

Memorandum 88-79

Subject: Commission Practices and Procedures (Meeting Attendance Policy)

At the October meeting, the Commission discussed the problem of attendance at Commission meetings and decided to pursue the possibility of adopting an official policy on the matter. The Commission also expressed interest in past experience with this issue. This memorandum provides some background on this question and discusses several alternatives.

Background

The Commission's *Handbook of Practices and Procedures* does not state any policy on expected meeting attendance nor does it provide procedures for excusing absences or dealing with truancy. In the past, the Commission has dealt with the problem on an ad hoc basis. (See the excerpts from Commission Minutes set out in Exhibit 1.) When attendance rates declined, making it difficult to get a quorum, the Commission would take action such as asking for an attendance report, having the Chairperson make telephone calls, or writing letters. If these steps did not work, the Commission would decide whether to ask delinquent Commission members to resign if they could not improve their attendance rates.

In 1981, two Commissioners resigned following a request to "either regularly attend the future meetings or resign from the Commission." (The full text of this letter is set out in Exhibit 2.) As we discussed at the October meeting, such a letter can elicit differing responses. Since several Commission members indicated a desire to review this material, the text of these responses is also set out in Exhibit 2.

In 1983, another Commissioner was asked to attend or consider resigning. (See items 4-6 in Exhibit 2.) The Commissioner did not thereafter attend meetings with any regularity, and despite another

letter, never did resign. Ultimately, the Commissioner's term expired.

In 1984, the Commission decided to recommend legislation to deal with the problem of a member who fails regularly to attend meetings. Assembly Bill 195 was introduced upon request of the Commission at the 1985 legislative session. This bill, in its last amended version, provided:

The Governor may remove from office a member of the commission appointed by the Governor if the member is absent, without having been excused, from three consecutive regular meetings of the commission. For the purposes of this section, a member is excused from attending a meeting only if (1) the commission, acting at the meeting the member failed to attend or at the next meeting of the commission determines that the member is excused from attending the meeting and (2) the commission's action is entered in the minutes of the meeting at which the action was taken. If a member of the commission appointed by the Governor is absent, without having been excused, from three consecutive regular meetings of the commission, the chairperson of the commission shall give written notice of that fact to the Governor. Nothing in this section limits or restricts the power of the Governor, conferred by any other provision of law, to remove a member of the commission.

The Legislative members of the Commission concluded that an additional method should be provided to deal with the quorum problem. Recognizing that they seldom are able to attend Commission meetings, they amended the bill to permit the legislative member to designate a person who would attend and vote in place of the absent legislative member. Because of this amendment, the Commission withdrew its support, and the bill was placed on the inactive file of the Senate Committee on Judiciary where it died.

During the time Assembly Bill 195 was before the Legislature, the Commission adopted the practice of considering and approving excuses for absence. As noted in the excerpts from the Minutes for 1985, the Commission approved the absences of several Commissioners. (See Exhibit 1.) This practice was dropped after the bill died.

What Commitment Does a Person Make on Appointment to the Commission?

The Commission should consider whether it wants to adopt a policy statement concerning the meeting attendance expected of a person

appointed by the Governor as a member of the Law Revision Commission. We cannot expect legislative members to attend meetings. They are busy with their legislative work most of the year. Historically, the same has been true of the Legislative Counsel, although in recent years the Legislative Counsel has attended a significant number of meetings.

A quorum consists of five members, considering that there are eight voting members of the Commission (excluding the legislative members). We should count only on the seven members appointed by the Governor to make up a quorum. This means that five of the seven must attend each meeting (although in some cases the Legislative Counsel will attend a meeting and make up a quorum). If each member is to attend his or her share of the meetings, this means that each member must attend not less than five out of seven meeting days or approximately 72% of the meeting days. This degree of attendance is the minimum requirement that could achieve a quorum at each meeting. Thus, the Commission could adopt a policy that a member's attendance becomes an issue whenever it sinks below 72% or 75% (or some other figure) during the preceding year, or since a benchmark date, or during the last 10 or 20 meetings.

During 1988, the Commission has had a quorum at approximately two-thirds of its meeting days (days of meetings actually held, not counting meetings canceled because of a lack of a quorum). This is true even though one Commissioner attended all 12 meeting days and two others attended 10 out of the 12 meeting days. Also the Legislative Counsel attended 58% of the meeting days. This did not make up for the lack of attendance by other members.

Other standards could be used in conjunction with a policy based on percentage of meeting day attendance. As noted above, the trigger in AB 195 was a member's unexcused absence from three consecutive regular Commission meetings. During the discussion at the October meeting, two unexcused absences was suggested as a standard. (The issue of excuses is discussed below.) The consecutive meeting standard does not seem sufficient alone. For example, a person could attend one day of every third meeting and not run afoul of a three consecutive meeting standard. This is not an entirely theoretical concern. During

the 1982-83 fiscal year, when the Commission was in a period of concern over low attendance, one member attended one day of the third and sixth meetings out of the seven meetings held during that period. This pattern would not have run afoul of the three consecutive meeting standard. However, during this time, the member was present for only two out of 17 meeting days, resulting in a daily attendance rate of less than 12%.

What Would Constitute Failure to Meet Attendance Standards?

There are many reasons why a Commissioner may fail to attend a meeting. The Commissioner may be sick or there may be an illness or another family situation preventing attendance. The meeting may conflict with a business or social engagement, or with vacation plans. A Commissioner may have planned to attend a meeting that is rescheduled to a date the Commissioner cannot attend. Or there may be any number of other reasons. Thus, the attendance standard must provide some leeway to cover such situations. A Commissioner cannot reasonably be expected to attend every scheduled meeting day.

Excuses

Should a formal excuse procedure be adopted? If the Commission adopts a standard based on consecutive meetings missed, or total meeting days missed, should an absence be ignored if the absent Commissioner provides a sufficient excuse? If so, who should judge the sufficiency of the excuse, the Chairperson or the full Commission? In the past, when excuses were granted, an excuse was granted whenever requested. One member who failed to attend any meeting during an eight-month period was nevertheless granted excuses from attending some of the meetings. Moreover, granting an excuse does not deal with the basic problem of obtaining a quorum at meetings. The staff recommends against adopting an excuse system for determining whether a Commissioner is satisfying the meeting attendance standard. This does not mean, however, that the situation of the member in a particular case must be ignored when the Commission considers what action, if any, it will take when a member is not regularly attending meetings.

Method of Raising Attendance Issue at a Meeting

It would be useful to decide on a method whereby the Commission would be informed of attendance figures and the issue of failure to meet the expected standard could be raised. Providing the information to all Commissioners would enable each individual to become aware of his or her attendance pattern. For example, the Commission might want to receive attendance data in a format such as that set out in Exhibit 3, which gives attendance figures for 1987 and 1988, with cumulative totals. (See also Exhibit 4 which summarizes annual and cumulative figures from April 1984 to the present.)

The staff could prepare a report on a monthly, quarterly, or other periodic basis, and provide a copy to each Commissioner before every meeting or less frequently. A discussion of the attendance summary could be scheduled for discussion during administrative matters at each meeting or on a less frequent basis. The existing system has been to become concerned about attendance when it is necessary to cancel a meeting or reschedule a meeting, but there has not been a systematic procedure used for review of meeting attendance. Whatever policy is adopted, it should be stated in the *Handbook*.

Consequence of Failure to Reach Expected Attendance Level

The Commission needs to determine the procedure for urging compliance with the expected attendance level by a member appointed by the Governor. If a member continually fails to meet the expected attendance level, it would be proper for the Commission to ask the Chairperson to call or write the member about the problem. In appropriate cases, the Commission might decide to send a letter suggesting that the truant commit to attending future meetings on a regular basis or consider resigning.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

Excerpts from Commission Minutes
Concerning Meeting Attendance

October 1980 Minutes:

The Commission discussed the problem of irregular Commissioner attendance at Commission meetings. The Commission requested the Executive Secretary to prepare an attendance report for the Chairperson. The Chairperson will telephone those Commissioners whose attendance is irregular to see whether their attendance can be improved. If not, the Commission may wish to request their resignation or to require their resignation pursuant to statutes that mandate regular attendance by public officials.

January 1981 Minutes:

The Commission considered Memorandum 81-8 concerning attendance at meetings. It was determined that a letter should be sent over the signature of the Chairperson to the Commissioners having attendance of less than 25%. The letter would express the concern of the Commission over the difficulty of obtaining a quorum when certain members are regularly absent, and pointing out that this places an additional burden on those Commissioners who ordinarily attend regularly when a schedule conflict develops.

September 1983 Minutes:

The Commission reviewed the report concerning attendance of members of the Commission (attached to Memorandum 83-79) and noted that attendance of Commissioners at meetings is one factor that is considered significant by the Department of Finance in recommendations concerning the continued existence and level of funding of commissions (see First Supplement to Memorandum 83-79).

September 1984 Minutes:

The Commission directed the Executive Secretary to prepare a letter for the Chairman's signature to Commissioner John B. Emerson, asking that he attend Commission meetings. If he is unable to attend, he should be asked to submit his resignation.

. . . .
The Commission decided to seek to have the Commission's enabling statute amended as follows:

. . . .
(2) A new provision should be added to provide that if a Commissioner is absent from three consecutive commission meetings without being excused by the Chairperson, that Commissioner's office shall be deemed to be vacant.

March 1985 Minutes:

Commissioner Davis was in trial at the time of the Commission meeting and was therefore unable to attend. The Commission excused Commissioner Davis' absence.

April 1985 Minutes:

The Commission excused the absence of Commissioner Arnebergh, who was in Washington, D.C., and therefore unable to attend the meeting.

June 1985 Minutes:

The Chairperson announced that he had received written and telephone communications from Commissioner Emerson indicating that he would be unable to attend the June meeting and requesting that he be excused from attending. The Commission excused Commissioner Emerson from attending the meeting.

EXHIBIT 2

Selected Correspondence Concerning Meeting Attendance

1. *The following letter was sent to two Commissioners on January 15, 1981:*

At its January 1981 meeting the Commission considered the problem of your absences at meetings during the last year. The Commission has experienced serious difficulties in obtaining a quorum for its meetings when certain members are regularly absent. These absences place a great burden on the Commissioners who attend regularly. When a schedule conflict develops they are forced to rearrange or restrict their schedules so that they can attend meetings to ensure a quorum. Judy Ashmann's recent appointment to the Municipal Court will make it even more difficult to obtain a quorum if these absences continue.

During 1980 you were present at only 22% of the the meetings (2 out of 9 meeting days). You were also not present at the January 1981 meeting. Your regular absence has seriously impaired the ability of the Commission to carry out its statutory function. At the January meeting, the Commission directed me to write to you requesting that you either regularly attend the future meetings or resign from the Commission.

Sincerely,

Beatrice P. Lawson
Chairperson
California Law Revision Commission

2. *One Commissioner responded as follows:*

February 11, 1981

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Gentlemen:

I am in receipt of your recent letter stating the numerous times that I have been absent during last year's meetings, and also stating how difficult it has been for the Commission to form a quorum for its meeting.

I sincerely regret to inform you that because I was not in the best of health, coupled with the irregularity of my daily schedule as a result therefrom, I must most reluctantly tender my resignation from the Commission.

I want you to know how much I have enjoyed working with you, and regret that, due to reason of my ill-health, I cannot spare any additional time contributing to the noteworthy work.

With my profound regrets,

Very truly yours,

3. *The other Commissioner, however, resigned in the following fashion:*

February 7, 1981

Beatrice P. Lawson

Chairperson
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Dear Ms. Lawson:

Receipt is acknowledged of your letter dated January 15, 1981.

I was indeed disappointed to receive this letter in view of the tenor and tone contained therein. If you and/or the Commission are concerned with my presence at the meetings, it would seem to me appropriate to first ask why I was unable to attend the meetings. Perhaps illness in the family or prior commitments made it impossible, or other emergency matters might have arisen. Certainly, to undertake a suggestion which you have made in your letter appears to me both rude and presumptuous.

Whether my reasons for not appearing at the meetings were or were not justified is no longer of relevance. I would not care to serve on a Commission where the members would authorize

a letter of the type that you have sent to me. I want to clearly indicate that I find it a very insulting letter.

I am this date resigning my commission and am so advising Governor Brown.

Very truly yours,

4. *The following letter was sent on November 7, 1983:*

At its last meeting, the members of the Commission expressed concern about your lack of attendance at Commission meetings. The last meeting you attended was the September 1982 meeting. You have not attended the last seven meetings (16 meeting days).

I know that it is difficult to set aside time for Commission meetings in a heavy work schedule. But all of us have had to choose among competing demands for our time, and we have made a commitment to the Commission's work and have given a high priority to this commitment.

I would appreciate receiving from you an indication that you will regularly attend future Commission meetings. The Commission needs the benefit of the contribution you can make to its work based on your experience, insight, and expertise. If, for whatever reasons, you feel unable to make this commitment, the Commission believes that you should resign so that your place on the Commission can be taken over by a Commissioner who can actively participate in the Commission's work.

It is our hope that you will decide that you can regularly attend future meetings, and we all look forward to seeing you at our future meetings.

Sincerely,

David Rosenberg
Chairperson

5. *The Commissioner responded on November 14, 1983, in part as follows:*

Thank you for your letter of November 7, 1983. I am, to say the least, embarrassed and disappointed by my record of attendance at Commission meetings. Unfortunately, I have had incredibly bad luck in coordinating my schedule with the Commission meetings.

As you are aware, I chair Gary Hart's Presidential campaign in California. Senator Hart comes to California approximately every six to eight weeks. No less than five of those trips have coincided with Commission meetings.

Since I am ultimately responsible for everything that occurs on those trips, and I travel with the Senator when he is in California, I was unable to attend those Commission meetings. Yet another Commission meeting occurred while I was engaged in a three-week jury trial. Finally, I note with dismay that the January meeting of the Commission is scheduled during a long planned two-week vacation with my wife, which will be the first extended vacation we have had in three years.

Excuses, however, do not justify the fact that my attendance record has been unfair to the other members of the Commission and to the Commission staff, and I apologize. I do want the Commission to understand, however, that my lack of attendance has not been the result of simply being busy, which I know affects everyone on the Commission, but of conflicting scheduling problems which are largely out of my control. Nevertheless, I will pledge to attend all future Commission meetings after the January, 1984 meeting. If I am unable to keep that pledge, I will promptly resign my position on the Commission so that someone more productive can be appointed to take my place.

6. *On October 23, 1984, the Chairperson wrote again as follows:*

At the last meeting, the Commission asked me to write to you to ask you either to resign from the Commission or regularly to attend meetings of the Commission.

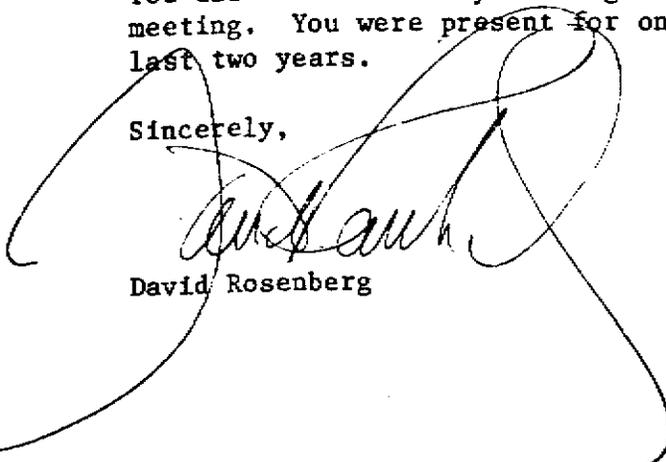
The Commission is now engaged in a major effort to prepare a new Probate Code for the 1986 legislative session. During 1985, we will regularly hold three-day meetings. We will need the active participation of all the members of the Commission or the quality of our work product will suffer.

Last November I wrote to you pointing out that the last meeting you attended was the September 1982 meeting. You did not attend the next seven meetings (16 meeting days). On November 14, 1983, you responded:

Nevertheless, I will pledge to attend all future Commission meetings after the January, 1984 meeting. If I am unable to keep that pledge, I will promptly resign so that someone more productive can be appointed to take my place.

You did not attend any meetings of the Commission after the January 1984 meeting. You were present for only one day of one meeting during the last two years.

Sincerely,



David Rosenberg

1987																								
Month:	Jan	Feb	Mar	Apr	May	Jun	Jul	Sep	Oct	Nov	Dec													
Day:	15	16	19	20	12	13	9	10	14	15	25	26	23	24	17	18	22	23	20	10	1987	%	Out	Of
Amebergh	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	Amebergh	95%	19	20
Gregory	0	0	0	1	1	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0	Gregory	30%	6	20
Marshall	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	0	Marshall	90%	18	20
Marzec	1	1	1	1	0	0	1	1	1	1	1	1	0	0	1	1	1	0	1	0	Marzec	70%	14	20
Paone	0	1	0	0	0	0	1	1	0	0	1	1	1	1	0	0	0	0	0	1	Paone	40%	8	20
Plant	n/a	n/a	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	Plant	94%	17	18
Stodden	1	1	1	1	1	1	1	1	0	0	1	1	1	1	1	1	1	1	1	1	Stodden	90%	18	20
Walker	n/a	n/a	1	1	1	1	1	1	1	1	0	0	0	0	0	1	0	0	0	1	Walker	56%	10	18
Totals:	4	5	6	7	6	6	8	7	6	6	5	5	5	5	5	6	5	4	5	4	Avg Cmr/Day:	5.50		
Quorum:	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	0	Quorum Days:	85%	17	20
Place:	LA	LA	SD	SD	SF	SF	Sac	Sac	Sac	Sac	SD	SD	Irv	Irv	LA	LA	Sac	Sac	SF	SJ	Cmr-Day:	71%	110	156

1988																										
Month:	Jan	Mar	May	May	Jul	Sep	Oct	Dec																		
Day:	14	15	10	11	5	6	20	14	15	8	9	24	1	2							1988	%	Out	Of		
Amebergh	1	1	1	1	1	1	1	1	1	0	0	1							Amebergh	83%	10	12				
Gregory	1	0	1	1	1	1	1	0	0	0	0	1							Gregory	58%	7	12				
Marshall	1	1	1	1	0	0	1	1	1	1	1	1							Marshall	83%	10	12				
Marzec	0	0	0	0	0	1	1	1	1	0	1	1							Marzec	50%	6	12				
Paone	0	0	0	1	0	0	1	0	0	0	0	1							Paone	25%	3	12				
Plant	1	1	1	1	1	1	1	1	1	1	1	1							Plant	100%	12	12				
Stodden	1	1	1	1	1	1	1	1	1	0	0	0							Stodden	75%	9	12				
Walker	0	0	1	1	0	0	0	0	0	1	1	1							Walker	42%	5	12				
Totals:	5	4	6	7	4	5	7	5	5	3	4	7							Avg Cmr/Day:	5.17						
Quorum:	1	0	1	1	0	1	1	1	1	0	0	1							Quorum Days:	67%	8	12				
Place:	LA	LA	LA	LA	Sac	Sac	LA	LA	LA	SF	SF	Sac							Cmr-Day:	65%	62	96				

1987-1988	87-88	%	Out	Of	87-88	%	Out	Of	87-88	%	Out	Of
Cumulative	Amebergh	91%	29	32	Paone	34%	11	32	Avg Cmr/Day:	5.38		
Totals	Gregory	41%	13	32	Plant	97%	29	30	Quorum Days:	78%	25	32
	Marshall	88%	28	32	Stodden	84%	27	32	Cmr-Day:	68%	172	252
	Marzec	63%	20	32	Walker	50%	15	30				

Commissioner Attendance Summary

California Law Revision Commission

Annual Totals	1984			1985			1986			1987			1988			
	%	Out	Of	%	Out	Of										
Amebergh	100%	8	8	89%	16	18	89%	16	18	95%	19	20	83%	10	12	Amebergh
Gregory	75%	6	8	89%	16	18	33%	6	18	30%	6	20	58%	7	12	Gregory
Marshall	75%	6	8	100%	18	18	83%	15	18	90%	18	20	83%	10	12	Marshall
Marzec	100%	8	8	100%	18	18	78%	14	18	70%	14	20	50%	6	12	Marzec
Paone							56%	10	18	40%	8	20	25%	3	12	Paone
Plant										94%	17	18	100%	12	12	Plant
Stodden	100%	8	8	100%	18	18	100%	18	18	90%	18	20	75%	9	12	Stodden
Walker										56%	10	18	42%	5	12	Walker
Avg Cmr/Day:	6.38			5.56			4.39			5.50			5.17			Avg Cmr/Day
Quorum Days:	100%	8	8	89%	16	18	39%	7	18	85%	17	20	67%	8	12	Quorum Days
Cmr-Day:	80%	51	64	78%	100	128	73%	79	108	71%	110	158	65%	62	96	Cmr-Day
Cumulative Totals	1984 to 1988			1985 to 1988			1986 to 1988			1987 to 1988			1988			
	%	Out	Of	%	Out	Of										
Amebergh	91%	69	76	90%	61	68	90%	45	50	91%	29	32	83%	10	12	Amebergh
Gregory	54%	41	76	51%	35	68	38%	19	50	41%	13	32	58%	7	12	Gregory
Marshall	88%	67	76	90%	61	68	86%	43	50	88%	28	32	83%	10	12	Marshall
Marzec	79%	60	76	76%	52	68	68%	34	50	63%	20	32	50%	6	12	Marzec
Paone	42%	21	50	42%	21	50	42%	21	50	34%	11	32	25%	3	12	Paone
Plant	97%	29	30	97%	29	30	97%	29	30	97%	29	30	100%	12	12	Plant
Stodden	93%	71	76	93%	63	68	90%	45	50	84%	27	32	75%	9	12	Stodden
Walker	50%	15	30	50%	15	30	50%	15	30	50%	15	30	42%	5	12	Walker
Avg Cmr/Day:	5.29			5.16			5.02			5.38			5.17			Avg Cmr/Day
Quorum Days:	74%	56	76	71%	48	68	64%	32	50	78%	25	32	67%	8	12	Quorum Days
Cmr-Day:	73%	402	552	72%	351	488	70%	251	360	68%	172	252	65%	62	96	Cmr-Day