

Admin.

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Memorandum 2018-29

Handbook of Practices and Procedures

The Commission¹ has long maintained an informal *Handbook of Practices and Procedures* to memorialize its decisions about how it operates.² The Handbook is updated from time to time to reflect new or changed practices.

The Commission recently directed the staff to wholly restate the Handbook, to improve its organization and remove obsolete materials.³ The staff has done so and a draft of a restated Handbook is attached to this memorandum for the Commission's review. The Commission should decide whether to approve that draft, with or without changes. Once approved, the staff will prepare and distribute copies to all Commissioners and post the document to the Commission's website.

A copy of the current handbook is also attached, for comparison purposes. The staff has also prepared and attached a disposition table that shows the proposed new location of each provision of the existing Handbook. This should make it easier to track the changes proposed in the restated Handbook

NUMBERING

Each provision in the current handbook is numbered, using a tiered decimal system to show nesting (e.g., 2 contains 2.1, which contains 2.1.1, etc.). In the attached draft, the staff has instead used whole numbers for each provision. The nesting of provisions is indicated by using some of the same headings that are used in statutory codes (e.g., Parts contain Chapters, which contain Articles).

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.

2. See, e.g., Memorandum 1969-145.

3. Minutes (May 2018), pp. 2-3.

The attached draft also borrows the statutory convention of referring to each distinct provision as a “section” and then further dividing those sections into “subdivisions” and “paragraphs.” The subdivisions and paragraphs are each given alphabetical or numerical designations, just as in the codes.

Not only are these conventions familiar to the Commission, they are easier to use when there is a need to refer to part of the Handbook. The existing Handbook has no standard way to refer to entire provisions (which the staff sometimes calls “Rules”, as will be done in the remainder of this memorandum) or the individual paragraphs within the provisions. With the approach taken in the attached draft, it will be a simple matter to refer to sections, subdivisions, and paragraphs, using the same methods used when citing to provisions of a statutory code.

The attached draft continues the existing Handbook’s practice of using footnotes for citation of sources and other informational notes.

PRELIMINARY PROVISIONS

The attached draft begins with a handful of preliminary provisions. They are mostly self-explanatory, but there are a couple of points worth noting.

Handbook Nonregulatory

Proposed Section 15 makes clear that the provisions in the Handbook do not bind the Commission or the public and are not “regulations.”

This is a helpful point to make for two reasons:

- (1) As the staff has pointed out from time to time, these are Commission-made practices that the Commission can choose to change or waive where appropriate. It is helpful to state that expressly, as a reminder.
- (2) State agency *regulations* must be promulgated under the Administrative Procedure Act’s rulemaking procedure. However, the statutory rulemaking procedure does not apply to rules that relate “only to the internal management of the state agency.”⁴ Expressly declaring that the Handbook is not intended to have any binding regulatory effect may help to avoid any erroneous implication that the Handbook is intended to operate as a set of “underground regulations.”

4. Gov’t Code § 11340.9.

Definitions

Proposed Section 25 defines some of the terms that are used in the Handbook. This simplifies drafting. It also provides a sort of glossary, helping new Commissioners and other interested persons to familiarize themselves with the Commission's commonly-used terminology. The staff invites suggestions for other terms that might be worth including in Section 25.

PREVIOUSLY APPROVED CHANGES

The Commission has approved three significant changes to the Handbook since it was last updated, on the following topics:

- Rule 2.4.5. Voting (previously, "Roll Call Votes")⁵
- Rule 2.5.5. Electronic Communications (new rule)⁶
- Rule 5.2. Tribal Consultation Policy (new rule)⁷

Those decisions have been implemented in proposed Sections 380 (electronic communications), 510 (recording of votes), 820 (tribal consultation).

NEW PROVISIONS

The content of the Handbook has developed in a piecemeal fashion. As the Commission saw the need to memorialize a practice, it added language to the Handbook. Consequently, there are gaps in the Handbook.

While the restated Handbook does not intend to cover every point of the Commission's operational process, it does cover a few important points that are not currently addressed.

In selecting which points to address in new provisions, the staff considered (1) which points might be important to providing a good introduction to those who are not yet familiar with the Commission (e.g., newly appointed Commissioners) and (2) points that are important to establish for common understanding (e.g., how recommendations might be revised to conform to the amendment of a Commission bill).

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

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

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

The provisions that are new and the topics they address are listed in the table below:

10	Content of Handbook
15	Handbook Nonregulatory
20	Public Document
25	Definitions
50	Mission
55(a)-(b), (d)	Authority
60(a)-(b), (d)	New Topics
100	Members
105(a)	Member Duties
110	Compensation
115	New Commissioners
150(e)	Officers
155(a)	Officer Duties
200(a)	Executive Director
205	Reporting Structure
250(a)-(c)	Commencement of Study
255	Development of Proposed Law
260	Tentative Recommendation
265	Public Comment
270	Final Recommendation
300(b), (d)	Meeting Dates and Locations
380	Electronic Communications
400(a)	Agenda
405	Staff Memoranda
415	Material Received at Meeting
455(e)-(f)	Approval of Actions
510(a)-(b), (d)	Minutes
555(a)-(c)	Introduction of Commission Bill
565(a), (c)-(d)	Staff Assistance to Author
600	Recommendations
605	Annual Report
615	Citation
700(a)-(b)	Pre-Print Reports
705	Revision of Recommendation to Conform to Bill Amendments
800	Legislative Committees
810(a)-(b)	Legal Publishers

SIGNIFICANT CHANGES

In some instances, the staff made significant changes in restating an existing Handbook provision, because the existing provision was substantially out of date or incomplete. Those provisions are discussed briefly below.

2.2. Agenda

The last sentence of existing Rule 2.2 provides: “Special orders should be scheduled early enough so that the meeting can be adjourned if the agenda is completed.” The meaning of that sentence is not clear and the sources cited for that provision do not provide clarification.

The staff suspects that the point is to avoid scheduling a special order of business so late in the day that the Commission completes all of its other work before the special order item commences. That seems like common sense, and the staff cannot recall the issue having ever arisen. The staff omitted the sentence from the restated Handbook.

2.4.10. Meeting recordings

Existing Rule 2.4.10 describes an obsolete process for public access to staff-made recordings of Commission meetings. The current practice is described in proposed Section 505.

3.1. Introduction of bills

Existing Rule 3.1 discusses the introduction of bills to implement Commission recommendations. It is obsolete in two ways.

First, there is no presumption that the Commission’s legislative members will introduce all Commission bills, as the Rule seems to imply. The legislative members often carry Commission bills, especially bills that would otherwise be difficult to place. But it is more common to find an author who has specialized knowledge relating to the subject of a recommendation.

Second, the Rule describes an obsolete practice regarding the initial content of Commission bills.

Current practices on both points are described in proposed Sections 550 and 555, with greater detail.

3.3. Acceptance of amendments to Commission bill

It will sometimes happen that the author of a Commission bill will consider amending it, usually to address some point of opposition. Existing Rule 3.3 describes some points of process for this, but it does so in a way that is a bit indirect. The staff regularly finds it necessary to paraphrase the Rule when briefing the Commission on an amendment to a Commission bill.

Proposed Section 560(a)-(c) describes the current process in language that the staff believes is clearer about the roles of the author, staff, the Commission, and its Chairperson.

Proposed Section 560(d) is new. It describes the choices that the Commission faces when deciding how to react to an amendment of a Commission bill. The staff believes it would be helpful to memorialize this information.

5. Relationship with State Bar and other groups

There are two problems with existing Rule 5, which describes the Commission's process for cooperation with the State Bar. First, it does not reflect the fact that the former Bar Sections have been split off from the Bar and made part of a new organization, the California Lawyers Association ("CLA"). Second, the process described is not consistent with current practice.

The process described in Rule 5 was developed when the Commission had a much closer working relationship with the State Bar. The staff believes that this relationship developed when the Commission was working on large studies that heavily impacted the practice of law (like the overhaul of the Probate Code and creation of the Family Code). Success in those studies depended on close and regular coordination with the relevant Bar Sections, to ensure that the Commission had input from expert practitioners.

Bar Sections were given a special status — receiving meeting materials early, having one-on-one meetings with staff or the Chairperson, and being given an opportunity to recommend revisions to a Commission recommendation *after* the introduction of implementing legislation. In addition, Rule 5 expressly states that it is the Commission's goal to have the support of the Bar and to minimize Bar concerns.

The Commission still greatly values input from practitioners and regularly invites the participation of relevant CLA Sections, but there is less of a *special* relationship between the Commission and CLA. The Commission shows CLA

Sections the same respect and interest that it does other affected professional groups. It follows the same process in working with CLA that it does all stakeholders (including courts, judges, consumer groups, business and trade groups, and the like).

Proposed Section 805 is intended to describe the more contemporary approach to working with CLA Sections, the Bar, and any other knowledgeable group.

7.3.3, 7.4, & 7.7. Distribution of materials

The existing Handbook's discussion of the distribution of materials is perhaps the most outdated part of the Handbook. It was developed when most memoranda and reports were distributed in hard copy, through the mail. To cover the cost of reproduction and distribution, the Commission would require payment from most people who requested materials. These costs were imposed through annual subscriptions and one-off payments for individual documents.

That system required rules for determining the cost of a subscription or specific document, and exceptions aimed at encouraging participation in Commission studies (through waiver of costs for those who would actively participate).

Since that time, the Internet has become nearly ubiquitous. The old subscription process has been almost completely phased out (only a handful of libraries and law firms still subscribe) and individual documents are not sold. Instead, all documents are available on the website at no cost. A system of electronic notice lists is used to announce the availability of documents as they are uploaded to the website. Almost all of the Commission's materials are now distributed through the website.

In the attached restatement, existing rules 7.3.3, 7.4., and 7.7 are replaced by proposed Sections 650-660, which accurately describe the current practices. The staff also intends to omit the existing Handbook's Appendix D "Publication Distribution Policy," which is also obsolete.

7.5. Cooperation with CEB

Existing Rule 7.5 describes a practice that occurred occasionally in the past, but not in the Commission's recent history — the Commission would assist the California Continuing Education of the Bar (CEB) in preparing educational

materials aimed at familiarizing attorneys with the effect of major Commission studies that had been enacted into law. Proposed Section 810(c) acknowledges that prior practice, but in less detail than in the current Handbook.

CONCLUSION

The Commission needs to decide whether to adopt the attached draft as its current Handbook, with or without changes. If approved, the staff will distribute copies to all Commissioners and post a PDF version on the Commission's website.

Respectfully submitted,

Brian Hebert
Executive Director

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HANDBOOK OF COMMISSION PRACTICES AND PROCEDURES

PART 1. PRELIMINARY PROVISIONS

10. Content of Handbook

(a) This Handbook memorializes some of the Commission's current practices and procedures.

(b) Some provisions of the Handbook are the result of a formal decision of the Commission. In those instances, a footnote cites the Minutes for the meeting at which the decision was made.

(c) Some provisions describe an informal practice that has been established over time, without having been formally adopted by the Commission. No citation is provided as authority for such a procedure.

(d) Some provisions are based on a statutory requirement. In those instances, the governing statute is cited in a footnote.

15. Handbook is nonregulatory

(a) The provisions of this Handbook are not regulations. They relate primarily to internal matters and do not bind the Commission or the public.

(b) Despite their nonbinding nature, there are good reasons for the Commission to follow the practices and procedures described in this Handbook and it generally does so. Most of those practices and procedures are time-tested and successful. In many cases, they are the result of Commission deliberation, after a weighing of possible alternative approaches.

(c) The Commission is free at any time to waive or change a provision of this Handbook (except to the extent that a provision is based on a statutory requirement).

20. Handbook is a public document

This Handbook is a public document. It will be made available on the Commission's website.

25. Definitions

As used in this Handbook, the following terms have the indicated meanings:

(a) "Calendar of Topics" means the Calendar of Topics Authorized for Study that is required by Government Code Section 8293. The Calendar of Topics forms the basis for the Commission's Resolution of Authority.

(b) "Bound Volume" means a hardbound volume of the Commission's official compilation of "Reports, Recommendations, and Studies."

(c) "Commission bill" means a bill introduced to implement a Commission recommendation.

(d) “Pre-print report” means a report that is final as to substance but has not yet been put into final form and published in a Bound Volume.

(e) “Recommendation” means a final Commission report that recommends a specific change to statutory law.

(f) “Report” means a final Commission report that provides information and analysis without recommending any specific change to statutory law.

(g) “Resolution of Authority” means the concurrent resolution of the Legislature that is introduced each legislative session to grant the Commission authority to study specified topics. It is required by Government Code Section 8293.

(h) “Revised Comment report” means a report that sets out revised Comments that supersede those in a Commission recommendation, to correct technical errors or conform to the effect of amendments to a Commission bill.

PART 2. GENERAL PROVISIONS

CHAPTER 1. MISSION AND AUTHORITY

50. Mission

(a) The Commission studies topics assigned by the Legislature in order to recommend statutory reforms that improve the law.

(b) Some Commission studies address purely technical reforms, such as error correction and restatement of the law. Others involve substantive policy reforms, or a mixture of both technical and policy reforms.

(c) The Commission’s goal is to improve the fairness and efficiency of California law, through an open, participatory, and even-handed deliberative process.

(d) The Commission is politically neutral. It strives to develop balanced reforms that accommodate competing policy interests.

55. Authority

(a) By statute, the Commission may only study topics that have been authorized by concurrent resolution or statute.¹

(b) In each Annual Report, the Commission will recommend a Calendar of Topics Authorized for Study. The calendar of topics will include authority for any new studies the Commission wishes to undertake. The calendar of topics will continue the Commission’s existing authority, except when the Commission decides to remove a topic that is unlikely to receive further study.²

(c) At least once per legislative session, the Resolution of Authority will be introduced to authorize the most recent calendar of topics.³ The content of the

1. Gov’t Code § 8293.

2. *Id.*

3. *Id.*

Resolution of Authority is not bound by the Commission's recommended calendar of topics. The Legislature is free to remove or add authority contrary to or in addition to the Commission's recommendation.

(d) The Commission has general authority to correct technical and minor substantive defects in the statutes, without a specific grant of authority from the Legislature.⁴

60. New topics⁵

(a) Any person or organization may contact the Commission to propose a topic for study.

(b) Any Commissioner may propose a study topic at any time.

(c) Any person who proposes a new topic for study, including a Commissioner, is encouraged to provide written background that describes the problem to be addressed.

(d) A proposed topic may be brought to the Commission's attention when a suggestion is received, but proposed topics will generally be considered as a group, in an annual staff memorandum entitled "New Topics and Priorities." This gives the Commission a useful overview for deciding which new topics to request authority to study and for planning the next year's work priorities.

(e) If the Commission decides to study a topic for which it does not have current authority, it will recommend adding the topic to its Calendar of Topics Authorized for Study. Implementing language will be included in the next next resolution of authority.⁶ The Legislature will then decide whether to grant the requested authority.

65. Proposed legislation affecting Commission

(a) The staff should notify the Commission when the staff becomes aware of pending legislation directly affecting the Commission.⁷

(b) The Executive Director may respond to inquiries from the Legislature regarding the practicability of a potential new study assignment.

70. Deference to prior recommendations

Unless there is a good reason for doing so, the Commission will not recommend changes to laws that were enacted on Commission recommendation.⁸

4. Gov't Code § 8298.

5. Minutes (Sept. 1970); revised to reflect current practice.

6. See Section 55.

7. Minutes (Oct. 1986).

8. Minutes (Dec. 1971).

CHAPTER 2. MEMBERS

100. Members

(a) The Commission has ten members. Seven are appointed by the Governor. One is a member of the Assembly; another is a member of the Senate. The Legislative Counsel is also member.⁹

(b) The members who are appointed by the Governor serve four-year terms, in two staggered groups.¹⁰

(c) If a member is not reappointed, that member may serve until replaced¹¹ or for 60 days after the end of the term,¹² whichever comes sooner.

105. Member duties

(a) The most important duty of a Commissioner is to attend the Commission's meetings. Attendance is critical to achieving a quorum, which is a prerequisite to taking action at a meeting. Full attendance also improves the Commission's deliberative process, by ensuring that a range of views are represented.

(b) Commissioners are presumed to have read all the material to be considered at a meeting.

110. Compensation

When attending a Commission meeting, Commissioners are entitled to statutory per diem and the reimbursement of actual expenses, including travel expenses. Commissioners receive no other compensation for service on the Commission.¹³

115. New Commissioners

When a new Commissioner takes office, the Executive Director will brief the new Commissioner, to provide a detailed introduction to the Commission's process and current work. New Commissioners will be provided with a copy of this Handbook and other introductory materials.

CHAPTER 3. OFFICERS

150. Officers

(a) The officers of the Commission are the Chairperson¹⁴ and the Vice Chairperson.

9. Gov't Code § 8281.

10. *Id.*

11. *Id.*

12. Gov't Code § 1774.

13. Gov't Code § 8282.

14. Gov't Code § 8283.

(b) The terms of office are one year, commencing on September 1.¹⁵ Officers hold office until the following September 1 or the election of successors, whichever is later.¹⁶

(c) In case of a vacancy in the office of Chairperson or Vice Chairperson, the Commission shall elect new officers for the remainder of the term.¹⁷

(d) No officer is eligible to succeed himself or herself in the same office in which the officer has served a full term.¹⁸ 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.¹⁹ If the Chairperson is reelected to office under this provision, 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.²⁰

(e) Before the terms of the Chairperson and Vice Chairperson end, the staff will prepare a memorandum entitled “Election of Officers” for the Commission to consider at an upcoming meeting. This will provide an opportunity for the Commission to elect officers for the coming term.

155. Officer duties

(a) The Chairperson officiates at Commission meetings. Between meetings, the Chairperson may be required to consult with the staff about legislative developments or administrative matters. Such consultation includes, but is not limited to the following:

(1) Provisional approval of an amendment of a bill that would implement a Commission recommendation.

(2) Approval of staff-drafted revisions to a tentative recommendation, recommendation, or report.

(b) If the Chairperson is unavailable or there is a vacancy in the office of Chairperson, the Vice Chairperson will perform the duties of the Chairperson.²¹

(c) If both the Chairperson and Vice Chairperson are absent at any point in a meeting, or are unavailable to take action required between meetings, any Commissioner may act as temporary Chairperson until an officer becomes available.²²

15. Minutes (Oct. 1986); Minutes (Dec. 1981).

16. Minutes (Jan. 1995).

17. Minutes (Jan. 1995).

18. Minutes (Jan. 1960).

19. Minutes (Dec. 1960).

20. Minutes (Jan. 1962).

21. Minutes (Feb. 2000); Minutes (Jan. 1995).

22. Minutes (Feb. 2010); Minutes (June 2007); Minutes (July 1998).

160. Recognition of service

The Commission will present a commemorative plaque to the Chairperson shortly after the end of the Chairperson's term of office.

CHAPTER 4. STAFF

200. Executive director

(a) The Executive Director serves as the administrative head of the agency and represents the Commission to the Executive Branch and Legislature.

(b) Unless otherwise indicated, any of the acts in this Handbook that may be done by the Executive Director may also be done by a member of the staff designated by the Executive Director.²³

205. Reporting structure

(a) Between meetings, the Executive Director reports to the Chairperson. At a Commission meeting, the Executive Director reports to the Commission as a body.

(b) The Chief Deputy Counsel reports to the Executive Director.

(c) Other staff attorneys report to the Executive Director and, with respect to work that is supervised by the Chief Deputy Counsel, to the Chief Deputy Counsel.

(d) Administrative staff report to the Executive Director.

210. Personnel action²⁴

(a) The appointment, promotion, or involuntary termination of the Executive Director or Chief Deputy Counsel shall first be approved by the Commission.

(b) The appointment, promotion, or involuntary termination of staff counsel shall first be approved by the Chairperson. Commission approval is not required.

(c) Except as otherwise provided in this section, the Executive Director is authorized to take all actions with respect to appointment, promotions, terminations, leave, merit increases, other salary increases, and the like, for Commission employees other than the Executive Director. 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 Director. 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 Director.

(d) Except as otherwise provided in this section, the Chairperson is authorized to take all actions, with respect to appointment, termination, leave, merit increases, and other salary increases, and similar matters for the position of Executive Director.

23. Minutes (May 2005); see also Memorandum 2005-15.

24. Minutes (Feb. 2010); Minutes (Oct. 1971); Minutes (Oct. 1965).

(e) The Chief Deputy Counsel is authorized to approve sick leave and vacation leave requests of the Executive Director.

215. Incompatible activities²⁵

Each employee shall notify the Executive Director of any outside activities that might reasonably be deemed incompatible, inconsistent, or in conflict with the employee's duties to the Commission under either Government Code Section 19990 or the Commission's Incompatible Activities Statement.

PART 3. STUDY PROCESS

250. Commencement of study

(a) Some studies begin with the preparation of a background report by a consultant.²⁶ In recent years, resource limitations and short deadlines have made it less practicable to solicit the preparation of a formal background report. Instead, the staff has done the necessary background research and analysis.

(b) At the commencement of a new study, the staff will reach out to groups and individuals who are expected to have an interest and expertise in the subject of the study and invite their participation. Those who are interested will be added to the Commission's mailing list for the study. The staff will provide Commissioners with a list of the groups and individuals that were invited to participate.²⁷

(c) When commencing a new study that is part of the Commission's Calendar of Topics authorized by concurrent resolution, the Executive Director "shall submit a detailed description of the scope of work to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and any other policy committee that has jurisdiction over the subject matter of the study, and if during the course of the project there is a major change to the scope of work, submit a description of the change." In recent years, this requirement has been imposed as a condition in the Commission's Resolution of Authority.²⁸

(d) The Commission does not use standing subcommittees to initially review studies on the Commission's agenda and submit their recommendations to the Commission.²⁹

255. Development of proposed law

(a) In this stage of the study process, the staff will prepare memoranda that provide background information, the results of legal research and analysis, public comments, and draft legislation.

25. Minutes (Feb. 2013).

26. See Part 8 *infra*.

27. Minutes (Oct. 2014), p. 3.

28. See, e.g., 2016 Cal. Stat. res. ch. 150.

29. Minutes (May 1960); Minutes (Jan. 1960).

(b) At its public meetings, the Commission will consider these staff memoranda and will make decisions to address the matters discussed in the memoranda or that come up during discussion of the memoranda.

(c) The staff will present these memoranda orally at the Commission's meetings, making sure that all decision points are presented for Commission action. In presenting a memorandum, the staff will presume that the Commissioners are familiar with its content.

260. Tentative recommendation

(a) Once the Commission has made provisional decisions about the content of a proposed reform, the staff will prepare a draft tentative recommendation. It will include (1) a narrative explanation of the problem and the proposed solution, (2) draft legislation to implement the proposed reform, and (3) an official "Comment" for every section of the proposed legislation. Comments describe the derivation and general effect of a proposed revision. They may also include brief explanatory background information.

(b) Once approved by the Commission, a tentative recommendation will be released to the public for review and comment (for a period specified in the tentative recommendation).

265. Public comment

(a) The Commission welcomes public comment at any stage of its study process.

(b) Comment can be submitted in a formal letter, by email, or by oral testimony at a meeting.

(c) The Commission will consider all public comment on a tentative recommendation and decide whether to make any changes to the tentative recommendation.

(d) In rare instances, the changes made to a tentative recommendation may be so significant that the Commission decides to release a revised tentative recommendation and conduct a further round of public comment.

270. Final recommendation

(a) When the Commission has considered and addressed all public comment on a tentative recommendation and has reached the end of deliberation, the staff will prepare a draft of a final recommendation for the Commission's consideration. A final recommendation contains all of the same content as a tentative recommendation, except that it does not invite public comment.

(b) When the Commission approves a staff draft as its final recommendation, the recommendation will be prepared for publication and distribution.

(d) Occasionally, when time is of the essence, the Commission will approve a final recommendation subject to minor changes that have not yet been drafted. Instead, the drafting of the changes is delegated to the staff, subject to final approval of the draft language by the Chairperson.

PART 4. MEETINGS

CHAPTER 1. SCHEDULING

300. Meeting dates and locations

(a) Regular meetings are scheduled approximately once every two months, or more frequently as required. 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.³⁰

(b) Most regular meetings are one-day meetings, but the staff may propose multi-day meetings if the workload requires it.

(c) When the Commission's budget permits, meetings are scheduled so that the Commission meets in various cities around the state.³¹

(d) In the second half of each calendar year, the staff will present a memorandum proposing a meeting schedule for the next year. The Commission will decide whether to approve the proposed schedule, with or without changes.

305. 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.³²

310. Meeting starting time

Commission meetings are not commenced 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.³³ 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.³⁴

30. Minutes (Nov. 1996); Minutes (Sept. 1995); current practice.

31. Minutes (Feb. 2010); Minutes (April 2009); Minutes (April 1987). See also Memorandum 2009-13.

32. 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.

33. Minutes (April 1984).

34. Minutes (April 1987); Minutes (Aug. 1985).

CHAPTER 2. PUBLIC PARTICIPATION

350. 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

355. 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.³⁷

360. Teleconference meetings

(a) The Commission believes that in-person attendance is important. Teleconference is disruptive and changes the character of the discussion and deliberations.³⁸

(b) In general, the Commission discourages the use of teleconference at meetings and will not grant a request to appear by teleconference.³⁹ In extraordinary situations, the Chairperson may authorize the use of teleconferencing.⁴⁰

(c) Any use of teleconferencing must satisfy the requirements of the Bagley-Keene Open Meeting Act.

365. Written comments generally⁴¹

A written communication to the Commission that is relevant to matters currently under consideration may be attached as an exhibit to a staff memorandum. In general, the memorandum will discuss the points made in the written comments. However, there may be situations in which a written communication is provided without analysis (e.g., the communication is received shortly before a meeting or has a plain meaning that does not require discussion).

35. Gov't Code §§ 11120-11132.

36. Minutes (Feb. 1960). See also Gov't Code § 11125.7.

37. Minutes (May 9 & 15, 1996).

38. Minutes (Nov. 2002).

39. Minutes (Jan. 1995).

40. See, e.g., Minutes (Aug. 1999); Minutes (May 9 & 15, 1996).

41. Minutes (Feb. 2010); Minutes (March & May 2005); see also Memorandum 2010-1, pp. 6-7; Memorandum 2005-15.

370. Particular types of written comments

(a) 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 a part of the public record and may be considered at a public meeting. The same statement should be included in the footer on the first page of each staff memorandum.⁴²

(b) Although the Commission encourages persons to identify themselves and their affiliations, a communication to the Commission may be anonymous. 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.⁴³

(c) 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 to a memorandum unless it is redacted to eliminate the inappropriate material. Any redaction shall be clearly indicated.

(d) Email transmission details (such as time of transmission and email addresses of recipients) and personal contact information shall be routinely omitted in presenting an email communication, and this type of omission need not be noted.

(e) A communication that is not reproduced as an exhibit may be summarized in a staff memorandum.

375. Communication to individual Commissioner⁴⁴

(a) If the staff receives a written communication addressed to the Chairperson or to an individual Commissioner regarding a Commission study, the staff will treat the communication in the same manner as a communication to the Commission as a whole. If the communication relates to a topic under study, it will be treated in the same way as any other public comment on a study. If the communication relates to other business of the Commission, the staff will normally respond to the communication.

(b) If the Chairperson or an individual Commissioner receives a written or oral communication from an interested person regarding a Commission study, it is recommended that the Chairperson or individual Commissioner inform the staff of the substance of the communication and, if possible, provide a copy of the communication to the staff.

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

42. Minutes (Feb. 2010); Minutes (May 2005); see also Memorandum 2010-1, p. 6; Memorandum 2005-15.

43. Minutes (May 2005).

44. Minutes (May 2005); see also Memorandum 2005-15; Memorandum 87-70; Memorandum 87-39.

380. Electronic communications⁴⁵

(a) Commissioners and members of the staff shall not use text messaging or social media to send or receive a message that relates to the conduct of the Commission's business.

(b) Members of the staff should only use an official account to send or receive email messages that relate to the conduct of the Commission's business. In the event that a staff member uses a personal account for such a purpose, the staff member shall forward a copy of the message to an official account.

(c) If a Commissioner uses a personal account to send or receive an email message that relates to the conduct of the Commission's business, the Commissioner shall store the message in a location that is used exclusively for that purpose. When a Commissioner's term of service ends, the Commissioner shall forward all such messages to the Executive Director for retention.

(d) For the purposes of this section, "official account" means an email account within the domain "clrc.ca.gov." "Personal account" means any email account that is not an official account.

(e) The Commission's annual memorandum discussing "Open Government Laws" shall reiterate these practices.

CHAPTER 3. MEETING MATERIALS

400. Agenda⁴⁶

(a) Typically, the staff will prepare and release a tentative agenda several weeks before a meeting date, followed by a final agenda that is released no later than 10 days before the meeting date. If significant changes are made to a tentative agenda, such as a change in the meeting's date or location, the staff may prepare and release a revised tentative agenda.

(b) The staff shall schedule no more work for any particular meeting than can reasonably be considered at the meeting.

(c) At the meeting, the Chairperson may change the order of items on the agenda to accommodate persons in attendance or for other good reason.

(d) 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.

405. Staff memoranda

(a) Ordinarily, the staff will prepare one or more memoranda for each item on the meeting agenda.⁴⁷

⁴⁵. See Minutes (Aug. 2017), p. 4; Minutes (Sept. 2017), p. 3; see also Memorandum 2017-40, pp. 2-3.

⁴⁶. Minutes (Jan. 1969). See also Minutes (June 1968).

(c) When beneficial, the staff may prepare supplements to the memoranda listed on an agenda. Supplements provide a way to provide further information or to segment a lengthy discussion.

410. Staff-produced material

(a) All staff-produced meeting materials will be posted to the Commission's website and distributed to Commissioners and to any members of the public who have subscribed to receive them.

(b) The staff will bring one complete set of the staff-produced meeting materials to each meeting. This set of materials will be made available for public inspection at the meeting.⁴⁸

(c) In preparing meeting materials, the staff should indicate changes to a former draft by some appropriate means. This may be done by description or by the use of *strikeout* and *underscore*.⁴⁹

(d) The staff will attempt to deliver meeting materials no more than 5 working days before a meeting. If that is not possible, due to late arising information, the staff will either deliver the material as soon as possible or distribute it at the meeting.

415. Material received at meeting

If the Commission receives written public comment at a meeting, that material will be attached to a memorandum, which will be posted and distributed after the meeting.

CHAPTER 4. DECISIONMAKING

450. Quorum

(a) Five members of the Commission constitute a quorum, except that:⁵⁰

(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.

(b) 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

47. The exceptions are for items that are limited to oral discussion (e.g., Executive Director's Report).

48. Minutes (Feb. 2018), p. 2.

49. Minutes (Oct. 1987).

50. Minutes (Aug. 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.

the absence of any member who is part of the quorum.⁵¹ Any action may be taken by a majority of those present after a quorum is established, except as provided in subdivision (b) of Section 455.⁵²

(c) 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.⁵³ 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.⁵⁴

(d) The Commission may establish a quorum by teleconference in accordance with open meeting act rules.⁵⁵

455. Approval of actions

(a) Commission actions are generally made by a motion approved by the Commission.⁵⁶

(b) Approval of a motion requires an affirmative vote of a majority of the Commissioners present when the vote is taken.

(c) A final report or recommendation must be approved by the affirmative votes of at least three Commissioners.⁵⁷

(d) 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.⁵⁸

(e) Actions may also be taken by unanimous assent. If the staff asks whether a certain action should be taken, and no Commissioner objects after having been given an opportunity to do so, the action is deemed approved by the unanimous assent of those present.

(f) The Commission may give the staff informal instructions or guidance without taking formal action.

460. 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.⁵⁹

51. Minutes (Jan. 1993).

52. Minutes (Jan. 1993); Minutes (Feb. 1966); Minutes (April 1963); Minutes (March 1959).

53. Minutes (Jan. 1993); Minutes (April 1987); Minutes (April 1963); Minutes (Jan. 1958).

54. See, e.g., Minutes (Feb. 1997); Minutes (May 9 & 15, 1996).

55. See Minutes (June 1999); Gov't Code § 11123. But see Section 360 (teleconference disfavored).

56. Minutes (April 1987); Minutes (Jan. 1985).

57. Minutes (Jan. 1993); Minutes (Feb. 1966); Minutes (April 1963); Minutes (March 1959).

58. Minutes (March 1994).

59. Minutes (March 1959).

CHAPTER 5. RECORD

500. Transcripts⁶⁰

As a general rule, the staff will not make a transcript of a Commission meeting.

505. Meeting recordings

(a) The staff shall make an audio record of each meeting for the purpose of preparing Minutes and redrafting statutes.

(b) The recordings are public records.

(c) Due to storage limitations, the staff does not routinely post recording files to the Commission's website. However, on request, the staff will post a specific recording. After sufficient time for the requestor to download the file, the recording will be removed.

510. Minutes

(a) The staff will prepare draft Minutes for each meeting, to record actions taken by the Commission.

(b) The Minutes shall record each Commissioner's vote on each action taken at a meeting. If a Commissioner abstained from voting or was not present when a vote was taken, the Minutes shall record that fact.⁶¹

(c) Ordinarily, the Minutes do not describe oral statements made at a meeting.⁶²

(d) At each meeting, the Commission shall decide whether to approve the draft Minutes of the prior meeting, with or without changes. After the approval of draft Minutes, the staff will prepare a final draft of the Minutes, including any changes made by the Commission, for posting to the Commission's website.

PART 5. LEGISLATIVE PROCESS

550. Identifying potential authors

(a) After a recommendation has been approved, the Executive Director will identify legislators or legislative committees that might be interested in introducing a bill to implement the recommendation. In identifying potential authors, the Executive Director may consult with legislative staff.

(b) The Executive Director will contact potential authors to provide a copy of the recommendation, explain its background and purpose, and answer any questions about the recommendation or the Commission's process.

60. Minutes (May 2005); see also Memorandum 2005-15.

61. Minutes (April 2015), p. 3; Memorandum 2015-8, p. 7.

62. Exceptions include matters that involve oral reports (e.g., the Executive Director's Report).

555. Introduction of Commission bill⁶³

Although a Commission bill will generally be introduced in the form in which it was recommended by the Commission, any of the following changes to the Commission's recommended language may be made before introduction:

(a) Technical changes proposed by the Office of the Legislative Counsel. These may be made at the staff's discretion.

(b) Unrelated content may be included in the bill, at the discretion of the author. This is especially common when a Commission recommendation is part of an omnibus bill.

(c) The staff may make a technical correction or other minor change that appears to be proper. Such a change shall be approved in the same way as an amendment of a Commission bill.

560. Amendment of Commission bill⁶⁴

(a) The author of a Commission bill has unlimited authority to decide whether to amend a Commission bill. However, the Commission will request that the author consult with the Executive Director before doing so.

(b) If a proposed amendment is nonsubstantive, the Executive Director may approve the amendment without first consulting either the Commission or its Chairperson.

(c) If a proposed amendment is substantive, the Executive Director shall take the following steps:

(1) If time permits, the Executive Director shall brief the Commission on the proposed amendment at its next meeting, before the amendment is made.

(2) If the author proposes to make a substantive amendment before the Commission's next scheduled meeting, the Executive Director shall consult with the Chairperson before the amendment is made. If the amendment is made, the Executive Director shall consult with the full Commission at the next scheduled meeting.

(d) When the Commission or Chairperson considers a proposed amendment to a Commission bill, it will typically take one of the following positions:

(1) Approve the proposed amendment. If the amendment is made, the Commission may revise its recommendation to include the amendment.

(2) Do not approve the amendment, but find that it is compatible with the Commission's recommendation. If the amendment is made, the Commission will take no position on the amendment. However, to avoid confusion in the record, the Commission may revise its Comments to conform to the amendment.

(3) Disapprove the amendment as incompatible with the Commission's recommendation. The Commission will take no position on the merits of the

63. Minutes (Jan. 1959); revised to reflect current practice.

64. Minutes (Dec. 2010); Minutes (Sept. 1987).

amendment, but will make clear that the amendment is not based on the Commission's recommendation.

565. Staff assistance to author

(a) The staff will offer to provide technical assistance to the author of a Commission bill, by answering questions and drafting explanatory background materials. The staff will not advocate for approval of the Commission bill.

(b) Shortly before a legislative policy committee hears a Commission bill, the staff will send an explanatory letter and a copy of the recommendation (including any revised Comment report) to each member of the committee. The letter will not advocate for approval of the bill.

(c) A member of the staff will appear as a witness at any policy committee hearing of a Commission bill. The staff's testimony will be limited to explaining the Commission's recommendation and answering questions. The staff will not advocate for approval of the Commission bill.

(d) Ordinarily, the staff will not send letters to or appear before an appropriations committee that is hearing a Commission bill. However, the staff may do so if requested by the author or the committee, or if the staff determines that the bill involves an important fiscal issue.

(e) When a Commission bill has passed the Legislature and is being sent to the Governor for approval, the staff will send an explanatory letter and a copy of the recommendation (including any revised Comment report) to the Governor. The letter will not advocate for approval of the bill.

570. Staff contacts with Legislature or Governor's Office⁶⁵

(a) Except as otherwise authorized by this Handbook, the staff should not contact a member of the Legislature, the Governor, or their staff about a pending Commission bill.

(b) Such contact is permitted if a person in the Legislature or the Governor's Office has raised an issue about a Commission bill that seems to be based on a misunderstanding of the Commission's recommendation or the reasons for it. If it appears desirable, the Executive Director may contact that person to answer questions about the bill and otherwise explain it. Care must be taken not to advocate or appear to be advocating for enactment of the Commission bill.

575. New legislators

The staff should send a letter to and attempt to meet with new legislators to provide background on the Commission and its function. The staff should explain that the Legislature sets the Commission's agenda, and that the Commission provides a resource legislators should consider using where there are issues

65. Minutes (May 2005); Minutes (Jan. 1971); Minutes (Feb. 2010); see also Memorandum 2005-15, Memorandum 2010-1, pp. 7-8.

appropriate for Commission study. The staff should provide a brief overview explaining how the Commission operates and offering to provide additional information.⁶⁶

PART 6. RECOMMENDATIONS, REPORTS, AND OTHER WRITTEN MATERIALS

CHAPTER 1. CONTENT

600. Recommendation

(a) A recommendation typically includes (1) a narrative description of the Commission's findings and recommendation, (2) proposed legislation, and (3) a Comment for each provision of the proposed legislation.

(b) Commission Comments briefly state the derivation of a provision of the proposed law. A Comment may also provide a brief explanation of the purpose or effect of the proposed revision or a reference to related law. Comments are an important source of legislative history. Overly-long Comments and Comments that establish rules not found in the statute itself are disfavored.

605. Annual Report

(a) Each year, the Commission is required to prepare an Annual Report.

(b) The Annual Report summarizes the Commission's recent and current work, provides background information about the Commission generally, identifies any United States or California Supreme Court decisions holding a California statute unconstitutional or repealed by implication, and makes a recommendation to the Legislature regarding the Commission's Calendar of Topics Authorized for Study.

(c) The Annual Report may also include appendices that set out revisions to Commission Comments that were made to conform to amendments to Commission bills.

610. Approval date

A recommendation or report is dated as of the month in which the Commission approved it. The names of the members of the Commission at that time shall be listed in the letter of transmittal.⁶⁷

615. Citation

A recommendation or report that has been published in a Bound Volume should be cited by its title, volume and page number, and year of approval. The Commission uses the following citation format:

66. Minutes (Nov. 1994).

67. Minutes (Oct. 1960); revised to reflect current practice.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 43 Cal. L. Revision Comm'n Reports 755 (2013)

625. Prefatory note⁶⁸

Each Commission recommendation 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.

630. Dissents

Dissenting votes of Commission members on all or part of a recommendation or report are not reported in the recommendation or report. However, any vote against approving a recommendation or report will be recorded in the Minutes for the meeting at which the recommendation or report was approved. In addition, the Commission's Annual Report states 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."⁶⁹

635. Special reports⁷⁰

(a) At the discretion of the Executive Director, the staff may prepare special reports to provide the public with useful information, in a convenient form, about laws that were enacted on the Commission's recommendation.

(b) Such reports will be posted to the Commission's website. The Executive Director shall decide whether the report should also be included in a bound volume or distributed by other means.

CHAPTER 2. DISTRIBUTION

650. Website⁷¹

(a) The Commission maintains a website on the Internet at <www.clrc.ca.gov>.

(b) Background information and information on current activities, such as agendas, bills, tentative recommendations out for comment, and the like, are kept current on the website.

68. Minutes (July 2002).

69. Minutes (Aug. 1960). See also Minutes (July 1960).

70. Minutes (Feb. 2010); Minutes (March 1960); see also Memorandum 2010-1, pp. 1-3 & Attachments.

71. Minutes (Feb. 2010); current practice.

(c) Commission meeting agendas, staff memoranda, minutes, tentative recommendations, printed reports, and other publicly-distributed materials are available for downloading from the website.

(d) 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 Commissioners' biographical information on the website.⁷²

655. Electronic notice lists

(a) The staff maintains electronic notice lists for each of its active study topics, meeting agendas, and press releases.

(b) Members of the public may subscribe or unsubscribe to any of the Commission's notice lists, using tools on the Commission's website.

(c) Whenever new materials are uploaded to the Commission's website, electronic notice will be emailed to the related notice list. The email will include a link to download the new material. Such notices are also sent to all Commissioners.

(d) The only information that must be provided in order to subscribe to a notice list is an email address. That information will not be used for any other purpose.

660. Hard copy distribution

(a) While nearly all of the Commission's meeting materials and reports are distributed by website posting and emailed notice, the staff may distribute hard copies in appropriate circumstances.

(b) In general, members of the Legislature are sent a copy of a final report or recommendation only on request.⁷³

665. Mailing list privacy

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 disclosure⁷⁴ against the policies of the Information Practices Act requiring protection of personal information.⁷⁵ The Commission (or the staff, as appropriate in the circumstances) should make this determination on a case-by-case basis, evaluating the specific circumstances of each particular request.⁷⁶

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

73. See Gov't Code § 9795.

74. Gov't Code §§ 6250-6276.48.

75. Civ. Code §§ 1798-1798.78.

76. Minutes (July 2002).

CHAPTER 3. REVISION OF RECOMMENDATIONS AND REPORTS

700. Pre-print status

(a) Until a recommendation or report has been printed in a bound volume, it is identified as a “pre-print.”

(b) A pre-print bears the date of its approval or its last revision, whichever is later.

705. Revisions to conform recommendation to bill amendments

(a) When a Commission bill is amended, the Commission may wish to revise its recommendation to conform to the amendment. This may reflect Commission approval of the amendment or it may be done to avoid confusion in the historical record.

(b) If the recommendation is in pre-print form, such revisions can be made in the recommendation itself.

(c) If the recommendation has already been printed in a Bound Volume, and the Commission only wishes to revise its Comments, it may do so in a Revised Comment report, which will be printed as an appendix to the next Annual Report.

(d) If the recommendation has already been printed in a Bound Volume and the Commission wishes to revise more than just the Comments, it may approve and print a “Revised Recommendation” that supersedes the initial recommendation. A Revised Recommendation shall be distributed in the same way as any other recommendation.

710. Revision to correct error or conform to Commission policy

When preparing a recommendation for publication, the staff may make any revisions necessary to conform to the Commission’s policy decisions or to correct technical defects. Members of the Commission may submit suggested editorial revisions of that type to the staff for consideration.⁷⁷

CHAPTER 4. BOUND VOLUMES⁷⁸

750. Content

Each Commission recommendation, report, and Annual Report, is incorporated into a hardbound volume of the Commission’s REPORTS, RECOMMENDATIONS, AND STUDIES.

77. Minutes (Oct. 1979); revised to reflect current practice.

78. Minutes (Feb. 2010); see also Memorandum 2010-1, pp. 1-3 & Attachments.

755. Frequency

(a) 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.

(b) The Executive Director determines when material should be printed. However, no recommendation shall be printed, or distributed, unless the recommendation has first been approved for printing and distribution by the Commission.⁷⁹

760. Distribution

(a) The Executive Director shall determine how many copies of the bound volume to order for the Commission's use.

(b) Complimentary copies of Bound Volumes 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.⁸⁰

(c) Copies of Bound Volumes are also available for purchase.

(d) Softcover versions of the bound volumes are distributed to legal depository libraries by the Office of State Publishing under the Library Distribution Act.

PART 7. COOPERATION WITH OTHER ENTITIES

800. Legislative committees

By statute, the Commission is required to confer and cooperate with any legislative committee on revision of the law.⁸¹ In practice, this typically means that the staff will provide what assistance it can in response to legislative inquiries. The staff will make clear that any assistance it provides is informal and does not represent any position of the Commission as an entity.

805. State Bar, California Lawyers Association, and other associations

(a) The State Bar is required to "assist the commission in any manner the commission may request within the scope of its powers or duties."⁸² The staff presumes that this obligation now extends to the California Lawyers Association ("CLA").

(b) The Commission may cooperate with the State Bar or any other "learned, professional, or scientific association, institution or foundation" in any manner suitable for the fulfillment of the Commission's duties.

79. Minutes (Feb. 2010); Minutes (March 1960); see also Memorandum 2010-1, pp. 1-3 & Attachments.

80. For the current Publication Distribution Policy, see Appendix D.

81. Gov't Code § 8295.

82. Gov't Code § 8287.

(c) In practice, the Commission solicits input on its studies from relevant sections of the CLA and other relevant organizations. Those groups are requested to provide written comment on Commission materials and to attend Commission meetings.

810. Legal publishers

(a) Near the end of each year's legislative session, the Commission provides legal publishers electronic copies of all Commission recommendations and final Comments for Commission bills enacted that year. These are used by the publishers to prepare annotations for affected code sections.

(b) Historically, legal publishers (Thomson-Reuters, LexisNexis, California Continuing Education of the Bar) have provided the Commission complimentary copies of legal publications. These have included annotated code sets, desktop code volumes, subject matter treatises, and the like.

(c) In the past, the Commission occasionally assisted the California Continuing Education of the Bar (CEB) in their publication of educational materials for their use in connection with programs designed to instruct lawyers concerning major Commission legislative enactments.

815. Law reviews

(a) A background 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.

(b) 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

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 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.

83. Minutes (Dec. 1965).

84. Minutes (June 1966); current practice.

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.

(c) A letter should be obtained from a law review publishing a Commission study or tentative recommendation recognizing that the Commission itself may republish the article in a Commission Bound Volume.

820. Tribal consultation policy⁸⁵

Consistent with the Governor's Executive Order B-10-11, the Commission shall take all practicable steps to encourage early and frequent communication and consultation with California Native American Tribes, including all of the following:

(a) Before the Commission begins a new study, it shall send notice to Tribes explaining the scope and nature of the study, inviting consultation regarding the study, and offering to add Tribes to the distribution list for materials prepared as part of the study. This notice shall be sent by the Commission's Chair or Executive Director.

(b) If an official of a Tribe wishes to address the Commission at one of its public meetings, the Commission shall set aside time for that purpose.

(c) The Executive Director shall be available for consultation with representatives of Tribes on their request.

PART 8. RESEARCH CONSULTANTS

850. Meeting attendance

Consultants are requested to attend Commission meetings when appropriate.

855. Compensation

(a) Compensation of research consultants is on a modest scale, as paid in connection with public service rather than at regular professional rates.⁸⁶ Payment is made in a lump sum (rather than on an hourly basis) under a contract made with the consultant.⁸⁷ Partial payments may be made for portions of a research study that have been completed.

(b) Consultants may be reimbursed for travel expenses when attending Commission meetings.

860. Statement of scope of background study

(a) The Commission considers it important that there be a clear understanding concerning the scope of the background study so that the background study

85. Minutes (Sept. 2016), p. 3; Memorandum 2016-42.

86. Minutes (June 1955).

87. *Id.*

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.

(b) 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.

865. Form and content of background study

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

(b) 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.

(b) 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.⁸⁸

88. Minutes (Aug. 1960).

(c) Whenever possible, a consultant's study should be 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.

870. Presentations by consultant to other persons or groups⁸⁹

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:

(a) The consultant's recommendations are not recommendations of the Commission and do not represent the views or recommendations of the Commission.

(b) 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.

875. Involvement of consultant in litigation⁹⁰

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:

(a) Advise the Commission of involvement in the litigation.

(b) 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.

880. Advisers to commission consultant⁹¹

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.

89. Minutes (Jan. 1990); Minutes (Jan. 1982). For further discussion of this matter, see Memorandum 90-2; Memorandum 89-74.

90. Minutes (Jan. 1990).

91. *Id.*

885. 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.⁹²

890. Report on status of research studies

Periodically, the Executive Director is to submit for Commission review the status of each research study being prepared by an outside research consultant.⁹³

PART 9. GENERAL ADMINISTRATION

CHAPTER 1. SIGNATURE AUTHORITY

900. Contracts and leases

(a) The Executive Director is authorized to sign on behalf of the Commission all leases and contracts previously approved by the Commission.⁹⁴

(b) The Executive Director is authorized to execute contracts covering equipment maintenance, equipment rental, subscriptions, and the like.

905. Personnel and financial documents⁹⁵

(a) The Chairperson, Executive Director, and Chief Deputy Counsel are authorized to sign all personnel and financial documents.

(b) The Executive Director shall determine the particular types of documents that the Chief Deputy Counsel and other Commission employees can sign.

(c) The Chairperson and the Executive Director are authorized to sign any documents that must be executed to allow a Commissioner or Commission employee to sign personnel or financial documents.

CHAPTER 2. TRAVEL

950. Travel claims

(a) The staff is responsible for overseeing the travel claim process.

(b) To make a claim, a Commissioner must first complete a staff-provided worksheet and submit it to the staff. All required information must be provided

92. Minutes (Sept. 1987).

93. Minutes (April 1971); revised to reflect current practice.

94. Minutes (July 1964).

95. Minutes (Feb. 2010); Minutes (Oct. 1965).

and specified receipts must be attached. If required information or receipts are missing, reimbursement may be delayed or limited.

(c) 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.

(d) Current information concerning travel expense regulations and claims is sent to Commissioners periodically or on request. Questions about travel claims or the procedure should be directed to the responsible staff member.

955. Out-of-state travel⁹⁶

The Chairperson is authorized to approve requests for authorization by the Department of Finance and the Governor of unbudgeted out-of-state travel by the staff. Requests for budgeted out-of-state travel are presented for approval by the Department of Finance and Governor by submission of the necessary document by the Executive Director.

960. Photo identification cards

Any Commissioner may request that the staff provide a photo identification card that will affirm the Commissioner's status as a member of the Commission. These cards may be useful in obtaining state contract rates on accommodations when staying overnight for a Commission meeting.⁹⁷

96. Minutes (Oct. 1965).

97. Minutes (May 2018), pp. 22-3; Minutes (May 2002).

DISPOSITION TABLE

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1.1, ¶ 1	150(a)-(b)	3.6	65
1.1, ¶ 2	155(b)-(c)	3.7	575
1.1, ¶ 3	150(c)	4.1, ¶ 1	omitted
1.1, ¶ 4	150(d)	4.1, ¶ 2, 1st sent.	565(e)
1.2	160	4.1, ¶ 2, 2d & 3d sent.	570
1.3.1	950(a) & (d)	5	805
1.3.2	950(b) & (c)	6.1	855
1.4.1	960	6.2.1	860
2.1.1, ¶ 1	300(a)	6.2.2	865
2.1.1, ¶ 2	300(c)	6.3	870
2.1.2	305	6.4	875
2.1.3	360	6.5	880
2.2 (last sent omitted)	400(b)-(d)	6.6	885
2.3, ¶ 1	410(a) & (d)	6.7	890
2.3, ¶ 2	365	7.1, ¶ 1	755(b)
2.3, ¶ 3	410(c)	7.1, ¶ 2	635
2.4, ¶ 4	105(b)	7.2, ¶ 1, 1st sent.	750
2.4.1	450	7.2, ¶ 1, 2d sent.	755(a)
2.4.2	310	7.2, ¶ 1, 3d sent.	760(a)
2.4.3	455(a)	7.2, ¶ 2	760(d)*
2.4.4	455(b)-(c)	7.3.1	760(b)
2.4.5	510(a)-(b)*	7.3.2, 1st sent.	660(b)
2.4.6	250(d)	7.3.2, 2d sent.	565(b)
2.4.7	850	7.3.3(1)	655(a)
2.4.8, ¶ 1	350	7.3.3(2)	760(c)
2.4.8, ¶ 2	650(b)-(c), 655	7.3.3(3)-(5)	omitted
2.4.9	460	7.3.4	665
2.4.10	505	7.4	760(c)
2.4.11	500	7.5	810(c)
2.4.12	355	7.6.1	815(a)
2.5.1	370(a)	7.6.2	815(b)
2.5.2	370(b)	7.7, ¶ 1	650(a)-(c)
2.5.3	375(a)-(b)	7.7, ¶ 2, 1st sent.	385(c)
2.5.4, 1st sent.	365	7.7, ¶ 2, 2d & 3d sent.	650(d)
2.5.4, 2d & 3d sent.	370(c)	7.7, ¶ 3	655(c)
2.5.4, 4th sent.	370(b)	7.7, ¶ 4	655
2.5.4, 5th sent.	370(e)	8.1	200(b)
2.6	60(c)-(d)	8.2	905
2.7.1	610	8.3.1	210(a)-(b)
2.7.2	630	8.3.2	210(c)
2.7.3	625	8.3.3	210(d)-(e)
2.7.4	710	8.4	955
3.1, 1st-3d sent.	550	8.5	900
3.1, 4th sent.	555	9.1	215
3.2, ¶ 1	omitted		
3.2, ¶ 2, 1st sent.	565(b)		
3.2, ¶ 2, 2d & 3d sent.	570		
3.3	560		
3.4	55(c)		
3.5	70		

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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 If both the Chairperson and Vice Chairperson are absent at any point in a meeting, or are unavailable to take action or provide guidance as needed between meetings, a Commission member may act as temporary Chairperson until an officer returns.⁵

In case of a vacancy in the office of Chairperson, the Commission shall elect new officers for the remainder of the term.⁶

No officer is eligible to succeed himself or herself in the same office in which the officer has served a full term.⁷ 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;⁸ 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.⁹

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.

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

2. Minutes (Oct. 1986); Minutes (Dec. 1981).

3. Minutes (Jan. 1995).

4. Minutes (Feb. 2000); Minutes (Jan. 1995).

5. Minutes (Feb. 2010); Minutes (June 2007); Minutes (July 1998).

6. Minutes (Jan. 1995).

7. Minutes (Jan. 1960).

8. Minutes (Dec. 1960).

9. Minutes (Jan. 1962).

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 periodically or on request. Questions about travel claims or the procedure should be directed to the 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. 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.¹⁰

2. Meetings and Procedure

2.1. Meetings¹¹

2.1.1. Meeting dates and locations

Regular meetings ordinarily are scheduled once every two months, or more frequently as required. 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.¹²

When the Commission's budget permits, meetings are scheduled so that the Commission meets in various cities around the state.¹³ The Commission may deviate from this practice if necessary due to budget constraints.¹⁴

10. Minutes (May 2002).

11. Minutes (Jan. 1984); Minutes (Nov. 1982); Minutes (Nov. 1980); Minutes (Oct. & Nov. 1979); revised to reflect current practice.

12. Minutes (Nov. 1996); Minutes (Sept. 1995); current practice.

13. Minutes (Feb. 2010); Minutes (April 1987).

14. See Memorandum 2009-13; Minutes (April 2009).

2.1.2. 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.¹⁵

2.1.3. Teleconference meetings

As a general rule, the Commission believes that in-person attendance is important and discourages the use of teleconference meetings.¹⁶ Teleconference is disruptive and changes the character of the discussion and deliberations.¹⁷ However, in extraordinary situations, the Commission may hold a teleconference meeting,¹⁸ as determined by the Chairperson. Any use of teleconferencing must satisfy the requirements of the Bagley-Keene Open Meeting Act.¹⁹

2.2. Meeting Agenda²⁰

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.

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 business days before the meeting.²¹ 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.²²

15. 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.

16. Minutes (Jan. 1995).

17. Minutes (Nov. 2002).

18. See, e.g., Minutes (Aug. 1999); Minutes (May 9 & 15, 1996).

19. See Gov't Code § 11123(b).

20. Minutes (Jan. 1969). See also Minutes (June 1968).

21. Minutes (April 1987); Minutes (Sept. 1984).

22. Minutes (Dec. 1995).

Sending materials as email attachments will satisfy this guideline if the recipient Commissioner has approved this means of receipt.

Public comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

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.²³

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:²⁴

(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.²⁵ Any action may be taken by a majority of those present after a quorum is established, but any final recommendation to the Legislature must be approved by a minimum of three affirmative votes.²⁶

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.²⁷ 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.²⁸

The Commission may establish a quorum by teleconference in accordance with open meeting act rules.²⁹

23. Minutes (Oct. 1987).

24. Minutes (Aug. 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).

25. Minutes (Jan. 1993).

26. Minutes (Jan. 1993); Minutes (Feb. 1966); Minutes (April 1963); Minutes (March 1959).

27. Minutes (Jan. 1993); Minutes (April 1987); Minutes (April 1963); Minutes (Jan. 1958).

28. Current practice. See, e.g., Minutes (Feb. 1997); Minutes (May 9 & 15, 1996).

29. Current practice. See also Minutes (June 1999); Gov't Code § 11123.

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.³⁰ 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.³¹

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.³²

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.³³

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.³⁴ 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.³⁵

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.³⁶ Any person may attend as an observer and may address the Commission or participate in the

30. Minutes (April 1984).

31. Minutes (April 1987); Minutes (Aug. 1985).

32. Minutes (April 1987); Minutes (Jan. 1985).

33. Minutes (March 1994).

34. Minutes (Nov. 1965).

35. Minutes (May 1960); Minutes (Jan. 1960).

36. Gov't Code §§ 11120-11132.

discussion as authorized by the Chairperson.³⁷ The Commission believes that in-person attendance is important and generally will not accommodate a request to appear by teleconference.³⁸

The agenda for each meeting is sent to 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.³⁹ 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.⁴⁰

2.4.10. Recording of meetings

Recording of meetings by the staff is for the purpose of preparing Minutes and redrafting statutes. The following procedures apply:⁴¹

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

2.4.11. Transcripts of meetings⁴²

As a general rule, transcripts will not be made of Commission meetings.

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.⁴³

2.5. Communications to Commission

2.5.1. Confidential communication to Commission⁴⁴

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 a part of

37. Minutes (Feb. 1960). See also Gov't Code § 11125.7.

38. Current practice; see Rule 2.1.3.

39. See also Gov't Code § 11125.

40. Minutes (March 1959).

41. Minutes (April 2011).

42. Minutes (May 2005); see also Memorandum 2005-15.

43. Minutes (May 9 & 15, 1996).

44. Minutes (Feb. 2010); Minutes (May 2005); see also Memorandum 2010-1, p. 6; Memorandum 2005-15.

the public record and may be considered at a public meeting. The same statement should be included in the footer on the first page of each staff memorandum.

2.5.2. Anonymous communication to Commission⁴⁵

Although the Commission encourages persons to identify themselves and their affiliations, a communication to the Commission may be anonymous. 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.

2.5.3. Communication to Chairperson or to individual Commissioner⁴⁶

If the staff receives a written communication addressed to the Chairperson or to an individual Commissioner regarding a Commission study, the staff will treat the communication 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.

If the Chairperson or an individual Commissioner receives a written or oral communication from an interested person regarding a Commission study, it is recommended that the Chairperson or individual Commissioner inform the staff of the substance of the communication and, if possible, provide a copy of the communication to the staff.

2.5.4. Reproduction of written communication to Commission⁴⁷

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. Email transmission details (such as time of transmission and email addresses of recipients) and personal contact information shall be routinely omitted in presenting an email communication, and this type of

45. Minutes (May 2005).

46. Minutes (May 2005); see also Memorandum 2005-15; Memorandum 87-70; Memorandum 87-39.

47. Minutes (Feb. 2010); Minutes (March & May 2005); see also Memorandum 2010-1, pp. 6-7; Memorandum 2005-15.

omission need not be noted. A communication that is not reproduced as an exhibit may be summarized in a staff memorandum.

2.6. Evaluation of Suggested Topics⁴⁸

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.⁴⁹

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."⁵⁰

2.7.3. Prefatory note⁵¹

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*.

48. Minutes (Sept. 1970); revised to reflect current practice.

49. Minutes (Oct. 1960); revised to reflect current practice.

50. Minutes (Aug. 1960). See also Minutes (July 1960).

51. Minutes (July 2002).

2.7.4 Editorial, technical, and conforming revisions⁵²

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 of that type to the staff for consideration in preparing material for publication.

3. Relationship with Legislature

3.1. Introduction of Bills⁵³

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.⁵⁴ In this case, the other legislators are selected by the Executive Director 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 they are published by the Commission and later amended to reflect changes that the Commission believes desirable.⁵⁵

3.2. Contacting Individual Members of Legislature⁵⁶

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

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. 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 Director may contact the member to answer questions the member may have about the bill and otherwise explain it. Care

52. Minutes (Oct. 1979); revised to reflect current practice.

53. Minutes (Jan. 1959); revised to reflect current practice.

54. *Id.*

55. *Id.*

56. Minutes (May 2005); Minutes (Jan. 1971); see also Memorandum 2005-15.

must be taken not to advocate or 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 Legislature⁵⁷

The legislator carrying a Commission bill and the Executive Director 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 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.

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.⁵⁸

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

57. Minutes (Dec. 2010); Minutes (Sept. 1987).

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

Legislature changes in laws that have been enacted on Commission recommendation.⁵⁹

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.⁶⁰

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 offering to provide additional information.⁶¹ The Commission staff will also attempt to meet with new legislators personally.

4. Relationship with Governor

4.1. Contacting the Governor or the Governor's Staff ⁶²

The Commission has considered whether and under what procedure the Executive Director should contact the Governor or the Governor's staff to explain Commission bills.

When a bill to effectuate a Commission recommendation has passed the Legislature and is being sent to the Governor for approval, the staff should send (or assist the Chairperson in sending) the recommendation and an explanatory letter to the Governor. Aside from this practice, the staff should not contact the Governor or the Governor's staff about a pending Commission bill unless the Governor or the Governor's staff has raised a question about a Commission bill and it seems likely that the person raising the question does not fully understand the Commission's recommendation or the reasons for it. If it appears desirable, the Executive Director may contact that person to answer questions about the bill and otherwise explain it. Care must be taken not to advocate or appear to be advocating legislation in violation of Government Code Section 8288.

59. Minutes (Dec. 1971).

60. Minutes (Oct. 1986).

61. Minutes (Nov. 1994).

62. Minutes (Feb. 2010); see also Memorandum 2010-1, pp. 7-8.

5. Relationship with State Bar and Other Groups⁶³

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.

6. Relationship with Research Consultants

6.1. 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.⁶⁴ Payment is made in a lump sum (rather than on an hourly basis) under a contract made with the consultant.⁶⁵ Partial payments may be made for portions of a research study that have been completed.

63. Minutes (Sept. 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").

64. Minutes (June 1955).

65. *Id.*

6.2. Form and Contents of Consultant's Study⁶⁶

6.2.1. 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.

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.

6.2.2. 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. 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

66. Minutes (May 2005); Minutes (Jan. 1982); see also Memorandum 2005-15.

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.⁶⁷ 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.

6.3. Presentations by Consultant to Other Persons or Groups⁶⁸

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.

6.4. Involvement of Consultant in Litigation⁶⁹

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

67. Minutes (Aug. 1960).

68. Minutes (Jan. 1990); Minutes (Jan. 1982). For further discussion of this matter, see Memorandum 90-2; Memorandum 89-74.

69. Minutes (Jan. 1990).

any, will be made in the Commission's printed report to the Legislature.

6.5. Advisers to Commission Consultant⁷⁰

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.

6.6. 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.⁷¹

6.7. Report on Status of Research Studies

Periodically, the Executive Director is to submit for Commission review the status of each research study being prepared by an outside research consultant.⁷²

7. Printing and Distribution Policies

7.1. Authority To Print and Distribute Commission Materials⁷³

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

At the discretion of the Executive Director, a "Staff Report" may be prepared following enactment of a Commission recommendation, to assist persons using the new law. A staff report may include relevant legislative amendments, revised Commission Comments, revised tables, or minor editorial notes, in a convenient form. Any changes from the Commission's recommendation will be clearly indicated as such. Staff Reports may be printed or provided in either hard copy or electronic form or both.

70. *Id.*

71. Minutes (Sept. 1987).

72. Minutes (April 1971); revised to reflect current practice.

73. Minutes (Feb. 2010); Minutes (March 1960); see also Memorandum 2010-1, pp. 1-3 & Attachments.

7.2. Bound Volumes⁷⁴

Each Commission recommendation is incorporated into a 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 Director shall determine how many copies of the bound volume to order for the Commission's use.

Copies of the bound volumes will be distributed to legal depository libraries by the Office of State Publishing under the Library Distribution Act.

7.3. Distribution⁷⁵

7.3.1. 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.

7.3.2. Distribution to Members of Legislature

In general, members of the Legislature are sent a complimentary copy of a final report or recommendation only on request.⁷⁶ However, copies of recommendations are provided to members of a legislative policy committee that is considering legislation to implement the recommendation.⁷⁷

7.3.3. 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. Almost all older meeting materials and publications are available on the website.

(2) Printed bound volumes and staff reports are available 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.

74. Minutes (Feb. 2010); see also Memorandum 2010-1, pp. 1-3 & Attachments.

75. For the current Publication Distribution Policy, see Appendix D.

76. See Gov't Code § 9795.

77. See Rule 3.2

78. Minutes (Feb. 2010); Minutes (Sept. 1996); see also Appendix D. For discussion of a prior distribution policy, see Memorandum 94-36.

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

7.3.4. 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

7.4. Sale of Commission Publications

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

7.5. 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. 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.

7.6. Publication of Commission Material in Law Reviews

7.6.1. 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.

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 D.

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

7.6.2. 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

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 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.

7.7. 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 or business website 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 meeting materials by email to Commissioners on request.

83. Minutes (Dec. 1965).

84. Minutes (June 1966); current practice.

85. Minutes (Feb. 2010); current practice.

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

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.

8. Delegation of Authority

8.1. Delegation of Authority By Executive Director⁸⁷

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

8.2. Personnel and Fiscal Matters Generally⁸⁸

Both the Chairperson and the Executive Director 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 Director, and Chief Deputy Counsel are authorized to sign all such documents.

The Executive Director is authorized to determine the particular types of documents that the Chief Deputy Counsel and other Commission employees can sign as a matter of practice.

8.3. Personnel Matters⁸⁹

8.3.1. Hiring

Appointments, promotions to higher level positions, and involuntary terminations of persons to or from positions as Executive Director or Chief Deputy Counsel shall first be approved by the Commission. In the case of an appointment of a person to a permanent attorney position (other than Executive Director or Chief Deputy Counsel), the approval of the Chairperson shall be obtained before the appointment is made, but Commission approval is not necessary.

8.3.2. Other Matters

The Executive Director is authorized to take all actions, other than those specified in Rule 8.3.1, with respect to appointment, promotions, terminations, leave, merit increases, other salary increases, and the like, for Commission employees other than the Executive Director. 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 Director. It is understood that no such action

87. Minutes (May 2005); see also Memorandum 2005-15.

88. Minutes (Feb. 2010); Minutes (Oct. 1965).

89. Minutes (Feb. 2010); Minutes (Oct. 1971); Minutes (Oct. 1965).

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 Director.

8.3.3. Matters Involving Executive Director

The Chairperson is authorized to take all actions, other than those specified in Rule 8.3.1, with respect to appointment, termination, leave, merit increases, and other salary increases, and similar matters for the position of Executive Director. The Chief Deputy Counsel is authorized to approve sick leave and vacation leave requests of the Executive Director.

8.4. Out-of-State Travel ⁹⁰

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

8.5. Contracts and Leases

The Executive Director is authorized to sign on behalf of the Commission all leases and contracts previously approved by the Commission.⁹¹ The Executive Director is authorized to execute contracts covering equipment maintenance, equipment rental, subscriptions, and the like.

9. Administration

9.1. Incompatible Activities⁹²

Each employee shall notify the Executive Director of any outside activities that might reasonably be deemed incompatible, inconsistent, or in conflict with the employee's duties to the Commission under either Government Code Section 19990 or the Commission's Incompatible Activities Statement.

90. Minutes (Oct. 1965).

91. Minutes (July 1964).

92. Minutes (Feb. 2013).