
***APPROVED* MINUTES OF MEETING**
CALIFORNIA LAW REVISION COMMISSION

October 19, 2023

A meeting of the California Law Revision Commission was held in Sacramento on October 19, 2023. Invited presenters and other attendees were able to join either in person or by zoom teleconference.

ATTENDANCE

Commission

Present David A. Carrillo, Chairperson
Amb. (r.) David Huebner, Vice-Chairperson
Xochitl Carrion
Ana Cubas
Victor King
Jane McAllister
Richard Simpson

Absent Assembly Member Ash Kalra
Senator Richard D. Roth
Cara Jenkins, Legislative Counsel

Staff, Invited Presenters, and Assistants

Brian Hebert, Executive Director
Kristin Burford, Chief Deputy Director
Sharon Reilly, Special Consultant
Steve Cohen, Staff Counsel
Debora Larrabee, Chief of Administrative Services
Megan Hayenga, Office Technician

New York State Senator Michael Gianaris
Eric J. Stock, Gibson Dunn & Crutcher

Other Attendees¹

Peter Bernstein
Khara Boender
Betsy Butler
George Cavinta
Julianna Gesiotto

¹ Members of the public are only identified in the Minutes as attendees if they expressly consented to being identified.

Richard Gilbert
Cheryl Johnson
Lara Korte, Politico
Alexander Marion
Nancy Ostrom
Naomi Padron
Christopher Richardson
Dan Robbins
Tracy Rosenberg
Robert Singleton, Chamber of Progress
Jenn Weintraub

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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 2023-32, presenting draft Minutes of the June 22, 2023, meeting. The Commission approved the Minutes without change.

(Commissioner Carrion voted present.)

ADMINISTRATIVE MATTERS

Recognition of Brian Hebert

On the occasion of his upcoming retirement, the Commission and its staff presented Brian Hebert with a Joint Legislative Resolution recognizing his achievements, character, and service to the People of California. The Resolution read as follows:

Whereas, Brian Hebert is retiring as Executive Director of the California Law Revision Commission, and it is appropriate at this time to highlight his many achievements and extend to him a heartfelt thank you for a job well done; and

Whereas, Having ably served the California Law Revision Commission for 27 years, Brian Hebert started as a staff attorney in 1996, accepted the role of Assistant Executive Secretary in 2003, and was promoted to Executive Secretary, now known as Executive Director, in 2006; and

Whereas, Renowned for his thorough legal research, keen analytical skills, masterful writing and statutory drafting, cogent oral presentations of difficult legal concepts, and overall constructive approach to law reform, Brian Hebert spearheaded extensive improvements to the law that governs common interest developments, including important substantive reforms and organizational changes to make that law more accessible for the millions of people living in common interest developments across the State of California; and

Whereas, Brian Hebert's sharp insight into the complexities of laws governing estate planning and his ability to discuss them in a clear and understandable manner resulted in an exemplary record of contributions in that area, including reforms relating to no-contest clauses, donative transfer restrictions, disposition of an estate without administration, the intersection of estate planning and marital dissolution, revocable transfer on death deeds, and more; and

Whereas, A consummate professional, Brian Hebert played a leading role in numerous other statutory reforms to improve the clarity, fairness, and effectiveness of California law, including laws relating to unincorporated associations, administrative rulemaking, fish and wildlife, and exemptions from enforcement of judgments, to name just a few; and

Whereas, During Brian Hebert's tenure as Executive Director, the Commission approved more than 60 final recommendations containing proposed legislation, almost all of which were enacted, revising over 4,000 code sections spanning a broad range of topics, and he helped the Commission produce several informational reports for the California State Legislature and the Governor, including a major report on application of the

Government Claims Act to charter schools and a comprehensive report on state and local agency access to electronic communications, and he was instrumental in effectively launching the Commission's ongoing study of antitrust law in the modern technological era; and

Whereas, Over the course of his tenure with the Commission, Brian Hebert also developed and implemented many improvements to the Commission's administrative procedures, while being resourceful, patient, and creative in leading the Commission as its Executive Director for almost 17 years, and he guided the agency through repeated state fiscal crises, the COVID-19 pandemic, and the creation of an entirely new law reform body, the Committee on Revision of the Penal Code; and

Whereas, Brian Hebert's model professionalism, calm demeanor, straightforward manner, diplomatic leadership, judiciousness, and thoughtfulness have earned the respect and admiration of those who have had the good fortune to work with him, including numerous staff and Members of the California State Legislature; now, therefore, be it

Resolved by Senators Richard D. Roth and Bill Dodd and Assembly Members Cecilia M. Aguiar-Curry and Ash Kalra, That all best wishes for a long and happy retirement be conveyed to Brian Hebert along with sincere appreciation for his years of dedicated and exemplary service to the people of California.

Report of the Executive Director

The Executive Director reported on the following matters:

- Commissioners Carrillo, King, and Simpson were reappointed by the Governor.
- The Commission has vacated its former office at the University of California Davis and established a new office at 925 L Street, Sacramento.
- The study of Recodification of Toxic Substance Statutes has been temporarily suspended. Staff working on that topic has been reassigned to the study of Landlord-Tenant Terminology.

Commissioner Suggestions

There were no suggestions made by Commissioners.

Election of Officers

The Commission considered Memorandum 2023-34 discussing the election of officers to serve from October 20, 2023, to August 31, 2024 (or until the selection of a successor). Commissioner David Huebner was elected to serve as Chairperson; Commissioner Xochitl Carrion was elected to serve as Vice-Chairperson.

(Commissioner Huebner abstained from voting for Chairperson; Commissioner

Carrion abstained from voting for Vice-Chairperson.)

Meeting Schedule

The Commission considered Memorandum 2023-35 and its First Supplement, discussing a proposed meeting schedule for 2024.

The Commission directed the staff to prepare alternative schedules and present them at the next meeting. The alternative schedules should have fewer meetings (perhaps six or nine), try to avoid summer meetings, and, with one exception, preserve the dates set out in Memorandum 2023-35. The exception is that the proposed February 2024 meeting should be changed to February 15, 2024.

2023 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2023-42 and its First Supplement, discussing the Commission's 2023 legislative program. The Commission made the following decisions:

- In connection with Assembly Bill 522 (Kalra), the Commission will begin a short second-look study of the issues discussed in Memorandum 2023-42.
- In connection with Assembly Bill 1756 (Committee on Judiciary), the Commission approved the revised Comments attached to the First Supplement to Memorandum 2023-42.

In connection with Assembly Bill 1760 (Committee on Water, Parks, and Wildlife), no Commission Comments will be revised based on the subsequent enactment of Senate Bill 500 (McGuire). However, Commission staff will advise legal publishers not to publish Commission Comments on Fish and Game Code Sections 8041, 8043, and 8047, as the amendments to those sections in Senate Bill 500 included both Commission-recommended changes and unrelated additional reforms.

STUDY B-750 — ANTITRUST LAW

New York State Senator Michael Gianaris and Eric J. Stock (Gibson Dunn & Crutcher) made presentations regarding New York Senate Bill 6748 (Gianaris), the "Twenty-First Century Anti-Trust Act." The First and Second Supplements to Memorandum 2023-43 provided background information on that bill.

The Commission also considered Memorandum 2023-43, which recommended that Cheryl Lee Johnson be hired as a consultant on antitrust, to begin work on January 1, 2024. The Commission approved the staff's recommendation.

STUDY I-100 — EQUAL RIGHTS AMENDMENT

The Commission considered Memorandum 2023-40, its First Supplement, and Memorandum 2023-44. Those materials discuss the next steps in the study of this topic.

The Commission discussed the possible next steps in the study and provided general direction to staff on how to proceed. No Commission decisions were made.

The Commission indicated general interest in a statutory sex equality provision to serve as a backstop for sex discrimination prohibitions. This provision would identify protected characteristics that are encompassed by sex and include language to make clear that list of protected sex characteristics is not exclusive (e.g., sex discrimination “includes, but is not limited to discrimination on the basis of...”). The Commission also discussed the possibility of a strict scrutiny standard and a scholarly narrative report describing its findings.
