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Joyce Dudley, Chair
Police Officers Standards and Training Commission
Santa Barbara County District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101

Re: *Urgent Need to Correct the Administrative Record and Permit Public Comment on the Amended ISR before POST's Resubmission of 11 CCR §1005(a) to OAL for approval.*

Dear Chairwoman Dudley:

The Los Angeles County Professional Peace Officers Association is dismayed over the POST Commission's misrepresentations and lack of transparency regarding its attempts to obtain approval from the Office of Administrative Law ("OAL") for 11 CCR 1005(a). This letter provides recent examples of these objectionable practices for which I ask that you, as POST Chair, take action to correct these deficiencies and assure that similar conduct does not recur.

As you know, 11 CCR 1005(a) makes the SIBC certificate equivalent to the more comprehensive RBC certificate for employment as a District Attorney Investigator ("DAI"). Widespread opposition from law enforcement throughout California to this regulation was voiced to POST because the SIBC certificate can be obtained with fewer hours of study and a more limited scope of training courses than what is presently required for becoming a DAI under the RBC certificate. Nonetheless, the Commission voted on September 29, 2021, to submit this watered-down regulation to OAL for approval.

Erroneous Reports by POST to Public and Law Enforcement Agencies

On December 8, 2021, POST reported that as of September 22, 2021, this specific regulation was "under review by the OAL." (See POST Informational Report on Regulatory Actions dated Sept. 22, 2021, and enclosed with POST's 12/8/21 POST Meeting Report.) That statement was false. On September 22, POST had not yet submitted the regulation to OAL for review; it was not submitted until mid-October 2021. And by December 8, OAL was no longer reviewing the regulation because it had been, along with the complete administrative record, withdrawn by POST from OAL on November 24.

The reasons for POST's "withdrawal" of the regulation were never communicated by POST to our or any other law enforcement organization or agencies who submitted opposition to POST about its adoption. Kirk Bunch,



who is representing POST in shepherding the regulation through OAL, reported to our attorney on November 30 that POST withdrew the regulation from OAL because it was too close to the Thanksgiving holiday and did not give OAL sufficient time for review. This seems disingenuous given that the law provides for a decision by OAL within 30 working days from its receipt of the administrative file from an agency like POST, which in this case expired near Thanksgiving, a fact certainly known to POST at the time of its submission. A leading practice guide on administrative procedure states about “withdrawal,” however, that “[i]f the submitting agency is advised by OAL that the filing cannot be approved, it is often prudent for the agency to withdraw the filing. This means there will be no official disapproval decision and thus *no negative publicity*.” *CALIFORNIA PRACTICE GUIDE: ADMINISTRATIVE LAW*, Chap. 26, §148 (2020). Is this the real reason for POST’s withdrawal? If so, why be coy about it and keep those interested in its administrative review process from knowing what is really going on?

POST’s Failure to Notify Public and Stakeholders about New Amended Initial Statement of Reasons (“ISR”).

When our attorney spoke with Mr. Bunch on November 30, he was told POST intended to resubmit an “enhanced” administrative file to OAL for approval of the regulation as early as sometime in March 2022. Accordingly, our attorney wrote to POST on February 23, 2022, asking for an “update as to what has happened with respect to Regulation 1005 since POST submitted it for approval to OAL in October 2021.” POST replied that it withdrew the regulation from OAL on November 29, 2021; and then added that it had also amended the ISR on January 21, 2022, to add to its administrative file and published this amended ISR on its website for public comment, for which “no additional public comments [were] received during the prescribed [15-day] period.”

In fact, according to OAL’s records, POST withdrew Regulation 1005(a) from it (as previously mentioned) on November 24, not November 29. More importantly, however, it is unsurprising that no one commented on the new, amended ISR since finding it on POST’s website is like hunting for the proverbial needle in a haystack. That supposed “notice” for the January 2022 amendment is not found under regulatory actions taken in 2022, but instead is located on POST’s website page for actions noticed on July 30, 2021. Assuming someone was lucky enough to find this anemic “notice” of the amended ISR in this intuitively unlikely location, that manner of notice is legally and practically inadequate.

Gov. C. § 11347.1(b)(1) & (2) specifies that “[a]t least 15 calendar days before the proposed action is adopted by [POST], . . . [it] shall *mail . . . a notice* identifying the added document . . . [to] persons who testified at the public hearing [and] persons who submitted written comments at the public hearing.” The purpose of Gov. C. § 11347.1 is to ensure that those who have

participated in public hearings about the regulatory process involving a particular regulation of interest to them be given a meaningful opportunity to comment about it. Yet none of the law enforcement agencies who testified against this regulation received a notice from POST by mail or email of the amended ISR. Perhaps this is why POST Commission member Braziel stated at its September 29, 2021 meeting that “we need to go back and look at our processes for identifying stakeholders and making sure we include people in the process.” Clearly that did not happen here.

While Gov. C. § 11340.85 provides that POST may publish this required notice on its website, that permissive action does not dispense with providing notice to interested persons by mail/email; it is a supplementary means of notice, not a substitute for the more direct, targeted notice required by statute. Indeed, subsection (f) makes clear that § 11340.85 “is intended to make the regulatory process more user-friendly and to *improve communication* between interested parties and the regulatory process.”

Conclusion

POST’s failure to mail or email to interested parties the notice and text of the amended ISR violates the letter and spirit of the law. Does POST now contend that we and the public are foreclosed from commenting on the ISR and having those comments included in the administrative file when it is resubmitted to OAL? Or will POST clarify that public comments about the amended ISR, which differs significantly from its previous ISR on the regulation, can be submitted within a new 15-day posted and mailed/mailed notice to interested parties? This is important because the amended ISR contains factual errors and misrepresentations about which POST should correct and OAL should be aware.

Thank you for your considered response to this letter.

Sincerely,



Wayne J. Quint, Jr.
PPOA Executive Director

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