



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*June 21, 2018 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of May 4, 2018 through June 6, 2018, the Enforcement Division received 162 complaints, opened 38 for investigation, and rejected 73. The Enforcement Division received 104 non-filer referrals during this time.

Also during this time, the Enforcement Division closed a total of 82 cases including:

- 40 warning letters,
- 20 no action letters,
- 1 advisory letter,
- 14 as a result of the adoption of stipulations at the May Commission meeting, and
- 7 committees were administratively terminated.

The Division had 905 cases in various stages of resolution at the time of the May Monthly Report and currently has approximately 919 cases in various stages of resolution, including the 20 cases before the Commission as listed in the June 2018 agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 11 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 22 remain pending. We are receiving 2015, 2016, and 2017 referrals periodically through the new Electronic Complaint System.

At Commissioner Audero's direction, the Enforcement Division is in process of gathering and organizing the case pendency by type data. This project is difficult because the new Case Management System was only recently implemented and contains no simple method to obtain accurate and useful case pendency by type data.

However, we have provided what information we have currently on the next page. This chart details the annual statistics for enforcement complaints, referrals and cases. The information in the chart has been gathered from public reports, information from the defunct and inactive database, and data that has been converted into current form, so the numbers are close estimates in some instances.

	<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
1	Complaints Received	1,228	609	1,180	564
2	Referrals Received	614	596	350	1,616
3	Total Complaint and Referrals Received	1,842	1,205	1,530	2,180
4	Cases opened	1,405	2,273 <sup>1</sup>	1,315	1,480
5	Cases closed	1,869	1,253	1,803	1,477
6	Cases with resolutions approved by the Commission <sup>2</sup>	332	333	311	340
	a Streamline cases approved by Commission	234	258	234	262
	b Mainline cases approved by Commission	86	69	70	66
	c Default cases approved by Commission	12	6	7	12
7	Total fines imposed by the Commission	\$744,868	\$703,821	\$894,257	\$1,126,933
8	Warning letters issued	673	442	489	505
9	Administrative terminations	69	116	668	297
10	Cases closed with violations found <sup>3</sup>	1,074	891	1,468	1,142
11	Advisory letters issued	10	19	14	17
12	No action closure letters	453	343	321	318

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<sup>1</sup> In 2015, the Enforcement Division received information regarding 2,460 \$50 Annual Fee non-payers in May and another 1,786 in October of that year. None of these came through the typical “referral” process and had to be evaluated for: whether the committee had been terminated locally or with SOS, whether the committee never qualified, whether the fees were paid prior to the referral, and whether records existed to evaluate the committee, before the information could be opened into a case. Therefore, these do not appear in the Referral line since they did not follow that process.

<sup>2</sup> Total for lines 6a, 6b, and 6c.

<sup>3</sup> Total for lines 6, 8, and 9.

## II. LEGAL DIVISION

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**STAFF:****BRIAN LAU, ACTING GENERAL COUNSEL****TRISH MAYER, ASSISTANT CHIEF****JOHN FESER, SENIOR COMMISSION COUNSEL IV****A. Pending Litigation***Howard Jarvis Taxpayers Association, et al. v. Edmund Brown, et al.*

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds to finance campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act<sup>4</sup> (the Act) because it does not “further the purposes of the Act,” an express requirement in the Act for legislative amendment. The Attorney General’s Office is representing both Governor Brown and the Commission in this litigation. A hearing was held in Superior Court on August 4, 2017. After taking the matter under submission, the Court issued a Ruling, dated August 23, 2017, “entering a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107.”

In closed session at its meeting on September 21, 2017, the Commission voted to appeal the Superior Court decision. The Notice of Appeal was filed with the Third District Court of Appeal on January 9, 2018.

*Frank J. Burgess v. Fair Political Practices Commission*

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission’s decision and order in *In re Frank J. Burgess*, Case No. 12/516.

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<sup>4</sup> The Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source, unless otherwise indicated.

Mr. Burgess's case was first heard by an Administrative Law Judge (ALJ), and then Mr. Burgess challenged the ALJ's decision to the Commission. On March 19, 2015, the Commission rejected the ALJ's decision and decided the case based on the record and the parties' supplemental briefing. Ultimately, the Commission found that Mr. Burgess had violated Section 87100 of the Act and imposed a \$5,000 fine on July 7, 2015.

Mr. Burgess challenged that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On September 15, 2016, the Superior Court issued its judgment granting the petition on due process grounds. The Court further ordered the Commission to file a Return to the Writ on or before November 7, 2016.

After a closed session discussion at the Commission meeting on October 20, 2016, the Commission voted to let the Superior Court's judgment stand and to vacate and set aside its Decision and Order in the underlying matter, thereby dismissing the administrative proceedings against Mr. Burgess. The Commission timely filed a Return to the Writ.

On November 14, 2016, Burgess filed a Motion for Attorney's Fees under Code of Civil Procedure section 1021.5 (private attorney general). The FPPC, in conjunction with the Attorney General's, office prepared an opposition to this motion which was filed on January 25, 2017. The fee motion was heard on April 3, 2017, and the Superior Court took the matter under submission after argument by the parties. On April 10, 2017, the Superior Court granted Burgess's motion for attorney's fees. The Commission voted in closed session to appeal the Superior Court's order granting Burgess attorney's fees at the June meeting.

The parties' respective appellate briefs have been timely filed: Appellant's opening brief on November 6, 2017; Respondent's opposition brief on December 5, 2017, and Appellant's reply brief on December 26, 2017. A hearing date for oral argument has not yet been set.

## **B. Outreach and Training**

None to report.

## **C. Advice**

In May 2018, the Legal Division responded to the following requests for advice:

- ***Requests for Advice:*** Legal Division Political Reform Consultants and attorneys collectively responded to more than 1,064 e-mail and telephone requests for advice.
- ***Advice Letters:*** Legal Division received 21 new advice letter requests under the Political Reform Act and completed 19 letters.
- ***Section 1090 Letters:*** Legal Division received six new advice letter requests concerning Section 1090 and completed seven letters. This year to date, we have received 25 advice requests regarding Section 1090.

## D. Advice Letter Summaries

Full copies of FPPC Advice Letters, including those listed below, are available at:  
<http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

### Campaign

**Emily A. Andrews**[A-18-035](#)

A general purpose recipient committee may not omit 501(c)(3) organizations or other types of organizations as top contributors to the committee on advertisements that support or oppose candidates when such organizations have restricted their funds for non-candidate use only because no exemption is provided under the Disclose Act's new provisions. However, the Act does not prevent the committee from including the phrase "funds not used for candidate support" after the name of a 501(c)(3) top contributor on the advertisements.

**Robin D. Peters**[I-18-065](#)

A councilmember who makes fundraising behests on behalf of a nonprofit organization must report all resulting donations of \$5,000 or more per calendar year. This includes requests made to friends and relatives, and requests regardless of the donation's jurisdiction of origin. However, a mailed solicitation from the nonprofit that does not include the councilmember's name or photo in any form is not a "behest" and the donations in response are not reportable.

**Matthew C. Alvarez**[I-18-080](#)

Under the Act, a political committee distributing a mailer, supporting or opposing a city candidate, in a jurisdiction requiring "paid for by" and "not authorized by" disclosures in addition to the disclosures required under the Act may merge the language into one comprehensive disclosure statement.

### Conflict of Interest

**Randi Wallach**[A-17-283](#)

Corporation formed by local governmental agencies to manage a building housing the agencies, as well as non-governmental tenants, is a local governmental agency under the Act and required to adopt a Conflict of Interest Code identifying designated officials or include the officials within the existing codes for the agencies that have formed the corporation.

**Damien Brower**[A-18-032\(a\)](#)

Additional information did not change advice issued in A-18-032. Councilmembers and a Planning Commissioner are not disqualified from making governmental decisions regarding proposed project to consolidate two golf courses and develop two senior housing facilities because their residences, rental property, and managed properties were sufficiently removed from the development of the senior housing facilities and the limited nature of the development

proposed for the removed course holes would not significantly change the nature of the open space.

**John Imperato**[I-18-052](#)

Local advisory committee members are not public officials under the Act because they do not have decisionmaking authority and therefore do not have a conflict of interest under the Act when voting on issues related to a report to be sent to the City Council.

**Andre de Bortnowsky**[A-18-054](#)

The Act prohibits officials, who have residences within 500 feet of the City-owned golf course, from taking part in governmental decisions relating to the golf course's budget because those decisions, which could result in the closure of the golf course, would have a reasonably foreseeable material financial effect on their respective residences.

**Eric May**[A-18-055](#)

Three members of a clean energy alliance board with solar panels attached to their residential and commercial properties may take part in decisions to set net energy metering rates as the decisions fall under the "public generally" exception for utility rates under Regulation 18703(e)(1), so long as the rates are applied equally, proportionally, or by the same percentage to all properties with renewable energy systems within the board's future service territory.

**Tom Schroeter**[A-18-058](#)

A councilmember who owns businesses operating at the City's municipal airport is disqualified from taking part in the City Council's decision to consider an airport hangar use policy because the decision would potentially impose restrictions on other competing businesses operating at the airport.

**Joan A. Borger**[A-18-059](#)

Mayor is prohibited from taking part in governmental decisions relating to the Costco corporation's proposed redevelopment of its existing retail warehouse facility, including the addition of a 32-position gas station on the premises, because those decisions would have a reasonably foreseeable material financial effect on the Mayor's business interest in his gas station located within 0.41 miles of the potential Costco gas station.

**Donna Mooney**[A-18-067](#)

Councilmember, who owns a residential real property rental unit within 500 feet of an area currently zoned for medical marijuana business use, may participate in zoning amendments to allow recreational marijuana business use subject to the same conditions and operating requirements where the facts do not indicate a reasonably foreseeable measurable impact on the property due to the decision.

**Noel Tapia**[A-18-072](#)

Councilmember, who is also an employee of the county sheriff's department, is not prohibited from voting on contracts related to the development of the proposed municipal public safety facility because the proposed facility will not have a reasonably foreseeable material financial effect on the official's interests.

**Donna Mooney**[A-18-076](#)

Councilmember, who owns five properties with the potential for an Accessory Dwelling Unit (ADU), may not participate in an ordinance decision that will determine if he may build ADUs on his properties as the decision will have a reasonably foreseeable and material financial effect on his properties' value.

**Andrew Morris**[A-18-078](#)

Councilmember employed by an investment and development firm is disqualified from decisions relating to the Town's participation in a statewide infrastructure program where the decisions were triggered in part by the firm's request to participate in the program so that the firm may take advantage of the program's financing for a pending project.

**Zack Friend**[A-18-086](#)

Regional transportation commissioner and county supervisor with a home located approximately 250 feet from a railway line right of way is disqualified from decisions relating to the railway line, including the selection of a new line operator, implementation of a trail planned by the RTC, and involvement in the study and implementation of recommendations for future use of the corridor, will have a reasonably foreseeable material financial effect on his residential property.

**Shannon Eckmeyer**[A-18-087](#)

Architectural Heritage and Landmarks Commissioners are not prohibited from taking part in governmental decisions relating to a Mills Act application associated with a residential real property despite the fact that the property is within 500 feet of the commissioners' respective residences. The maintenance and improvements to the subject property covered by the application were not the types of changes to that property that would have a measurable impact on the residences.

**Blaise J. Jackson**[A-18-088](#)

A board member does not have a conflict of interest in decisions involving an entity he previously contracted with for billing and collections work, because the board member did not receive income from, hold any position of management with, or have an ownership interest in, the billing and collections company.

**Molly S. Stump**[A-18-106](#)

Mayor is prohibited from taking part in decisions relating to the potential modification of at-grade crossings of the rail corridor that runs through the City, including consideration of "citywide options" that would relocate the tracks below ground, because those decisions would have a disqualifying financial effect on the Mayor's business interest in multi-family residential rental property located within 500 feet of the tracks. The Vice Mayor is also prohibited from taking part in those decisions because they would have a disqualifying effect on his real property interest in his residence located within 500 feet of the tracks and an existing at-grade crossing. However, the Act does not prohibit a councilmember, who is a tenant of a residential property located within 500 feet of the tracks and existing at-grade crossing, from taking part in those decisions because the decisions would not have a disqualifying effect on his leasehold interest.

## Conflict of Interest Code

### **Linda Filchev**

[I-17-169](#)

Section 87311 of the Act provides that the preparation of proposed conflict of interest codes by state agencies shall be subject to the Administrative Procedure Act (APA). Regulation 18750(a)(3)(B) clarifies basic notice requirements for any agency subject to the APA. The regulation does not impose APA notice requirements on any agency not subject to the APA's notice requirements. Nonetheless, even if the agency is not subject to the APA, the Commission's review of an agency's conflict of interest code remains subject to the APA.

## Section 1090

### **Inder Khalsa**

[A-17-248](#)

Neither the Act or Section 1090 prohibit the City and nonprofit from entering future agreements if the city librarian also serves a volunteer board member of a nonprofit organization. Moreover, the librarian is not prohibited from participating in the making or administration of any future agreements with the nonprofit in her role as the librarian.

### **Joshua E. Morrison**

[A-18-010](#)

Under the Act, free admission to a professional development conference is not considered a gift or income under the "informational material" exception, and the official is not required to report the free admission on the official's statement of economic interests. Other payments for travel provided as part of a conference are reportable as income so long as the official work performed for the source is equal or greater consideration for the payments. Additionally, the receipt of the income does not prohibit an official from taking part in decisions related to contracts between clients of the source and the official's agency under the Political Reform Act or Section 1090.

### **Donna Mooney**

[A-18-053](#)

Section 1090 prohibits councilmember McConnell, who also sits on the Housing Authority Board, from entering into a housing assistance payment contract with the board so that he may accept a Section 8 Housing Choice voucher from an existing market-rate tenant. The requirements for a remote interest under Section 1091(b)(12) are not met and the contract is prohibited.

### **Charles Lester**

[A-18-060](#)

Former District Director, who participated in the settlement agreement and subsequent permit amendment for a development project necessitating a lot retirement program as a mitigation condition, is not prohibited from working as a consultant on the implementation of the program under the permanent ban as the implementation is a separate proceeding. Additionally, he is not prohibited under Section 1090 where the facts do not indicate that he had influence over the program to promote his personal financial interests in the future implementation contract, triggered ten years after the permit amendment.

### **Kristen Barneich**

[A-18-073](#)

A city councilmember, who also serves as an uncompensated member of a nonprofit organization's board, may take part in the council's decisions to donate or enter into contracts

with a local nonprofit because the councilmember does not have a disqualifying interest in the decisions under the Act. Moreover, under Section 1090 the councilmember does not have a financial interest in any contracts between the city and the nonprofit organization.

**Michael J. Maurer**

[A-18-091](#)

Section 1090 does not prohibit transportation authority from entering into a cooperative agreement with a business entity where no members of the board or staff have a prohibitory financial interest in the contract.

### **E. Miscellaneous Decisions**

None to report.

### **F. Potential Upcoming Regulations**

**August 16, 2018.**

Parent, Subsidiary, Otherwise Related Business Entity Definition (Adoption) – The Commission will discuss and vote on possible amendments to conflict of interest rules defining parent and subsidiary corporations and otherwise related business entities and clarifying disqualification requirements when an official has an interest in a business entity and the decision implicates a parent, subsidiary, or otherwise related business entity of the business entity.

**Scheduling to be Determined.** Discussion of materiality thresholds under the Act's conflict of interest provisions including bright-line materiality standards and clarification of the 500-foot property rule.

### **G. Conflict of Interest Codes**

#### **Biennial Notices**

Every local government agency in California is required to review its conflict of interest code in 2018 and submit a notice by October 1, 2018 to its code reviewing body as to whether the code needs to be amended. Information on this requirement, including blank biennial notices, have been sent to all multi-county agencies, as well as to counties and cities who must administer this requirement. This information is also posted on the FPPC website.

#### **Adoptions and Amendments**

##### *State Agency Conflict of Interest Codes*

None to report.

##### *Multi-County Agency Conflict of Interest Codes*

- Inland Empire Health Plan Health Access Joint Powers Agency
- Inland Empire Health Plan Joint Powers Agency

- San Joaquin River Exchange Contractors Groundwater Sustainability Authority

### **Exemptions**

None to report.

### **Extensions**

None to report.

## **H. Probable Cause Hearings**

*Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.*

*The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.*

1. ***In the Matter of Re-Elect Terry Cox For Central Unified School District Trustee Area 6, 2016, Terry Cox, and Julie Lim, FPPC No. 17/382.*** On May 15, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

- Count 1: The Committee, Cox, and Lim failed to timely file a semiannual campaign statement for the reporting period of October 23, 2016 through December 31, 2016, due January 31, 2017, in violation of Section 84200, subdivision (a).
- Count 2: The Committee, Cox, and Lim failed to timely file a semiannual campaign statement for the reporting period of January 1, 2017 through June 30, 2017, due July 31, 2017, in violation of Section 84200, subdivision (a).
- Count 3: The Committee, Cox, and Lim failed to timely file a semiannual campaign statement for the reporting period of July 1, 2017 through December 31, 2017, due January 31, 2018, in violation of Section 84200, subdivision (a).
- Count 4: The Committee, Cox, and Lim failed to timely file a 24-hour contribution report for a \$1,000 late contribution received on August 10, 2016, in violation of Section 84203.
- Count 5: The Committee, Cox, and Lim failed to timely file a 24-hour contribution report for a \$1,000 late contribution received on September 26, 2016, in violation of Section 84203.
- Count 6: The Committee, Cox, and Lim failed to timely file a 24-hour contribution report for a \$2,000 late contribution received on October 8, 2016, in violation of Section 84203.

- Count 7: The Committee, Cox, and Lim failed to timely file a 24-hour contribution report for a \$1,000 late contribution received on October 18, 2016, in violation of Section 84203.
- Count 8: The Committee, Cox, and Lim failed to timely pay the requisite 2017 annual fee by the January 15, 2017 due date, and the resulting penalty, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 9: The Committee, Cox, and Lim failed to timely pay the requisite 2018 annual fee by the January 15, 2018 due date, in violation of Section 84101.5, subdivision (c).

2. ***In the Matter of Committee to Clean House, Kevin McVey, and Janice Smith, FPPC No. 15/2202.*** On May 31, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

- Count 1: The Committee and McVey failed to name the Committee to include the last names of the opposed candidates, the offices sought and year of the election, and the fact that the Committee opposed the candidates, and failed to identify the committee as being primarily formed on its statement of organization, in violation of Section 84102, and Regulation 18402, subdivision (c)(3).
- Count 2: The Committee and McVey failed to disclose, on certain television advertisements, that the advertisements were not authorized or paid for by a candidate or committee controlled by a candidate, in violation of Section 84506.5, subdivision (a); and failed to disclose the proper committee name on advertisements, in violation of Section 84506, subdivision (a)(1).
- Count 3: The Committee, McVey, and Smith failed to maintain adequate source documentation for 100 percent of its contributions received, amounting to \$10,486.50; and approximately 93 percent of expenditures made, amounting to \$7,836, in violation of Section 84104 and Regulation 18401.
- Count 4: The Committee and McVey accepted cash contributions of \$100 or more, and made cash expenditures of \$100 or more, in violation of Section 84300, subdivisions (a) and (b).
- Count 5: The Committee and McVey failed to timely report contributions less than \$100 on the Committee's pre-election campaign statement covering the period of January 1, 2015 to October 22, 2015, in violation of Section 84211, subdivisions (a) and (d).
- Count 6: The Committee, McVey, and Smith failed to timely report a loan in the amount of \$1,631.50 along with repayment information; contributor information for contributions of \$100 or more; and expenditures amounting to \$1,121.71, on the Committee's semiannual campaign statement covering the period of October 23, 2015 to December 31, 2015, in violation of Section 84211, subdivisions (a), (c),

(f), (g), (i), (j), and (k).

- Count 7: The Committee and McVey failed to timely file a 24-hour contribution report for a loan in the amount of \$1,631.50 received on October 9, 2015, in violation of Section 84203.
- Count 8: The Committee and McVey failed to timely file a 24-hour contribution report for a contribution in the amount of \$1,300 received on October 17, 2015, in violation of Section 84203.
- Count 9: The Committee and McVey failed to timely file a 24-hour contribution report for a contribution in the amount of \$1,700 received on October 26, 2015, in violation of Section 84203.
- Count 10: The Committee and McVey failed to timely file a 24-hour contribution report for two contributions amounting to \$3,000 received on October 28, 2015, in violation of Section 84203.
- Count 11: The Committee and McVey failed to timely file a 24-hour independent expenditure report for an independent expenditure in the amount of \$1,125 made on October 28, 2015, in violation of Section 84204.
- Count 12: The Committee and McVey failed to timely file a 24-hour independent expenditure report for independent expenditures amounting to \$2,000 made on October 30, 2015, in violation of Section 84204.
- Count 13: The Committee and McVey failed to timely file a 24-hour independent expenditure report for an independent expenditure in the amount of \$1,350 made on November 4, 2015, in violation of Section 84204.

## III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: DEBORAH HANEPHIN, MANAGER

### **Phone Advice Requests**

The External Affairs and Education Division responded to 642 requests for technical assistance via phone in May.

### **Training & Outreach**

Political Reform Consultant Alex Castillo conducted a workshop for campaign filing officers in San Ramon. The presentation was attended by approximately 45 clerks from San Ramon and surrounding cities.

Alex Castillo also participated in a workshop hosted by Contra Costa County for prospective candidates. Ms. Castillo presented information on how candidates can comply with the Political Reform Act as they start their campaigns. There were roughly 100 attendees.

June is shaping up to be a busy training month with seven workshops scheduled for candidates, treasurers, and filing officers in various cities.

### **Additional Training**

Our video tutorials for Form 700 filers continue to be successful. During the month of May when only assuming and leaving office statements might have been due, the videos had a total of 324 views. The filing officer videos for both campaigns and the Form 700 were viewed 154 times.

### **Filing Schedules**

Staff created filing schedules for Santa Rosa due to a third pre-election report required by the local campaign ordinance.