

Minutes

April 27, 2016

## Memorandum 2016-20

**Minutes of Meeting on April 14, 2016 (Draft)**

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The California Law Revision Commission<sup>1</sup> held a meeting on April 14, 2016. A draft of Minutes for that meeting is attached for Commissioners to review.

The attached draft will be deemed final after it is approved by a vote of the Commission. When voting, the Commission may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

Respectfully submitted,

Brian Hebert  
Executive Director

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

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**DRAFT** MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
APRIL 14, 2016  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on April 14, 2016.

**Commission:**

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

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

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

**Other Persons:**

Prof. William Dodge, U.C. Davis School of Law  
Lawrence Doyle, Conference of California Bar Associations  
Rachel Ehrlich, Ehrlich Mediation  
Robert Flack  
Meredith Hankins, CLRC law student extern  
Ron Kelly  
Phyllis G. Pollack, PGP Mediation  
Patricia Prince, Prince Law & Mediation  
Cynthia Remmers, Remmers Global  
Jasmine Randhawa, Office of Assembly Member Chau  
Ana Sambold, San Diego County Bar Association  
Floyd J. Siegal, Southern California Mediation Association  
John S. Warnlof, California Dispute Resolution Council  
Lulu Wong

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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 in connection with the affected decision.

MINUTES OF FEBRUARY 4, 2016, COMMISSION MEETING

Memorandum 2016-10 presented a draft of the Minutes of the February 4, 2016, Commission meeting. The Commission approved the Minutes as submitted. (*Commissioner Boyer-Vine was not present when this decision was made. Commissioners Capozzola, King, and Miller-O’Brien abstained.*)

ADMINISTRATIVE MATTERS

**Report of Executive Director**

The Executive Director had nothing to report.

**Commissioner Suggestions**

No Commissioner suggestions were made.

**Meeting Schedule**

The Commission considered Memorandum 2016-11, discussing the Commission’s 2016 meeting schedule. The Commission changed the date of its May 26, 2016, meeting. The meeting will now be held on June 1, 2016.

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2016 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2016-12, discussing the status of its 2016 Legislative Program.

The memorandum described certain amendments to Assembly Bill 2881, which implements the Commission’s recommendation on *Trial Court Unification: Publication of Legal Notice* (Oct. 2015). The Commission approved those changes as consistent with the overall purpose of its recommendation.

The memorandum also noted that Assembly Concurrent Resolution 148 would authorize a new study, relating to the nonsubstantive recodification of the California Public Records Act. The staff will investigate whether the scope of the study is limited to the four corners of the Public Records Act or would also include closely-related law located elsewhere in the codes (e.g., the provisions added by Senate Bill 8 (Yee) (2011)). If the answer is unclear, the staff will raise the issue with appropriate legislative staff.

*(Commissioner Boyer-Vine was not present when these decisions were made.)*

STUDY D-1200 — RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS

The Commission considered Memorandum 2016-13, discussing the exceptions to recognition of foreign and tribal court money judgments.

The Commission directed the staff, in preparing proposed legislation for this study, to draft Comments as indicated below:

- Existing law permits nonrecognition of a judgment where the defendant did not receive notice of the proceeding in sufficient time to enable the defendant to defend. The Comment for that rule should make clear that defects in either the timing or the content of the notice could be grounds for nonrecognition. *(Commissioner Capozzola was not present when this decision was made.)*
- Existing law permits nonrecognition of a judgment where the court rendering the judgment lacked personal jurisdiction over the defendant. The Comment for that rule should make clear that defects in service of process could be grounds for nonrecognition if the defect would defeat personal jurisdiction under the rendering court’s own law.
- Existing law permits nonrecognition of a judgment where the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case. The Comment for that rule should refer to the relevant commentary from both the

1 Uniform Act and the draft Restatement (Fourth) of Foreign  
2 Relations Law of the United States.

- 3 • Existing law permits nonrecognition of a judgment where the  
4 judgment conflicts with another final and conclusive judgment.  
5 The Comment for that rule should include guidance drawn from  
6 the commentary of the draft Restatement (Fourth) of Foreign  
7 Relations Law of the United States.

8 STUDY G-301 — GOVERNMENT INTERRUPTION OF COMMUNICATION SERVICES

9 The Commission considered Memorandum 2016-15, discussing the  
10 interruption of communications of persons under government control. The  
11 memorandum also discussed a few miscellaneous matters.

12 The Commission decided that Public Utilities Code Section 7908 should not  
13 apply to any of the following:

- 14 • Action by a correctional facility to prevent prisoner use of wireless  
15 communication devices.  
16 • Government-issued emergency alerts that briefly interrupt  
17 communications.  
18 • Routine actions to protect computing resources from attack or  
19 misuse.

20 Before addressing the last point, the staff will consult with experts in Internet  
21 security, including experts in the office of the Legislative Counsel. The staff will  
22 inquire about the feasibility of providing notice to affected users when  
23 communication services are interrupted for computer security purposes.

24 STUDY H-859 — COMMON INTEREST DEVELOPMENTS:

25 MECHANICS LIENS AND COMMON AREA

26 The Commission considered Memorandum 2016-14, discussing the  
27 application of mechanics lien law to common interest developments. The  
28 Commission tabled most of the possible reforms discussed in the memorandum,  
29 but authorized the staff to work on the following matters:

- 30 • Provide that the association is the agent for receipt of mechanics  
31 lien related notices and claims for a work of improvement on  
32 common area within a common interest development. Consider  
33 the extent to which the association should be required to notify its  
34 members on receipt of such notices and claims.

- 1 • Generalize Civil Code Section 4615(b) (authorization of work on  
2 common area in condominium project) so that it applies to all  
3 common interest developments and not just condominiums.
- 4 • Generalize Civil Code Section 8448 (defining “separate residential  
5 unit”) so that it applies to all common interest developments and  
6 not just condominiums.

7 To the extent practicable, this study should be a law student project.

8 STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND  
9 ATTORNEY MALPRACTICE AND OTHER MISCONDUCT

10 The Commission considered Memorandum 2016-18 (*In Camera* Screening  
11 Process and Related Matters) and Memorandum 2016-19 (Public Comment) and  
12 its First Supplement. The Commission also considered a letter from Jeffrey  
13 Kichaven, which is attached to the Second Supplement to Memorandum 2016-19.

14 The Commission instructed the staff to investigate and report on whether  
15 there is any constitutionally permissible method of *in camera* screening or quasi-  
16 screening that a judicial officer could use as a filter at the inception of a legal  
17 malpractice case based on mediation misconduct (an early way to eliminate  
18 claims that have no basis and should not result in public disclosure of mediation  
19 communications). (*Commissioner Miller O-Brien voted against this decision.*)

20 The Commission did not resolve the issues on *in camera* screening that the  
21 staff presented for decision in Memorandum 2016-18. The Commission might  
22 revisit those issues after it receives the staff’s analysis of the filtering concept  
23 described above.

24 For convenient reference, the staff should also prepare a document that  
25 reiterates previously presented information on existing *in camera* approaches to  
26 the intersection of mediation confidentiality and mediation misconduct, which  
27 might serve as possible models for California.

28 STUDY R-100 — FISH AND GAME LAW

29 The Commission considered Memoranda 2016-16 and 2016-17, relating to the  
30 Commission’s study of fish and game law. No Commission action was required  
31 or taken.

APPROVED AS SUBMITTED

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Date

APPROVED AS CORRECTED  
(for corrections, see Minutes of next meeting)

\_\_\_\_\_  
Chairperson

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Executive Director