

1 Amend 2 Cal. Code Regs., Section 18361.2 to read:

2 **§ 18361.2. Memorandum Respecting Civil Litigation.**

3 (a) If the Executive Director concludes civil litigation should be initiated, ~~he or she~~ the  
4 Executive Director shall submit to the Commission a written memorandum, which shall be first  
5 reviewed by the General Counsel, or an attorney from the Legal Division, summarizing the facts  
6 and the applicable law of the case and recommending the initiation of a lawsuit. The  
7 memorandum shall include all exculpatory and mitigating information known to the staff.

8 (b) The Commission shall review the memorandum at an executive session. The General  
9 Counsel, or an attorney from the Legal Division, and the Commission Assistant shall be in  
10 attendance. No other member of the staff may be present unless the Commission meets with a  
11 member of the staff for that person to answer questions. The Commission may not resume its  
12 deliberations until the person is no longer present. Any communication between the Commission  
13 and the person during the executive session shall be recorded. After review of the memorandum,  
14 the Commission may direct the Executive Director to do any of the following:

15 (1) Initiate civil litigation.

16 (2) Decide whether probable cause proceedings should be commenced pursuant to 2 Cal.  
17 Code of Regulations Section 18361.4.

18 (3) Return the matter to the staff for further investigation.

19 (4) Take no further action on the matter or take any other action it deems appropriate.

20 (c) If the Commission decides to initiate civil litigation, the Commission may then permit  
21 other members of the staff to attend the executive session.

22 (d) If the Executive Director deems it necessary, ~~he or she~~ the Executive Director may

1 call a special meeting of the Commission to review a staff memorandum recommending the  
2 initiation of civil litigation.

3 (e) It is the intent of the Commission in adopting this section to preserve for the members  
4 of the Commission the authority to decide whether alleged violations should be adjudicated in  
5 administrative hearings or in civil litigation, while at the same time avoiding the possibility that  
6 discussions with members of the staff might cause members of the Commission to prejudge a  
7 case that might be heard by the Commission under Government Code Section 83116.

8 Note: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5  
9 and 83116, Government Code.