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APPROVED MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
OCTOBER 11, 2018
Sacramento

A meeting of the California Law Revision Commission was held in Sacramento on October 11, 2018.

Commission:

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

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

Staff:

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

Other Persons:

John Andersen, Executive Committee of the Trusts and Estates Section, California Lawyers Association
Derek Chernow, Office of Senator Wieckowski
Chris Cho, Department of Toxic Substances Control
Charles Martel, Judicial Council of California
Gabby Nepomuceno, Department of Toxic Substances Control
Elizabeth Dietzen Olsen, Senate Office of Research

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9 APPROVAL OF ACTIONS TAKEN

10 Unless otherwise indicated, the Commission decisions noted in these Minutes
 11 were approved by all members present at the meeting. If a member who was
 12 present at the meeting voted against a particular decision, abstained from voting,
 13 or was not present when the decision was made, that fact will be noted below.

14 MINUTES

15 The Commission considered Memorandum 2018-41, presenting draft Minutes
 16 for the August 17, 2018 meeting.

17 The Commission approved the Minutes for the August meeting without
 18 change.

19 ADMINISTRATIVE MATTERS

20 **Report of Executive Director**

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

28 The Executive Director also reported that the December 7 meeting would be
 29 held in Burbank.

30 **Commissioner Suggestions**

31 No Commissioner suggestions were made.

1 **Meeting Schedule**

2 The Commission considered Memorandum 2018-42, presenting a proposed
3 Commission meeting schedule for 2019. The Commission approved the
4 following schedule:

5	February 2019	Sacramento
6	Feb. 7 (Thur.)	10:00 am – 4:00 pm
7	April 2019	Sacramento
8	April 4 (Thur.)	10:00 am – 4:00 pm
9	May 2019	Sacramento
10	May 30 (Thur.)	10:00 am – 4:00 pm
11	July 2019	Burbank
12	Dec. 7 (Fri.)	10:00 am – 4:00 pm
13	September 2019	Sacramento
14	Sept. 26 (Thur.)	10:00 am – 4:00 pm
15	December 2019	Burbank
16	Dec. 5 (Fri.)	10:00 am – 4:00 pm

17 2018 LEGISLATIVE PROGRAM

18 The Commission considered Memorandum 2018-43, discussing the
19 Commission’s 2018 Legislative Program.

20 The Commission directed the staff not to make any further effort to find an
21 author for a bill to implement the Commission’s recommendation on *Relationship*
22 *Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct*
23 (Dec. 2017).

24 STUDY E-200 — RECODIFICATION OF TOXIC SUBSTANCE STATUTES

25 The Commission considered Memorandum 2018-52, introducing a new study
26 to recodify Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code.

27 The Commission made the following decisions:

- 28
- The staff is authorized to proceed with work on this topic.
 - In principle, the substantive suggestions of the Independent Review Panel (“IRP”), which are beyond the scope of the Commission’s nonsubstantive study, should be included on the
- 29
30
31

1 Commission's list of substantive issues for possible future study
2 (with attribution to the IRP).

- 3 • In this study, the Commission will use the criteria set forth on
4 page 5 of the memorandum for assessing whether to include a
5 proposed change in its recommendation.

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

7 **Cumulative Draft (Memorandum 2018-53)**

8 The Commission considered Memorandum 2018-53 and its First Supplement,
9 presenting and discussing a cumulative draft of material previously considered.

10 The Commission made the following decisions relating to that draft:

- 11 • There should be a signpost provision in the "Definitions" chapter
12 of the proposed recodification, flagging the different definitions of
13 "trade secret" used in the CPRA (*compare* proposed Gov't Code §
14 7924.305(f) *with* proposed Gov't Code § 7924.510(f)).
- 15 • The treatment of Government Code Section 6254.7(c) in the
16 cumulative draft (see proposed Gov't Code §§ 7924.510, 7924.700)
17 is still acceptable; the legislative history of that provision does not
18 seem to suggest otherwise.
- 19 • When the staff prepares a complete draft of a tentative
20 recommendation for the Commission to consider, the staff should
21 review all of the proposed Comments, insert additional references
22 to related statutory material as appears appropriate, and bring
23 those suggested revisions to the Commission's attention.

24 The staff will incorporate legislation enacted in 2018 in the next version of the
25 cumulative draft, as discussed at pages 1-3 of Memorandum 2018-53.

26 **Chapter 5: Health Care (Memorandum 2018-54)**

27 The Commission considered Memorandum 2018-54, presenting a draft of
28 Chapter 5 of Part 5 of proposed new Division 10 of Title 1 of the Government
29 Code. The Commission made the following decisions relating to that draft:

- 30 • The draft's recodification of Government Code Section 6254(q)(1)
31 — i.e., proposed Gov't Code § 7926.220(a) — is acceptable for
32 purposes of a tentative recommendation.
- 33 • The draft's recodification of the four definitions in Government
34 Code Section 6254.18(b) — i.e., proposed Gov't Code § 7926.400 —
35 is acceptable for purposes of a tentative recommendation.
- 36 • There is no need for a signpost provision flagging the definition of
37 "personal information" in proposed Government Code Section
38 7926.400(b).

- 1 • The previously approved signpost provision flagging the two
2 different definitions of “public agency” used in the CPRA
3 (proposed Gov’t Code § 7920.520) is still acceptable now that the
4 staff has drafted recodifications of both of those definitions.
- 5 • The substance of newly enacted Government Code Section 6270.7
6 should be included in “Chapter 5. Health Care,” as shown in the
7 draft.
- 8 • Subject to the above decisions, the draft of Chapter 5 of Part 5 is
9 acceptable for purposes of a tentative recommendation.

10 *(Commissioner Mack was not present for these decisions.)*

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

13 **Obsolete “Constable” References [Study J-1405.1]**

14 The Commission considered Memorandum 2018-46, which includes a staff
15 draft of a recommendation on *Trial Court Restructuring Clean-Up: Obsolete*
16 *“Constable” References*. The Commission approved that draft as a final
17 recommendation, for publication and submission to the Legislature and the
18 Governor.

19 **Task Force on Trial Court Employees [Study J-1405.2]**

20 The Commission considered Memorandum 2018-47, which includes a staff
21 draft of a tentative recommendation on *Trial Court Restructuring Clean-Up: Task*
22 *Force on Trial Court Employees*. The Commission approved that draft as a tentative
23 recommendation, to be posted to the Commission’s website and circulated
24 widely for comment.

25 **Marshals [Study J-1405.3]**

26 The Commission considered Memorandum 2018-48, discussing issues
27 relating to marshals. For purposes of a tentative recommendation, the
28 Commission made the decisions described below.

29 *Abolition of the Marshal’s Office in Merced County (Gov’t Code § 26638.15)*

30 Article 1.75 (commencing with Section 26638.15) of Chapter 2 of Part 3 of
31 Division 2 of Title 3 of the Government Code relates to abolition of the marshal’s
32 office in Merced County. It should be repealed as obsolete, as shown on pages 7-
33 8 of Memorandum 2018-48. To protect any vested rights that might still exist, the
34 proposal to repeal this article should contain a savings clause, as previously

1 described and decided (see Memorandum 2018-21, p. 4; Minutes (May 2018), p.
2 6).

3 *Display of Flashing Amber Warning Lights in Specified Circumstances (Veh. Code §*
4 *25254)*

5 Vehicle Code Section 25254 should be repealed:

6 **Veh. Code § 25254 (repealed). Display of flashing amber warning**
7 **lights in specified circumstances**

8 SEC. _____. Section 25254 of the Vehicle Code is repealed.

9 ~~25254. In any county with a population of 250,000 or more~~
10 ~~persons, publicly owned vehicles operated by peace officer~~
11 ~~personnel of a marshal's department, when actually being used in~~
12 ~~the enforcement of the orders of any court, including, but not~~
13 ~~limited to, the transportation of prisoners, may display flashing~~
14 ~~amber warning lights to the rear when such vehicles are necessarily~~
15 ~~parked upon a roadway and such parking constitutes a hazard to~~
16 ~~other motorists.~~

17 **Comment.** Section 25254 is repealed to reflect:

18 (1) Unification of the municipal and superior courts pursuant to
19 former Article VI, Section 5(e), of the California Constitution.

20 (2) Elimination of the marshal's office in every county having a
21 population of 250,000 or more. See Gov't Code § 69921.5
22 ("Except for court security services provided by the marshal
23 in the Counties of Shasta and Trinity, the sheriff is
24 responsible for the necessary level of court security services
25").

26 *Contra Costa County Sheriff-Marshall Consolidation (Gov't Code §§ 26625-26625.9)*

27 The Contra Costa County sheriff-marshall consolidation statute should be
28 revised along the lines shown on pages 13-15 of Memorandum 2018-48.

29 *(Commissioner Mack was not present for this decision.)*

30 *Los Angeles County Sheriff-Marshall Consolidation (Gov't Code §§ 26639-26639.3)*

31 The Los Angeles County sheriff-marshall consolidation statute should be
32 revised along the lines shown on page 16 of Memorandum 2018-48.

33 *(Commissioner Mack was not present for this decision.)*

34 *Shasta County Sheriff-Marshall Consolidation (Gov't Code § 72116)*

35 The Shasta County sheriff-marshall consolidation statute should be revised
36 along the lines shown on pages 18-19 of Memorandum 2018-48.

1 *Packaging of the Proposed Reforms*

2 The staff should prepare a draft of a tentative recommendation that consists
3 solely of the marshal-related reforms described above and the other marshal-
4 related reforms tentatively approved by the Commission (see pages 2-5 of
5 Memorandum 2018-48).

6 **Court Facilities [Study J-1405]**

7 The Commission considered Memorandum 2018-49, discussing issues
8 relating to court facilities. For purposes of a tentative recommendation, the
9 Commission made the decisions described below.

10 *Flags for Courtrooms (Gov't Code § 69504)*

11 As previously decided, the tentative recommendation should include the
12 following amendment of Government Code Section 69504:

13 **§ 69504 (amended). Flags for courtrooms**

14 SEC. _____. Section 69504 of the Government Code is amended to
15 read:

16 69504. The ~~board of supervisors~~ superior court of each county
17 shall purchase and provide for the installation of the Flag of the
18 United States and the Bear Flag of California in each superior
19 courtroom in the county.

20 However, the tentative recommendation should also include a Note along the
21 following lines:

22 **Note.** The above amendment would make clear that boards of
23 supervisors are no longer responsible for purchasing and providing
24 courtroom flags. The Commission is not sure where that
25 responsibility properly rests: On the Judicial Council? On each
26 superior court?

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

30 *Regional Justice Facilities Acts (Gov't Code §§ 26290-26299.083)*

31 The staff should prepare a discussion draft that solicits input on whether and,
32 if so, how, to revise the San Joaquin County Regional Justice Facility Financing
33 Act (Gov't Code §§ 26290-26293.4), the Orange County Regional Justice Facilities
34 Act (Gov't Code §§ 26295-26295.58), and the County Regional Justice Facilities
35 Financing Act (Gov't Code §§ 26299.000-26299.083) to reflect trial court

1 restructuring. The discussion draft should describe the basic options and present
2 the text of those Acts without proposing any revisions.

3 *San Diego Courthouse, Jail, and Related Facilities Development Agency (Gov't Code §*
4 *6520)*

5 Government Code Section 6520 should be repealed as obsolete, as shown on
6 pages 18-19 of Memorandum 2018-49.

7 *Surcharge in San Bernardino County (Gov't Code § 70624)*

8 Government Code Section 70624 should be amended to sunset in five years.

9 *Transfers Between the Courthouse Construction Fund and the Criminal Justice Facilities*
10 *Fund in a County of the 1st or 47th Class (Gov't Code §76101.5)*

11 Government Code Section 76101.5 should be amended as follows:

12 **Gov't Code § 76101.5 (amended). Transfers between Courthouse**
13 **Construction Fund and Criminal Justice Facilities Fund in**
14 **county of 1st or 47th class**

15 SEC. ____ . Section 76101.5 is amended, to read:

16 76101.5. Notwithstanding any other provision of this article or
17 Article 3 (commencing with Section 76200), following a public
18 hearing, the board of supervisors of a county of the first class ~~or a~~
19 ~~county of the 47th class~~ which has established both a Courthouse
20 Construction Fund and a Criminal Justice Facilities Construction
21 Fund pursuant to the provisions of this chapter may by resolution
22 provide for the transfer of deposits from one fund to the other.

23 **Comment.** Section 76101.5 is amended to reflect:

24 (1) The enactment of the Lockyer-Isenberg Trial Court Funding
25 Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655) and
26 the related Trial Court Facilities Act, 2002 Cal. Stat. ch. 1082 (see
27 generally Sections 70301-70508).

28 (2) The closure of the Courthouse Construction Fund for Lassen
29 County.

30 See Sections 28020 (Lassen County population is 14,960), 28068
31 (county with population of more than 14,600 and less than 15,000 is
32 county of 47th class), 28085 (when new federal census is taken,
33 county remains in old classification until reclassified by
34 Legislature).

35 *Courthouse Construction Fund for Los Angeles County (Gov't Code § 76219)*

36 The tentative recommendation should present the text of Government Code
37 Section 76219 (without any proposed revisions), together with a Note along the
38 following lines:

1 **Note.** In many places, Section 76219 still refers to municipal
2 courts and municipal court districts. It appears to need revisions to
3 reflect trial court unification. The Commission is unsure how to
4 draft such revisions, because it is not familiar with the status of the
5 various court construction projects in Los Angeles County and their
6 financing.

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

10 *Construction of Court Facilities in Merced County (Gov't Code § 76223)*

11 Government Code Section 76223 should be amended as follows:

12 **Gov't Code § 76223 (amended). Construction of court facilities in**
13 **Merced County**

14 SEC. ____ . Section 76223 of the Government Code is amended to
15 read:

16 76223. Notwithstanding any other provision of law, the
17 following conditions pertain to the construction of court facilities in
18 Merced County by the County of Merced for any construction
19 pursuant to a written agreement entered into prior to January 1,
20 2004, between the board of supervisors and the presiding judge of
21 the superior court:

22

23 ~~(e) If legislation is passed and becomes effective transferring the~~
24 ~~responsibility for court facilities to the state, and the legislation~~
25 ~~permits the transfer of the bonded indebtedness or other~~
26 ~~encumbrance on court facilities together with revenue sources for~~
27 ~~payment of the bonded indebtedness or other encumbrance, the~~
28 The revenue sources provided for by this section may also be
29 transferred to the state.

30

31 **Comment.** Section 76223 is amended to reflect enactment of the
32 Trial Court Facilities Act, 2002 Cal. Stat. ch. 1082. See in particular
33 Section 70321 (transfer of court facilities from county to Judicial
34 Council) and Section 70325(a)(2) (county may transfer revenue
35 sources to state, whereupon state becomes responsible for making
36 payments on bonded indebtedness).

37 *Lease of Unimproved Property to City of Folsom for Police Station, Courthouse, or City*
38 *Hall (Gov't Code § 14672.5)*

39 Government Code Section 14672.5 should be amended as follows:

1 **Gov't Code § 14672.5 (amended). Lease of unimproved property**
2 **to City of Folsom for police station, courthouse, or city hall**

3 SEC. _____. Section 14672.5 of the Government Code is amended
4 to read:

5 14672.5. Notwithstanding Section 14670, the Director of General
6 Services, with the consent of the Department of Corrections, may
7 lease to the City of Folsom a parcel of approximately five acres of
8 unimproved real property situated in the County of Sacramento
9 within Rancho Rio de Los Americanos for a period not to exceed 50
10 years for a police station, ~~courthouse~~, or city hall.

11 **Comment.** Section 14672.5 is amended to reflect the enactment
12 of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch.
13 850 (see generally Sections 77000-77655) and the related Trial Court
14 Facilities Act, 2002 Cal. Stat. ch. 1082 (see generally Sections 70301-
15 70508).

16 *Dining and Parking Facilities In or Adjacent to Court Building in County With*
17 *Population Exceeding Three Million (Gov't Code § 68073.5)*

18 The tentative recommendation should propose to repeal Government Code
19 Section 68073.5 as obsolete.

20 *Reimbursement of Court Construction Funds in Merced County if Transfers Do Not*
21 *Occur On Time (Gov't Code § 76225)*

22 The tentative recommendation should propose to repeal Government Code
23 Section 76225 as obsolete.

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

25 The Commission considered Memorandum 2018-44, discussing the Revocable
26 Transfer on Death Deed (“RTODD”). No action was required or taken.

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

29 The Commission considered Memorandum 2018-38, discussing the liability
30 rule provided in Probate Code Sections 13550 and 13551, which imposes liability
31 on a surviving spouse for a decedent’s debts.

32 The Commission decided to proceed with a reform to codify a narrow scope
33 of liability under that rule, as described on page 4 of the memorandum.

1 STUDY L-4130 — DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

2 The Commission considered Memorandum 2018-37, discussing the property
3 return provisions in certain probate avoidance procedures.

4 The Commission made the following decisions about those provisions:

- 5 • Under existing law, when returned property has not been
6 significantly improved by a transferee, the transferee is required to
7 make restitution to the estate sufficient to pay off any post-transfer
8 encumbrance on the property. The same rule should apply to
9 property that has been significantly improved by the transferee.
- 10 • Under existing law, when returned property has not been
11 significantly improved by a transferee, the transferee is required to
12 make restitution to the estate for net income received by the
13 transferee from the property. The same rule should apply to
14 property that has been significantly improved by the transferee.
- 15 • The staff should develop and present a different statutory
16 approach to the issue of reimbursement of a transferee and
17 restitution to the estate, when property is returned to the estate.
18 Rather than listing categorical reimbursement and restitution
19 requirements, the statutes could state more general rules,
20 grounded in the general principle underlying the existing
21 requirements. It might also be appropriate to include the existing
22 categorical requirements in a nonexclusive illustrative list of
23 circumstances in which reimbursement or restitution could be
24 required.

25 STUDY R-100 — FISH AND GAME LAW

26 The Commission considered Memorandum 2018-50, discussing the
27 preparation of a tentative recommendation on the proposed Fish and Wildlife
28 Code. The Commission directed the staff to distribute that very large document
29 electronically, without producing hard copies. The memorandum presenting the
30 draft will highlight changes from prior drafts, including the addition of 2018
31 legislation.

32 STUDY T-100 — TECHNICAL AND MINOR SUBSTANTIVE CORRECTIONS

33 The Commission considered Memorandum 2018-51, presenting a draft
34 tentative recommendation relating to technical corrections to Health and Safety
35 Code Section 131052.

36 The Commission approved the draft for circulation as a tentative
37 recommendation.