
***APPROVED* MINUTES OF MEETING**
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 2, 2017
SACRAMENTO

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

1 **Open Government Laws**

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

5 2017 LEGISLATIVE PROGRAM

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

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

10 The Commission considered Memorandum 2017-5, introducing the study of a
11 nonsubstantive recodification of the California Public Records Act (Gov’t Code
12 §§ 6250-6276.48, also known as the “CPRA”) and related provisions.

13 The Commission made the following decisions:

- 14 • This study is strictly nonsubstantive; the proposed recodification
15 should consist of clarifying clean-up only. In preparing drafts for
16 the Commission to consider, the staff should stick closely to the
17 existing language of the CPRA. The staff should also use the
18 Commission’s other traditional techniques for ensuring that a
19 recodification effects no substantive change.
- 20 • In addition, the staff should apply the same prudential
21 considerations as in other recent studies of this type. Any
22 proposed statutory change must meet all three of the following
23 criteria:
 - 24 (1) It is plainly beneficial.
 - 25 (2) It does not present a significant risk of unintended
26 consequences (i.e., its effects seem straightforward and
27 circumscribed).
 - 28 (3) It is not likely to be controversial.
- 29 • For now, the Commission will focus only on statutory provisions
30 that are within the CPRA, or that cross-refer to the CPRA. The
31 Commission deferred decision on whether to examine any other
32 statutory provisions, such as those comprising the Richard McKee
33 Transparency Act (Educ. Code §§ 89913-89919).
- 34 • To ease the transition to a new numbering scheme, the proposed
35 recodification should include a provision substantially similar to

1 Penal Code Section 16010, which is shown on page 13 of
2 Memorandum 2017-5.

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

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

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

- 10 (1) Possible additional reforms to include in the tentative
11 recommendation.
12 (2) Further work on the draft tentative recommendation.

13 **Possible Additional Reforms to Include in the Tentative Recommendation**

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

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

20 *Disclosure Requirements*

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

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

24 *Revise the Law on Waiving Mediation Confidentiality*

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

27 *Revise the Law on Modifying Mediation Confidentiality By Agreement*

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

31 *(Commissioners Boyer-Vine and McAllister abstained from this decision.)*

1 *Cooling-Off Period or Similar Reform*

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

5 *Level of Assistance for Mediation Participants*

6 The tentative recommendation should not propose any reform relating to the
7 level of assistance for mediation participants (see Memorandum 2016-59, pp. 26-
8 27).

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

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

12 *Requirements to Ensure that Mediation Participants Effectively Memorialize Key*
13 *Representations*

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

17 *(Commissioner Boyer-Vine abstained from this decision.)*

18 *Empirical Study*

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

21 *Ron Kelly's "Alternative Compromise Package"*

22 The tentative recommendation should not propose Ron Kelly's "Alternative
23 Compromise Package" (see Memorandum 2016-59, pp. 31-35 & Exhibit pp. 51-
24 53).

25 *(Commissioner Boyer-Vine abstained from this decision.)*

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

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

31 Rather, the tentative recommendation should propose and solicit comment on
32 a single reform: the new mediation confidentiality exception that the

1 Commission has been drafting for the past year. The tentative recommendation
2 should explain why the Commission is proposing that approach. The tentative
3 recommendation should also describe the other options that the Commission
4 considered (without detailing its concerns about those options).

5 **Further Work on Draft Tentative Recommendation**

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

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

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

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

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

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

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

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

31 No Commission action was required or taken.

