

Admin.

December 13, 2010

Memorandum 2010-51

Handbook of Practices and Procedures

The Commission's *Handbook of Practices and Procedures* collects procedural decisions and Commission practices in a convenient format. Earlier this year, the Commission began reviewing the Handbook for purposes of updating it. The Commission made decisions on most points, but not on how to revise the printing and distribution policies in the Handbook. That matter is discussed below, along with a couple of other issues the staff would like to bring to the Commission's attention.

PRINTING AND DISTRIBUTION POLICIES (RULES 6.1-6.7 & APPENDIX E)

For many years, each Commission recommendation has been printed by the Office of State Printing ("OSP") in two formats:

- (1) **A softcover blue pamphlet**, which might contain only one recommendation, or might collect several recommendations that were finalized at about the same time. The softcover pamphlet is usually printed a few months after the Commission approves the recommendation. It is often, but not always, available for distribution when a bill to effectuate the recommendation is pending.
- (2) **An annual hardcover bound volume**, which contains all of the recommendations finalized in a particular year. Typically, the bound volume is not printed until after a bill to effectuate the recommendation has gone through the legislative process.

In the past, the softcover blue pamphlets served an important function, because the Commission could not internally mass-produce a document in high quality form. Now that word-processing and desktop printing capabilities are well-developed, that is no longer true. The Commission staff is able to generate professional-looking, pre-print copies of a recommendation in quantity. We often use such copies in the legislative process rather than the blue pamphlets, because

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). 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.

the blue pamphlets have not yet been printed, or because the blue pamphlets contain multiple recommendations, most of which are irrelevant to the bill being considered. In addition, a pre-print version of a recommendation can be posted to the Commission's website and distributed in electronic form. Consequently, for most Commission recommendations, we are no longer able to use all of the blue pamphlets we receive from OSP. As a result, many of the blue pamphlets are ultimately recycled without being used.

To save costs and prevent waste, last February the Commission directed the staff to explore the possibility of discontinuing the practice of routinely having OSP print the softcover blue pamphlets. See Minutes (Feb. 2010), p. 4; see also Memorandum 2010-1, pp. 9-10.

Having further investigated and considered this matter, **the staff concludes that there is no longer any good reason to routinely produce softcover versions of the reports and recommends eliminating the requirement that they be printed in all cases.**

However, there may still be instances where a Commission report is in high demand, and a softcover version would be more convenient for public use. For example, the Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes* is over one thousand pages long. The softcover pamphlet is bulky, but it serves as a convenient reference for persons using the newly reorganized statutes governing control of deadly weapons. The softcover pamphlets are already sold out; reprinting might be in order at some point. We still have bound volumes containing the same recommendation, but those are even bulkier (and more expensive to produce and purchase) than the softcover pamphlets, and they contain some material that may be of no interest to users of the deadly weapons laws.

In such cases, it might be appropriate to print a softcover edition of a recommendation for sale to the public. Authority for this type of special edition already exists in the Handbook, in Rule 6.1, which provides in relevant part:

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 in either hard copy or electronic form or both.

For example, under that authority, the staff could prepare a special softcover “Staff Report” containing the deadly weapons recommendation, with adjustments to reflect the final statutory language, revised comments, and a revised disposition table. That would be a valuable resource for practitioners and judges applying the recodified statute.

If the Commission agrees with these recommendations, it should consider precisely how to implement the concept in the Handbook. To that end, attached for the Commission’s review are:

- (1) A mark-up showing suggested revisions of the section entitled “Printing and Distribution Policies” (Rules 6.1-6.7).
- (2) A mark-up showing suggested revisions of Appendix E, entitled “Publication Distribution Policy.”

In addition to implementing the concepts discussed above, the suggested revisions in these attachments would make various minor corrections, updates, and adjustments of the current printing and distribution policies. These should be self-explanatory.

Does the Commission wish to revise its printing and distribution policies as shown in the attachments? Should any other changes be made?

ACCEPTANCE OF AMENDMENTS AFTER INTRODUCTION IN LEGISLATURE (RULE 3.3)

Handbook Rule 3.3 governs the procedure for amending a bill that would implement a Commission recommendation. Among other things, this rule provides that “whenever possible, an amendment that involves a policy decision of the Commission should be discussed with the Chairperson *by telephone* before being made.” (Emphasis added.)

Nowadays, it is often easier for the staff to communicate with the Chairperson by email than to reach the Chairperson by phone. We therefore suggest that Rule 3.3 be revised as follows:

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 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 or by email 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.

Does the Commission agree with this suggestion?

MATTERS INVOLVING EXECUTIVE SECRETARY (RULE 7.3.3)

Government Code Section 8284 provides:

8284. The commission may appoint an executive secretary and fix his or her compensation, in accordance with law.

Due to this statute, the head of the Commission staff has always been known as the "Executive Secretary." At times, however, that has resulted in confusion over the nature of the position, with the Executive Secretary being mistaken for a clerical employee.

To prevent this type of mistake, it would be helpful for the Executive Secretary to be able to use the title "Executive Director," which more aptly describes the nature of the position.

The most direct means of achieving that result would be to amend the statute. But the staff has always been reluctant to suggest such a step, because it might lead to additional tinkering with the statutes governing the Commission, perhaps in ways that would be detrimental to the Commission. Even if this fear is unfounded, seeking enactment of legislation to amend Section 8284 would be unduly time-consuming given current constraints on staff and Commission resources.

An alternative would be to address the matter in the Handbook. In particular, the Commission could revise Rule 7.3.3, which concerns the Executive Secretary. With corrections approved at the February meeting, the rule now reads:

7.3.3. Matters Involving Executive Secretary

The Chairperson is authorized to take all actions, other than those specified in Section 7.3.1, with respect to appointment, termination, leave, merit increases, and other salary increases, and similar matters for the position of Executive Secretary. The Chief Deputy Counsel is authorized to approve sick leave and vacation leave requests of the Executive Secretary.

The staff recommends that a new paragraph be added at the end of this rule, stating:

The Executive Secretary may be known and referred to as the Executive Director.

Is this revision acceptable to the Commission?

NEXT STEP

After the Commission resolves the issues presented in this memorandum, the staff will prepare a new version of the Handbook, which incorporates those decisions and the decisions that the Commission made earlier this year. We will distribute the new Handbook to each Commissioner and staff member, and post a copy of the Handbook on the Commission's website.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

Appendix E. Publication Distribution Policy

Hardcover Bound Volumes

A limited edition of hardcover bound volumes of the Commission's *Reports, Recommendations, and Studies* is prepared on an approximately annual basis. If the amount of printed material is not sufficient, two volume years may be bound into one physical volume. ~~Currently, an edition of 200 is bound~~ The Executive Secretary shall determine how many copies of a bound volume are prepared. The availability of back issues of bound volumes is indicated in the "Commission Publications" section of the most recent Annual Report and on the Commission's website. The staff has held back ~~four~~ five complete sets of bound volumes as a permanent resource.

Complimentary distribution: Approximately ~~40~~ 50 hardcover bound volumes are distributed free to current Commissioners, organizations with which we have exchange agreements, including law publishers, and to the judiciary committees of both houses of the Legislature. Additional volumes are given to legislators and legislative staff on request. Bound volumes are ~~not~~ distributed under the Library Distribution Act.

Sale: The standard price of bound volumes is ~~\$60~~ \$75 plus tax. On occasion, older volumes in oversupply have been discounted.

Softcover Reports

~~Softcover reports are typically printed in editions of 250-500, depending on the number of subscribers and anticipated demand. In rare cases, as with the 1994 Family Code, a reprint may be ordered.~~

~~*Complimentary distribution:* Softcover copies of Commission reports are distributed free to the same persons who receive bound volumes. In addition, printed recommendations are distributed as necessary to legislators, committee staff, lobbyists, and other interested persons in support of the Commission's legislative program. Softcover publications are also distributed to approximately 200 libraries, at Commission expense, through the Library Distribution Act. Electronic copies (in PDF format) are available on request or by downloading from the Commission's website.~~

~~*Sale and subscription:* Prior to 2011, the Commission routinely printed softcover editions of its recommendations and reports. ~~Softcover~~ Any remaining copies of those softcover printed reports may be purchased from the Commission. ~~When the Commission's budget requires us to restrict free distribution, individuals and organizations on our mailing list are notified of the availability and cost of the report.~~ The standard prices are as follows: 1-10 pages: \$5.50; 11-50 pages: \$8.50; 51-100 pages: \$18.00; over 100 pages: \$25.00 or special price.~~

Tentative Recommendations

When a tentative recommendation has been prepared, the staff sends notice to the legal press and distributes copies to persons on the mailing list on a priority basis because of the time deadline for receiving comments.

Complimentary distribution: One copy of a tentative recommendation is distributed free to each person who requests it during or shortly after the comment period. Generally, there is a charge for older tentative recommendations. Electronic copies (in PDF format) are available on request or by downloading from the Commission's website.

Sale and subscription: When a charge is imposed, the standard price is 25¢ per page. Copies of tentative recommendations are available by subscription at a combined price with printed reports as a convenience to libraries and others who want materials automatically sent.

Meeting Materials

In recent years, the Commission has produced over 1,500 pages of meeting materials annually. Meeting materials include memoranda with exhibits, draft statutes, draft recommendations, background studies, and minutes. The Commission's budget does not permit wide distribution of this volume of material on a complimentary basis. Generally, the Commission finds it necessary to charge an amount sufficient to reimburse for the cost of reproducing and mailing meeting materials.

Complimentary distribution: Commission meeting materials are distributed free to the Los Angeles County Law Library and to consultants on the subject under consideration. A person who has written a letter that is attached to a memorandum, or is otherwise participating in the study, will be sent a complimentary copy. Surplus extra meeting materials will be given to persons at a Commission meeting on request, once it is clear that all Commissioners have copies. By law, anyone may obtain a meeting agenda on request. The Commission maintains a list of standing requests for agendas, but the request must be renewed annually when the mailing list is cleared. Meeting Agendas and meeting materials can also be found on the Commission's website. Interested persons may subscribe online to receive electronic notice each time a new document relating to a study is posted on the Commission's website.

Sale and subscription: Meeting materials are available by subscription by subject or comprehensively. Subject subscriptions are priced based on mailing costs and the anticipated amount of materials. Copies of memoranda and minutes may be purchased individually for 25¢ per page.

6. Printing and Distribution Policies

6.1. Authority To Print and Distribute Commission Materials¹

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

~~A~~ At the discretion of the executive secretary, 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 in either hard copy or electronic form or both.

6.2. ~~Number of Copies Printed~~ Hardcover Bound Volumes

~~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~~ Each Commission recommendation is incorporated into a hardcover bound volume of the Commission’s REPORTS, RECOMMENDATIONS, AND STUDIES. In general, one bound volume is prepared each year, but that may vary due to fluctuations in the volume of Commission recommendations and budgetary constraints. The Executive Secretary shall determine how many copies of the bound volume to order for the Commission’s use.

~~The Commission’s budget also pays for printing approximately 200 copies of reports to be~~ Copies of the hardcover bound volumes will be distributed to legal depository libraries by the Office of State Publishing under the Library Distribution Act.

6.3. Distribution²

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

1. Minutes (March 1960); revised to reflect changes in printing procedures and existing practice.

2. For the current Publication Distribution Policy, see Appendix F E.

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~~ Distribution to Members of Legislature

~~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.~~

In accordance with legislative mandate, members of the Legislature are sent a complimentary copy of a bound volume only on request.³

6.3.3. General materials distribution policy⁴

(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~~ Almost all older meeting materials and publications are also available ~~electronically on request~~ on the website.

(2) Printed bound volumes and staff 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 disclosure⁵ against the policies of the Information Practices Act requiring protection of personal information.⁶ 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.⁷

3. See Gov't Code § 9795.

4. Minutes (Sept. 1996); see also Appendix E. For discussion of a prior distribution policy, see Memorandum 94-36.

5. Gov't Code §§ 6250-6276.48.

6. Civ. Code §§ 1798-1798.78.

7. Minutes (July 2002).

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.⁸

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~~ Sometimes, 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~~ publication 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.⁹ If a tentative recommendation is published in a law review or otherwise distributed, it should be accompanied by the substance of the following note:¹⁰

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be considered at a public meeting when the Commission determines what, if any, recommendation it

8. Minutes (July 1991); for the current price structure, see Appendix F E.

9. Minutes (Dec. 1965).

10. Minutes (June 1966); current practice.

will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it. The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

6.7. Internet Website and Email¹¹

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.¹²

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~~ Interested persons may subscribe to be notified by email each time a new document is posted to the Commission's website on a particular subject. The message shall contain a link to download the new document. This option is also available to Commissioners on request.

¹¹. Current practice.

¹². Minutes (May 2001); Minutes (May 1996).