



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Casher, Wasserman, and Wynne
From: Sukhi K. Brar, Senior Commission Counsel
Subject: Repeal and Adopt Regulation 18360, Amend Regulation 18362
Date: November 6, 2015

Staff has identified ways to improve the procedure to notify Enforcement complainants and those who are the subject of an Enforcement complaint. Staff has also identified the need for an established and detailed policy for media and public records inquiries related to Enforcement records. The proposed amendments to Regulations 18360 and 18362¹ are intended to improve the current processes and to reflect best practices for the Commission to follow.

I. COMPLAINTS - REGULATION 18360

A. Enforcement Complaint Notification Procedures

The Act and its Regulations contain certain procedures to follow in Enforcement cases. Among them is the requirement that the Commission provide notice to the complainant within fourteen days after the receipt of the complaint of the course of action the Commission will take, if any. (Section 83115, Regulation 18360). This notice is commonly referred to as the “14-Day Letter.” Under current Regulation 18360, the Executive Director is required to inform the complainant if the Commission will take any of the following actions:

“(A) Investigate the allegations of the complaint, in which case the response shall inform the complainant the commencement of an investigation only indicates the complaint alleges a violation of the Act, and the culpability of the person complained against, if any, has not been determined.

“(B) Refer the complaint to another governmental agency.

“(C) Take no action on the complaint because, on the basis of the information provided, the Commission does not appear to have jurisdiction to investigate, but the complainant may provide additional information.

¹ The Political Reform Act (Act) is in Government Code sections 81000 through 91014, and all further statutory references are to this code. The Commission’s regulations are sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

“(D) Take no action on the complaint because the allegations of the complaint, absent the Commission receiving additional information, do not warrant the Commission’s further action for the reason stated.

“(E) Take additional time to evaluate the complaint to determine whether an investigation should ensue and provide an appropriate explanation for the delay. This information shall be provided within successive intervals of no more than 14 days per interval until the Commission notifies the complainant it has acted on the complaint under subparagraphs (A) through (D).”

Under current Regulation 18360, there are different procedures depending on whether the matter is based upon a sworn complaint or the matter is the result of a Commission initiated investigation.

When the Commission receives a sworn complaint:

- The Executive Director provides the subject of the complaint with a copy within three business days of receipt and informs the subject of his or her opportunity to respond before the Executive Director makes a final determination on how to proceed with the complaint. The Executive Director does not make a determination until 14 days have passed from date of receipt, unless the determination is to take no action.
- The Executive Director notifies a complainant within 14 calendar days of receipt of a sworn complaint that the Commission will take one of the courses of action listed above.
- The Commission does not to disclose contents of the 14-day letter to the public until at least five business days have passed from when the 14-day letter is sent to the complainant and the subject of the complaint, unless the complaint is rejected by the Executive Director.
- The Executive Director sends a notice of resolution to the complainant and notice of any public hearing or meeting, or any public court hearing as a result of the complaint.

When the Commission proceeds with a Commission initiated investigation the following procedures are listed in the current Regulation 18360:

- The Executive Director sends notification of the potential investigation to the subject and informs the subject of his or her opportunity to respond within 10 calendar days from the date notification is sent, and informs the subject that no determination will be made until 10 days calendar days have passed from the date notification was sent.
- No documents are disclosed to the public until five business days have passed from the time the subject of the investigation is informed or sent notification of the investigation.

The proposed amendments will shift many of the initial notification procedures from the Executive Director to the Chief of Enforcement as explained below. Under proposed Regulation 18630, the following notification procedures will be followed for sworn complaints:

- The Enforcement Division must notify the respondent in writing within three business days of receipt of a sworn complaint and provide each person the complaint alleges committed a violation a copy of the complaint and notice that those individuals may respond to the complaint. This is similar to our current process, however, currently the Executive Director is tasked with sending this notification, but in reality the Enforcement Division is best suited to complete this task. The Chief of Enforcement has discretion to withhold this notice if it would jeopardize an investigation.
- Within 14 days of receiving a sworn Enforcement complaint, the Enforcement Division will notify the complainant that it will be taking one of the courses of action listed above under the current regulation. The Enforcement Division will send the same notice to the subject or subjects of the complaint at the same time it is send to the complainant. The Chief of Enforcement has discretion to withhold this notice if it would jeopardize an investigation. Currently, the Executive Director is tasked with sending this notification, but in reality the Enforcement Division is best suited to complete this task. As noted below, a respondent does have the opportunity to appeal the decision made in the 14-Day Letter to the Executive Director as is also currently allowed. The current five day waiting period to release contents of the 14-Day letter is removed.
- The Enforcement Division will send a notice of resolution to each complainant who filed a complaint and was notified the Enforcement Division would investigate the allegations in the complaint.

Under proposed Regulation 18360, the following notification procedures will be followed for Commission initiated investigations:

- The Enforcement Division will notify any potential subjects of an investigation and also provide any documents submitted by a member of the public to any potential subjects of an investigation if the investigation resulted from information provided by a member of the public. The Chief of Enforcement has discretion to withhold this notice if it would jeopardize an investigation. There is no longer a five day waiting period (after notice to subjects of the investigation) for the Commission to confirm a Commission initiated investigation.
- Before pursuing a Commission initiated investigation, the Enforcement Division may send a letter of inquiry in order to determine whether a case should be opened to further investigate potential violations. Upon request by a member of the public, the Commission may confirm a letter of inquiry and provide a copy two calendar days after the letter of inquiry is sent.

B. Reconsideration of Intended Action

The proposed amendments allow a person who files a sworn complaint and disagrees with the response sent in the 14-day letter by the Enforcement Division to seek reconsideration from the Executive Director within 20 calendar days of receipt of the response. This procedure is also currently allowed. Additionally, the proposed amendments would provide that the Executive Director will decide to grant reconsideration based on a finding of good cause.

C. Media and Public Inquiry Policy

The proposed amendments provide that the Commission will respond to requests for information about complaints and investigations as follows:

- **Sworn complaints:** The Commission may confirm receipt of a sworn complaint at any time, but will not provide a copy of the complaint until two calendar days after sending a copy of the complaint to the subject or subjects of the complaint. Commission staff will not disclose any action the Enforcement Division intends to take until after it sends the 14-day letter to the complainant.
- **Commission initiated investigations:** The Commission may confirm that a letter of inquiry was sent and may provide a copy of the letter and any documents submitted by the complaining member of the public two calendar days after sending the letter of inquiry. The Commission may confirm that it has opened a case on its own initiative two calendar days after sending notice to all identified subjects of the investigation. Currently, the policy is to release information about a Commission initiated investigation five business days after the respondent is notified or notification of the investigation is sent. Upon request, at the same time, the Commission will provide a copy of any documents submitted to the Enforcement Division by the complaining member of the public.

II. ACCESS TO ENFORCEMENT RECORDS (REGULATION 18362)

The proposed amendments to Regulation 18362 provide an update to current practices for release of records and costs of copying. The amendments account for the option for releasing records electronically as well as in paper format.

III. CONCLUSION

In order to achieve the appropriate balance between efficiency, fairness and access to information staff strongly recommends adopting the proposed amendments.

Attachments:

Repeal and Adopt -- Regulation 18360

Amend -- Regulation 18362