

1 Repeal and Adopt 2 Cal. Code Regs. Section 18360 to read:

2 ~~§ 18360. Complaints. (a) Pursuant to Section 83115, a person may submit a sworn complaint to~~
3 ~~the Commission or the Commission may on its own initiative investigate an alleged violation of~~
4 ~~the Act.~~

5 ~~(b) A sworn complaint shall be filed on a form made available by the Commission and shall~~
6 ~~comply with all of the following requirements:~~

7 ~~(1) Be in writing.~~

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

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

11 ~~(4) Be based on facts of which the complainant has personal knowledge, or based on information~~
12 ~~and belief supported by documentary or other evidence included or described in the complaint.~~

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

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

16 ~~(7) Be signed by the complainant under penalty of perjury.~~

17 ~~(c) This regulation does not prevent a person from complaining by telephone to the Commission~~
18 ~~or requesting anonymity when doing so, but only a sworn complaint filed substantially in~~
19 ~~conformity with subdivision (b) entitles the complainant to the procedural rights set forth in~~
20 ~~Section 83115 and in this regulation.~~

21 ~~(d) Prior to each regularly scheduled Commission meeting, the Commission staff shall provide~~
22 ~~each member of the Commission a report with the information specified in paragraphs (1) and~~
23 ~~(2):~~

- 1 ~~(1) With respect to sworn complaints received since the last report:~~
- 2 ~~(A) The name of the complainant unless the complainant is a confidential informant.~~
- 3 ~~(B) The name of the person or persons complained against.~~
- 4 ~~(C) The date the sworn complaint was received.~~
- 5 ~~(D) The alleged violation or violations of the Act.~~
- 6 ~~(2) With respect to a staff initiated investigation commenced since the last report:~~
- 7 ~~(A) The name of the person who is the subject of the investigation.~~
- 8 ~~(B) The date the staff initiated the investigation.~~
- 9 ~~(C) The alleged violation or violations of the Act.~~
- 10 ~~(3) The Commission staff shall also provide additional information a Commissioner requests to~~
- 11 ~~that Commissioner, including a copy of a sworn complaint, unless the Executive Director~~
- 12 ~~determines, in consultation with the Chief of Enforcement, the information will compromise the~~
- 13 ~~impartiality of the Commissioner on matters alleged in a complaint.~~
- 14 ~~(e) The Chief of Enforcement, with the authorization of the Executive Director, shall provide~~
- 15 ~~information about sworn complaints and staff initiated investigations to other governmental~~
- 16 ~~agencies that have an official and specific interest in the information, and make every effort to~~
- 17 ~~cooperate with other governmental agencies in a position to assist the Commission with an~~
- 18 ~~investigation. However, the Commission may decline to disclose the identity of a confidential~~
- 19 ~~informant.~~
- 20 ~~(f) The Executive Director shall take the following actions with respect to complaints:~~
- 21 ~~(1) Notify the complainant in writing within 14 calendar days of receipt of a sworn complaint~~
- 22 ~~that the Commission will do one or more of the following:~~

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

5 ~~(B) Refer the complaint to another governmental agency.~~

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

9 ~~(D) Take no action on the complaint because the allegations of the complaint, absent the~~
10 ~~Commission receiving additional information, do not warrant the Commission's further action~~
11 ~~for the reason stated.~~

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

16 ~~(2) Ensure that Commission staff does not disclose information relating to the contents of the 14-~~
17 ~~day notification required by subdivision (f)(1), to anyone other than Commission staff and those~~
18 ~~listed in subdivision (e) of this Regulation, except for purposes of investigation of the initial~~
19 ~~complaint, until at least 5 business days have passed from the time the 14 day notification letter~~
20 ~~is sent by the Commission to the complainant and the subject of the complaint. The limitation in~~
21 ~~this subdivision does not apply in cases where the Executive Director rejects the formal~~
22 ~~complaint.~~

1 ~~(3) Provide the subject of the sworn complaint with a copy of the complaint within three business~~
2 ~~days of receipt. A cover letter shall be included with the copy of the complaint informing the~~
3 ~~subject of the complaint of the Executive Director's obligations listed in subdivision (f)(1) of this~~
4 ~~regulation and the subject's opportunity to respond to the allegations in the complaint before the~~
5 ~~Executive Director makes a final determination on any items listed in subdivisions (f)(1)(A-E) of~~
6 ~~this regulation. The Executive Director shall not make a final determination on any items listed~~
7 ~~in subdivisions (f)(1)(A-E) until 14 calendar days have passed from the date the complaint was~~
8 ~~received by the Enforcement Division, unless the final determination is to take no action. Any~~
9 ~~additional correspondence sent to the complainant pursuant to subdivision (f)(1) must be~~
10 ~~provided to the subject of the complaint at the same time it is provided to the complainant.~~
11 ~~However, upon the recommendation of the Chief of Enforcement and provided withholding the~~
12 ~~information is otherwise consistent with law, the Executive Director may decline to provide a~~
13 ~~copy of, or may redact information from, the complaint or the correspondence sent to the~~
14 ~~complainant. If all or part of a complaint or correspondence is withheld from the subject of the~~
15 ~~complaint, what is withheld may not be disclosed to another person except to a law enforcement~~
16 ~~agency on a confidential basis. If the sworn complaint is otherwise made public, a copy of the~~
17 ~~complaint shall be promptly sent to the subject of the complaint.~~

18 ~~(4) Send notification of a potential staff initiated investigation to the subject of the potential~~
19 ~~investigation and inform the subject of the potential staff initiated investigation that the subject~~
20 ~~may respond in writing to any allegations set forth in the notification within 10 calendar days~~
21 ~~from the date the notification is sent. The notification shall also inform the subject of the~~
22 ~~potential staff-initiated investigation that no final determination on full investigation of the~~
23 ~~allegations set forth in the notification will be made until at least 10 calendar days have passed~~

1 from the date the notification was sent. Notification of a potential staff initiated investigation
2 must be sent to the subject of the potential staff initiated investigation at the same time
3 information of the potential investigation is provided to the Commissioners. The Executive
4 Director shall ensure that Commission staff does not disclose information relating to the staff
5 initiated investigation, to anyone other than Commission staff and those listed in subdivision (e)
6 of this Regulation, except for purposes of investigation, until at least 5 business days have passed
7 from the time the subject of the investigation is informed or sent notification of the investigation.
8 However, upon the recommendation of the Chief of Enforcement that providing the information
9 would jeopardize the investigation, the Executive Director may decline to inform the subject of
10 the complaint. If the Executive Director makes this determination, he or she shall prepare a
11 memorandum setting forth justification for the declination, which shall be retained in the
12 enforcement case file. If the subject of the complaint is not informed of the complaint, the
13 existence of the complaint may not be disclosed except to a law enforcement agency on a
14 confidential basis.

15 (g) If the Commission investigates the allegations of a sworn complaint, the Executive Director
16 shall notify the complainant in writing of the following:

17 (1) The time, date, and location of any public hearing or public meeting on the complaint
18 scheduled to be heard by an administrative law judge or the Commission.

19 (2) The date, time, and location of any public proceeding on the complaint scheduled to be heard
20 by a court.

21 (3) The Commission's or a court's final resolution of the complaint.

22 (h) If the person who filed the sworn complaint disagrees with the response sent pursuant to
23 subdivision (f)(1)(C) or (D), he or she may submit in writing, within 20 calendar days of receipt

1 of the response, a request for reconsideration that shall be directed to the Executive Director,
2 who shall forward the correspondence to each member of the Commission for consideration.

3 **§ 18360. Enforcement Complaints**

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

7 (1) Be filed with the Enforcement Division on a form made available by the Commission.

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

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

11 (4) State facts of which the complainant has personal knowledge, or based on information and
12 belief supported by documentary or other evidence included or described in the complaint.

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

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

16 (7) Be signed by the complainant under penalty of perjury.

17 (b) **Notice of sworn complaint.** Within three business days of receipt of a sworn complaint, the
18 Enforcement Division will provide each person who the complaint alleges violated the Political
19 Reform Act with a copy of the complaint, and notice that the person may respond to the
20 complaint. The Enforcement Division may withhold notice of a complaint if the Enforcement
21 Division Chief determines that providing the person with notice of the complaint would
22 jeopardize the investigation.

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

4 (1) Investigate the allegations in the complaint. This notice will include a statement that opening
5 an investigation does indicate the complaint alleges a potential violation of the Act, but the
6 Enforcement Division has not necessarily determined that any violations actually occurred.

7 (2) Refer the complaint to another governmental agency.

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

10 (4) Take no action on the complaint because the allegations of the complaint, absent the
11 Commission receiving additional information, do not warrant the Commission's further action
12 for the reason stated.

13 (5) Take additional time to evaluate the complaint to determine whether to investigate the matter
14 and provide an explanation for the delay. The Enforcement Division will provide the
15 complainant with subsequent written notice of what action it will take in response to the
16 complaint.

17 (d) **Reconsideration of intended action.** If the person who filed the sworn complaint disagrees
18 with the response sent pursuant to paragraphs (c)(1)- (5), he or she may submit in writing, within
19 20 calendar days of receipt of the response, a request for reconsideration to the Executive
20 Director. The Executive Director may deny the request, or based on good cause, direct the Chief
21 of the Enforcement Division to take specified action consistent with the Act and its regulations.
22 The Executive Director will provide the complainant written notice of his or her decision within
23 20 calendar days of receipt of the request.

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

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

9 (g) **Notice of investigation initiated by the Commission:** The Enforcement Division will send
10 notice to any identified potential subjects of a Commission initiated investigation opened by the
11 Enforcement Division, unless the Enforcement Division Chief determines that doing so would
12 jeopardize the investigation. If such an investigation resulted from information provided by a
13 member of the public, the Enforcement Division will provide any person the complaint alleges
14 violated the Political Reform Act a copy of any document submitted to the Enforcement Division
15 by the complaining member of the public along with the notice required by this subdivision. The
16 Enforcement Division may withhold any document that the Enforcement Division Chief
17 determines would jeopardize the investigation if disclosed, or that contains privileged or
18 confidential information.

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

21 (1) **Sworn Complaints.** The Commission may confirm receiving a sworn complaint at any time
22 but will not provide a copy of the complaint until two calendar days after sending a copy of the
23 complaint to all persons the complaint alleges violated the Political Reform Act as provided in

1 subdivision (b). The Enforcement Division need not wait two calendar days before providing a
2 copy of the complaint if it has decided to take no action on the complaint. Commission staff may
3 not disclose any action the Enforcement Division intends to take on a sworn complaint until after
4 it sends a notice to complainant of intended action, as provided in subdivision (c).

5 (2) **Commission initiated investigation.** The Commission will confirm that it has opened an
6 investigation on its own initiative two calendar days after sending notice of the investigation to
7 all identified subjects of the investigation as provided in subdivision (g). Upon request at the
8 time of confirming an open investigation, the Commission will provide a copy of any documents
9 submitted to the Enforcement Division by the complaining member of the public, except the
10 Commission may withhold any document that the Enforcement Division Chief determines would
11 jeopardize the investigation if disclosed, or that contains privileged or confidential information.

12 (3) **Referrals.** The Commission will confirm that it has received a referral from filing officers
13 upon receipt.

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

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

18 Government Code.