A meeting of the California Law Revision Commission was held in Sacramento on February 2, 2017.

Commission:

Present: Susan Duncan Lee, Chairperson
         Thomas Hallinan, Vice Chairperson
         Diane F. Boyer-Vine, Legislative Counsel
         Taras Kihiczak
         Victor King
         Jane McAllister
         Crystal Miller-O’Brien

Absent: Assembly Member Ed Chau
         Senator Richard D. Roth
         Damian Capozzola

Staff: Brian Hebert, Executive Director
       Barbara Gaal, Chief Deputy Counsel
       Kristin Burford, Staff Counsel
       Steve Cohen, Staff Counsel

Other Persons:

Heather Anderson, Judicial Council of California
Lawrence Doyle, Conference of California Bar Associations
J. Felix De La Torre, PERB
Robert Flack
Greg Gonzalez, CLRC law student extern
Ron Kelly
Jeff Kichaven
Hon. David W. Long (ret.), California Judges Association
Phyllis G. Pollack, PGP Mediation
Fern Topas Salka
Elisa Shieh, CLRC law student extern
Heidi S. Tuffias
Loretta Van Der Pol, PERB/SMCS
John S. Warnlof, California Dispute Resolution Council
Stephanie L. Williams, ACFLS
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APPROVAL OF ACTIONS TAKEN

Unless otherwise indicated, the Commission decisions noted in these Minutes were approved by all members present at the meeting. If a member who was present at the meeting voted against a particular decision, abstained from voting, or was not present when the decision was made, that fact will be noted below.

MINUTES OF DECEMBER 1, 2016, COMMISSION MEETING

Memorandum 2017-1 presented a draft of the Minutes of the December 1, 2016, Commission meeting. The Commission approved the Minutes as submitted.

(Commissioners Kihiczak and Miller-O’Brien were not present when this decision was made.)

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director introduced the Commission’s current externs, Gregory Gonzalez and Elisa Shieh, both students at the U.C. Davis School of Law.

Commissioner Suggestions

No new Commissioner suggestions were made.
Open Government Laws

The Commission considered Memorandum 2017-2, summarizing “open
government” laws applicable to the Commission. No Commission action was
required or taken.

2017 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2017-3, discussing the
Commission’s 2017 Legislative Program. No Commission action was required or
taken.

STUDY G-400 — CALIFORNIA PUBLIC RECORDS ACT CLEAN-UP

The Commission considered Memorandum 2017-5, introducing the study of a
nonsubstantive recodification of the California Public Records Act (Gov’t Code
§§ 6250-6276.48, also known as the “CPRA”) and related provisions.

The Commission made the following decisions:

• This study is strictly nonsubstantive; the proposed recodification
  should consist of clarifying clean-up only. In preparing drafts for
  the Commission to consider, the staff should stick closely to the
  existing language of the CPRA. The staff should also use the
  Commission’s other traditional techniques for ensuring that a
  recodification effects no substantive change.

• In addition, the staff should apply the same prudential
  considerations as in other recent studies of this type. Any
  proposed statutory change must meet all three of the following
criteria:

  (1) It is plainly beneficial.

  (2) It does not present a significant risk of unintended
      consequences (i.e., its effects seem straightforward and
      circumscribed).

  (3) It is not likely to be controversial.

• For now, the Commission will focus only on statutory provisions
  that are within the CPRA, or that cross-reference to the CPRA. The
  Commission deferred decision on whether to examine any other
  statutory provisions, such as those comprising the Richard McKee

• To ease the transition to a new numbering scheme, the proposed
  recodification should include a provision substantially similar to
Penal Code Section 16010, which is shown on page 13 of Memorandum 2017-5.

- As a next step in the study, the staff should prepare and present a tentative outline proposing a reorganization of the CPRA.

STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND ATTORNEY MALPRACTICE AND OTHER MISCONDUCT

The Commission discussed two aspects of its study of the relationship between mediation confidentiality and attorney malpractice and other misconduct:

1. Possible additional reforms to include in the tentative recommendation.
2. Further work on the draft tentative recommendation.

Possible Additional Reforms to Include in the Tentative Recommendation

The Commission considered Memorandum 2016-59 (Possible Additional Reforms to Include in the Tentative Recommendation) and its First Supplement. The Commission also considered the material pertaining to that topic in the First and Second Supplements to Memorandum 2017-9.

The Commission made the following decisions regarding inclusion of additional reforms in its tentative recommendation for this study.

Disclosure Requirements

The tentative recommendation should not propose any statutory disclosure requirement (see Memorandum 2016-59, pp. 6-18).

(Commissioner Boyer-Vine was not present for this decision.)

Revise the Law on Waiving Mediation Confidentiality

The tentative recommendation should not propose any revision of the rules for waiving mediation confidentiality (see Memorandum 2016-59, pp. 18-21).

Revise the Law on Modifying Mediation Confidentiality By Agreement

The tentative recommendation should not propose any reform relating to modifying mediation confidentiality by agreement (see Memorandum 2016-59, pp. 21-22).

(Commissioners Boyer-Vine and McAllister abstained from this decision.)
Cooling-Off Period or Similar Reform

The tentative recommendation should not propose a cooling-off period for a mediated settlement agreement or a similar reform (see Memorandum 2016-59, pp. 23-26).

Level of Assistance for Mediation Participants

The tentative recommendation should not propose any reform relating to the level of assistance for mediation participants (see Memorandum 2016-59, pp. 26-27).

Oral or Written Voir Dire Before a Party Signs Mediated Settlement Agreement

The tentative recommendation should not propose a voir dire requirement for a mediated settlement agreement (see Memorandum 2016-59, pp. 27-28).

Requirements to Ensure that Mediation Participants Effectively Memorialize Key Representations

The tentative recommendation should not propose any requirement relating to memorializing key representations made in the mediation process (see Memorandum 2016-59, pp. 28-30).

(Commissioner Boyer-Vine abstained from this decision.)

Empirical Study

The tentative recommendation should not propose any reform involving an empirical study (see Memorandum 2016-59, pp. 30-31).

Ron Kelly’s “Alternative Compromise Package”

The tentative recommendation should not propose Ron Kelly’s “Alternative Compromise Package” (see Memorandum 2016-59, pp. 31-35 & Exhibit pp. 51-53).

(Commissioner Boyer-Vine abstained from this decision.)

Report With No Recommendation or a Recommendation to Leave the Law As Is

The tentative recommendation should not raise the possibility of preparing a report in which the Commission (1) describes various approaches but makes no recommendation or (2) recommends leaving existing law on mediation confidentiality intact (see Memorandum 2016-59, p. 36).

Rather, the tentative recommendation should propose and solicit comment on a single reform: the new mediation confidentiality exception that the
Commission has been drafting for the past year. The tentative recommendation should explain why the Commission is proposing that approach. The tentative recommendation should also describe the other options that the Commission considered (without detailing its concerns about those options).

**Further Work on Draft Tentative Recommendation**

The Commission began to consider Memorandum 2017-8 (Further Work on Draft Tentative Recommendation) and material pertaining to that topic in the Memorandum 2017-9 and its First Supplement. In particular, the Commission heard testimony, raised questions, and expressed thoughts on the issues raised by the Public Employment Relations Board (“PERB”).

The Commission did not resolve PERB’s issues or any of the other drafting issues. It requested that the staff include them in a memorandum for the April meeting, which should take the February discussion into account.

(Because her firm does legal work involving PERB, Commissioner Miller-O’Brien left the room during the discussion of PERB’s issues, and did not participate in that discussion.)

**STUDY L-3032.1 — REVOCABLE TRANSFER ON DEATH DEED: FOLLOW-UP STUDY**

The Commission considered Memorandum 2017-6, discussing the statutory requirement that a revocable transfer on death deed be recorded, in order to be valid. The Commission directed the staff to prepare a draft tentative recommendation that would do both of the following:

1. Expressly provide that failure to record the “common questions” page of the statutory revocable transfer on death deed form has no effect on the validity of the deed.
2. Apply that new rule retroactively.

**STUDY L-4100 – NONPROBATE TRANSFERS: CREDITOR CLAIMS AND FAMILY PROTECTION**

The Commission considered Memorandum 2017-7, reactivating the Commission’s study of the liability of nonprobate transfers for creditor claims and family protections.

No Commission action was required or taken.
The Commission considered Memorandum 2017-4, discussing the tentative recommendation that is currently being prepared. No Commission action was required or taken.