

Admin.

May 6, 2005

Memorandum 2005-15

Handbook of Practices and Procedures

The Commission's *Handbook of Practices and Procedures* collects procedural decisions and Commission practices in a convenient format. From time to time, the Commission updates the Handbook to incorporate new decisions and practices. The Commission has not updated the Handbook since January 2002. It is time for the Commission to review the Handbook and consider what changes to make.

Attached to this memorandum is the current version of the main text of the Handbook, with proposed revisions recommended by the staff (appendices are not included). Proposed deletions are shown in strikeout (e.g., ~~deletion~~); proposed additions are shown in underscore (e.g., addition).

The staff reviewed the Minutes since January 2002 for any changes in Commission policies that need to be included in the Handbook. Some of the proposed revisions in the attached draft reflect policy decisions made during this time period (e.g., proposed Rule 6.3.4). These revisions require no further discussion unless someone raises an issue.

Other revisions in the attached draft are technical changes for purposes of correction, clarification, or the like (e.g., Rule 1.4.2). Again, these require no further discussion unless someone raises an issue.

A few of the proposed revisions are more substantive or otherwise warrant discussion. These points are discussed below.

The Commission should review the attached draft, consider the points discussed in this memorandum, and also consider whether any additional revisions should be made. On receiving direction from the Commission, the staff will implement any approved revisions and send out a revised Handbook, including updated appendices.

Rule 1.4.1. Binders for Commission Materials

Rule 1.4.1 refers to binders that Commissioners can use for Commission materials. No one has requested such binders in many years and the Commission

does not have a supply of special binders for this purpose. The staff proposes to delete this provision from the Handbook.

Rule 2.4.8. Open Meetings

On occasion, a stakeholder or other interested person has asked to attend a Commission meeting by teleconference. Consistent with the Commission's repeatedly expressed view that in-person attendance is important, the Commission has not accommodated these requests. The Handbook already states that the Commission discourages the use of teleconference meetings and will hold a teleconference meeting only in an extraordinary situation. See Rule 2.1.4. The staff proposes to revise the portion of the Handbook regarding public participation in a Commission meeting (Rule 2.4.8) to state that the Commission "generally will not accommodate a request to appear by teleconference." This would not represent a change in policy but would merely revise the Handbook to conform to existing practice.

Rule 2.4.8 also says that the agenda for each Commission meeting is sent "to those persons who normally attend the meetings as observers," as well as to anyone else who requests a copy of the agenda or who may be interested in the subject matter of a particular meeting. In practice, there are no "persons who normally attend the meetings as observers." The Commission does, however, routinely send the agenda for each meeting to persons on the mailing list for each study on the agenda. The staff proposes to revise the rule to reflect these points. See page 6 of the attached draft.

Rule 2.4.11 Transcripts of Meetings

Rule 2.4.11 currently provides:

As a general rule, transcripts will not be made of Commission meetings unless the Commission directs the staff to prepare a transcript on a particular matter and announces that decision before the discussion to be transcribed. There are two exceptions to this general policy: (1) In the case of a question as to the accuracy of the Minutes for the previous meeting, at the request of a Commissioner, the staff may prepare a transcript, for Commissioners only, of the part of the discussion as needed to resolve the issue. (2) The Commission may decide to transcribe a discussion without prior notice if all Commissioners present consent and no person who participated in the discussion objects to the transcript.

The Commission adopted this policy on transcribing Commission meetings in 1987.

In considering whether the policy is still appropriate, the staff had concerns about some of the details regarding preparation of a transcript. For example, the rule states that the “Commission may decide to transcribe a discussion without prior notice if all Commissioners present consent and no person who participated in the discussion objects to the transcript.” The phrase “objects to the transcript” is ambiguous and could refer either to an objection to *preparation* of the transcript, or to an objection to *the content* of the transcript. More fundamentally, we are uncertain whether it is appropriate to give anyone veto power over preparation of a transcript.

Rather than trying to specifically resolve points such as these, the staff recommends revising Rule 2.4.11 to simply state that “As a general rule, transcripts will not be made of Commission meetings.” Transcript requests are rare. The Commission can address the particular circumstances of such a request when it is made, instead of trying to spell out detailed rules in advance in the Handbook.

Rule 2.5 (Proposed Rule 2.5.1). Confidential Communication to Commission

The Handbook includes a detailed policy on confidential communications to the Commission, which was adopted in 1987:

The Commission does not ordinarily receive communications on a confidential basis. The Commission will solicit a communication on a confidential basis only where the Commission has made a determination that the information contained in the communication is necessary for a Commission study and might not reasonably be obtainable without providing confidentiality. An unsolicited request for confidentiality will be considered by the Commission on an individual basis, applying the same standard of necessity. The notice on the cover of a Commission tentative recommendation should state that any comments received will be considered at a public meeting.

A communication received under a Commission assurance of confidentiality will be considered by the Commission without knowledge of the identity of the author of the communication. The Commission staff will summarize the contents of the communication, quote from the communication, reproduce the communication with identifying markings deleted, or handle the communication in another appropriate way to protect the identity of the author from disclosure.

The staff will protect the identity of the author of a communication received under a Commission assurance of confidentiality from disclosure. The staff will mark Commission files as confidential, segregate Commission files, destroy the communication, or take other appropriate action to preserve the author's identity from disclosure. This could be accomplished by filing confidential communications in a separate drawer or by referring to the existence of a confidential communication in the study file to which the communication relates. The staff will resist judicial proceedings to require disclosure of any communication received by the Commission under an assurance of confidentiality.

Again, the staff is unsure whether all of the details of the rule are appropriate. We propose to revise the rule to simply state:

The Commission does not ordinarily receive communications on a confidential basis. The notice on the cover of a Commission tentative recommendation should state that any comments received will be considered at a public meeting.

Proposed Rule 2.5.2. Anonymous Communication to Commission

The Commission sometimes receives an anonymous communication, such as an email message from an unidentified person. The Handbook does not address how the Commission will handle an anonymous communication. The situation occurs often enough that the staff believes a rule on this point should be added. We suggest adding a rule along the following lines:

Although the Commission encourages persons to identify themselves and their affiliations, a communication to the Commission may be anonymous. An author's decision to remain anonymous, like other decisions about the content of a communication, is an aspect of constitutionally protected freedom of speech.

The Commission can take the anonymity of the author into account in evaluating an anonymous communication. The identity of a source is sometimes helpful in assessing the merits of an idea or how much weight it should be given.

Proposed Rule 2.5.3. Written Communication to Chairperson or to Individual Commissioner

The staff sometimes receives a letter addressed to the Chairperson or to an individual Commissioner regarding a Commission study. These are routinely treated in the same manner as a written communication addressed to the

Commission as a whole. The staff proposes to add a statement of this policy to the Handbook, along the following lines:

2.5.3. Written communication to Chairperson or to individual Commissioner

A written communication addressed to the Chairperson or to an individual Commissioner regarding a Commission study will be treated in the same manner as a communication to the Commission as a whole. For example, if a communication relates to a topic under study, the staff normally attaches the communication to a staff memorandum, discusses the communication in the memorandum, and presents the memorandum for consideration at a Commission meeting. If a communication relates to other business of the Commission, the staff normally responds to the communication.

Proposed Rule 2.5.4. Reproduction of Written Communications to Commission

At the March meeting, the Commission adopted the following policy regarding reproduction of written communications to the Commission:

A written communication to the Commission that is relevant to matters currently under consideration may be attached as an exhibit to a staff memorandum. A communication that is off-topic, defamatory, obscene, invasive of personal privacy or confidentiality, or that is otherwise inappropriate for republication will not be reproduced as an exhibit unless it is redacted to eliminate the inappropriate material. Any redaction shall be clearly indicated. A communication that is not reproduced as an exhibit may be summarized in a staff memorandum.

In discussing the policy, Commissioner Kaplan asked whether the reference to material that is “otherwise inappropriate for republication” might raise constitutional issues. The Commission decided to approve the policy with that phrase included.

In drafting the policy, the staff added the phrase “otherwise inappropriate for republication” when we were trying to figure out how to cover hate mail, fighting words, or other communications that are violent or threatening in nature. The intent was to encompass such communications to the extent constitutionally permissible without having to spell out in the rule precisely what the applicable constitutional standards are. We also thought there might be other categories of communications that are similarly inappropriate for republication

and can be redacted without violating constitutional constraints on content regulation.

The phrase “otherwise inappropriate for republication” may be too vague. After the March meeting, it occurred to the staff that the phrase “similarly inappropriate for republication” might be a slight improvement. That would help indicate that a communication could not be redacted or excluded unless the basis for doing so was similar to the examples given in the rule (off-topic, defamatory, obscene, or invasive of personal privacy or confidentiality). We propose to substitute “similarly inappropriate” for “otherwise inappropriate” in the Handbook. We realize that even with this change the rule might be criticized as vague. We welcome any suggestions for improvement.

Rule 3.2. Contacting Individual Members of Legislature

Rule 3.2 currently provides:

The Commission has considered whether and under what procedure the Executive Secretary should contact individual members of the Legislature to explain Commission bills. A member of the Legislature should not be contacted unless the member has raised questions about a Commission bill in committee or otherwise and it seems likely that the member does not fully understand the Commission’s recommendation or the reasons for it. If it appears desirable, the Executive Secretary may contact the member to answer questions the member may have about the bill and otherwise explain it. Care must be taken not to appear to be advocating legislation in violation of Government Code Section 8288, which provides:

No employee of the Commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the Commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

As presently worded, this rule might be misinterpreted to prohibit the longstanding Commission practice of sending an explanatory letter and the Commission recommendation to each member of a policy committee before the committee hears a bill to effectuate a Commission recommendation. The rule might also be misinterpreted to restrict Commission staff from communicating with a legislative member of the Commission or an author, coauthor, or prospective coauthor regarding a bill to effectuate a Commission recommendation. The staff proposes to revise the rule to clarify these points (see page 11 of the attached draft).

In considering this rule, the Commission may be interested to know that except for communications covered by the proposed revisions — i.e., (1) the routine practice of sending an explanatory letter to committee members and (2) communications with a legislative member of the Commission or an author, coauthor, or prospective coauthor regarding a bill to effectuate a Commission recommendation — it is extremely rare for a staff member to communicate with an individual legislator regarding a pending Commission bill.

5.2.1. Statement of scope of background study

Rule 5.2.1 concerns preparation of a statement outlining the scope of a background study that a consultant is to conduct for the Commission. The second paragraph of the rule states:

The staff prepares and presents for Commission consideration a draft of a statement of the scope of the study. If the consultant is not present when the draft of the statement is considered by the Commission, the staff draft of the statement as revised by the Commission is sent to the consultant. The consultant is requested to review the statement and suggest any additional aspects of the topic in need of study or other modifications of the statement. The suggestions of the consultant are reviewed by the Commission and any necessary changes made in the statement.

The Commission adopted this procedure when it was having trouble with a particular consultant. The problem occurred only once; it has not been repeated. The staff proposes to delete this paragraph from the Handbook. It is not necessary to prescribe in such detail the procedure for preparing a statement outlining the scope of a background study.

Proposed Rule 7.0. Delegation of Authority By Executive Secretary

The staff recommends adding a rule stating that “Except with respect to personnel and fiscal matters, any of the acts in this Handbook that may be done by the Executive Secretary may also be done by a member of the Commission staff designated by the Executive Secretary.” This clarification would conform to current practice, under which (1) the staff member responsible for a particular study typically continues to handle the matter through the legislative process, and (2) the Executive Secretary sometimes delegates to another staff member responsibility for reporting on the status of a consultant’s work or determining when material should be printed.

Appendix H-2. Biographical Information on Commissioners and Commission Staff

In the past, an appendix to the Handbook included biographical information and addresses for each Commissioner and staff member. The biographical information was sometimes difficult to collect; this task apparently was never completed for the current version of the Handbook.

The staff proposes not to include biographical information in the new edition of the Handbook. Such information is not related to the purpose of the Handbook, which is to memorialize the Commission’s practices and procedures. The Handbook would continue to include an appendix listing the office address of each Commissioner and each staff member.

Respectfully submitted,

Barbara Gaal
Staff Counsel

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HANDBOOK OF COMMISSION PRACTICES AND PROCEDURES

1. Officers and Members of Commission

1.1. Officers

The officers of the Commission are the Chairperson¹ and the Vice Chairperson. The terms of office are one year, commencing on September 1.² Officers hold office until the following September 1 or the election of successors, whichever is later.³

At meetings, the Vice Chairperson shall act as Chairperson in the absence of the Chairperson. In case of a vacancy in the office of Chairperson or where the Chairperson is unavailable, the Vice Chairperson shall perform the duties of the Chairperson.⁴

In case of a vacancy in the office of Chairperson, the Commission shall elect new officers for the remainder of the term.⁵

No officer is eligible to succeed himself or herself in the same office in which the officer has served a full term.⁶ However, an officer who has served for less than a full term may succeed himself or herself in the same office for a full term;⁷ and, where the Chairperson is reelected to office, the incumbent Vice Chairperson is eligible for reelection even though reelection may result in the Vice Chairperson succeeding himself or herself for another full term.⁸

1.2. Recognition of Service

The practice of the Commission is to present a plaque to each Chairperson shortly after the term as Chairperson ends. Certificates are awarded to members at completion of their service on the Commission.

1.3. Expense Claims

1.3.1. Staff assistance

The Commission's staff is charged with the responsibility of supervising the process of preparing travel expense claims. Current information concerning travel expense regulations and claims is sent to Commissioners periodi-

1. Gov't Code § 8283 ("The commission shall select one of its members chairperson.").

2. Minutes, April 1987.

3. Minutes, January 1995.

4. Minutes, February 2000; Minutes, January 1995.

5. Minutes, January 1995.

6. Minutes, January 1960.

7. Minutes, December 1960.

8. Minutes, January 1962.

cally or on request. Questions about travel claims or the procedure should be directed to the ~~Administrative Assistant or other~~ responsible staff member.

1.3.2. Procedure

The general procedure for processing travel claims is described here: Travel claims for Commission members are submitted to the Commission's office. The member submits the necessary information on a worksheet supplied by the staff indicating the required information and receipts. If required information or receipts are missing, there will be delays in processing the travel claims. From the worksheet information, the staff prepares the formal travel claim and sends it to the Commissioner for signature. The claim is then returned to the Commission office for final approval and submission to the State Controller for payment.

1.4. Materials and Supplies

1.4.1. ~~Binders for Commission materials~~

~~Some members of the Commission use binders to keep Commission material in a convenient form. On request to the Commission's office, a Commissioner will be provided with the binders necessary for this purpose.~~

1.4.1. Photo identification cards

The staff will prepare a photo identification card for each Commissioner and each staff member. These cards are useful in obtaining state contract rates on accommodations for Commission meetings.⁹

1.4.2. Credit cards

American Express Corporate cards are available. (Contact the ~~Administrative Assistant~~ staff for further information.)

2. Meetings and Procedure

2.1. Meetings¹⁰

2.1.1. Meeting dates and locations

Regular meetings ordinarily are scheduled bimonthly, or more frequently as required. A meeting is not held during the month of August. During the legislative session, meetings will be scheduled to accommodate the schedule of the Commission's legislative members; this will usually involve meeting on Thursday in Sacramento.¹¹

9. Minutes, May 2002.

10. Minutes, January 1984; Minutes, November 1982; Minutes, November 1980; Minutes, October & November 1979; revised to reflect current practice.

11. Minutes, November 1996; Minutes, September 1995; current practice.

Meetings are scheduled so that the Commission meets in various cities around the state;¹² most meetings are in Sacramento, Los Angeles, San Francisco, and San Diego.

2.1.2. Meeting times¹³

Depending on airline schedules, meeting times for two-day meetings are normally scheduled for Thursday, 10:00 AM to 5:00 PM, and Friday, 9:00 AM to 4:00 PM.

To facilitate attendance of legislative members, Thursday meetings may be scheduled to start at 1:00 PM when a meeting is scheduled during a time when the Legislature is in session.

One-day meetings are normally scheduled from 9:00 AM to 5:00 PM.

2.1.3. Special and rescheduled meetings

The Chairperson is authorized to call a special meeting and to change the date, times, and place of a previously scheduled meeting when necessary to improve attendance at the meeting or for other good reason. Notice of a special or rescheduled meeting shall be given immediately.¹⁴

2.1.4. Teleconference meetings

As a general rule, the Commission believes that in-person attendance is important and discourages the use of teleconference meetings.¹⁵ Teleconference is disruptive and changes the character of the discussion and deliberations.¹⁶ However, in extraordinary situations, such as where a quorum cannot be attained and Commission action is needed to approve a tentative recommendation, action on a Commission bill, or other time-sensitive matter, the Commission may hold a teleconference meeting,¹⁷ as determined by the Chairperson.

2.2. Meeting Agenda¹⁸

The staff is to schedule no more work for any particular meeting than can reasonably be considered at the meeting.

At the meeting, the order of items on the agenda may be changed to accommodate persons in attendance.

12. Minutes, April 1987.

13. Current practice.

14. Notice of special meetings is also governed by provisions of the Bagley-Keene Open Meeting Act. See, e.g., Gov't Code §§ 11125.3, 11125.4, 11125.5 (Appendix C).

15. Minutes, January 1995.

16. Minutes, November 2002.

17. See, e.g., Minutes, August 1999; Minutes, May 9 & 15, 1996.

18. Minutes, January 1969. See also Minutes, June 1968.

When useful to fit the schedule of a consultant or other persons planning to attend the meeting, the staff may schedule a special order of business for consideration of a topic. Special orders should be scheduled early enough so that the meeting can be adjourned if the agenda is completed.

2.3. Staff-Prepared Meeting Materials

Staff-prepared meeting materials should be mailed so that Commission members receive the materials not less than five days before the meeting.¹⁹ Where meeting materials cannot meet this standard, such as where a letter, fax, or email is received immediately before a meeting, it is acceptable to distribute materials at the meeting; but if the earliest possible distribution is critical, the staff should fax or express mail the material, if practicable.²⁰ Sending materials as email attachments will satisfy this guideline if the recipient Commissioner has approved this means of receipt.

In preparing meeting materials, the staff should indicate changes in a current draft from the immediately preceding draft by some appropriate means. This may be done by strikeout and underscore in cases where it can be done easily and without causing undue confusion.²¹

Commissioners are presumed to have read all the material to be considered at the meeting and the staff is to make its presentations on this assumption.

2.4. Conduct of Meeting

2.4.1. Quorum

Five members of the Commission constitute a quorum, except that:²²

(1) If there are three or four vacancies in the membership of the Commission, four members of the Commission constitute a quorum.

(2) If there are five or more vacancies in the membership of the Commission, three members of the Commission constitute a quorum.

If a quorum is established at any time during a meeting of the Commission, the Commission may thereafter act for the duration of the meeting notwithstanding the absence of any member who is part of the quorum.²³ Any action may be taken by a majority of those present after a quorum is

19. Minutes, April 1987; Minutes, September 1984.

20. Minutes, December 1995.

21. Minutes, October 1987.

22. Minutes, August 1999; Minutes, June 1999; Minutes, April 1987. The five-member quorum rule historically follows from the statutory provision that legislative members participate to the extent "not incompatible with their respective positions as Members of the Legislature." Gov't Code § 8281 (Appendix A).

23. Minutes, January 1993.

established, but any final recommendation to the Legislature must be approved by a minimum of three affirmative votes.²⁴

If a quorum is not established at a particular meeting, members present act as a subcommittee and no final action may be taken at the meeting.²⁵ Decisions of a Commission subcommittee may be ratified by the Commission when a quorum is attained, whether at the same meeting or a later meeting.²⁶

The Commission may establish a quorum by teleconference in accordance with open meeting act rules.²⁷

2.4.2. Meeting starting time

Commission meetings are not commenced with the Commission acting as a subcommittee if absent members are known to be in the area where the meeting is being held and are known to be planning to attend the meeting.²⁸ However, meetings should not be delayed more than 15 minutes from the originally scheduled starting time to await the arrival of an absent member who is known to be planning to attend the meeting.²⁹

If both the Chairperson and Vice Chairperson are absent when the meeting should start, a Commission member may convene the meeting and act as temporary Chairperson.³⁰

2.4.3. Actions on adopted motion

Actions to send out tentative recommendations for review and comment or to submit recommendations to the Legislature and other Commission actions are made on a motion adopted by the Commission.³¹

2.4.4. Actions by Chairperson

The Chairperson, or other Commission member acting as Chairperson, may make motions, second motions, and vote on motions in the same manner as Commission members generally, without the need to vacate the chair temporarily.³²

24. Minutes, January 1993; Minutes, February 1966; Minutes, April 1963; Minutes, March 1959.

25. Minutes, January 1993; Minutes, April 1987; Minutes, April 1963; Minutes, January 1958.

26. Current practice. See, e.g., Minutes, February 1997; Minutes, May 9 & 15, 1996.

27. Current practice. See also Minutes, June 1999; Gov't Code § 11123 (Appendix C).

28. Minutes, April 1984.

29. Minutes, April 1987; Minutes, August 1985.

30. Current practice. The Commission cited this practice as a sufficient rule, obviating any need for selecting a second Vice Chairperson. Minutes, July 1998.

31. Minutes, April 1987; Minutes, January 1985.

32. Minutes, March 1994.

2.4.5. Roll call votes

A roll call vote shall be taken on any matter at the request of any member of the Commission.³³ Votes are not recorded in the Minutes unless a member requests that the vote on a particular matter be recorded. On rare occasions, a member will request that the Minutes reflect that the member voted against the action taken by the Commission.

2.4.6. Standing subcommittees

The Commission has disapproved the use of standing subcommittees to initially review studies on the Commission's agenda and submit their recommendations to the Commission.³⁴

2.4.7. Research consultants

Research consultants are requested to attend meetings from time to time.

2.4.8. Open meetings

Meetings of the Commission are open to the public and are subject to the provisions of the Bagley-Keene Open Meeting Act.³⁵ Any person may attend as an observer and may address the Commission or participate in the discussion as authorized by the Chairperson.³⁶ The Commission believes that in-person attendance is important and generally will not accommodate a request to appear by teleconference.³⁷

The agenda for each meeting is sent to ~~those persons who normally attend the meetings as observers~~ the mailing list for each study on the agenda and to anyone else who requests a copy of the agenda or who may be interested in the subject matter of a particular meeting.³⁸ Agendas may be sent by regular mail or email, and are posted on the Commission's website.

2.4.9. Termination of deliberations

The Chairperson should terminate prolonged deliberations on any matter either by bringing it to a vote when appropriate or by referring the matter to the staff for further research or redrafting.³⁹

33. Minutes, November 1965.

34. Minutes, May 1960; Minutes, January 1960.

35. Gov't Code §§ 11120-11132 (Appendix C).

36. Minutes, February 1960. See also Gov't Code § 11125.7 (Appendix C).

37. Current practice; see Rule 2.1.4.

38. See also Gov't Code § 11125 (Appendix C).

39. Minutes, March 1959.

2.4.10. Recording of meetings

Recording of meetings by the staff is for the purpose of preparing Minutes and redrafting statutes. The tapes are then recycled or erased. following procedures apply:⁴⁰

- (1) The Commission will record its meetings digitally.
- (2) The digital recording files will be retained for 30 days and then erased.⁴¹
- (3) Prior to erasure, a person may listen to the recording files on equipment in the Commission's offices.⁴²
- (4) Prior to erasure, a person may obtain a copy of the recording files by paying a small fee to cover the cost of reproduction. Copies will be provided on compact disk.

2.4.11. Transcripts of meetings ⁴³

As a general rule, transcripts will not be made of Commission meetings unless the Commission directs the staff to prepare a transcript on a particular matter and announces that decision before the discussion to be transcribed. There are two exceptions to this general policy: (1) In the case of a question as to the accuracy of the Minutes for the previous meeting, at the request of a Commissioner, the staff may prepare a transcript, for Commissioners only, of the part of the discussion as needed to resolve the issue. (2) The Commission may decide to transcribe a discussion without prior notice if all Commissioners present consent and no person who participated in the discussion objects to the transcript.

2.4.12. Commissioner identification

Commissioners should be identified with a name plate or other form of identification so that members of the public are able to identify Commissioners at meetings.⁴⁴

2.5. Confidentiality of Communications to Commission

2.5.1. Confidential communication to Commission⁴⁵

The Commission has adopted the following policy relating to confidentiality of communications received by the Commission:⁴⁶

40. Minutes, March 1988; see also Gov't Code § 11124.1 (tapes to be held for at least 30 days) (Appendix C) January 2005.

41. See Gov't Code § 11124.1(b).

42. *Id.*

43. Minutes, May-June 1990 May 2005.

44. Minutes, May 9 & 15, 1996.

45. Minutes, May 2005.

46. Minutes, September 1987.

The Commission does not ordinarily receive communications on a confidential basis. The Commission will solicit a communication on a confidential basis only where the Commission has made a determination that the information contained in the communication is necessary for a Commission study and might not reasonably be obtainable without providing confidentiality. An unsolicited request for confidentiality will be considered by the Commission on an individual basis, applying the same standard of necessity. The notice on the cover of a Commission tentative recommendation should state that any comments received will be considered at a public meeting.

A communication received under a Commission assurance of confidentiality will be considered by the Commission without knowledge of the identity of the author of the communication. The Commission staff will summarize the contents of the communication, quote from the communication, reproduce the communication with identifying markings deleted, or handle the communication in another appropriate way to protect the identity of the author from disclosure.

The staff will protect the identity of the author of a communication received under a Commission assurance of confidentiality from disclosure. The staff will mark Commission files as confidential, segregate Commission files, destroy the communication, or take other appropriate action to preserve the author's identity from disclosure. This could be accomplished by filing confidential communications in a separate drawer or by referring to the existence of a confidential communication in the study file to which the communication relates. The staff will resist judicial proceedings to require disclosure of any communication received by the Commission under an assurance of confidentiality.

2.5.2. Anonymous communication to Commission⁴⁷

Although the Commission encourages persons to identify themselves and their affiliations, a communication to the Commission may be anonymous. An author's decision to remain anonymous, like other decisions about the content of a communication, is an aspect of constitutionally protected freedom of speech.

The Commission can take the anonymity of the author into account in evaluating an anonymous communication. The identity of a source is sometimes helpful in assessing the merits of an idea or how much weight it should be given.

⁴⁷. Minutes, May 2005.

2.5.3. Written communication to Chairperson or to individual Commissioner⁴⁸

A written communication addressed to the Chairperson or to an individual Commissioner regarding a Commission study will be treated in the same manner as a communication to the Commission as a whole. For example, if a communication relates to a topic under study, the staff normally attaches the communication to a staff memorandum, discusses the communication in the memorandum, and presents the memorandum for consideration at a Commission meeting. If a communication relates to other business of the Commission, the staff normally responds to the communication.

2.5.4. Reproduction of written communication to Commission

A written communication to the Commission that is relevant to matters currently under consideration may be attached as an exhibit to a staff memorandum. A communication that is off-topic, defamatory, obscene, invasive of personal privacy or confidentiality, or that is similarly inappropriate for republication will not be reproduced as an exhibit unless it is redacted to eliminate the inappropriate material. Any redaction shall be clearly indicated. A communication that is not reproduced as an exhibit may be summarized in a staff memorandum.⁴⁹

2.6. Evaluation of Suggested Topics⁵⁰

The decision as to which new topics will be requested for authorization at a particular legislative session ordinarily is made at one meeting each year, usually in the fall after action on the Commission's current legislative program is completed. A topic may be brought to the Commission's attention when a suggestion is received, but generally suggested topics will be held for consideration as a group. This gives the Commission a useful overview for deciding which new topics to request authority to study and for planning the future study agenda.

2.7. Reports and Recommendations

2.7.1. Listing of members in report

A printed Commission report is dated as of the month in which the Commission makes a final recommendation or approves printing of the report, and the names of the members of the Commission at that time are listed in the letter of transmittal.⁵¹

⁴⁸. Current practice.

⁴⁹. Minutes, March & May 2005.

⁵⁰. Minutes, September 1970; revised to reflect current practice.

⁵¹. Minutes, October 1960; revised to reflect current practice.

2.7.2. Dissents

Dissenting votes of Commission members on all or part of a recommendation of the Commission are not reported in the recommendation. Rather, a statement is included in the Annual Report of the Commission stating in substance that “occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.”⁵²

2.7.3. Prefatory note⁵³

Each Commission report should include a prefatory note stating:

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission’s most recent *Annual Report*.

2.7.4 Editorial, technical, and conforming revisions ⁵⁴

After the Commission has approved a recommendation for printing, the staff may make substantive or technical revisions in preparing the recommendation for printing where necessary to conform to the Commission’s policy decisions or to correct technical defects. Members of the Commission may submit suggested editorial revisions to the staff for consideration in preparing material for publication.

3. Relationship with Legislature

3.1. Introduction of Bills ⁵⁵

Commission bills may be introduced by one of the legislative members of the Commission. The Commission encourages other members of the Legislature to be authors or coauthors of Commission bills.⁵⁶ In this case, the other legislators are selected by the Executive Secretary after consulting with the legislative members of the Commission or appropriate legislative staff members. Ordinarily, Commission bills will be introduced in the form in which

52. Minutes, August 1960. See also Minutes, July 1960.

53. Minutes, July 2002.

54. Minutes, October 1979; revised to reflect current practice.

55. Minutes, January 1959; revised to reflect current practice.

56. *Id.*

they are published by the Commission and later amended to reflect changes that the Commission believes desirable.⁵⁷

3.2. Contacting Individual Members of Legislature⁵⁸

The Commission has considered whether and under what procedure the Executive Secretary should contact individual members of the Legislature to explain Commission bills.

~~A member of the Legislature should not be contacted Shortly before a legislative committee hears a bill to effectuate a Commission recommendation, the staff should send (or assist the Chairperson in sending) the recommendation and an explanatory letter to each member of the committee.⁵⁹ Aside from this practice and communications with a legislative member of the Commission or an author, coauthor, or prospective coauthor of a bill to effectuate a Commission recommendation, the staff should not contact a member of the Legislature about a pending Commission bill unless the member has raised questions about a Commission bill in committee or otherwise and it seems likely that the member does not fully understand the Commission's recommendation or the reasons for it. If it appears desirable, the Executive Secretary may contact the member to answer questions the member may have about the bill and otherwise explain it. Care must be taken not to appear to be advocating legislation in violation of Government Code Section 8288, which provides:~~

No employee of the Commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the Commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

3.3. Acceptance of Amendments After Introduction in Legislature⁶⁰

The legislator carrying a Commission bill and the Executive Secretary are authorized to amend the bill prior to or at the time of the hearing on the bill where the amendment is a technical or nonpolicy amendment or where the

57. *Id.*

58. Minutes, January 1971.

59. Current practice.

60. Minutes, September 1987.

failure to make the amendment would jeopardize the enactment of the bill. If possible, the staff should submit the amendments to the members of the Commission in advance of making the amendments, either at a meeting or by distribution of a draft of the amendments to each member of the Commission. If this is not possible, the amendments made to the bill should be presented to the Commission, at the first opportunity, for review and approval or for revision. In addition, whenever possible, an amendment that involves a policy decision of the Commission should be discussed with the Chairperson by telephone before being made. The authority of the legislator to amend a bill the member is carrying for the Commission is not limited, but any amendments so made should be submitted to the members of the Commission using the procedure described above.

3.4. Request for Authority To Continue Existing Studies

A concurrent resolution is submitted at each legislative session to authorize continuance of existing studies and any new studies the Commission desires to undertake and, if needed, to remove previously authorized studies from the Commission's agenda.⁶¹

3.5. Proposing Changes in Laws Enacted on Commission Recommendation

The Commission has established that, as a matter of policy, unless there is a good reason for doing so, the Commission will not recommend to the Legislature changes in laws that have been enacted on Commission recommendation.⁶²

3.6. Proposed Legislation Affecting Commission

The staff should immediately inform the Commission or members when the staff becomes aware of pending legislation directly affecting the Commission.⁶³

3.7. Introductory Information

The staff should send a letter to new legislators explaining that the Legislature sets the Commission's agenda, and that the Commission provides a resource legislators should consider using where there are issues appropriate for Commission study. The introductory letter to new legislators should enclose a brief overview explaining how the Commission operates and offer-

61. Current practice. See Gov't Code § 8293.

62. Minutes, December 1971.

63. Minutes, October 1986.

ing to provide additional information.⁶⁴ The Commission staff will also attempt to meet with new legislators personally.

4. Relationship with State Bar and Other Groups⁶⁵

The Commission seeks to work closely with the State Bar on major studies. The customary practice is to work with the appropriate State Bar section to develop a recommendation that will be supported by the State Bar section or to minimize the differences between the Commission and the State Bar section. The following guidelines have proven useful:

(1) Meeting materials are distributed to the designated representatives of the State Bar section not later than the time the materials are distributed to members of the Commission. The State Bar section provides the Commission with detailed comments concerning the meeting materials prior to the time the meeting materials are considered by the Commission. If time permits, these comments are distributed to each member of the Commission for study prior to the meeting. Representatives of the State Bar section attend the meeting to answer questions concerning the comments previously sent to the Commission and to provide additional comments.

(2) After a bill has been introduced to effectuate a recommendation, the State Bar section reviews the bill and the official Comments set out in the Commission's recommendation to suggest technical and policy changes in the bill or the Comments.

(3) The Chairperson and members of the staff sometimes meet with representatives of State Bar sections to informally discuss Commission recommendations.

The Commission will follow these guidelines in its relations with other bar associations and groups as appropriate.

5. Relationship with Research Consultants

5.1. Compensation of Research Consultants

Compensation of research consultants is on a modest scale, as paid in connection with public service rather than at regular professional rates.⁶⁶ Pay-

64. Minutes, November 1994.

65. Minutes, September 1987. See also Gov't Code §§ 8297 (State Bar "shall assist the commission in any manner the commission may request within the scope of its powers or duties), 8289 (Commission duty to "[r]eceive and consider proposed changes in the law recommended by ... any bar association or other learned bodies").

66. Minutes, June 1955.

ment is made in a lump sum (rather than on an hourly basis) under a contract made with the consultant.⁶⁷ Partial payments may be made for portions of a research study that have been completed.

5.2. Form and Contents of Consultant's Study⁶⁸

5.2.1. Statement of scope of background study

The Commission considers it important that there be a clear understanding concerning the scope of the background study so that the background study includes an adequate discussion of those matters that the Commission believes are in need of study. For this reason, a statement of the scope of the study is prepared by the staff in cooperation with the Commission's consultant. The statement identifies those aspects of the topic to be studied that are considered by the Commission to be of particular importance. Where appropriate, the statement may indicate uniform or model acts or statutes of other jurisdictions that are to be considered in the background study. The statement is intended to ensure that the background study includes an adequate discussion of the matters that are described in the statement, but is not intended to restrict the consultant in any way.

~~The staff prepares and presents for Commission consideration a draft of a statement of the scope of the study. If the consultant is not present when the draft of the statement is considered by the Commission, the staff draft of the statement as revised by the Commission is sent to the consultant. The consultant is requested to review the statement and suggest any additional aspects of the topic in need of study or other modifications of the statement. The suggestions of the consultant are reviewed by the Commission and any necessary changes made in the statement.~~

In some cases, the Commission may invite the consultant to meet with the Commission before commencing work on the background study to discuss the scope and methodology of the study. This will enable the Commission to gain additional understanding of the subject matter and ensure that the background study will address all of the matters the Commission believes would be useful in considering the topic.

5.2.2. Form and content of background study

The consultant is completely free to determine the form and content of the background study, but the background study should include an adequate discussion of the specific matters that the statement of the scope of the study indicates should be discussed in the background study and such other matters as the consultant believes should be considered in the background study.

67. *Id.*

68. Minutes, January 1982.

The background study ordinarily is prepared in the form of one or more law review articles.

A background study is most useful to the Commission if it includes the following:

- (1) An identification of the specific problems that may require legislative action.
- (2) A discussion of existing California decisional and statutory law with respect to each such problem and, where the consultant considers it useful, a discussion of uniform and model acts, statutes of other jurisdictions, and other material.
- (3) The alternative methods by which each problem might be solved, the advantages and disadvantages of each alternative, and the consultant's recommendations as to which alternative is best. The consultant is completely free to make any recommendations the consultant considers appropriate or desirable.

If views expressed in a consultant's study are not in agreement with the final recommendation of the Commission on the subject, the consultant may be asked to review pertinent parts of the study. The consultant is not required, however, to conform the study to the views of the Commission, nor are any portions of the study eliminated when the study is published merely because they are inconsistent with the final action of the Commission.⁶⁹ Whenever possible, the consultant's study is published in a California law review or other publication and may be republished by the Commission. In some cases, a study may be published only in the Commission's reports. Studies are printed with a note explaining that the views expressed are not necessarily the views of the Commission.

5.3. Presentations by Consultant to Other Persons or Groups⁷⁰

If a consultant makes any presentation of a background study and recommendations to any person, or legislative or other group, the consultant shall make clear at the time the presentation is made that:

- (1) The consultant's recommendations are not recommendations of the Commission and do not represent the views or recommendations of the Commission.
- (2) The Commission may or may not make recommendations on the particular matter and, if the Commission does make recommendations, those recommendations will be made in the Commission's printed report to the Legislature.

69. Minutes, August 1960.

70. Minutes, January 1990; Minutes, January 1982.

5.4. Involvement of Consultant in Litigation⁷¹

A consultant is free to continue professional activities in an area related to the subject for which the consultant was hired to advise the Commission, including involvement in litigation. However, if the consultant becomes involved in litigation on the side of a party or as *amicus curiae*, the consultant shall do the following:

- (1) Advise the Commission of involvement in the litigation.
- (2) When the person's status as a Commission consultant becomes known to the parties litigant or the court, make clear that the consultant's views do not represent the views or recommendations of the Commission and that the Commission's recommendations, if any, will be made in the Commission's printed report to the Legislature.

5.5. Advisers to Commission Consultant⁷²

Although the Commission encourages consultants to seek the views of other experts and interested persons in the course of preparing a background study, the Commission does not approve the consultant setting up an advisory committee or similar named group.

5.6. Additional Funding of Consultant Studies

A consultant retained by the Commission for the preparation of a background study may seek to obtain grants or funding from foundations or other sources for the purpose of preparing the study required by the Commission, but no grant or funding shall be accepted by the consultant without the prior approval of the Commission, which approval shall be set out in the Minutes of the meeting at which the approval was given.⁷³

5.7. Report on Status of Research Studies

Periodically, the Executive Secretary is to submit for Commission review the status of each research study being prepared by an outside research consultant.⁷⁴

5.8. Certificates for Consultants

It is the practice of the Commission to present a certificate of distinguished service to consultants who satisfactorily complete their work for the Commission.

71. Minutes, January 1990.

72. *Id.*

73. Minutes, September 1987.

74. Minutes, April 1971; revised to reflect current practice.

6. Printing and Distribution Policies

6.1. Authority To Print and Distribute Commission Materials⁷⁵

The Executive Secretary determines when material should be printed. However, no pamphlet containing a Commission recommendation is distributed unless the recommendation has first been approved for printing and distribution by the Commission.

A "Staff Report" containing a Commission recommendation and revised Comments, including minor editorial notes in brackets, in a convenient form may be prepared following enactment of a Commission recommendation, to assist persons using the new law. Staff Reports may be printed or provided only in either hard copy or electronic form or both.

6.2. Number of Copies Printed

Ordinarily 250-500 copies of a recommendation or report are printed in pamphlet form. In some cases, more copies may be printed if greater demand is anticipated. If demand is particularly heavy, a publication may be reprinted.

An additional 200 copies are printed without covers and held for eventual incorporation into a bound volume of the Commission's REPORTS, RECOMMENDATIONS, AND STUDIES.

The Commission's budget also pays for printing approximately 200 copies of reports to be distributed to legal depository libraries by the Office of State Publishing under the Library Distribution Act.

6.3. Distribution⁷⁶

6.3.1. Bound volumes

When a bound volume is printed, complimentary copies are sent to a limited number of government officials, legal publishers, and others. Bound volumes are also sent to current members of the Commission and to members whose tenure is covered in the volume.

6.3.2. Printed reports in pamphlet form

Printed recommendations and other reports in pamphlet form are distributed on the same basis as bound volumes and to persons who have subscribed to the particular report. Distribution is made on an exchange basis with various other law revision commissions.

75. Minutes, March 1960; revised to reflect changes in printing procedures and existing practice.

76. For the current Publication Distribution Policy, see Appendix F.

In accordance with legislative mandate, members of the Legislature are sent a complimentary copy only on request.⁷⁷

6.3.3. General materials distribution policy⁷⁸

(1) All current and recent materials are available electronically from the Commission's website. Availability of materials on the Internet will be suggested as a first option to persons wishing to obtain copies of Commission materials. Many older meeting materials and publications are available electronically on request.

(2) Printed reports are available on request, the first copy free and additional copies charged at cost.

(3) Current tentative recommendations are available free of charge, including multiple copies (e.g., for bar committees), to persons wishing to review and comment on them.

(4) Meeting materials are available free of charge to persons who attend meetings or comment on the materials, and will be available at cost to other persons.

(5) Bound compilations of previously printed reports are available at cost.

(6) The staff has discretion to vary these rules in appropriate circumstances (e.g., provide discount for bulk purchase or educational use).

6.3.4. Privacy policy

If a person requests disclosure of a mailing list maintained by the Commission, the Commission must balance the policies of the Public Records Act requiring disclosure⁷⁹ against the policies of the Information Practices Act requiring protection of personal information.⁸⁰ The Commission (or its staff, as appropriate in the circumstances) should make this determination on a case by case basis, evaluating the specific circumstances of each particular request.⁸¹

6.4. Sale of Commission Publications

When the budgetary situation requires, the Commission has adopted a policy that a charge be made for Commission publications.⁸²

77. See Gov't Code § 9795.

78. Minutes, September 1996.

79. Gov't Code §§ 6250-6276.48.

80. Civ. Code §§ 1798-1798.78.

81. Minutes, July 2002.

82. Minutes, July 1991; for the current price structure, see Appendix F.

6.5. Cooperation with Continuing Education of the Bar

The Commission has published several publications in cooperation with California Continuing Education of the Bar (CEB). These publications have been published primarily for CEB use in connection with programs designed to instruct lawyers concerning major legislative enactments that have resulted from Commission recommendations. In recent years, CEB has included Commission material in program materials or appendices to other publications, instead of financing the printing of a separate pamphlet. The Commission cooperates by supplying electronic copy of Commission recommendations and other material.

6.6. Publication of Commission Material in Law Reviews

6.6.1. Background Studies

A study may be published in a law review if it is accompanied by the substance of the following note:

This article was prepared to provide the California Law Revision Commission with background information to assist the Commission in its study of this subject. The opinions, conclusions, and recommendations contained in this article are entirely those of the author and do not necessarily represent or reflect the opinions, conclusions, or recommendations of the Law Revision Commission.

A letter should be obtained from a law review publishing a Commission study recognizing that the Commission itself may republish the article in a pamphlet containing its recommendation to the Legislature.

6.6.2. Tentative Recommendations

A tentative recommendation may not be published in a law review unless Commission permission is first obtained.⁸³ If a tentative recommendation is published in a law review or otherwise distributed, it should be accompanied by the substance of the following note:⁸⁴

This tentative recommendation is published here so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative rec-

83. Minutes, December 1965.

84. Minutes, June 1966.

ommendation is not necessarily the recommendation the Commission will submit to the Legislature.

6.7. Internet Website and Email⁸⁵

The Commission maintains a website on the Internet at <www.clrc.ca.gov>. Background information and information on current activities, such as agendas, bills, tentative recommendations out for comment, and the like, is kept current on the website. Commission meeting materials, tentative recommendations, printed reports, and other materials are available for downloading. Subject to storage limitations, downloadable files are retained on the Commission's website for the convenience of the public and also as a cost-saving approach to distributing material of interest.

Email to Commissioners should be sent to <commission@clrc.ca.gov>, where it will be treated like any other communication to the Commission. On request, Commissioners are also provided with an individual agency email address (<name@clrc.ca.gov>). Commission members may, as an individual choice, provide their direct email addresses for linking from the Commission website. The Commission has decided not to provide biographical information on Commissioners at the website.⁸⁶

The staff will send the email edition of meeting agenda to Commissioners on request.

When special arrangements are made, such as with the Judicial Council or State Bar committees, the staff will distribute selected meeting materials as email attachments. This option is also available to Commissioners on request.

7. Delegation of Authority for Personnel and Fiscal Matters

7.0. Delegation of Authority By Executive Secretary

Except with respect to personnel and fiscal matters, any of the acts in this Handbook that may be done by the Executive Secretary may also be done by a member of the Commission staff designated by the Executive Secretary.

7.1. Personnel and Fiscal Matters Generally⁸⁷

Both the Chairperson and the Executive Secretary are authorized to sign on behalf of the Commission the necessary documents giving one or more Commissioners and employees authority to sign personnel and financial documents. The Chairperson, Executive Secretary, and Assistant Executive Secretary are authorized to sign all such documents.

85. Current practice.

86. Minutes, May 2001; Minutes, May 1996.

87. Minutes, October 1965.

The Executive Secretary is authorized to determine the particular types of documents that the Assistant Executive Secretary and other Commission employees can sign as a matter of practice.

7.2. Personnel Matters⁸⁸

7.2.1. Hiring

Appointments, promotions to higher level positions, and involuntary terminations of persons to or from positions as Executive Secretary, Assistant Executive Secretary, and other full-time attorney positions on the Commission staff shall first be approved by the Commission. In the case of an appointment of a person to a full-time attorney position (other than Executive Secretary or Assistant Executive Secretary), the approval of the Chairperson shall be obtained before the appointment is made, but Commission approval is not necessary.

7.2.2. Other Matters

The Executive Secretary is authorized to take all actions, other than those specified in Section 7.2.1, with respect to appointment, promotions, terminations, leave, merit increases, other salary increases, and the like, for Commission employees other than the Executive Secretary. Any other person authorized to sign personnel documents has similar authority but, except in emergency circumstances, this authority should be exercised only after consulting with the Executive Secretary. It is understood that no such action shall be taken over the objection of the employee involved unless the Chairperson or the Commission first indicates approval of the action proposed to be taken by the Executive Secretary.

7.2.3. Matters Involving Executive Secretary

The Chairperson is authorized to take all actions, other than those specified in Section 7.2.1, with respect to appointment, termination, leave, merit increases, and other salary increases, and similar matters for the position of Executive Secretary. The Assistant Executive Secretary is authorized to approve sick leave and vacation leave requests of the Executive Secretary.

7.3. Out-of-State Travel⁸⁹

The Chairperson is authorized to approve requests for authorization by the Department of Finance and the Governor of unbudgeted out-of-state travel by members of the Commission's staff. Requests for budgeted out-of-state travel are presented for approval by the Department of Finance and

88. Minutes, October 1971; Minutes, October 1965.

89. Minutes, October 1965.

Governor by submission of the necessary document by the Executive Secretary.

7.4. Contracts and Leases

The Executive Secretary is authorized to sign on behalf of the Commission all leases and contracts previously approved by the Commission.⁹⁰ The Executive Secretary is authorized to execute contracts covering equipment maintenance, equipment rental, subscriptions, and the like.

90. Minutes, July 1964.