
1 **APPROVED** MINUTES OF MEETING
2 CALIFORNIA LAW REVISION COMMISSION
3 August 26, 2021

4 A meeting of the California Law Revision Commission was held on August
5 26, 2021. Consistent with Executive Order N-08-21, the meeting was held as an
6 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 Victor King
15 Jane McAllister
16 Richard Rubin

17 *Absent:* Assembly Member Ed Chau
18 Cara Jenkins, Legislative Counsel
19 Senator Richard D. Roth

20 **Staff:**

21 *Present:* Brian Hebert, Executive Director
22 Barbara Gaal, Chief Deputy Director
23 Steve Cohen, Staff Counsel
24 Alexandra Azad, Summer Law Fellow

25 **Other Persons:**

26 Angela Donlan, Department of Fish and Wildlife
27 Jacqueline Wong-Hernandez

CONTENTS

Approval of Actions Taken.....	2
Minutes	2
Administrative Matters.....	2
Report of Executive Director	2
Use of Teleconferencing	2
Election of Officers	3
2021 Legislative Program	3
Study G-300 — State and Local Agency Access to Customer Information From Communication Service Providers.....	3
Study J-1407 — Statutes Made Obsolete by Trial Court Restructuring (Part 8).....	4
Study R-100 — Fish and Game Law	8
Study X-100 — Emergency-Related Reforms.....	8

1

APPROVAL OF ACTIONS TAKEN

2

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.

6

MINUTES

7

The Commission considered Memorandum 2021-30, presenting draft Minutes of the June 24, 2021, meeting. The Commission approved the Minutes without change.

10

ADMINISTRATIVE MATTERS

11

Report of Executive Director

12

The Executive Director reported on the following matters:

13

- The Commission has hired an Office Technician.

14

- The Executive Director plans to begin reopening the Davis office on September 7, 2021.

15

16

- The staff will begin using a formal roll-call voting procedure for all final Commission decisions.

17

18

Use of Teleconferencing

19

The Commission considered Memorandum 2021-31 and its First Supplement, discussing the use of teleconferencing to conduct Commission meetings. No Commission decisions were required or made.

21

1 **Election of Officers**

2 The Commission considered Memorandum 2021-34, discussing the election of
3 officers. Richard Simpson was elected to serve as Chair; David A. Carrillo will
4 serve as Vice-Chair. The terms of the new officers will begin on September 1,
5 2021.

6 Members of the Commission expressed their thanks and admiration to
7 outgoing Chair Crystal Miller-O'Brien and her predecessor Victor King, who led
8 the Commission during two very difficult years.

9 **2021 LEGISLATIVE PROGRAM**

10 The Commission considered Memorandum 2021-35, discussing the
11 Commission's 2021 legislative program. No Commission action was required or
12 taken.

13 The Commission also considered the First Supplement to Memorandum
14 2021-35, relating to Assembly Bill 473 (Chau) and Assembly Bill 474 (Chau),
15 which would recodify the California Public Records Act and make conforming
16 revisions throughout the codes. The Commission approved all of the Comment
17 revisions discussed in that supplement.

18 **STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER INFORMATION**
19 **FROM COMMUNICATION SERVICE PROVIDERS**

20 The Commission considered Memorandum 2021-38, discussing a possible
21 requirement that notice be given to a customer when an administrative subpoena
22 is served on a communications service provider for the production of the
23 customer's records.

24 The Commission directed the staff to prepare a draft tentative
25 recommendation based on the proposed language attached to the memorandum.
26 In addition, when an agency serves notice of a subpoena on a customer, the
27 proposed law should require that proof of service be served on the
28 communications service provider. The staff will examine Code of Civil
29 Procedure Section 1985.3 as a possible model for that provision.

30 The staff should consider providing advisory information in the notice of
31 subpoena that would be served on a customer.

32 The staff will confirm whether existing law provides a general prohibition on
33 communication service provider disclosure of customer communications, barring

1 a statutory exception. If so, that fact will be noted in the draft tentative
2 recommendation; if not, the staff will bring that information back to the
3 Commission for further discussion.

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

6 The Commission considered Memorandum 2021-37, relating to
7 representation and indemnification of trial courts and trial court personnel.

8 For purposes of a tentative recommendation, the Commission made the
9 decisions described below.

10 **Government Code Section 811.9**

11 Government Code Section 811.9 should be amended along the following
12 lines:

13 **Gov't Code § 811.9 (amended). Representation, defense, and**
14 **indemnification of trial courts and trial court personnel**

15 811.9. (a) Notwithstanding any other provision of law, judges,
16 subordinate judicial officers, and court executive officers of the
17 superior courts are state officers for purposes of Part 1
18 (commencing with Section 810) to Part 7 (commencing with Section
19 995), inclusive, and trial court employees are employees of the trial
20 court for purposes of Part 1 (commencing with Section 810) to Part
21 7 (commencing with Section 995), inclusive. The Judicial Council
22 shall provide for representation, defense, and indemnification of
23 those individuals and the court pursuant to Part 1 (commencing
24 with Section 810) to Part 7 (commencing with Section 995),
25 inclusive. The Judicial Council shall provide for that representation
26 or defense through the county counsel, the Attorney General, or
27 other counsel. The county counsel and the Attorney General may,
28 but are not required to, provide representation or defense for ~~the~~
29 ~~Judicial Council~~ a trial court, judge, subordinate judicial officer,
30 court executive officer, or trial court employee if the Judicial
31 Council requests that assistance to fulfill its duties under this
32 section. The fact that a justice, judge, subordinate judicial officer,
33 court executive officer, court employee, the court, the Judicial
34 Council, or ~~the Administrative Office of the Courts~~ the staff of the
35 Judicial Council is or was represented or defended by the county
36 counsel, the Attorney General, or other counsel shall not be the sole

1 basis for a judicial determination of disqualification of a justice,
2 judge, subordinate judicial officer, the county counsel, the Attorney
3 General, or other counsel in unrelated actions.

4 (b) To promote the cost-effective, prompt, and fair resolution of
5 actions, proceedings, and claims affecting the trial courts, the
6 Judicial Council shall adopt rules of court requiring ~~the~~
7 ~~Administrative Office of the Courts~~ its staff to manage actions,
8 proceedings, and claims that affect the trial courts and involve
9 superior courts, superior court judges, subordinate judicial officers,
10 court executive officers, or trial court employees in consultation
11 with the affected courts and individuals. The ~~Administrative Office~~
12 ~~of the Courts'~~ staff's management of these actions, proceedings,
13 and claims shall include, but not be limited to, case management
14 and administrative responsibilities such as selection of counsel and
15 making strategic and settlement decisions.

16 (c) Nothing in this section shall be construed to affect the
17 employment status of subordinate judicial officers, court executive
18 officers, and trial court employees related to any matters not
19 covered by subdivision (a).

20 **Comment.** Section 811.9 is amended for purposes of
21 clarification. This is not a substantive change.

22 The section is also amended to update the references to the
23 Administrative Office of the Courts. The Judicial Council no longer
24 uses that name to refer to its staff. See Cal. R. Ct. 10.81 & Advisory
25 Committee Comment.

26 **Government Code Section 27647**

27 Government Code Section 27647 should be amended along the following
28 lines:

29 **Gov't Code § 27647 (amended). Representation of court or judge** 30 **by county counsel**

31 SEC. ____ . Section 27647 of the Government Code is amended to
32 read:

33 27647. (a) If requested to do so by the ~~superior court of the~~
34 ~~county of the county counsel, or by any judge thereof~~ Judicial
35 Council, and insofar as ~~such~~ these duties are not in conflict with,
36 and do not interfere with, other duties, the county counsel may
37 represent ~~any such~~ the superior court or a judge thereof in all
38 matters and questions of law pertaining to any of ~~such~~ the judge's

1 duties, including any representation authorized by Section 68111
2 and representation in all civil actions and proceedings in any court
3 in which with respect to the court's or judge's official capacity, ~~such~~
4 the court or judge is concerned or is a party.

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

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

7 (2) Any grand jury proceedings.

8 (3) Any proceeding before the Commission on Judicial
9 Qualifications Performance.

10 (4) Any civil action or proceeding arising out of facts under
11 which the judge was convicted of a criminal offense in a criminal
12 proceeding.

13 **Comment.** Section 27647 is amended to reflect the enactment of
14 Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and subsequent
15 legislation clarifying and solidifying the Judicial Council's role in
16 handling claims against trial courts and trial court personnel (see
17 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, § 16; see also
18 Sections 810-998.3; Cal. R. Ct. 20.201-10.203).

19 The section is also amended to update an obsolete reference to
20 the "Commission on Judicial Qualifications," which is now known
21 as the "Commission on Judicial Performance."

22 **Government Code Section 27648**

23 Government Code Section 27648 should be repealed, as follows:

24 **Gov't Code § 27648 (repealed). Reimbursement where judge is**
25 **required to retain own counsel due to conflict of interest**

26 ~~27648. If, because of a declared conflict of interest, any judge,~~
27 ~~who is otherwise entitled to representation pursuant to Section 825,~~
28 ~~995, or 27647, is required to retain his own counsel, such judge is~~
29 ~~entitled to recover from the appropriate public entity such~~
30 ~~reasonable attorney's fees, costs, and expenses as were necessarily~~
31 ~~incurred thereby.~~

32 **Comment.** Section 27648 is repealed to reflect:

33 (1) Enactment of the Lockyer-Isenberg Trial Court Funding Act,
34 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655).

35 (2) Enactment of the Trial Court Employment Protection and
36 Governance Act ("TCEPGA"), 2000 Cal. Stat. ch. 1010 (see generally
37 Sections 71600-71675).

1 (3) Enactment of three bills adjusting the Government Claims
2 Act (Sections 810-998.3) to reflect enactment of the Trial Court
3 Funding Act and the TCEPGA: 2000 Cal. Stat. ch. 447, § 4.5; 2002
4 Cal. Stat. ch. 1007; and 2005 Cal. Stat. ch. 706, §§ 16-17, 19, 39. Those
5 bills made the Judicial Council responsible for providing
6 representation, in accordance with the Government Claims Act, for
7 trial courts and trial court personnel in matters relating to their
8 work. For the provision in the Government Claims Act governing
9 reimbursement of a public employee’s attorney’s fees, costs, and
10 expenses, see Section 996.4. See also Section 811.9 (defining Judicial
11 Council’s role and scope of responsibility “[n]otwithstanding any
12 other provision of law).

13 **Government Code Section 68111**

14 Government Code Section 68111 should be amended along the following
15 lines:

16 **Gov’t Code § 68111 (amended). Representation of judge**
17 **appearing as witness in official capacity**

18 68111. (a) Whenever any judge of any court of this state is a
19 witness in ~~his~~ official capacity as judge in any action or proceeding,
20 ~~such~~ the judge shall be entitled to be represented at ~~such~~ the action
21 or proceeding by counsel of ~~his~~ the judge’s choice, at the judge’s
22 own expense.

23 (b) Representation of a judge at public expense is governed by
24 the Government Claims Act (Division 3.6 (commencing with
25 Section 810) of Title 1), including, but not limited to, Section 995.9.

26 **Comment.** Section 68111 is amended for purposes of
27 clarification. This is not a substantive change. See 62
28 Ops.Cal.Atty.Gen. 611 (1979) (Section 68111 “does not provide ...
29 for the expenditure of public funds for the expense of counsel
30 retained by the judge.”); see also Section 811.9 (establishing system
31 under which Judicial Council is responsible for handling claims
32 affecting trial courts and trial court personnel, which applies
33 “[n]otwithstanding any other provision of law) and Section 995.9
34 (stating rules for defense and indemnification of witness who
35 testifies on behalf of public entity, which apply “[n]otwithstanding
36 any other provision of law”).

