FPPC Enforcement Retrospective & Prospective
Policy Meeting
November 22, 2019
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<td>The year to come...</td>
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2019 Enforcement Trends

• Referrals Not Slowing Down
• Laundered Campaign Contributions
• Personal Use of Campaign Funds
• Advertisements/Mass mailers
• Campaign Related Communications at Public Expense
Complaints and Referrals Received (As of 11/1/19)
Laundered Campaign Contributions & Personal Use of Campaign Funds (Complaints Received)
Laundered Campaign Contributions & Personal Use of Campaign Funds (Cases Opened)

- **2016**: 8 (Laundered) + 15 (Misuse) = 23
- **2017**: 4 (Laundered) + 6 (Misuse) = 10
- **2018**: 7 (Laundered) + 10 (Misuse) = 17
- **2019**: 6 (Laundered) + 7 (Misuse) = 13

Legend:
- Blue: Laundered Campaign Contributions
- Orange: Misuse of Campaign Funds
Advertisements & Mass Mailings
2016 - 2019

Complaints

Cases Opened
Mass Mailings/Ads Sent at Public Expense

Number of Cases Opened

Case Resolutions

Advisory Letter
Stipulation
Warning Letter
No Action Closure Letter

18901.1 & 18420.1
89001 and 18901
Program

- 2019 Enforcement Trends
- **Resource Allocation 2019/2020**
- Penalties 2019/2020
- Streamline/WL Discussion
- Roadblocks to Enforcement
- Legislative Proposals
- Regulatory Proposals
- The year to come...
Resource Allocation 2019/2020 (Priorities)

• What was prioritized for 2019?
• What should be prioritized for 2020?
Types of Cases Opened 2018 v. 2019

2018 – Election Year

- Campaign (59%)
- SEI (27%)
- Other (14%)

2019 – Non-Election Year

- Campaign (28%)
- SEI (61%)
- Other (11%)
Drill Down – Campaign Cases Opened

<table>
<thead>
<tr>
<th>Year</th>
<th>Campaign Non-Filer</th>
<th>Annual Fees</th>
<th>Campaign Non-Reporter</th>
<th>Campaign Contribution Limits</th>
<th>Laundered Campaign Contributions</th>
<th>Other Campaign</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>10</td>
<td>21</td>
<td>34</td>
<td>63</td>
<td>107</td>
<td>683</td>
</tr>
<tr>
<td>2019</td>
<td>8</td>
<td>7</td>
<td>20</td>
<td>30</td>
<td>112</td>
<td>255</td>
</tr>
</tbody>
</table>
Prioritizing
Complaint
Processing

Complaints Received 2018

Days Opened (Median)

10

Complaints Received in 2018

- Case Open (36%)
- Complaint Rejected (64%)

Days Opened (Median)

10
Complaints Received 2019

Days Opened (Median) 6

Complaints Received in 2019

- Case Open (35%)
- Complaint Rejected (55%)
- Intake Review (10%)
Referrals Received – 2018 v. 2019

2018
- Case Open (93%)
- Referral Rejected (7%)

2019
- Case Open (84%)
- Referral Rejected (10%)
- Intake Review (6%)
Campaign Related Communications at Public Expense

Personal Use of Campaign Funds

Conflicts of Interest

Advertisements and Mass Mailings (Disclose Act)

Other areas

- Pursuing Nonfilers
- Behested Payments
- Contract Work
- Pursuing defaults and nonpayment
<table>
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<tr>
<th>Issue</th>
<th>Median Case Pendency (2016-2019 Cases)</th>
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<tr>
<td>Statements of Economic Interest Non-Filer</td>
<td>73</td>
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<tr>
<td>Campaign Non-Filer</td>
<td>109</td>
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<tr>
<td>Recordkeeping</td>
<td>151</td>
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<tr>
<td>Lobbying Reporting</td>
<td>202</td>
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<tr>
<td>Mass Mailings</td>
<td>208</td>
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<tr>
<td>Campaign Contribution Limits</td>
<td>216</td>
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<tr>
<td>Conflict of Interests</td>
<td>220</td>
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<tr>
<td>Advertisements</td>
<td>233</td>
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<tr>
<td>Misuse of Campaign Funds</td>
<td>347</td>
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<tr>
<td>Laundered Campaign Contributions</td>
<td>367</td>
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<tr>
<td>Campaign Bank Account</td>
<td>414</td>
</tr>
<tr>
<td>Cash and In-Kind Contributions and/or Expenditures</td>
<td>448</td>
</tr>
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Days Opened (Median) 105
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Penalties
2019/2020
Setting guidelines
Penalties 2019/2020

• General Criteria Applied
• By Category:
  • Conflicts of Interest
  • Personal Use
  • Use of Cash
  • Campaign Late Filing
  • Unreported Lobbying Activity
**General Criteria**

**Regulation 18361.5, subd. (d).**

| Consider all the surrounding circumstances including but not limited to: |
| The seriousness of the violation; |
| The presence or absence of any intention to conceal, deceive or mislead; |
| Deliberate, negligent or inadvertent; |
| Demonstrated good faith by consulting the Commission staff or any other government agency; |
| Isolated or part of a pattern; |
| Prior record of violations of the Act or similar laws; and |
| Voluntarily filed amendments to provide full disclosure. |
| Comparable cases. |
| Sophistication of the parties. |
Factors that Influence Penalties for Conflict of Interests Violations (Range $3,000 - $5,000)

**Aggravating Factors = Higher Penalty**
- Interest Not Disclosed in SEIs/Interest Concealed
- Large Personal Benefit Received
- Official Worked Directly on the Project that was the Subject of the Governmental Decision
- Large Benefit to Official’s Economic Interest
- Pattern of Violations

**Mitigating Factors = Lesser Penalty**
- No Prior History of Conflict of Interest Violations
- Cooperation with Enforcement
- Interest Disclosed in SEIs
- No Longer in Office
- Requested Advice from Agency Attorney Before Governmental Decision
- Corrective Action Taken Before Complaint Filed
- Official Did Not Work Directly on Project that was the Subject of the Governmental Decision
Personal Use of Campaign Funds – ($5,000 w. some exceptions)

- Considerations:
  - Sophistication
  - Amount
  - Reimbursement
  - Frequency
  - Own Money
Receipt of Cash/Making Cash Expenditures ($1,000 - $2,500)

• Considerations:
  • Amount
  • Percentage
  • Recordkeeping
  • Personal Use
  • Level of Sophistication
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Streamline & Warning Letter Discussion

Major Donor Committees

Behested Payment

What’s working?

What needs some review?
Streamline/WL Program

• What’s working?
  • Extended categories – committee naming, cash, ads, recordkeeping, gift limit violations
  • No surprises

• What needs reviewed?
  • Level of detail – exclusions re: 24 hr reports
  • Some of the percentages
  • Lobbying limit
  • Population exclusion bottom level
  • Add Major Donors and Behested Payments
Major Donors

- Under $30k;
- No notice;
- Never filed before;
- Filed after contact;
- Business is terminated.
Behested Payments

- Filed before Enforcement contact;
- Within 100 days of due date;
- Filed with estimated amount;
- # of payments or solicitations;
- Prior history of filing (knowledge of requirements);
- Requested info from charity;
- Amount of donation.

Exclusions –
1. Business before his/her agency;
2. Perceived or real personal benefit.
Program

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Roadblocks to Enforcement

- Subpoenas out of state
- LLCs
- Sworn officer access
- Advertisement rules
Program

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Legislative Proposals

- LLC Presumption
- FPPC Sworn Officer
- Out of State Subpoenas
- Public Agency Campaign Ads Bright Line Rule
- Advertisement Rules
- Lobbying Audits
Program

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Regulatory Proposals

The year to come...
Regulatory Proposals

- LLC recordkeeping
- Enforcement procedures regulations overhaul
- Cash + Recordkeeping = Presumption of Personal Use or Laundering
Program

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The year to come...
The year to come...
Questions?