

Thank you for requesting task force members' ideas for issues to be reviewed by the task force. Here is a list of issues that merit review:

1. At the initial meeting of the Enforcement Task Force, participants expressed concern regarding reciprocity between the FPPC and Secretary of State with respect to late filing and administrative penalties. Why should a filer be required to pay late filing penalties for late or unfiled reports for which they have paid an administrative penalty? Shouldn't late filing penalties, at a minimum, be a mitigating factor in the administrative enforcement action?
2. Should late filing penalties be tolled when campaign activity is disclosed on a publicly filed campaign report? For example, if a state candidate fails to disclose a received contribution of \$1,000 or more on a Form 497, but the filer discloses the received contribution on a Form 460 campaign report, why wouldn't the late filing penalties be tolled on the date the Form 460 campaign report was filed?
3. Why should a late filer pay late filing penalties on both a paper and electronic filing of the same report? One late filing penalty (\$10 per day) should apply per campaign report whether it is required to be filed electronically, on paper, or both.
4. Should a policy be adopted to limit public comment by Commissioners or staff on enforcement cases? Isn't acknowledging the receipt of a complaint or a decision to proceed with an investigation all that should be made public?
5. What should be the priority in use of enforcement resources? Should prosecution of serious violations of the Act be prioritized over lower level reporting violations where the public harm is not significant?
6. In May 2018, the Legislative Analyst pointed out that only 39 percent of the local reimbursement assumed in the State Budget was being collected by the Commission. Why would the Commission be enforcing local agency campaign finance ordinances if the local jurisdiction does not pay for the Commission's services?

**League of California Cities  
Input to the FPPC Enforcement Task Force**

1. An issue that warrants examination is the increased involvement of the FPPC in local enforcement actions (e.g. making the FPPC the originator of the original “warning” notice when an 87200 filer doesn’t file, and the collector of the \$10 fine). It would greatly increase the efficacy of enforcement if the agency promulgating the regulation were also the agency sending the notice and collecting the fine.
2. Comments related to the FPPC’s draft enforcement manual issued in March 2018:
  - a) It is unclear from the document what the general enforcement philosophy is. Clearly, each case should be judged on a case-by-case basis but overall, what is the tone and tenor that the Commission wants its enforcement division to take? This seems like a subcomponent of the Mission Statement. The purpose behind this is because it ultimately protects staff and staff process from the dynamics of a changing board. In other words, staff can justify its approach by pointing to the philosophical enforcement policy that the Commission has adopted. An analogy would be a local jurisdiction’s General Plan – if the policy is to go up, not out, then don’t complain when projects come forward that are higher than existing projects.
  - b) The enforcement manual should have a section that is focused on the role of the Commission and the proper interrelationship between the Commission and staff with respect to enforcement matters.
  - c) I like the calibration that is established for the streamlined enforcement programs – i.e. the tiers and penalty payments. Perhaps something like this could be carried over to Section VIII, d). Having a common understanding and some benchmarks on appropriate case resolution is always helpful, especially for new staff.

Related to item (a) above, it is unclear if staff should prioritize enforcement actions chronologically or some other way. Staff should be entrusted to prioritize complaints and investigations based on the severity of the violation. If this is how the Commission wants staff to operate then it should say so.

3. A common complaint from elected officials and city clerks alike is that the FPPC does not communicate with respect to the enforcement process and/or the end result. The PowerPoint that the FPPC enforcement staff gave to the Commission in March was quite informative. Most local elected officials and clerks are not aware of how complaints are received and handled, and sometimes when they do not hear from the FPPC by way of formal notification they assume that no news is good news. Also, they’re not aware of the timing – how long does one have to lodge a complaint about a current election violation and in what amount of time must it be resolved and the affected parties notified. Also, while priorities change based on the desire of the new Commission Chair, a set standard of policies and procedures in regards to enforcement should be openly shared with all public agencies in California.

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4. It is frustrating when enforcement of issues that arise during active campaigns don't get resolved until many months after the election. Sometimes the FPPC makes a positive finding of wrongdoing, and the campaign (or person) is fined, but in many cases, they have been elected and have taken office. If decisions are rendered sooner, the outcome can better inform voters.
  
5. To have an e-filing database that communicates with the various filing software programs. For example, the Netfile system used County filings communicating with the e-file system that the FPPC provides. Efficiency would improve and frustration reduced if the available filing software programs could speak the same language so that the FPPC can accept forms generated through different programs.

## Sasha Linker

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**From:** Adam Silver  
**Sent:** Thursday, August 16, 2018 1:11 PM  
**To:** Sasha Linker  
**Subject:** FW: FPPC Enforcement Task Force Meeting

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**From:** Dora Rose [mailto:DRose@lwvc.org]  
**Sent:** Wednesday, July 25, 2018 3:15 PM  
**To:** Adam Silver <asilver@fppc.ca.gov>; skaufman@kaufmanlegalgroup.com  
**Cc:** Melissa Breach <mbreach@lwvc.org>  
**Subject:** RE: FPPC Enforcement Task Force Meeting

Hi Adam and Steve,

We would like to change the League of Women Voters of California's representative on the task force to our Executive Director, Melissa Breach (cc'd here). Let me know if there's some formal process required to make the change. There are several task force objectives we recommend.

1. Ensuring that large contributions are disclosed prior to the relevant election, regardless of the timing of the contribution. The task force would consider both factoring a violation's timing into the calculation of consequences, and imposing increased scrutiny to large, late infusions of cash.
2. Focusing enforcement on bigger and/or repeat offenders rather than smaller, first time offenders. While the streamlined system has mechanisms in place for that purpose, there are enhancements that would be useful. For example, the FPPC could build a system of reminders to make errors less likely and provide tools to make it easier for filers to correct errors and fix small problems.
3. Developing proactive enforcement strategies so that the agency is not confined to complaint-driven enforcement.
4. Establishing a regulatory standard on cryptocurrency to ensure that filings reveal the origin of campaign contributions and verifiable identities of contributors. We believe that doing so would put California at the vanguard of setting policy in the area.

Thanks for your work on this. We look forward to hearing the date of the next meeting.

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**From:** Adam Silver [mailto:asilver@fppc.ca.gov]  
**Sent:** Wednesday, July 18, 2018 10:18 AM

**Enforcement Task Force**  
**FPPC Enforcement Policy Question**

In the 2017 FPPC Annual Report, one of the priorities listed for 2018 was “to improve transparency in governmental ethics by launching the enforcement database public portal.” A public portal was created in conjunction with the new Enforcement case management and electronic complaint systems and is now available for launch. This system would allow members of the public and media to obtain information and records related to pending complaints and cases allowing for greater transparency in the Enforcement process. The portal’s capabilities allow users to:

- (1) Search for complaints received by the name of the person or entity alleged to have violated the law (searchable by individual or committee name).
- (2) Check the status of a complaint (i.e. rejected, pending, opened into a case).
- (3) Check the status of a case.
- (4) View basic information about a complaint including: Complaint Type (Sworn, Anonymous or Commission-Initiated); Jurisdiction; Complaint Number; Case Number (if any); and Respondent Information.
- (5) Access disclosable and redacted documents related to a complaint or case electronically without having to submit a California Public Records Request.

This information would be provided in compliance with the timelines and requirements of Regulation 18360 (copy attached), which was adopted by the FPPC in 2015. However, since these standards were adopted over three years ago and by a former group of Commissioners with very limited public input, FPPC Enforcement is interested in public comment regarding the current regulation, specifically on the issue of the proper balance between transparency through public disclosure of information versus confidentiality to protect officials running a campaign.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18360. Enforcement Complaints.**

(a) Sworn complaint. The Enforcement Division considers each complaint it receives but only a sworn complaint entitles the complainant to the procedural rights provided for in subdivisions (b) through (e) of this regulation. In order to file a sworn complaint, the complainant must:

(1) File the Complaint with the Enforcement Division on a form made available by the Commission.

(2) Identify the person or persons who allegedly violated the Act and, if known, the specific provision or provisions of the Act allegedly violated.

(3) Describe with as much particularity as possible the facts constituting each alleged violation.

(4) State the facts that support the complainant's belief that a person has violated the Act and include any documents or other evidence supporting this conclusion.

(5) Include or describe with as much particularity as possible evidence or means of obtaining evidence in support of the complaint.

(6) Include names and addresses of potential witnesses, if known.

(7) Sign the complaint under penalty of perjury.

(b) Notice of sworn complaint. Within three business days of receipt of a sworn complaint, the Enforcement Division will provide each person who the complaint alleges violated the Act a copy of the complaint, and notice that the person may respond to the complaint. The Enforcement Division may withhold notice of a complaint or the identity of the

complainant if the Enforcement Division Chief determines that disclosing the information would jeopardize the investigation.

(c) Notice to complainant of intended action. Within 14 calendar days of receiving a sworn complaint, the Enforcement Division will notify the complainant in writing that it will do one or more of the following in response to the complaint:

(1) Open a case to further investigate the allegations in the complaint. This notice will include a statement that opening a case indicates the complaint alleges a potential violation of the Act, but the Enforcement Division has not necessarily determined that any violations actually occurred.

(2) Refer the complaint to another governmental agency.

(3) Take no action on the complaint because the Commission does not have jurisdiction to investigate based on the information provided.

(4) Take no action on the complaint because the allegations of the complaint, absent additional information, do not warrant further action for the reason stated.

(5) Take additional time to investigate the complaint to determine whether to open a case and provide an explanation for the delay. The Enforcement Division will provide the complainant with subsequent written notice of what action it will take in response to the complaint.

(d) Reconsideration of intended action. If the person who filed the sworn complaint disagrees with the response sent pursuant to paragraphs (c)(1)-(5), he or she may submit in writing, within 20 calendar days of receipt of the response, a request for reconsideration to the Executive Director of the Commission. The Executive Director may deny the request, or based on good cause, direct the Chief of the Enforcement Division to take specified action consistent

with the Act and its regulations. The Executive Director will provide the complainant written notice of his or her decision within 20 calendar days of receipt of the request.

(e) Notice to subjects of a sworn complaint. The Enforcement Division will send a copy of the notice to the complainant of intended action to any person the complaint at issue alleges violated the Act at the same time the notice is sent to a complainant, unless the Enforcement Division Chief determines that providing the person with notice of the complaint would jeopardize the investigation.

(f) Commission initiated investigation. All investigations that do not result from a sworn complaint are opened on the initiative of the Commission as provided for under Section 83115. The Enforcement Division will determine whether to open Commission initiated investigations.

(1) Letters of Inquiry. The Enforcement Division may contact subjects of a Commission initiated investigation to gather additional information to determine whether to open an Enforcement case and further investigate potential violations.

(2) Notice of investigation initiated by the Commission: The Enforcement Division will send notice, as well as a copy of any document submitted to the Enforcement Division, to any identified subjects of a Commission initiated investigation after a case is opened. The Enforcement Division may withhold any document, the identity of any person providing information, or the notice and existence of an investigation if the Enforcement Division Chief determines disclosing the information would jeopardize the investigation, or if the information is privileged, private or confidential. No notice will be sent to the provider of the information regarding whether a case has been opened.

(g) Media and public inquiries. The Commission will respond to requests for information about complaints and investigations as follows:

(1) Sworn Complaints. The Commission may confirm receiving a sworn complaint at any time but will not provide a copy of the complaint until five calendar days after a copy of the complaint is sent to all persons the complaint alleges violated the Act as provided in subdivision (b). The Commission is not required to wait five calendar days before providing a copy of the complaint if the Enforcement Division has decided to take no action on the complaint. Commission staff may not disclose any action the Enforcement Division intends to take on a sworn complaint, other than no action, until after notice to complainant of intended action is sent under subdivision (c).

(2) Commission initiated investigation. The Commission may confirm that the Enforcement Division sent a letter of inquiry and may provide a copy of the letter and any documents submitted to the Enforcement Division by the complaining member of the public five calendar days after sending the letter of inquiry. The Commission may confirm that it has opened a case on its own initiative and provide a copy of the notice sent to all identified subjects of the Commission initiated investigation five calendar days after sending notice to all identified subjects of the investigation as provided in subdivision (f)(2).

(3) Referrals. The Commission will confirm that it has received a referral from filing officers upon receipt and will provide a copy of the referral upon request.

(4) Protected Information. The Commission may withhold any document, the identity of any person providing information, or the existence of an investigation or complaint if the Enforcement Division Chief determines that disclosing the information would jeopardize the investigation, or the information is privileged, private or confidential.

(h) Notice of resolution. The Enforcement Division will send a notice of resolution to each complainant who filed a sworn complaint with the Commission and was notified that the Enforcement Division would investigate the allegations in the complaint.

Note: Authority cited: Section 83112, Government Code. Reference: Section 83115, Government Code.

### **HISTORY**

1. New section filed 10-9-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 41).
2. Amendment filed 5-22-78; effective thirtieth day thereafter (Register 78, No. 21).
3. Amendment of subsection (g) filed 11-2-78; effective thirtieth day thereafter (Register 78, No. 44).
4. Amendment of section heading filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).
5. Editorial correction of subsection (f) filed 10-29-82 (Register 82, No. 44).
6. Amendment of subsection (g) filed 9-24-2007; operative 10-24-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 39).
7. Amendment filed 6-11-2008; operative 6-11-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992

(FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements)  
(Register 2008, No. 24).

8. New subsection (f)(2), subsection renumbering and amendment of newly designated subsections (f)(3)-(4) filed 7-6-2011; operative 8-5-2011. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2011, No. 27).

9. Amendment of subsections (f)(1), (f)(1)(E), (f)(3)-(4) and (h) filed 12-7-2011; operative 1-6-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2011, No. 49).

10. Repealer and new section heading and section filed 12-15-2015; operative 1-14-2016. Submitted to OAL for filing and printing only pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 51).