

FAIR POLITICAL PRACTICES COMMISSION



Mission of the Commission

- The mission of the Fair Political Practices Commission is to promote the integrity of state and local government in California through fair, impartial interpretation and enforcement of political campaign, lobbying and conflict of interest laws.
- Advice, Train and Educate - Legal and Education Divisions
- Audit, Investigate, and Prosecute - Enforcement Division

Enforcement Division Mission

To fairly, effectively and efficiently enforce the provisions of the Political Reform Act.

Enforcement Division

- 30 Employees
- 9 Attorneys
- 9 Investigators
- 8 Specialists
- 4 Support Staff

Enforcement Under the PRA

- “In enacting the Political Reform Act, the people find and declare that previously laws regulating political practices have suffered from inadequate enforcement by state and local authorities.” (Gov’t Code § 81001(h))
- “Adequate enforcement mechanisms should be provided to public officials and private citizens in order that the Political Reform Act will be vigorously enforced.” (Gov’t Code § 81002(f))

Duty to Investigate

- “Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or administrative action.” (Gov’t Code § 83115)
- “...the Commission may make investigations and audits with respect to any reports or statements required by this title.” (Gov’t Code § 90003)

Administrative Investigations

- Gov't Code § 11180 authorizes investigations and prosecutions concerning “all matters relating to the business activities and subjects under the jurisdiction of the department” including “violations of any law.”
- Gov't Code § 11181 provides that in connection with investigations, the department head may “issue subpoenas for the . . . production of papers, books, accounts, documents . . . and testimony in an inquiry, investigation, hearing or proceeding pertinent or material thereto in any part of the state.”
 - FPPC has administrative subpoena power through this section and from within the Act itself (Gov't Code § 83118)

Administrative Investigations

(cont.)

The California Supreme Court stated in *Brovelli v. Superior Court of Los Angeles County* (1961) 56 Cal.2d 524, 529:

“As has been said by the United States Supreme Court, the power to make administrative inquiry is not derived from a judicial function but is more analogous to the power of a grand jury, which does not depend on a case or controversy in order to get evidence but can investigate **‘merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.’**” (*United States v. Morton Salt Co.*, 338 U.S. 632, 642-643.)
(emphasis added)

What the Commission Enforces

- Financial Reporting by Public Officials (SEIs)
- Conflicts-of-Interest for Public Officials (GC 87100 & 1090)
- Gifts and Honoraria
- Post-Governmental Employment (State & Local)
- Mass Mailings & Advertising Disclosure
- Campaign Finance and Reporting
- State Lobbying

Enforcement Options

Most violations of the Act can be prosecuted three ways:

- Administrative
- Civil
- Criminal

Administrative Prosecution

- Most common type of FPPC action
- Can seek penalties of up to \$5,000 per violation
 - More for certain advertising violations
- Statute of Limitations – 5 years
 - Can be tolled with a PC Report, tolling agreement, or if intent to conceal
- Applicable to all violations of Act
- Faster and more efficient resolution than civil court

Civil Prosecution

- Can be initiated by FPPC, private citizens, Attorney General or District Attorneys (Gov't Code § 91001)
- FPPC – State or any State agency, or local with written DA permission
- Attorney General – FPPC only
- District Attorneys – Any other agency
- Private Citizens – Must request action from DA, FPPC or AG first.
 - 120 days to respond.

Criminal Prosecution

- Must knowingly or willfully violate Act (Gov't Code § 91000)
- Violations are misdemeanors
- Statute of Limitations – 4 years
- If convicted, can't be candidate or lobbyist for four years
 - Judge may waive this, but must do so explicitly
 - Violation of this is a felony

Sources of Cases

Enforcement cases are initiated by:

1. Complaints (Sworn, Non-sworn or Anonymous)
2. FPPC SEI Unit and filing officer referrals
3. Audits and audit referrals
4. Media reports
5. Staff-initiated investigations
6. Tips
7. Referrals from law enforcement agencies

Cases, Complaints and Referrals

2016 (Election year)

- 1,180 Complaints
- 350 Referrals
- 1,530 Total

2017 (Non-election year)

- 564 Complaints
- 1,616 Referrals
- 2,180 Total

Intake

- All complaints and referrals go through the intake process to determine whether Enforcement should open a case.
- In determining whether to open a case, intake staff review the complaint or referral, any additional information provided by the complainant, publicly available information, and any material submitted by the subject of a complaint.
- If the Intake staff determines sufficient evidence is present to suggest a violation may have occurred then a case is opened.

Intake Timeline (Regulation 18360)

- Sworn Complaints:
 - Within 3 days, respondent is sent a copy of the complaint
 - Enforcement staff has 14 days to send investigate/won't investigate letter/need more time letter to complainant with a copy to respondent (Gov't Code § 83115)
- Commission-initiated cases (includes everything else):
 - No legally-mandated deadlines
 - Letter of Inquiry sent when appropriate
 - Generally, 10 days to respond
- Enforcement sends respondents notice of allegations against them 5 days prior to disclosure to the public/media.

Investigations

- Investigators and attorneys work together to gather the evidence to prove or disprove violations occurred. Auditors and other staff assist with these investigations.
- FPPC has subpoena power but must seek voluntary compliance prior to issuing subpoena unless:
 - Bank/business records
 - Threat of record destruction
- Executive Director authorizes issuance of administrative subpoenas if:
 - Records are material to the matter, and
 - the ED reasonably believes the person has the information under their control.

Audits

- The PRA requires the FPPC perform audits of the candidates and their committees for State Controller, Public Employees Retirement Board and State Board of Equalization
- FTB performs all other statutorily required audits
- FPPC has the authority to perform discretionary audits
- Contract with County of San Bernardino
- Auditors also routinely assist with complicated campaign investigations

Types of Resolutions

- **No Action closure letter** – If there is insufficient evidence to prosecute a case and no further information would be helpful or informative. (318)
- **Advisory letter** – If there is insufficient evidence to prosecute a case but the person complained about appears to need information about the Act to ensure future compliance. (17)
- **Warning letter** – If a violation of the Act is found but the seriousness of the offense is low, public harm is minimal, or other mitigation is found so that a monetary fine is not warranted. (505)
- **Stipulation** – negotiated settlement. (Mainline (66)/Streamline (262))
- **Default judgment** – Respondent does not participate in settlement or administrative hearing process. (12)
- **Administrative Law Judge Decision** – The decision is issued after an administrative hearing conducted pursuant to the Administrative Procedures Act. The decision must be approved by the Commission before being final. (1)
- **Civil action** – Judgment issued by a superior court. (0)

Streamline Program

- 77% of all cases prosecuted with fines go through the streamline program.
- Commission approved (May 2015): lower fines based on a formula for violations involving small amounts of contributions rec'd or expenditures made as well as SEI non-filing and SEI non-reporting.
- Commission will start discussions regarding modifying the program to change the fine amounts and possibly add additional violations, like advertising and recordkeeping violations.

Mainline Settlements

- Work with respondent (or counsel) to negotiate a mutually agreeable result, which must include:
 - An admission of violations,
 - Agreement on relevant facts, and
 - Public disclosure of any previously undisclosed information.
- “Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.” (*Hanlon v. Chrysler Corp.*, (1998) 150 F.3d 1011, 1027.)

Penalties

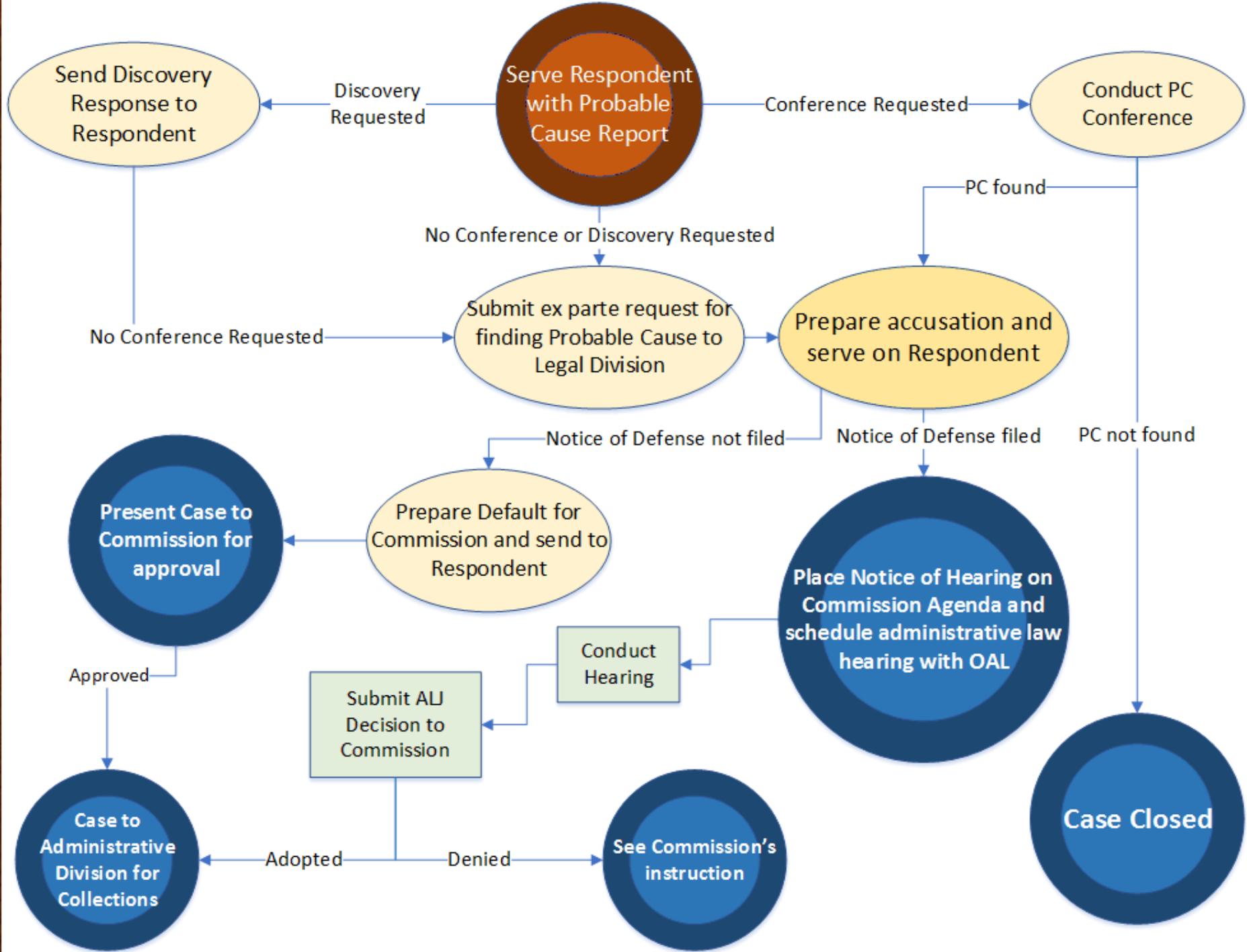
Recommended penalties determined by:

- Prior similar cases
- Commission Direction
- Factors set forth in Regulation 18361.5, subdivision (d):
 - the seriousness of the violations;
 - the presence or lack of intent to deceive the voting public;
 - whether the violation was deliberate, negligent, or inadvertent;
 - whether the Respondent demonstrated good faith in consulting with Commission staff; and
 - whether there was a pattern of violations.
- Public harm

Approval of Penalties

All penalties are approved by Commission

- 3 votes are required to approve or reject
- Can accept or reject stipulated agreements
- Enforcement cannot discuss facts not included in stipulations, except otherwise public information
- For defaults, Enforcement can discuss facts and penalty and Commission can unilaterally change the proposed penalty



Probable Cause

- Probable Cause Report. Enforcement Division files a probable cause report by serving it on the respondent. The respondent has the right to submit written argument, request discovery of evidence, and request a hearing at which respondent may submit evidence, including witness testimony.
- Probable Cause Conference. A neutral hearing officer determines whether there is sufficient evidence to lead a reasonable person to believe, or entertain a strong suspicion, the respondent violated the PRA. Respondent may request that an ALJ act as hearing officer for a probable cause hearing.

Administrative Hearings

- Administrative Hearing. If a hearing officer finds probable cause, the hearing officer orders the Enforcement Division to issue an Accusation and the case proceeds to administrative hearing pursuant to the California Administrative Procedures Act. Hearings may be conducted by the Commission, or an administrative law judge from the Office of Administrative Law. If the hearing office does not find probable cause, the case is closed.
- ALJ Finding. If an administrative law judge finds a respondent violated the PRA, the Commission may adopt or reject the ALJ's decision. The respondent may submit a brief to the Commission prior to its determination on a proposed decision.
- Further Review. Respondents have the right to request reconsideration of a decision adopted by the Commission, and may file a writ of mandate in superior court challenging a final Commission decision.