
APPROVED MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
SEPTEMBER 28, 2017
Sacramento

A meeting of the California Law Revision Commission was held in Sacramento on September 28, 2017.

Commission:

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

Absent: Assembly Member Ed Chau
Susan Duncan Lee
Senator Richard D. Roth

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel

Other Persons:

Rene Ackerman, Third District Court of Appeal
Heather Anderson, Judicial Council of California
Karin Bailey, CLRC law student extern
Damian Caravez, CLRC law student extern
Angela Donlan, California Department of Fish and Wildlife
Rachel Ehrlich, Ehrlich Mediation
Robert Flack
Lexi Howard, California Judges Association
Ron Kelly
Jeff Kichaven
David G. Knitter, Executive Committee, Trust and Estates Section of the State Bar
Hon. David W. Long (ret.), California Judges Association
James Madison, California Dispute Resolution Council
Neli Palma, Office of the Attorney General
Phyllis G. Pollack, PGP Mediation
Jody Prunier, Sacramento Mediation Center
Ana Sambold, San Diego County Bar Association
Ellen Taylor, California Lawyers for the Arts
Gabe Tiffany, California Department of Fish and Wildlife

Brian R. Van Camp, California Judges Association
Michael G. Virga, Judicate West
Cordell Wesselink, Consortium for Children

C O N T E N T S

Approval of Actions Taken.....	2
Minutes of August 4, 2017, Commission Meeting	2
Administrative Matters	2
Report of Executive Director	2
Commissioner Suggestions	3
Public Records and Open Meeting Practices	3
Meeting Schedule.....	3
2017 Legislative Program	3
Study D-1300 — Homestead Exemption: Dwelling.....	4
Study Em-560 — Eminent Domain: Pre-Condemnation Activities.....	4
Study K-402 — Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct.....	5
Study L-4100 — Nonprobate Transfers: Creditor Claims and Family Protections	5
Study R-100 — Fish and Game Law	6

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APPROVAL OF ACTIONS TAKEN

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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.

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MINUTES OF AUGUST 4, 2017, COMMISSION MEETING

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Memorandum 2017-39 presented a draft of the Minutes of the August 4, 2017, meeting. The First Supplement to Memorandum 2017-39 recommended a technical correction to the draft Minutes. The Commission approved the Minutes, with the recommended correction.

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(Commissioner King abstained. Commissioner McAllister was not present when this decision was made.)

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ADMINISTRATIVE MATTERS

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Report of Executive Director

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The Executive Director reported on the following matters:

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- Commissioner Miller-O'Brien was reappointed to serve another term.

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- 1 • Commissioner Kihiczak's term will end on October 1, 2017.
- 2 • The Commission's secretary, Victoria Matias, will be retiring at the
- 3 end of the year.
- 4 • Medical absences will significantly limit the Commission's staff
- 5 resources prior to the December 1, 2017, meeting.

6 The Executive Director recognized and thanked the Commission's current
7 externs, Karin Bailey and Damian Caravez, both students at the U.C. Davis
8 School of Law.

9 **Commissioner Suggestions**

10 Commissioners did not make any new suggestions.

11 **Public Records and Open Meeting Practices**

12 The Commission considered Memorandum 2017-40, discussing the
13 Commission's public record and open meeting practices.

14 The Commission approved the language set out on page 2 of the
15 memorandum, for inclusion in the Commission's *Handbook of Practices and*
16 *Procedures*.

17 The Commission decided to continue its existing practices when preparing
18 meeting agendas.

19 **Meeting Schedule**

20 The Commission considered Memorandum 2017-41, discussing the location
21 of the Commission's December 1, 2017, meeting. The Commission decided to
22 move the location of that meeting to Sacramento.

23 (*Commissioner Kihiczak abstained.*)

24 **2017 LEGISLATIVE PROGRAM**

25 The Commission considered Memorandum 2017-42, discussing the
26 Commission's 2017 Legislative Program.

27 The memorandum described an amendment that had been made to Assembly
28 Bill 1034 (Chau) on August 24, 2017. The Commission approved the amendment
29 as compatible with its recommendation.

1 STUDY D-1300 — HOMESTEAD EXEMPTION: DWELLING

2 The Commission considered Memorandum 2017-44, presenting a draft
3 recommendation relating to the procedure used to approve the sale of a dwelling
4 to satisfy a judgment creditor. The Commission approved the draft as a final
5 recommendation, for publication and distribution to the Governor and
6 Legislature.

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

8 The Commission considered Memorandum 2017-43 and its First Supplement,
9 discussing public comment on its recommendation relating to the statutory
10 procedure for compensation of a property owner in connection with pre-
11 condemnation activity.

12 The Commission approved the staff recommendation on page 6 of
13 Memorandum 2017-43, replacing the Commission’s proposed addition to Code
14 of Civil Procedure Section 1245.060(c) with the following language:

15 In a proceeding under this subdivision, the owner has the
16 option of obtaining a jury trial on the amount of compensation for
17 actual damage to or substantial interference with the possession or
18 use of the property.

19 The Commission did not approve the draft recommendation attached to
20 Memorandum 2017-43. Instead, the staff will expand the scope of the study to
21 address the following matters:

- 22 • Whether Section 1245.060 should be revised to make clear that a
23 property owner is not entitled to compensation under that
24 provision for losses that have not yet occurred.
- 25 • Whether Section 1245.060 should be revised to expressly provide
26 that compensation may not be provided under that provision until
27 all pre-condemnation activities have terminated.
- 28 • Whether Section 1245.060 should be revised to expressly provide
29 that a claim for losses caused by pre-condemnation activity may be
30 sought in a subsequent condemnation action.

31 To the extent practicable, this work will be done with the assistance of law
32 student externs. Research on these matters should include an examination of
33 their treatment in other jurisdictions.

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

3 The Commission considered Memorandum 2017-51 and its First Supplement,
4 presenting the comments on the tentative recommendation in this study. The
5 Commission also considered Memorandum 2017-52, analyzing the comments
6 that are directed to the proposal as a whole.

7 The Commission made the decisions described below.

8 **Whether to Narrow the Proposed Exception So It Only Applies to Private**
9 **Discussions Between an Attorney and a Client in a Mediation Context**

10 The Commission considered whether its proposed mediation confidentiality
11 exception (proposed Evid. Code § 1120.5) should apply only to attorney-client
12 discussions that occur in private in a mediation context. The Commission
13 decided *not* to narrow the proposed exception in that manner. (*Commissioners*
14 *King and McAllister voted against this decision.*)

15 **Whether to Revise the Commission’s Proposal in Any Other Way**

16 The Commission considered the other options described on pages 33-35 of
17 Memorandum 2017-52. The Commission decided to stick with its current
18 proposal but explore the possibility of narrowing the proposed exception. It
19 directed the staff to prepare a memorandum that (1) analyzes the comments that
20 focus on a specific aspect of the tentative recommendation rather than the
21 proposal as a whole, and (2) explores whether the proposed exception should
22 apply only in a State Bar disciplinary proceeding and how to implement such an
23 approach if the Commission decides to pursue it. (*Commissioner King voted against*
24 *this decision.*)

25 (*Commissioner Boyer-Vine was not present for any of the decisions relating to this*
26 *study.*)

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

29 The Commission considered Memorandum 2017-46, discussing the
30 Commission’s study of the liability of nonprobate transfers for creditor claims
31 and family protections.

32 The Commission made the following decisions:

- 1 • Nonprobate transfers should be liable for all of the kinds of claims
2 that may be raised in probate (i.e., both creditor claims and claims
3 that arise as a consequence of death). (*Commissioner Miller-O'Brien*
4 *voted against this decision.*)
 - 5 • Nonprobate transfers should be subject to the probate homestead
6 (discussed at pages 6-9 of the memorandum), exempt property set-
7 aside (discussed at pages 9-12 of the memorandum), and family
8 allowance (discussed at pages 12-16 of the memorandum).
 - 9 • Nonprobate transfers should be subject to the surviving family's
10 temporary right of possession (discussed at pages 17-18 of the
11 memorandum). It was noted that implementation of this decision
12 might require an adjustment to the existing timing rules.
 - 13 • Nonprobate transfers should not be included within the scope of
14 the small estate set-aside (discussed at pages 19-20 of the
15 memorandum). (*Commissioner Miller-O'Brien voted against this*
16 *decision.*)
 - 17 • The rules governing omitted heirs and spouses (discussed at pages
18 20-22 of the memorandum) should not be expanded to govern
19 types of nonprobate transfers that are not currently subject to those
20 rules. (*Commissioner Miller-O'Brien voted against this decision.*)
- 21 (*Commissioner Boyer-Vine was not present for any of the decisions relating to this*
22 *study.*)

23 STUDY R-100 — FISH AND GAME LAW

24 The Commission considered Memorandum 2017-45, recommending a
25 methodology for the staff's analysis of the funding structures in the Fish and
26 Game Code and presenting a component of that analysis. The Commission
27 approved the recommended methodology.
