

Fair Political Practices Commission

MEMORANDUM

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda

From: Sukhi K Brar, Commission Counsel
John Wallace, Acting General Counsel

Re: Proposed Amendments to Regulation 18360 - Notification to Subjects of Enforcement Investigations

Date: May 26, 2011

I. Introduction

The Commission is seeking to implement a procedure that would provide notice to those who become the subject of an Enforcement investigation that they are being investigated by the Commission before such information is released to the general public.

II. Background and Current Law

Sworn Complaints:

Regulation 18360 currently requires the Commission to provide a notice within 14 days (“14-day notice”) to any complainant who submits a sworn complaint to the Commission with regard to an Enforcement matter. The notice must provide information as to whether or not the Commission has chosen to investigate the matter, refer the matter to another agency, take no action or take additional time to evaluate the complaint.

Regulation 18360 requires the subject of a sworn complaint be provided with a copy of the complaint within 3 business days of the date the complaint is received by the Commission. The Commission is also required to provide the subject of the complaint with a copy of the 14-day notice if a complainant is provided with the 14-day notice, though Regulation 18360 does not clearly specify when this is to be done. In addition, Regulation 18360 does not impose restrictions on releasing information contained in the 14-day notice to the public prior to the time the Commission sends the subject of the complaint a copy of the 14 day notice.

Staff Initiated Investigations:

In addition to sworn complaints submitted to the Commission from members of the public, Enforcement Division also proactively initiates investigations. With respect to Enforcement Division, or “staff-initiated” investigations, Regulation 18360 states that the subject of the investigation must be provided notice of the investigation at the time notice is provided to

the FPPC's Commissioners. The Regulation does not impose restrictions on communicating information about staff-initiated investigations to individuals, other than the complainant and the Commissioners, prior to the time the subject of the investigation is informed of the investigation.

III. Regulatory Changes

These amendments seek to require that no member of the Commission's staff be allowed to communicate the Commission's decision to investigate a matter, refer a matter to another agency, take no action or take additional time to evaluate the complaint to anyone other than members of Commission staff, other governmental agencies that have an official and specific interest in the information, or to individuals for purposes of investigation of the complaint until at least five days have passed from the time the 14-day notice has been sent to the complainant and the subject of the complaint. This proposed period is intended to ensure that the Commission treats all participants within an enforcement action fairly and it is appropriate that the subject of a complaint be given adequate notice of the contents of the 14-day notice prior to it being disseminated.

The amendments also seek to clarify that 14-day notices must be sent to the complainant and the subject of a complaint contemporaneously.