A meeting of the California Law Revision Commission was held in Burbank on August 17, 2018.

Commission:

Present: Thomas Hallinan, Chairperson
Victor King
Susan Duncan Lee
Olga Mack
Crystal Miller-O’Brien

Absent: Assembly Member Ed Chau
Senator Richard D. Roth
Diane F. Boyer-Vine, Legislative Counsel
Jane McAllister, Vice-Chairperson

Staff:

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

Absent: Steve Cohen, Staff Counsel

Other Persons:

Charles Martel, Judicial Council of California
Joyce Riley, Bet Tzedek

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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

The Commission considered Memorandum 2018-28, presenting draft Minutes for the May 4, 2018 meeting.

The Commission approved the Minutes for the May meeting without change.

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported that the Commission has been selected for an Independent Security Assessment by the California Department of Technology. Because of the Commission’s very small size and the fact that nearly all of its information technology services are provided by the University of California, the staff will attempt to obtain a waiver. If a waiver is not provided, the Commission may need to request a budget change to provide funding for the cost of the assessment.

Commissioner Suggestions

Commissioner Miller-O’Brien provided the staff with a document containing Internet links to information important to newly-appointed Commissioners. The staff will work that content into the information that is provided to new Commissioners.

Handbook of Practices and Procedures

The Commission considered Memorandum 2018-29, presenting a staff draft of a restated Handbook of Practices and Procedures. The Commission approved the staff draft as final, and made the following specific decisions:

- Language will be added to the Handbook, in or near Section 100, declaring that commissioners are state employees subject to state legal and ethical requirements. The provision will refer to relevant
pages of the CalHR and Fair Political Practices Commission websites.

- Going forward, the staff has discretion to make technical corrections to the Handbook as needed.
- Hard copies of the restated Handbook will be mailed to Commissioners.
- An electronic copy of the Handbook will be uploaded to the Commission’s website.

**Election of Officers**

The Commission considered Memorandum 2018-39, relating to the election of Commission officers. The Commission elected Jane McAllister as Chairperson and Victor King as Vice Chairperson, for terms commencing September 1, 2018, and ending August 31, 2019.

**2018 LEGISLATIVE PROGRAM**

The Commission considered Memorandum 2018-30, discussing the Commission’s 2018 Legislative Program.

No Commission actions were required or taken.

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

The Commission considered Memorandum 2018-40, presenting a cumulative draft of material previously considered. The Commission approved the revisions described in the memorandum (relating to timing of the proposed recodification, gender neutrality, internal cross-references, and various technical points). The Commission further decided to avoid the use of gendered pronouns wherever possible in future work on all of its studies.

The Commission also considered Memorandum 2018-32, presenting a draft of Chapters 2-4 of Part 5 of proposed new Division 10 of Title 1 of the Government Code. Subject to the decisions described below, the Commission approved that draft for purposes of a tentative recommendation.

**Definition of “Home Address” (Gov’t Code § 6254.4(b); proposed Gov’t Code § 7924.000(d))**

Proposed Government Code Section 7924.000 is acceptable as drafted.
Definition of “Petition” (Gov’t Code § 6253.5(c); proposed Gov’t Code § 7924.100)

Proposed Government Code Section 7924.100 is acceptable as drafted.

(Chairperson Hallinan was not present for this decision.)

Definition of “Proponent of the Petition” (Gov’t Code § 6253.5(d); proposed Gov’t Code § 7924.105)

Proposed Government Code Section 7924.105 is acceptable as drafted.

(Chairperson Hallinan was not present for this decision.)

Notice Requirement for a Proposed Pesticide Registration (Gov’t Code § 6254.2(b); proposed Gov’t Code § 7924.305(a))

Proposed Government Code Section 7924.305(a) is acceptable as drafted. The tentative recommendation should include a Note soliciting comments on whether that is the best place to recodify the second sentence of Government Code Section 6254.2(b) (notice requirement for proposed pesticide registration).

Definition of “Trade Secret” Drawn From the Federal Insecticide, Fungicide, and Rodenticide Act (Gov’t Code § 6254.2(f); proposed Gov’t Code § 7924.305(f))

Proposed Government Code Section 7924.305(f) is acceptable as drafted.

Violations of Building Standards and Safety Requirements (Gov’t Code § 6254.7(c); proposed Gov’t Code § 7924.700)

For present purposes, proposed “Article 3. Building Standards and Safety Requirements” (commencing with proposed Gov’t Code § 7924.700) is acceptable as drafted. Before seeking approval of a tentative recommendation, the staff should research the legislative history of Government Code Section 6254.7(c) and report back to the Commission. The tentative recommendation should include a Note soliciting Comment on the merits of recodifying that provision in a separate article, instead of keeping it with the other substance of Section 6254.7.

The Commission considered Memorandum 2018-31 and its First Supplement, relating to court facilities. For purposes of a tentative recommendation, the Commission made the decisions reported below.

STUDY J-1405 — STATUTES MADE OBSOLETE BY
TRIAL COURT RESTRUCTURING: PART 6

The Commission considered Memorandum 2018-31 and its First Supplement, relating to court facilities. For purposes of a tentative recommendation, the Commission made the decisions reported below.
Leftover Issue From the May Discussion (Gov’t Code §§ 26638.15, 69920-69927, 73790-73796)

Article 12.5 (commencing with Section 73790) of Chapter 10 of Title 8 of the Government Code, relating to Merced County, should be repealed. As discussed at pages 2-4 of Memorandum 2018-31, the accompanying Comment should refer to Government Code Section 69921.5.

Jury Deliberation Rooms (Code Civ. Proc. § 216)

Code of Civil Procedure Section 216 should be amended along the following lines:

§ 216 (amended). Jury deliberation rooms
SEC. ____. Section 216 of the Code of Civil Procedure is amended to read:
216. (a) At each court facility where jury cases are heard, the board of supervisors court shall provide a deliberation room or rooms for use of jurors when they have retired for deliberation. The deliberation rooms shall be designed to minimize unwarranted intrusions by other persons in the court facility, shall have suitable furnishings, equipment, and supplies, and shall also have restroom accommodations for male and female jurors.
(b) If the board of supervisors neglects to provide the facilities required by this section, the court may order the sheriff or marshal to do so, and the expenses incurred in carrying the order into effect, when certified by the court, are a county charge.
(c) (b) Unless authorized by the jury commissioner, jury assembly facilities shall be restricted to use by jurors and jury commissioner staff.

Comment. Section 216 is amended to reflect enactment of the Trial Court Funding Act of 1997 and the related Trial Court Facilities Act of 2002. See Sections 77003 (“court operations” defined), 77200 (state funding of trial court operations). See also Sections 70311-70312 (responsibility for court operations & facilities), 70391 (Judicial Council responsibility & authority for court facilities).

Municipal Court Facilities, Supplies, and Equipment (Gov’t Code §§ 71002, 71383)

Government Code Section 71002 should be repealed:

§ 71002 (repealed). Municipal court facilities, supplies, and equipment
SEC. ____. Section 71002 of the Government Code is repealed.
71002. The board of supervisors shall provide suitable quarters for the municipal courts, including heating, lighting, and janitorial services, and shall supply them with furniture, books, and supplies.
necessary for carrying out their duties, including supplies and
equipment for the preparation and maintenance of duplicate
records of the court or a division of the court when sessions are
held at more than one place.

Comment. Section 71002 is repealed to reflect:
(1) Unification of the municipal and superior courts pursuant to
former Article VI, Section 5(e), of the California Constitution.
(2) Enactment of the Trial Court Funding Act of 1997 and the
related Trial Court Facilities Act of 2002. See Sections 77003 (“court
operations” defined), 77200 (state funding of trial court operations).
See also Sections 70311-70312 (responsibility for court operations &
facilities), 70391 (Judicial Council responsibility & authority for
court facilities).

Government Code Section 71383 should also be repealed:

§ 71383 (repealed). “Board of supervisors”
SEC. ____. Section 71383 of the Government Code is repealed.
71383. As used in Section 71002, “board of supervisors” means
county or city and county.

Comment. Section 71383 is repealed to reflect the repeal of
Section 71002.

The cross-reference to that section in Penal Code Section 1463.5 needs to be fixed
(see Memorandum 2018-31, pp. 7-8). The staff should do further research on this
matter and report back to the Commission.

Task Force on Court Facilities (Gov’t Code §§ 77650-77655)

Government Code Sections 77650-77654, relating to the Task Force on Court
Facilities, should be repealed. Government Code Section 77655 should be
amended as follows:

Gov’t Code § 77655 (amended). Inadmissibility of Task Force
findings
SEC. ____. Section 77655 of the Government Code is amended to
read:
77655. Notwithstanding any other provision of law, including
Section 68073, the findings of the task force Task Force on Court
Facilities created by Section 28 of Chapter 850 of the Statutes of
1997 shall not be considered or entered into evidence in any action
brought by trial courts to compel a county to provide facilities that
the trial court contends are necessary and suitable.

Comment. Section 77655 is amended to make it read clearly as a
stand-alone section. This is not a substantive change.
Flags for Courtrooms (Gov’t Code § 69504)

Government Code Section 69504 should be amended as follows:

§ 69504 (amended). Flags for courtrooms
SEC. ____. Section 69504 of the Government Code is amended to read:
69504. The board of supervisors superior court of each county shall purchase and provide for the installation of the Flag of the United States and the Bear Flag of California in each superior courtroom in the county.

Charles Martel of the Judicial Council will give the staff some citations relating to this matter. It does not appear necessary to include a Note specifically soliciting comment on it.

Superior Court Chambers, Rules, and Hours of Operation (Gov’t Code § 24261)

Government Code Section 24261 should be repealed:

§ 24261 (repealed). Superior court chambers, rules, and hours of operation
SEC. ____. Section 24261 of the Government Code is repealed.
24261. The judges of the superior court shall have chambers at the county seat and establish rules and hours for the dispatch of official business; provided that such rules must require that the courts shall be open for the transaction of judicial business on days on which an election is held throughout the State where county offices are open for the transaction of county business during such election days pursuant to ordinance.

The tentative recommendation should include a Note soliciting comments on the repeal, along the following lines:

Note. The Commission welcomes comments on any aspect of this tentative recommendation, but it would especially appreciate comments on whether any part of Section 24261 needs to be preserved in some manner.

The content of Section 24261 relates to courts, which are no longer county-run. If any of the content remains useful, it should be placed with other material that relates to courts, not left in “Title 3. Government of Counties.”

Due to the enactment of the Trial Court Funding Act and the Trial Court Facilities Act, the Commission has tentatively determined that Section 24261’s requirement to “have [superior court] chambers at the county seat” is obsolete. See Memorandum 2018-31, pp. 12-13; see also Memorandum 2018-21, pp. 7-14. Given
the judicial branch’s broad authority over court facilities (see Sections 69740 and 70391), is there any reason to retain this requirement relating to superior court chambers?

Due primarily to the enactment of Section 69740 (giving each trial court broad, overriding authority to schedule court sessions), the Commission has also tentatively determined that Section 24261’s requirements relating to hours of operation are obsolete. See Memorandum 2018-31, p. 13. Is that assessment correct? Is there any need to preserve Section 24261’s requirement relating to statewide elections? If so, should that be done in Section 69740?

Finally, the Commission has tentatively decided not to relocate Section 24261’s requirement that superior court judges “establish rules ... for the dispatch of official business.” Relocation of this material does not appear necessary because Section 68070 is similar in content.

The Commission encourages stakeholders and other interested persons to consider these points and share their views.

Miscellaneous Statutes That Authorize a County to Acquire or Lease Property For, Construct, Remodel, and/or Maintain a Court Facility (Gov’t Code §§ 25351, 25351.3, 50531)

Government Code Sections 25351 and 50531 do not appear to require any revisions to reflect trial court restructuring. They should not be included in the tentative recommendation.

Government Code Section 25351.3 should be amended along the following lines:

§ 25351.3 (amended). Acquisition, rental, improvement, furnishing, and repair of real property and facilities
SEC. ____. Section 25351.3 of the Government Code is amended to read:

25351.3. In addition to its other powers and duties, the board of supervisors may do any or all of the following:

(a) Acquire land for and construct, lease, sublease, build, furnish, refurnish, or repair buildings for municipal or superior courts and for convention and exhibition halls, trade and industrial centers, auditoriums, opera houses, music halls and centers, motion picture and television museums, and related facilities used for public assembly purposes for the use, benefit and enjoyment of the public, including offstreet parking places for motor vehicles, ways of ingress and egress, and any other facilities and improvements necessary or convenient for their use.

(b) Acquire land and construct buildings, structures and facilities thereon, in whole or in part, with county funds or it may, by contract or lease with any nonprofit association or corporation,
provide for the acquisition of land or the construction of buildings, structures and facilities, or all or any part thereof, for public assembly purposes, upon the terms the board may determine.

(c) Lease, pursuant to Section 25371, any real property owned by the county and available for public assembly purposes to any person, firm, corporation, or nonprofit association or corporation for public assembly purposes, with the person, firm, corporation, or nonprofit association or corporation to lease the real property, as improved, back to the county for use for the purposes stated in the lease. Any lease authorized by the board under this subdivision, except leases for municipal or superior courts, which may be entered into without advertising for bids, shall be awarded to the lowest responsible bidder after public competitive bidding conducted in the manner determined by the board. Notice inviting bids shall be published pursuant to Section 6066 in a newspaper as the board may direct.

(d) Enter into a lease or sublease, without advertising for bids therefor, of buildings, structures, and facilities or any of them with any nonprofit association or corporation which agrees to use the buildings, structures, and facilities so leased to it for the public assembly purposes for which they were or are to be built; or contract, without advertising, for bids with any nonprofit association or corporation for the maintenance, operation, and management of the buildings, structures, and facilities, or any part thereof used for public assembly purposes, including the scheduling and promotion of events therein, for a specified term, not to exceed 40 years, upon terms and conditions as may be agreed upon. The leases, subleases, or contracts shall provide that, at least annually, there shall be paid to the county the net revenue, if any, from the operation and use of the facilities, remaining after the payment of expenses and costs, if any, for maintenance, operation or management, interest, and principal payments upon loans to the nonprofit corporation or association for purposes of maintenance, operation, or management, and any other expenses, and after providing maintenance and operation reserves. The lease, sublease, or contract shall also provide that, upon its expiration, all of the assets of the nonprofit association or corporation after payment or discharge of its indebtedness and liabilities shall be transferred to the county.

(e) If the county has a population in excess of 4,000,000, without advertising for bids therefor, grant any real property owned by the county, or lease, for a term not to exceed 99 years, any real property owned by the county, to any city, district, or other public entity for any of the above public assembly purposes, without consideration, except the agreement of the grantee or lessee to use the real property for the public assembly purposes specified, and upon terms and conditions which may be agreed upon by the board and the grantee or lessee.
The amendment to this section enacted by Chapter 755 of the Statutes of 1963 shall not be construed to affect or modify the then-existing duty of any county or board of supervisors to provide adequate quarters for courts but is courts. That amendment was intended to provide an alternative method of financing the acquisition of property and buildings for use for courthouse purposes.

The tentative recommendation should include a Note soliciting comments on this provision, as follows:

**Note.** Section 25351.3(c) permits a board of supervisors to enter into certain types of leases. Any lease so authorized shall be awarded to the lowest responsible bidder after public competitive bidding, except a lease for a trial court, “which may be entered into without advertising for bids ....” Is this exception from the public competitive bidding process obsolete? If so, why?

The Commission welcomes comments on any aspect of this tentative recommendation, but it would especially appreciate comments on this matter.

Authority to Dedicate Unused Parkland for a Court Facility (Gov’t Code § 25560.4)

Government Code Section 25560.4 should be amended along the following lines:

§ 25560.4 (amended). Dedication of unused parkland for court facility

SEC. ____. Section 25560.4 of the Government Code is amended to read:

25560.4. The board of supervisors of any county may, by a four-fifths vote of the members, use or dedicate any portion of any land acquired by the county by means of special assessment proceedings for park purposes, for the erection and maintenance of one or more buildings to house any municipal or a superior court, or one or more departments or divisions of any one or more of such courts thereof, if the portion of the land to be so used or dedicated has not been used by the public for park purposes for a period of more than 10 years.

**Comment.** Section 25560.4 is amended to reflect unification of the municipal and superior courts pursuant to former Article VI, Section 5(e), of the California Constitution.

The tentative recommendation should include a Note soliciting comments on this amendment, as follows:
Note. In specified circumstances, Section 25560.4 authorizes a county to dedicate unused parkland “for the erection and maintenance of one or more buildings to house any ... superior court, or one or more departments or divisions” of such a court. Counties are no longer responsible for providing court facilities, so this grant of authority might not be used much in the future. See Sections 70311-70312 (responsibility for court operations & facilities), 70391 (Judicial Council responsibility & authority for court facilities).

Should Section 25560.4 be repealed instead of amended as shown above? Are there circumstances in which it would remain useful?

The Commission welcomes comments on any aspect of this tentative recommendation, but it would especially appreciate comments on this matter.

(Commissioner Miller-O’Brien was not present for these decisions.)

County Penalties (Gov’t Code §§ 76000-76252)

Government Code Section 76000

Government Code Section 76000 should be amended as shown on pages 28-30 of Memorandum 2018-31. The tentative recommendation should include a Note soliciting comments on the amendment, along the following lines:

Note. The above amendment would just correct an erroneous cross-reference. Are any further revisions of Section 76000 in order to reflect trial court restructuring? In particular, should the table in subdivision (e) be updated, and, if so, how? For discussion of this matter, see Memorandum 2018-31, pp. 27-28; First Supplement to Memorandum 2018-31, pp. 2-5.

The Commission welcomes comments on any aspect of this tentative recommendation, but it would especially appreciate comments on this matter.

(Commissioner Miller-O’Brien abstained from these decisions.)

Government Code Sections 76100 and 76101

At present, Government Code Sections 76100 and 76101 do not appear to require any revisions to reflect trial court restructuring. They should not be included in the tentative recommendation.
Government Code Section 76106

The tentative recommendation should solicit comments on Government Code Section 76106 as discussed at pages 7-8 of the First Supplement to Memorandum 2018-31.

(Commissioner Mack was not present for this decision.)

Government Code Section 76110

The tentative recommendation should solicit comments on Government Code Section 76110 as discussed at pages 8-10 of the First Supplement to Memorandum 2018-31.

(Commissioner Mack was not present for this decision.)

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

The Commission considered Memorandum 2018-33 and its First Supplement, discussing the Revocable Transfer on Death Deed (“RTODD”).

The Commission’s decisions are described below.

Disclaimer

The staff indicated that future memoranda in this study will begin with a disclaimer making clear that the Commission’s analysis of specific issues does not indicate that the Commission has made any decision on whether the RTODD should be repealed by operation of its sunset provision. The Commission concurred.

Residential Property Limitation

The RTODD statute should continue to limit the property that can be transferred by RTODD to residential property. However, the provision that establishes the limitation (Probate Code Section 5610) needs to be revised to address the following technical problems:

• Terminology should be standardized and, to the extent practicable, refer to facts that are determinable from public records.

• The rule in Section 5610(a) needs to be revised so that it does not undermine the rules in Section 5610(b) and (c).

• As a general matter, the law should permit the RTODD to transfer any residential interest in a common interest development, and not just a condominium unit.
• However, the staff should investigate whether there are good reasons to exclude some kinds of interests in a common interest development (e.g., transfer of a unit in a stock cooperative that requires board approval of any conveyance, transfer to a person who would not be permitted to occupy the unit under an age restriction).

• The residential property limitation should be evaluated at the time of execution of an RTODD, not the time of its operation.

(Commissioner Mack was not present when these decisions were made.)

Legal Entities as Beneficiaries

The Commission directed the staff to contact stakeholders and request comment on whether the law should permit a legal entity to be named as beneficiary. The request should specifically request comment on the following issues:

• Are there problems associated with naming the trustee of a revocable inter vivos trust as beneficiary? The trustee of an irrevocable trust?

• If a legal entity is named as beneficiary and that entity cannot or does not wish to accept the property, existing law permits the beneficiary to disclaim the gift. Is there any reason that would not be a sufficient resolution of the matter?

• Are there legal restrictions on a public entity’s ability to accept a donative transfer of real property? Chairperson Hallinan and Commissioner King may be able to provide information on this point.

Property Return Provision (Probate Code Section 5676)

The Commission will tentatively recommend the repeal of Probate Code Section 5676 and specifically request public comment on the merits of that reform.

STUDY L-4130 — DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

The Commission considered three memoranda discussing various aspects of certain Probate Code Procedures that permit the disposition of a decedent’s estate without administration (“probate avoidance procedures”).

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Interest Rate

The Commission considered Memorandum 2018-34, presenting a draft final recommendation on changes to the interest that is charged under certain parts of the probate avoidance procedures.

The Commission approved the draft, with the footnote change proposed on page 2 of the memorandum, as a final recommendation.

Dollar Amounts

The Commission considered Memorandum 2018-36, presenting a draft final recommendation on adjusting the dollar amounts that prescribe the application of certain probate avoidance procedures.

The Commission approved the draft as a final recommendation subject to the following decisions:

- Proposed Probate Code Section 890 was revised, as described on page 2 of the memorandum.
- No change was made to the cross-reference in Probate Code Section 13602, as proposed on page 3 of the memorandum.
- The staff will adjust the dollar amounts to reflect cost-of-living changes through 2018, as described on page 3 of the memorandum.

Property Return Provisions

The Commission considered Memorandum 2018-37, discussing the creditor claim processes used in certain probate avoidance procedures. Under those procedures, a personal representative can require property transferred without administration to be returned to the estate for payment of creditor claims or satisfaction of a superior claim. The memorandum discussed the reimbursement of a property recipient for value that the recipient added to the decedent’s estate, prior to property being returned to the estate under Probate Code Sections 13111, 13206, and 13562.

The Commission made the following decisions about those provisions:

- The estate should reimburse a recipient of property that is returned to the estate if the recipient made any contribution toward the value of the property and that value accrued to the estate. The staff will develop draft language to implement this principle.
- The recipient should be reimbursed for any amount that the recipient paid toward a decedent debt that was secured against the
property when the transferor died. That rule should apply regardless of whether the recipient improved the property before it was returned to the estate.

• Funds that are required to be reimbursed should not be considered part of the decedent’s estate and should not be used by the estate to pay any of the decedent’s other obligations.

STUDY T-100 — TECHNICAL AND MINOR SUBSTANTIVE IMPROVEMENTS

The Commission considered Memorandum 2018-35, discussing technical corrections to Health and Safety Code Section 131052. The Commission directed the staff to prepare a staff draft tentative recommendation based on the language presented in the memorandum.