APPROVED MINUTES OF MEETING CALIFORNIA LAW REVISION COMMISSION

JUNE 8, 2017

SACRAMENTO

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 Řichard 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

Approval of Actions Taken	
Minutes of April 13, 2017, Commission Meeting	
Administrative Matters	
Commissioner Suggestions	
Public Records Practices	
2017 Legislative Program	
Study D-1300 — Homestead Exemption: Dwelling	
Study Em-560 — Eminent Domain: Pre-Condemnation Activities	
Study K-402 — Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct	
Other Misconduct	
Study L-4100 — Nonprobate Transfers: Creditor Claims and Family Protections	
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meeting. The Commission approved the Minutes as submitted.	
(Commissioner Hallinan was not present when this decision was made.).	
ADMINISTRATIVE MATTERS	
Report of Executive Director	
The Executive Director noted that there was no change to the Commission's	
budget in the Governor's May Revision.	
The Executive Director asked for Commission guidance on whether to change	
any of the staff's existing practices regarding the scheduling of the start and stop	
times and lunch breaks for Commission meetings. Under those practices, the	

staff endeavors to:

Provide a meaningful lunch break, with occasional longer lunches

Avoid very early flights to the meeting.

on special occasions.

- Provide enough meeting time to get through the material scheduled for consideration.
 - To the extent compatible with the prior goals, avoid unduly late return flights.
- The Commission directed the staff to continue those practices without change.
- 7 (Commissioner Hallinan was not present when this decision was made.
- 8 Commissioner King abstained.)

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9 Commissioner Suggestions

No new Commissioner suggestions were made.

Public Records Practices

- The Commission considered Memorandum 2017-21, discussing whether to adjust the Commission's practices to accommodate the holding in *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017). The Commission decided to postpone making any final decision on that topic until its August 2017 meeting. Memorandum 2017-21 will be placed on the agenda for that meeting, along with 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

- The Commission considered Memorandum 2017-22, discussing the Commission's 2017 Legislative Program. The Commission made the following decisions:
 - The Commission accepted the amendment to AB 1034 (Chau) that was set out in the memorandum. The Commission will revise its recommendation to use the amended language. (Commissioner Hallinan was not present when this decision was made.)
 - The Commission approved the Comment revisions proposed by staff to reflect the March 13, 2017, amendment of AB 905 (Maienschein). (Commissioner Hallinan was not present when this 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 20	Implementation of April Decisions on Mediator Testimony and Other 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 31	mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if both <u>all</u>
32	of the following requirements are satisfied:

1 (1) The evidence is relevant to prove or disprove an allegation that a lawyer breached a professional requirement when 2 representing a client in the context of a mediation or a mediation 3 consultation. 4 (2) The evidence is sought or proffered in connection with, and 5 is used pursuant to this section solely in resolving, one or more of 6 the following: 7 (A) (3) The evidence does not constitute or disclose a writing of the 9 mediator relating to a mediation conducted by the mediator. 10 11 (Commissioner King voted against this decision.) 12 The tentative recommendation should include a Note that specifically solicits 13 comment on the content and wording of proposed Section 1120.5(a)(3). 14 In addition, the Comment to proposed Section 1120.5 should be revised as 15 shown in underscore below: 16 Under subdivision (e), a mediator generally cannot testify or 17 produce documents pursuant to this section, whether voluntarily 18 19 or under compulsion of process, regarding a mediation that the mediator conducted. That general rule is subject to the same 20 exceptions stated in Section 703.5, which does not expressly refer to 21 documentary evidence. 22 For restrictions on obtaining a mediator's electronic records 23 from the mediator's service provider, see 18 U.S.C. § 2702(a); 24 O'Grady v. Superior Court, 139 Cal. App. 4th 1423, 44 Cal. Rptr. 3d 25 72 (2006). 26 Subdivision (f) 27 The staff should make conforming revisions throughout the proposal as 28 necessary to reflect these decisions. 29 Other Issues 30 The drafting issues described at pages 12-14 of the First Supplement to 31 32 Memorandum 2017-30 should be handled as shown on those pages. Approval of a Tentative Recommendation 33 Subject to the revisions described above, the Commission approved the draft 34 attached to Memorandum 2017-30 as a tentative recommendation, to be posted 35 to the Commission's website and broadly circulated for comment. 36 (Commissioner King voted against this decision. Commissioner Boyer-Vine 37

abstained.)

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STUDY L-4100 — NONPROBATE TRANSFERS: CREDITOR CLAIMS AND FAMILY PROTECTIONS

The Commission considered Memorandum 2017-23 and its First Supplement, discussing the Commission's study of the liability of nonprobate transfers for creditor claims and family protections.

The Commission made the following decisions:

- The Commission will consider whether to recommend the enactment of Section 102 of the Uniform Nonprobate Transfers on Death Act (regarding the liability of nonprobate transfers for creditor claims and family protections). (Commissioner Hallinan was not present when this decision was made. Commissioner King abstained.)
- The Commission will consider whether to recommend any statutory reforms to address *Kircher v. Kircher*, 189 Cal. App. 4th 1105 (2010). (*Commissioner Hallinan was not present when this decision was made. Commissioner King abstained.*)
- Any liability rule for nonprobate transfers should expressly exclude matters preempted by federal law and Medi-Cal Estate Recovery. (Commissioners Boyer-Vine and Hallinan were not present when this decision was made. Commissioner King abstained.)

STUDY R-100 — FISH AND GAME LAW

The Commission considered Memoranda 2017-28 and 2017-29, relating to the Commission's proposed recodification of the Fish and Game Code. The Commission made the following decisions:

- The Commission approved the draft attached to Memorandum 2017-28 for circulation as a tentative recommendation. (Commissioner Hallinan was not present when this decision was made; Commissioner Boyer-Vine abstained.)
- The Commission approved the preliminary staff draft attached to Memorandum 2017-29, for inclusion in a future tentative recommendation.
- The Commission directed the staff to include the remainder of the Fish and Game Code in a draft of a "Part 3" tentative recommendation, rather than presenting that material first as a preliminary staff draft.

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