
1 **APPROVED** MINUTES OF MEETING
2 CALIFORNIA LAW REVISION COMMISSION
3 April 22, 2021

4 A meeting of the California Law Revision Commission was held on April 22,
5 2021. Consistent with Executive Orders N-25-20 and N-29-20, the meeting was
6 held as an online video webinar.

7 Only those members of the public who expressly consented to being
8 identified in the Minutes are listed as attendees.

9 **Commission:**

10 *Present:* Crystal Miller-O'Brien, Chairperson
11 Richard Simpson, Vice-Chairperson
12 David A. Carrillo
13 Ana Cubas
14 Cara Jenkins, Legislative Counsel
15 Victor King
16 Jane McAllister

17 *Absent:* Assembly Member Ed Chau
18 Senator Richard D. Roth
19 Richard Rubin

20 **Staff:**

21 *Present:* Brian Hebert, Executive Director
22 Barbara Gaal, Chief Deputy Director
23 Steve Cohen, Staff Counsel
24 Kristin Burford, Staff Counsel

25 **Other Persons:**

26 Wendy Bogdan, Department of Fish and Wildlife
27 Angela Donlan, Department of Fish and Wildlife

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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 2021-17, presenting draft Minutes for the March 25, 2021, meeting.

The Commission approved the Minutes, without change.

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director gave a brief report on the work of the Committee on Revision of the Penal Code.

Commissioner Suggestions

The Commission made three decisions that were based on Commissioner suggestions:

- (1) The Commission will use elements drawn from the *California Style Manual* when citing cases. Specifically, the year parenthetical will follow the case name without a comma and there will be no spaces in abbreviated case reporter names.
- (2) The meeting scheduled for May 2021 is cancelled.

- 1 (3) The Executive Director’s report will occasionally include a brief
2 summary of the work of the Committee on Revision of the Penal
3 Code.

4 2021 LEGISLATIVE PROGRAM

5 The Commission considered Memorandum 2021-18, discussing the
6 Commission’s 2021 Legislative Program.

7 The Commission considered amendments made to Senate Bill 315 (Roth) and
8 Senate Bill 391 (Min) and decided against taking any position on those changes.

9 The Commission revised its Comment to proposed Civil Code Section 5450,
10 as shown on pages 3-4 of the memorandum.

11 STUDY E-200 – RECODIFICATION OF TOXIC SUBSTANCE STATUTES

12 The Commission considered Memorandum 2021-19, presenting draft
13 language for the first piece of proposed legislation for the recodification of
14 Chapter 6.5 of Division 20 of the Health and Safety Code.

15 The Commission provisionally approved the draft for inclusion in a future
16 tentative recommendation.

17 STUDY J-1407 — STATUTES MADE OBSOLETE BY TRIAL COURT
18 RESTRUCTURING (PART 8)

19 The Commission considered Memorandum 2021-21, relating to
20 representation and indemnification of trial courts and trial court personnel. For
21 purposes of a tentative recommendation, the Commission made the decisions
22 described below.

23 **Gov’t Code § 811.9. Representation, Defense, and Indemnification of Trial**
24 **Court Personnel**

25 Government Code Section 811.9 does not appear to contain any material
26 made obsolete by trial court restructuring. It should be left as is.

27 **Gov’t Code § 990.2. Authority to Insure Court Officer or Attaché**

28 Government Code Section 990.2 should be amended along the following
29 lines:

30 **Gov’t Code § 990.2 (amended). Authority to insure court officer or**
31 **attaché**

1 SEC. ____ . Section 990.2 of the Government Code is amended to
2 read:

3 990.2. ~~A county~~ The Judicial Council may insure any officer or
4 attaché of its superior ~~and municipal~~ courts against all or any part
5 of the officer or attaché's liability for injury resulting from any act
6 or omission in the scope of the officer or attaché's employment, and
7 also may insure against the expense of defending any claim against
8 ~~such~~ the officer or attaché, whether or not liability exists on ~~such~~
9 that claim.

10 **Comment.** Section 990.2 is amended to reflect:

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

13 (2) Enactment of the Trial Court Funding Act. See Section 70003
14 ("court operations" defined), 77200 (state funding of trial court
15 operations).

16 (3) Enactment of Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and
17 subsequent legislation clarifying and solidifying the Judicial
18 Council's role in handling claims against trial courts and trial court
19 personnel (see 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, §
20 16).

21 The tentative recommendation should include an accompanying Note, which
22 solicits comments on (1) whether the Judicial Council needs the authority that the
23 proposed amendment of Section 990.2 would provide, and (2) if not, whether the
24 section should be repealed instead of amended.

25 **Gov't Code § 26524. Representation of Court or Judge by District Attorney**

26 Government Code Section 26524 appears to be obsolete and should be
27 repealed, as follows:

28 **Gov't Code § 26524 (repealed). Representation of court or judge** 29 **by district attorney**

30 SEC. ____ . Section 26524 of the Government Code is repealed.

31 ~~26524. Upon request of any judge of the superior or municipal~~
32 ~~court, the district attorney shall appear for and represent the court~~
33 ~~or judge if the court or judge in his or her official capacity is a party~~
34 ~~defendant in any action.~~

35 **Comment.** Section 26524 is repealed to reflect:

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

38 (2) Enactment of Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and
39 subsequent legislation clarifying and solidifying the Judicial
40 Council's role in handling claims against trial courts and trial court

1 personnel (see 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, §
2 16; see also Sections 810-998.3; Cal. R. Ct. 20.201-10.203).

3 The tentative recommendation should include an accompanying Note, which
4 points out that Government Code Section 811.9 directs the Judicial Council to
5 provide for representation or defense “through the county counsel, the Attorney
6 General, or other counsel.” The Note should solicit comments on whether there
7 are circumstances under which the Judicial Council might want to provide for
8 representation or defense through a district attorney, and, if so, whether Section
9 26524 should be amended to permit such representation upon “request of the
10 Judicial Council” (instead of upon “request of any judge of the superior or
11 municipal court”).

12 **Gov’t Code § 26529. County Counsel to Discharge Duties of District Attorney**

13 To reflect the proposed repeal of Government Code Section 26524,
14 Government Code Section 26529 should be amended as follows:

15 **Gov’t Code § 26529 (amended). County counsel to discharge**
16 **duties of district attorney**

17 SEC. ____ . Section 26529 of the Government Code is amended to
18 read:

19 26529. (a) In counties that have a county counsel, the county
20 counsel shall discharge all the duties vested in the district attorney
21 by Sections 26520, 26522, 26523, ~~26524~~, and 26526. The county
22 counsel shall defend or prosecute all civil actions and proceedings
23 in which the county or any of its officers is concerned or is a party
24 in ~~his or her~~ the officer’s official capacity. Except where the county
25 provides other counsel, the county counsel shall defend as
26 provided in Part 7 (commencing with Section 995) of Division 3.6 of
27 Title 1 of the Government Code any action or proceeding brought
28 against an officer, employee, or servant of the county.

29 (b) Notwithstanding any other provision of law, the County
30 Counsel of the County of Solano may, and when directed by the
31 board of supervisors of that county shall, bring a civil action when
32 the county, or any of its officers, has a cause of action to abate a
33 public nuisance in the county. The County Counsel and the District
34 Attorney of Solano County have the concurrent right to bring an
35 action to abate a public nuisance pursuant to this subdivision.

36 **Comment.** Section 26529 is amended to reflect the repeal of
37 Section 26524, concerning representation of a trial court or trial
38 court judge by the district attorney.

1 **Gov't Code § 27647. Representation of Court or Judge by County Counsel**

2 Government Code Section 27647 should be amended along the following
3 lines:

4 **Gov't Code § 27647 (amended). Representation of court or judge**
5 **by county counsel**

6 SEC. ____ . Section 27647 of the Government Code is amended to
7 read:

8 27647. (a) If requested to do so by the ~~superior court of the~~
9 ~~county of the county counsel, or by any judge thereof~~ Judicial
10 Council when the Government Claims Act (Division 3.6
11 (commencing with Section 810) of Title 1) applies, or by the local
12 superior court or any judge thereof when that act does not apply,
13 and insofar as ~~such~~ these duties are not in conflict with, and do not
14 interfere with, other duties, the county counsel may represent ~~any~~
15 ~~such~~ the superior court or a judge thereof in all matters and
16 questions of law pertaining to any of ~~such~~ the judge's duties,
17 including any representation authorized by Section 68111 and
18 representation in all civil actions and proceedings in any court in
19 which with respect to the court's or judge's official capacity, ~~such~~
20 the court or judge is concerned or is a party.

21 (b) This section does not apply to any of the following:

22 (1) Any criminal proceedings in which a judge is a defendant.

23 (2) Any grand jury proceedings.

24 (3) Any proceeding before the Commission on Judicial
25 Qualifications Performance.

26 (4) Any civil action or proceeding arising out of facts under
27 which the judge was convicted of a criminal offense in a criminal
28 proceeding.

29 **Comment.** Section 27647 is amended to reflect the enactment of
30 Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and subsequent
31 legislation clarifying and solidifying the Judicial Council's role in
32 handling claims against trial courts and trial court personnel (see
33 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, § 16; see also
34 Sections 810-998.3; Cal. R. Ct. 20.201-10.203).

35 The section is also amended to update an obsolete reference to
36 the "Commission on Judicial Qualifications," which is now known
37 as the "Commission on Judicial Performance."

1 **Gov't Code § 27648. Reimbursement Where Judge Is Required to Retain Own**
2 **Counsel Due to Conflict of Interest**

3 The staff should do further research on Government Code Section 27648, seek
4 input on it from knowledgeable sources, and report back to the Commission. The
5 Commission is particularly interested in whether that section applies in any
6 situations beyond the scope of the Government Claims Act and, if so, what those
7 situations are.

8 *(Commissioner Jenkins was not present when this decision was made.)*

9 **Preparation of a Tentative Recommendation**

10 The staff should not prepare a separate tentative recommendation on
11 representation and indemnification of trial courts and trial court personnel, at
12 least at this time. The proposed revisions relating to that subject might receive
13 more attention if they are put in a tentative recommendation that is broader in
14 scope.

15 *(Commissioner Jenkins was not present when this decision was made.)*

16 STUDY L-3032.5 — STOCK COOPERATIVES AND THE
17 UNIFORM TOD SECURITY REGISTRATION ACT

18 The Commission considered Memorandum 2021-23, which presented a staff
19 draft of a tentative recommendation. The draft was approved for distribution as
20 a tentative recommendation, without change.

21 *(Commissioner Jenkins was not present when this decision was made.)*

22 STUDY R-100 — FISH AND GAME LAW

23 The Commission considered Memorandum 2021-20, analyzing public
24 comment on the Commission's tentative recommendation on *Fish and Wildlife*
25 *Code* (Dec. 2018).

26 The Commission made the following decisions:

- 27 • The provisions set out under the heading "Changes That Should
28 Be Made" were provisionally approved for inclusion in a draft
29 recommendation.
- 30 • The proposed revisions discussed under the heading "Changes
31 That Should *Not* Be Made" will not be included in a draft
32 recommendation.
- 33 • The proposed revisions discussed under the heading "Changes
34 That Should Presumptively Be Made" will be presented again in a

- 1 future memorandum, after providing an adequate opportunity for
2 public comment.
- 3 • The staff will present cumulative drafts at each meeting where this
4 study is taken up. Those drafts will provide draft language for all
5 provisions that have been provisionally approved for inclusion in
6 a draft recommendation.