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**APPROVED** MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
JUNE 8, 2017  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on June 8, 2017.

**Commission:**

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

*Absent:* Assembly Member Ed Chau  
Senator Richard D. Roth  
Damian Capozzola  
Crystal Miller-O'Brien

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

**Consultant:** Nathaniel Sterling

**Other Persons:**

Lawrence Doyle, Conference of California Bar Associations  
Ron Kelly  
David G. Knitter, Executive Committee, Trusts and Estates Section of the State Bar  
Hon. David W. Long (ret.), California Judges Association  
Nikki Moore, California Newspaper Publishers Association  
Ana Sambold, National Conflict Resolution Center  
Hon. Brian R. Van Camp (ret.), California Judges Association  
John S. Warnlof, California Dispute Resolution Council



- 1 • Provide enough meeting time to get through the material
- 2 scheduled for consideration.
- 3 • To the extent compatible with the prior goals, avoid unduly late
- 4 return flights.

5 The Commission directed the staff to continue those practices without  
6 change.

7 (*Commissioner Hallinan was not present when this decision was made.*  
8 *Commissioner King abstained.*)

### 9 **Commissioner Suggestions**

10 No new Commissioner suggestions were made.

### 11 **Public Records Practices**

12 The Commission considered Memorandum 2017-21, discussing whether to  
13 adjust the Commission's practices to accommodate the holding in *City of San Jose*  
14 *v. Superior Court*, 2 Cal. 5th 608 (2017). The Commission decided to postpone  
15 making any final decision on that topic until its August 2017 meeting.  
16 Memorandum 2017-21 will be placed on the agenda for that meeting, along with  
17 a supplemental memorandum discussing records held by former commissioners.

18 (*Commissioner Hallinan was not present when this decision was made.*  
19 *Commissioner King abstained.*)

### 20 **2017 LEGISLATIVE PROGRAM**

21 The Commission considered Memorandum 2017-22, discussing the  
22 Commission's 2017 Legislative Program. The Commission made the following  
23 decisions:

- 24 • The Commission accepted the amendment to AB 1034 (Chau) that  
25 was set out in the memorandum. The Commission will revise its  
26 recommendation to use the amended language. (*Commissioner*  
27 *Hallinan was not present when this decision was made.*)
- 28 • The Commission approved the Comment revisions proposed by  
29 staff to reflect the March 13, 2017, amendment of AB 905  
30 (Maienschein). (*Commissioner Hallinan was not present when this*  
31 *decision was made. Commissioner Boyer-Vine abstained.*)

1                   STUDY D-1300 — HOMESTEAD EXEMPTION: DWELLING

2           The Commission considered Memorandum 2017-25, presenting a draft  
3 tentative recommendation relating to the procedure used to approve the sale of a  
4 dwelling to satisfy a judgment creditor. The Commission approved the draft for  
5 circulation as a tentative recommendation.

6           *(Commissioner Hallinan was not present when this decision was made.)*

7                   STUDY EM-560 — EMINENT DOMAIN: PRE-CONDEMNATION ACTIVITIES

8           The Commission considered Memorandum 2017-27, relating to the statutory  
9 procedure for compensation of a property owner in connection with pre-  
10 condemnation activity. The Commission approved the draft for circulation as a  
11 tentative recommendation.

12           *(Commissioner Hallinan was not present when this decision was made.)*

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

15           The Commission considered Memorandum 2017-30 (draft tentative  
16 recommendation) and its First and Second Supplements. The Commission also  
17 considered Memorandum 2017-31 (public comment).

18           The Commission made the following decisions:

19           **Implementation of April Decisions on Mediator Testimony and Other**  
20           **Requests for Evidence From a Mediator**

21           The Commission approved the staff's implementation of the decisions that  
22 the Commission made in April relating to mediator testimony and other requests  
23 for evidence from a mediator (see First Supplement to Memorandum 2017-30,  
24 pp. 1-3).

25           **Access to Mediator Communications**

26           Proposed Evidence Code Section 1120.5 should be revised as shown in  
27 ~~strikeout~~ and underscore below:

28                   1120.5. (a) A communication or a writing that is made or  
29 prepared for the purpose of, or in the course of, or pursuant to, a  
30 mediation or a mediation consultation, is not made inadmissible, or  
31 protected from disclosure, by provisions of this chapter if ~~both~~ all  
32 of the following requirements are satisfied:

1 (1) The evidence is relevant to prove or disprove an allegation  
2 that a lawyer breached a professional requirement when  
3 representing a client in the context of a mediation or a mediation  
4 consultation.

5 (2) The evidence is sought or proffered in connection with, and  
6 is used pursuant to this section solely in resolving, one or more of  
7 the following:

8 (A) ....

9 (3) The evidence does not constitute or disclose a writing of the  
10 mediator relating to a mediation conducted by the mediator.

11 ....

12 *(Commissioner King voted against this decision.)*

13 The tentative recommendation should include a Note that specifically solicits  
14 comment on the content and wording of proposed Section 1120.5(a)(3).

15 In addition, the Comment to proposed Section 1120.5 should be revised as  
16 shown in underscore below:

17 Under subdivision (e), a mediator generally cannot testify or  
18 produce documents pursuant to this section, whether voluntarily  
19 or under compulsion of process, regarding a mediation that the  
20 mediator conducted. That general rule is subject to the same  
21 exceptions stated in Section 703.5, which does not expressly refer to  
22 documentary evidence.

23 For restrictions on obtaining a mediator's electronic records  
24 from the mediator's service provider, see 18 U.S.C. § 2702(a);  
25 O'Grady v. Superior Court, 139 Cal. App. 4th 1423, 44 Cal. Rptr. 3d  
26 72 (2006).

27 Subdivision (f) ....

28 The staff should make conforming revisions throughout the proposal as  
29 necessary to reflect these decisions.

### 30 **Other Issues**

31 The drafting issues described at pages 12-14 of the First Supplement to  
32 Memorandum 2017-30 should be handled as shown on those pages.

### 33 **Approval of a Tentative Recommendation**

34 Subject to the revisions described above, the Commission approved the draft  
35 attached to Memorandum 2017-30 as a tentative recommendation, to be posted  
36 to the Commission's website and broadly circulated for comment.

37 *(Commissioner King voted against this decision. Commissioner Boyer-Vine*  
38 *abstained.)*

