

Memorandum 2018-13

Handbook of Practices and Procedures

The Commission's *Handbook of Practices and Procedures* summarizes the Commission's procedural decisions and practices.¹ The Handbook is updated from time to time to reflect new decisions and practices. The Handbook was last updated in June 2013. Since then, the Commission has made several decisions approving language for addition to the Handbook. These changes are noted in this memorandum.

In addition to the approved changes, this memorandum discusses additional changes to adjust the Handbook to better reflect current Commission practices and procedures. This memorandum presents the additional proposed revisions in ~~strikeout~~ and underscore. The memorandum also seeks a Commission decision on whether to re-draft the Handbook as whole.

Where the rules are reproduced in this memorandum, the citations contained in the rules are omitted. For the most part, the citations in the Handbook refer to the Minutes for the Commission meeting at which the relevant decision was made. The staff will update the citations in the Handbook, as appropriate, to reflect the Commission's decisions at this meeting.

In addition to the issues discussed in this memorandum, the staff has made several minor changes to the Handbook to correct errors or add citations.

PREVIOUSLY APPROVED CHANGES

Since the Commission's last review of the Handbook as a whole in 2013, the Commission has approved the addition or amendment of language on three issues, affecting the following rules:

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

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

- Rule 2.4.5. Voting (previously, “Roll Call Votes”)²
- Rule 2.5.5. Electronic Communications (new rule)³
- Rule 5.2. Tribal Consultation Policy (new rule)⁴

The one issue that the Commission did not previously decide (but left to the discretion of staff) was the exact placement of the Tribal Consultation Policy in the Handbook. The staff proposes renaming Rule 5 (currently, Relationship with the State Bar and Other Groups) and dividing it into sub-rules as follows:

5. RELATIONSHIP WITH OTHER ENTITIES⁵

5.1. Relationship with the State Bar and Other Groups

5.2. Tribal Consultation Policy

The substance of the current Rule 5 (which pertains primarily to the Sections, formerly of the State Bar) will now be contained in Rule 5.1 (updates to the substance of that rule are discussed later in this memorandum).

Does the Commission have any concerns with that proposed location for the Tribal Consultation Policy language?

ADDITIONAL PROPOSED CHANGES

The staff has identified a number of rules from the Handbook that are either obsolete or need to be revised to reflect current Commission practice. Each of these proposed changes is discussed, in turn, below.

Rule 1.4.1. Photo Identification Cards

Currently, Rule 1.4.1 of the Handbook provides:

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

2. See Minutes (April 2015), p. 3; see also Memorandum 2015-8, p. 7.

3. See Minutes (Aug. 2017), p. 4; Minutes (Sept. 2017), p. 3; see also Memorandum 2017-40, pp. 2-3.

4. Minutes (Sept. 2016); see also Memorandum 2016-42.

5. The reference to “Other Entities” distinguishes this rule from Rule 3 (“Relationship with Legislature”) and Rule 4 (“Relationship with Governor”).

In the past, the Commission frequently had two-day meetings, which required travelling Commissioners and staff to stay in hotels over night. As the rule indicates, the cards were used primarily for securing state rates for hotel stays. In recent years, Commission practice has shifted away from two-day meetings and the need for these cards has essentially been eliminated.

At this point, the staff does not have ready access to the materials needed to prepare these cards.

The staff proposes deleting Rule 1.4.1 as obsolete. **Does the Commission have concerns with this proposed change?**

Rule 2.4.10. Recording of Meetings

Rule 2.4.10 discusses meeting recordings. The substance of this rule essentially describes the availability of the recordings as required by the Public Records Act. In addition, the rule is obsolete in referring to “cost of reproduction” for copies or recordings. These copies are no longer provided on discs or other physical media, but rather via the Internet. The staff believes that this rule could be simplified to refer to the Public Records Act, as follows:

Recording of meetings by the staff is for the purpose of preparing Minutes and redrafting statutes. The meeting recordings are subject to the Public Records Act.⁶ ~~The following procedures apply:~~

- ~~(1) The Commission will record its meetings digitally.~~
- ~~(2) A person may listen to the recording files on equipment in the Commission’s offices.~~
- ~~(3) Alternatively, a person may obtain a copy of the recording files by paying a small fee to cover the cost of reproduction.~~⁷

Does the Commission have any concerns with the proposed change?

New Rule 2.5.5. Electronic Communications

As indicated above, the Commission previously approved new Rule 2.5.5 pertaining to Electronic Communications. The staff, in reviewing the Handbook, found material in Rule 7.7 (discussed later in this memorandum) that would seem to better fit in this new rule. The staff proposes deleting the following language from Rule 7.7 and inserting it into new Rule 2.5.5:

6. Gov’t Code §§ 6250-6276.48.

7. Citation in strikethrough portion omitted.

Email to Commissioners should be sent to <commission@clrc.ca.gov>, where it will be treated like any other communication to the Commission.

Does the Commission have any concerns with this proposed change?

Proposed Rule 5.1. Relationship with the State Bar and Other Groups

The Handbook's current Rule 5 describes the working relationship between the Commission and the State Bar. The substance of this rule will be relocated to proposed new Rule 5.1, as noted previously.⁸ The substance of the rule needs to be updated in light of the restructuring of the State Bar and creation of the California Lawyers Association, the new entity comprising the Sections, which formerly were part of the State Bar.⁹ Proposed changes to the substance of the rule are shown below:

5.1. Relationship with the California Lawyers Association, State Bar, and Other Groups

The Commission seeks to work closely with the State Bar and relevant Sections of the California Lawyers Association on major studies.

The customary practice is to work with the appropriate ~~State Bar section~~ Section of the California Lawyers Association to develop a recommendation that will be supported by the ~~State Bar section~~ Section or to minimize the differences between the Commission and the ~~State Bar section~~ Section. The following guidelines have proven useful:

(1) Meeting materials are distributed to the designated representatives of the ~~State Bar section~~ Section not later than the time the materials are distributed to members of the Commission. The ~~State Bar section~~ 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~~ 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~~ 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.

8. See discussion of "Previously Approved Changes" *supra*.

9. See 2017 Cal. Stat. ch. 422 (SB 36 (Jackson 2017)); see also <http://calawyers.org/>.

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

The Commission will follow these guidelines in its relations with the State Bar, the Sections of the California Lawyers Association, and other bar associations and groups as appropriate.

Does the Commission have any concerns with these proposed changes?

Rule 7.7. Internet Website and Email

Rule 7.7 discusses the Commission's website and distribution of Commission materials via email. The following changes are proposed to Rule 7.7:

- As discussed previously, the content regarding email to Commissioners would fit well in new Rule 2.5.5 (Electronic Communications) and would, thus, be moved there.
- The content regarding agency email addresses for Commissioners would be deleted as out-of-date, in light of recent Commission decisions on public records practices.¹⁰
- The content regarding email notices to Commissioners would be simplified and updated.

With those changes, Rule 7.7 would be amended as follows:

7.7. Internet Website and Email

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 or business website addresses for linking from the Commission website. The Commission has decided not to provide biographical information on Commissioners at the website.~~

10. See Minutes (Aug. 2017), p. 4.

~~The staff will send the meeting materials by email to Commissioners on request.~~

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.~~ Commissioners will also receive such email notice for all Commission materials.

Does the Commission have any concerns with these proposed changes?

APPENDICES

Currently, the Handbook includes the following Appendices:

- A. GOVERNING STATUTE
- B. DISQUALIFICATION FROM DECISION-MAKING
- C. STUDIES ON CURRENT AGENDA
- D. PUBLICATION DISTRIBUTION POLICY
- E. COMMISSION CONSULTANTS
- F. OFFICE ADDRESSES OF COMMISSIONERS AND STAFF

The staff has made technical updates to the appendices, but seeks Commission input on several broader changes, discussed below.

Appendix D. Publication Distribution Policy

This Appendix contains information about the pricing and distribution policies for Commission publications. The current information contained in Appendix D is largely obsolete, given that Commission materials are mostly distributed electronically. Essentially, the current policy is that materials are available on the Commission's website, except for hard copy bound volumes, which can be purchased for \$60. Given the limited information that would be contained in an updated Appendix, the staff recommends eliminating Appendix D. **Are there any concerns about this approach?**

Appendix E. Commission Consultants

This Appendix contains a list of the most recent Commission consultants and background studies. However, many of the consultants listed have not worked for the Commission in many years and the background reports prepared by the listed consultants are, in some cases, decades old. The staff was initially considering revising the Appendix to list only recent consultants. However, the

resulting Appendix would only have a single consultant listed. In recent years, the Commission's studies have typically proceeded without the use of consultants or background reports, with the notable exception of the nonprobate transfer liability study, the background report for which was prepared by former Executive Director Nathaniel Sterling.¹¹

Given that the Commission's website contains a list of background studies prepared for the Commission¹² and the Commission's list of current consultants would be so brief, the staff recommends discontinuing this Appendix. **Does the Commission approve?**

Appendix F. Office Addresses of Commissioners and Staff

This Appendix provides mailing addresses for Commissioners and staff. The staff is unsure whether it is helpful to include it in the hard copy Handbook. **Would the Commission like contact information to be included as an Appendix to the hard copy Handbook?**

If so, the staff will be in touch with Commissioners seeking confirmation of the contact information that is currently on file.

RESTATED HANDBOOK?

In reviewing the Handbook and its Appendices, the staff considered whether a thorough restatement of the Handbook would be helpful to Commissioners.

The current Handbook has evolved organically, with additions and changes made as new circumstances arise. Some of the material in the Handbook, while perhaps not technically obsolete, is simply not as relevant today as it might have been when it was added to the Handbook. Some rules are accurate, but are not expressed as clearly as they could be. Many current Commission practices and procedures are not addressed in the Handbook at all.

Does the Commission see value in the staff preparing a restated Handbook to better reflect current practice?

11. Available at < <http://www.clrc.ca.gov/pub/BKST/BKST-L4100-NPT-Creditors.pdf>>.

12. See < http://www.clrc.ca.gov/Menu3_reports/bkstudies.html>.

CIRCULATION OF UPDATED HANDBOOK

Unless the Commission directs the staff to prepare a restated Handbook, the staff will update the Handbook to reflect the Commission's decisions and then provide an updated copy of the Handbook to the Commissioners.

Respectfully submitted,

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