CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

Friday, December 8, 2000

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:37 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Bill Deaver, Kathleen Makel, Carol Scott and Gordana Swanson were present.

Item #1. Approval of the Minutes of the November 3, 2000, Commission Meeting.

The minutes of the November 6, 2000 Commission meeting were distributed to the Commission and made available to the public. Commissioner Swanson motioned that the minutes be approved. The motion was seconded by Commissioner Deaver. There being no objection, the minutes were approved.

Item #2. Public Comment.

There was no public comment at this time.

Item #3. Proposition 34 Update.

General Counsel Sue Ellen Wooldridge explained that the agency has made tentative preparations for dealing with Proposition 34. She reported that an Interested Persons meeting was held on Thursday, December 2, 2000, and that staff explained their ideas on how to be responsive and provide guidance to the Commission on properly implementing Proposition 34.

Ms. Wooldridge explained that everyone in the Legal Division would be working on Proposition 34 implementation, with each staff lawyer assigned a particular subject area. Those persons would be asked to prepare memos, propose regulations, suggest issues for opinions, and do whatever may be necessary to implement that portion of Proposition 34. At the same time, she stated, Technical Assistance Division will have a Political Reform Consultant assigned to work with each of the lawyers. She noted that five people in the Legal Division will be coordinating master lists of regulations, legislation, and advice proposed in the implementation process.

Technical Assistance Division Chief Carla Wardlow reported that staff prepared and was mailing two forms needing immediate changes because of Proposition 34, and would be looking for public input regarding those forms. Form 501, she explained, was being amended to allow candidates to declare whether they accept or decline the voluntary expenditure limits; and the Committee Statement of Organization was being amended to allow recipient committees to designate whether they qualify as a small contributor committee under Proposition 34. The two forms, she noted, would be circulated for 30 days, an Interested Persons Meeting would be held, and then the proposed new forms would be presented to the Commission in January for approval.

Ms. Wardlow reported that other forms would also need amending, possibly including the Form 460, which is the major campaign reporting form.

Ms. Wooldridge stated that Assistant General Counsel Luisa Menchaca would be in charge of the Proposition 34 implementation.

Ms. Wooldridge pointed out that when Campaign Reporting Project issues involve a Proposition 34 issue, the Campaign Reporting Project person will be required to report that issue to the staff person working with the same issue as it relates to Proposition 34. If a campaign reporting project issue does not involve the Proposition 34 issues, or if it does not seem practical to deal with those issues at the same time, those Campaign Reporting Project issues will be considered after the Proposition 34 issues have been addressed.

Chairman Getman noted that there are two special elections scheduled for February and March that currently are regulated by Proposition 73, but will be regulated by Proposition 34 after January 1, 2001. She stated that staff from the FPPC and the Secretary of State's Office (SOS) will be meeting with candidates and their treasurers and attorneys to work out rules to help them run these elections, with the understanding that they will not be run like any other election under Proposition 34.

Chairman Getman explained that staff had developed a list of some of the issues related to Proposition 34, and offered those lists to the public. She also stated that initial policy decisions regarding Proposition 34 would be considered by the Commission at its January 12, 2001 meeting.

Item #4. Final Adoption Discussion: Phase 2 Project Conflict of Interest Regulations -- Repeal Regulation 18705.1; Adopt Regulations 18230, 18232, and 18705.1. Amend Regulations 18701, 18702.1, 18703.5, 18704.2, 18704.5, 18705, 18705.2, 18705.3, 18705.5, 18707, 18707.1 - 18707.3, 18707.7, 18707.9, 18708, and 18730.

Senior Counsel John Wallace began his presentation by explaining that staff would be presenting the projects in the order of the 8-step process.

Mr. Wallace explained that a letter was received from the Department of Motor Vehicles (DMV), expressing concern that the Phase 2 proposals do not reference the conflict of interest disclosure statutes. He noted that those references do not currently exist, and that the Phase 2 project does not add or delete them. He stated that staff believed that such a change should be done in the context of analyzing all the disclosure regulations. Staff recommended that any action on DMV's proposal should be deferred.

Mr. Wallace stated that a comment letter from Craig Martin and Henry Ramey involved issues that had already occurred, and that the Phase 2 project is prospective, and that past conduct issues are not discussed in the context of Phase 2. He suggested that the Commission take no action on the letter.

Mr. Wallace explained that the regulations will be effective 30 days after filing with the SOS office, giving localities time to deal with the changes. He added that staff will be alerting the public to the changes, but that there will need to be some initial transition to the new rules. There will be internal training first, with some additional outreach training throughout the state.

Commissioner Scott suggested that the web site and newspapers alert people to the new regulations, with a reference to FPPC phone numbers where more information would be available.

Mr. Wallace agreed, noting that staff would be trying to get the information out to the public in as many ways as they can find.

Step 1 - Projects O and P

Mr. Wallace explained that projects O and P deal with amending §18701, which defines "public official". The first amendment rewords and adds cross-references to that section, and adds no substantive changes. The second amendment sets out the definition of "member". This amendment, he noted, did not change the Commission's advice in that area at all. The third amendment adds language that would include the independent contractor as a "consultant" if the contractor serves in a staff capacity and participates in one of the seven designated decisions. The fourth amendment reorganizes subsection (b). The last amendment to this section adds a comment cross-referencing an existing Commission opinion, which does not change Commission advice or the application of law.

Commissioner Makel motioned that §18701 be adopted as amended. Chairman Getman seconded the motion. There being no objection, the motion carried.

Step 2 - Project M

Mr. Wallace explained that Project M amends §§18702.1 and 18730. He noted that existing regulations do not provide clear guidelines as to what an official's obligations are once it is determined that they cannot participate in a decision because of a conflict, and that Project M was developed to provide those guidelines. He noted that the Commission had determined that the obligations should be permissive, and that this decision was reflected in the proposed amended regulation 18702.1. Additionally, the amended regulation restates existing advice that an official who has been disqualified from participating because of a conflict and is allowed to stay on the dais during the discussion, shall not be counted toward a quorum. It also prohibits a disqualified official from being present during a closed session discussion of the issue that the public official has been disqualified from, and prohibits the disqualified public official from obtaining closed session materials regarding the governmental decision. Lastly, the amendment adds a comment that defers to the agency to decide whether an official needs to step down from the dais or leave the room.

Scott Hallabrin, from the Assembly Ethics Committee, suggested that the word "may" be changed to "shall" in §18702.1(c).

Mr. Wallace agreed that Mr. Hallabrin's suggested change should be made.

Commissioner Makel motioned that the proposed amendments to §18702.1 be adopted, with a change in the wording of §18702.1(c) from "may" to "shall". Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Mr. Wallace explained that the amendments proposed for §18730 parallel the changes to §18702.1.

Commissioner Deaver motioned that the proposed amendments to §18730 be adopted. Chairman Getman seconded the motion. There being no objection, the motion carried.

Step 3 - Project N

Mr. Wallace explained that Project N proposes a new regulation, §18230, which codifies the business contacts test and limits the concept of "doing business in the jurisdiction" to contacts with the person who actually maintains a physical presence in the jurisdiction. Additionally, the amendment includes a list of activities that constitute "business contacts", and "market activity" is excluded from that list. He noted that it was never the intent of this regulation to deal with the issue of planning to do business in the jurisdiction, but that the Commission may want staff to return to that issue.

Commissioner Makel motioned that §18230 be adopted. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Step 3 - Project E

Mr. Wallace explained that the proposed changes to §18703.5 are non-substantive, simply rewording the existing standard. The proposal would not change the application of the law, but makes clarifying changes and adds cross-references.

Commissioner Makel motioned that the amendment to §18703.5 be adopted. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Step 4 - Project E

Mr. Wallace explained that §18704.5 clarifies the regulation but makes no changes to the rules.

Commissioner Makel motioned that §18704.5 be adopted. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Step 5 - Project E

Mr. Wallace noted that the proposed amendments to §18705.5 add language that has been relocated from other existing provisions, in order to put all the types of exceptions to the "personal financial effect" rule in a single location.

Commissioner Makel motioned that the amendments to §18705.5 be adopted. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Step 3 - Project F

Mr. Wallace explained that §18232 interprets the definition of income and exclusions to that definition in Government Code section §82030(b)(2). This proposed new regulation defines the terms that are the most useful in that statutory exception. He noted that it did not define all the terms or possible situations that might arise, but is a good start in helping people understand that exception.

Commissioner Deaver motioned that §18232 be adopted. Commissioner Makel seconded the motion. There being no objection, the motion carried.

Step 5 - Project F

Mr. Wallace explained that the proposed amendments to §18705 delete language from this regulation that was moved to another regulation.

Commissioner Scott motioned that the amended language for §18705 be adopted. Commissioner Swanson seconded the motion. There being no objection, the motion carried.

Step 5 - Project G

Mr. Wallace explained that the proposed amendments to §18705.3 had some relationship to Project F. He noted that there are instances where governmental payments can be considered income for purposes of the Conflict of Interest rules under the Act. However, he added, measuring the material financial effect on a governmental entity was never expressly set forth in the regulations, and Project G incorporates that into the standards. He noted that it would be a substantive change that is consistent with past advice.

Commissioner Deaver motioned that amended §18705.3 be adopted. Commissioner Makel seconded the motion. There being no objection, the motion carried.

Step 4 - Project D

Mr. Wallace explained that §18704.2 deals with real property, and that the proposed amendments have non-substantive changes, and three major changes. The main substantive change to this regulation was to change the 300' materiality standard to a 500' standard. The amendments also relocated the existing 300' standard from §18705.5 into §18704.2(a), combining all situations subject to a "no financial effect" rule in a single location. In addition, language was moved from §18705.2(b)(2) to §18704.2(a)(4) for clarity. The third major change relocates "new or improved services" language into §18704.2.

Chairman Getman synopsized that materiality is presumed when an official's property is within 500' of the property under consideration, and that new and improved services do not include ordinary repairs and replacements.

Mr. Wallace agreed.

Commissioner Swanson motioned that the proposed amendments to §18704.2 be adopted. Commissioner Makel seconded the motion. There being no objection, the motion carried.

Step 5 - Project D

Mr. Wallace explained that the proposed amendments to §18705.2 could be divided into four blocks. First, (a)(1) was reworded to add presumptive language. However, the section retains the existing test for "direct effect" ownership interests in real property. He corrected the staff memo which erroneously stated that the Commission had decided not to change the indirect standard and should have stated that the Commission had decided not to change the direct standard of §18705.2(a)(1). He stated that proposed §18705.2(a)(2) is new language for leaseholds that tracks the direct analysis applicable to ownership interests in real property, and presumes materiality but allows a rebuttal of materiality. The proposed §18705.2(b), he stated, dramatically changes the language for indirect settings, applying a new fact-based test, presuming non-materiality that can be rebutted. The new standard also provides examples of situations that might meet the burden on the rebuttal. Lastly, the amendment proposes a non-substantive change to the existing rule regarding indirect effects on leasehold interests of a public official, adding presumptive language but retaining the existing standards. One substantive change, he noted, removed the dollar threshold from §18705.2(b)(2)(D), as directed by the Commission.

Commissioner Deaver motioned that amended §18705.2 be adopted. Commissioner Makel seconded the motion. There being no objection, the motion carried.

Step 5 - Project A

Mr. Wallace explained that this proposed amendment to §18705.1 would change the materiality thresholds for business entities that are an economic interest of a public official, and reorganizes some of the categories. The increased thresholds were generally doubled to reflect changes in the economy and inflation. He noted that one category was deleted to shorten the regulation and make it simpler. Mr. Wallace stated that subdivision (d)(4) added definitions to the accounting terms, and defers to general accepted accounting principles and auditing standards. Subdivision (e), he stated, adds a "safe harbor" allowing public officials to rely on the most recent independently audited financial statements of the business entity in question, providing those statements are accurate and recent. He noted that the Commission had previously agreed to repeal the existing regulation and adopt a new regulation.

Mr. Wallace, in response to questions, explained that there are two different sets of law related to generally accepted accounting principles and generally accepted auditing standards, GAAP and GAAS, and that they complement each other and work together. He stated that licenses, permits

and intellectual property would be included under the definition of intangible assets in subdivision (d)(1)(B). He added that the Pacific Stock Exchange was not included in the regulation because it was not used very often, and that the sizes of the companies varies among the different exchanges.. He suggested that by putting the increased thresholds in the regulation, it would encourage public input and could be reevaluated at a later date.

Commissioner Scott suggested that a questionnaire be directed to the public, asking whether there should be a distinction between the exchanges.

Mr. Wallace responded that the other option would be to set up dollar thresholds, but noted that they grow out-of-date. He noted that this issue would be presented to the Commission in October 2001, and that staff could send out questionnaires and solicit input prior to that discussion.

Commissioner Scott motioned that the existing §18705.1 be repealed. Commissioner Swanson seconded the motion. There being no objection, the motion passed.

Commissioner Scott motioned that the proposed §18705.1 be adopted. Commissioner Swanson seconded the motion. There being no objection, the motion passed.

Commissioner Scott also asked for clarification on **Project D**, Regulation 18705.2.

Mr. Wallace responded that the new rule in **Project D** would provide that property would be presumed not to be material, unless there are special circumstances, beginning at 500 feet. He also explained that the change in the leaseholds interest was brought about because the old rule applied essentially the same standard to all leasehold interests. The new rule, he added, establishes a differential for direct versus indirect involvement, and creates a distance standard where there was not one before.

Step 6 - Mr. Wallace noted that there is no action required for step 6 at this time, but that the "foreseeability issue" will be presented to the Commission in a future discussion.

Step 7 - Projects I, J and K

Mr. Wallace explained that renumbering the was necessary because §18707 was split into two regulations, requiring everything in sequence to be renumbered.

Commissioner Makel motioned that §18707.1 be renumbered to §18707.2; §18707.2 be renumbered to §18707.3; and §18707.3 be renumbered to §18707.7. Commissioner Swanson seconded the motion. There being no objection, the regulations were renumbered.

Mr. Wallace explained that the proposed amendment to §18707 provided new language that would primarily provide guidance to the public for applying the rules. The changes, he noted, were non-substantive and did not change the analysis.

Commissioner Makel motioned that the amended §18707 be adopted. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Mr. Wallace explained that the proposed §18707.1 was a new regulation that moved the thresholds that existed in §18707 to 18707.1. Most of those thresholds remained the same, he noted, but were now organized by economic interest. The proposed regulation added lower thresholds for business entities, added new language specific to governmental entities, and added a clarifying comment regarding governmental entities and the "public generally".

Commissioner Swanson motioned that proposed §18707.1 be adopted. Commissioner Makel seconded the motion. There being no objection the motion carried.

Mr. Wallace explained that the proposed §18707.2 dealt with rates, assessments and similar decisions. He noted that renumbering it from §18707.1 was the main change, but that there were also some minor clarifying changes where standards were specified instead of using cross references in some sections, and cross references were updated in other sections.

Commissioner Swanson motioned that §18707.2 be adopted. Commissioner Deaver seconded the motion. There being no objection the motion carried.

Mr. Wallace explained that proposed §18707.3 dealt with the "public generally" exception for a small jurisdiction principal residence. He noted that the changes were minor, changing the 300' language to 500' language, making it consistent with Project D.

Commissioner Swanson motioned that §18707.3 be adopted. Commissioner Makel seconded the motion. There being no objection, the motion carried.

Mr. Wallace explained that §18707.7 provides, for elected officials other than elected state officers, that an industry, trade or profession constitutes a "significant segment" of the public generally only if the industry, trade or profession is a predominant industry, trade or profession in the jurisdiction. The proposed amendment recognizes that an industry, trade or profession that constitutes 50% or more of the entities in the jurisdiction should be recognized as a predominant industry, trade or profession. The rest of the changes proposed, he stated, are non-substantive.

Commissioner Swanson stated that use of the word "entities" is not clear.

Assistant General Counsel Luisa Menchaca responded that §18707.1 included language that could be included in 18707.7, and suggested that language could be added to 18707.1 reading, "For purposes of this subdivision, a not-for-profit entity, other than a governmental entity, is treated as a business entity."

Commissioner Scott suggested that a definition could be included in parenthesis. She noted that use of the term "business entity" could raise issues related to the definition of that term.

Ms. Menchaca suggested language be added to proposed §18707.7(b) so that it would read, "….fifty percent or more of <u>business</u> entities in the jurisdiction of the official's agency or the

district the official represents is a predominant industry, trade, or profession for purposes of this regulation. For purposes of this subdivision, a not-for-profit entity, other than a governmental entity, is treated as a business entity."

Commissioner Swanson motioned that proposed §18707.7 be adopted with the corrections proposed by Ms. Menchaca. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Mr. Wallace explained that §18707.9 is a proposed new regulation, codifying the *Ferraro* Opinion, and creating a new exception for landlords in certain governmental decisions. He noted that staff had made clarifying changes since the Commission last discussed this regulation, adding cross references and clarifying that this regulation was not exclusive and that an official confronted with this type of decision can still use other exceptions in the Act.

Mr. Wallace noted that two comments had been received regarding the proposed regulation §18707.9. The first opposed adoption of the regulation, and the second supported adoption. He explained that staff drafted this exception narrowly and recommended adoption.

Commissioner Makel motioned that proposed §18707.9 be adopted. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Step 8 - Project Q

Mr. Wallace explained that proposed §18708 dealt with when an official is legally required to participate in a decision. The first substantive amendment to this regulation, he noted, clarifies the specific disclosures required when an official has a conflict of interest but is legally required to participate in the decision. He pointed out that the proposal includes a lot of specificity in order to deal with situations where a governmental decision was invalidated based on perceived incomplete disclosures, as in the *Kunec* case. It also includes specificity regarding the manner of disclosure, he added, and clarifies quorum issues and quorum language. Lastly, he stated, two versions of a comment were included for the Commission's consideration, dealing with disclosure of confidential information, and staff recommended adoption of Version 2.

Chairman Getman suggested changing "are" to "is" in the first line of the Version 2 language.

Commissioner Swanson motioned that §18708 be adopted with the inclusion of the Version 2 comment and with the correction suggested by Chairman Getman. Commissioner Deaver seconded the motion. There being no objection the motion carried.

Commissioner Deaver congratulated staff on an excellent job with the Phase 2 project.

Chairman Getman adjourned the meeting for a break at 10:48 a.m.

The meeting reconvened at 11:08 a.m.

Enforcement Division Chief Cy Rickards noted that Enforcement Division has created a Task Force to deal with Proposition 34 issues and is working with other Divisions of the FPPC in the implementation of that Proposition.

Chairman Getman added that Enforcement Division has been involved in discussions with the Secretary of State's office on how to implement the electronic filing provisions of Proposition 34.

Item #5. Major Donor Committees.

Investigator Jon Wroten explained that the Major Donor Enforcement policy being presented for Commission consideration expanded the proactive part of the program adopted in September 1999, to include a public outreach component. He explained that electronic filing has made filing information about donors much more readily available, and described a new proactive procedure Enforcement staff has used, utilizing the electronic filing data, to identify and notify potential major donors of their potential filing obligations. Following that, Enforcement staff again utilized the records and reports filed with the Secretary of State's office to determine whether those potential major donors had fulfilled their filing obligations. With the help of the Secretary of State's office, Enforcement staff was able to compile a list of apparent major donors who appeared to have not filed major donor reports as required. Enforcement staff contacted those individuals informing them that the filing date had passed and requesting that they complete other documents to explain why they had not filed the required reports. From this they were able to identify major donors who still had not filed the required reports, and contacted them by certified mail to inform them again of their filing requirements and to request that they contact Enforcement staff.

Chief Investigator Al Herndon explained that staff was now in a position to resolve the remaining major donor cases, including filing enforcement actions, if appropriate.

Item I

Mr. Herndon requested that the Commission approve a streamlined stipulation decision and order process. He emphasized that staff would retain discretion within the Enforcement Division to remove certain types of respondents from the streamlined process, such as those that have previous enforcement action, or those where there may be other violations of the Political Reform Act present. He pointed out that there would be one additional level of review of those non-filers making contributions of $50,000 or more before the streamlined settlement process would be used.

Mr. Herndon requested that the Commission implement a streamlined settlement process, with the understanding that certain types of cases may be removed from the process, utilizing Enforcement's prosecutorial discretion.

Commissioner Swanson motioned approval of the streamlined settlement process for purposes of discussion. Commissioner Deaver seconded the motion.

Commissioner Scott questioned how Enforcement staff currently identify major donor cases.

Mr. Herndon responded that most cases previously had been identified on a reactive basis. In the 1980's, he noted, there was a proactive program, but it has not been used since then.

Chairman Getman clarified that last year's policy adoption was primarily to handle complaints made by private attorneys general. This proposed system, she noted, would allow staff to generate the cases internally.

Mr. Herndon agreed, noting that with this system, a courtesy notice is sent, another notice is sent if the filing has not occurred, then, once the filing deadline has passed, appropriate actions can be taken.

Commissioner Scott stated that she strongly supported a program that will identify the major donors who have not properly filed, but she questioned why a streamlined process is necessary, noting that it allowed lower fines.

Mr. Herndon responded that, in the past, a more traditional stipulation decision and order was used, and that the new process proposed a one-page stipulation document.

Mr. Rickards explained that the new process would allow staff investigators to handle cases and attorney resources would not be required. Any person would have the right to have a hearing if they do not want to be involved in the streamlined process. He noted that staff could deal with those cases that are relatively clear, are identified very early, and use the least amount of resources to make the point that Enforcement wants to make. The objective, he pointed out, is compliance. If people do not comply in a short period of time, he noted, a much more substantial fine is imposed. If these cases are identified early and compliance is achieved, he added, the potential for public harm can be changed.

Mr. Rickards noted that the fine reflects the fact that someone failed to comply immediately, and he noted that if the fine is too high, people would be discouraged from complying. Existing fines, he stated, ranged from $400 to $600 if there were no late contribution violations.

Commissioner Scott questioned whether the process reached the major donors in time to make a difference in an election.

Chairman Getman clarified that major donors who had a filing obligation on July 31, 2000 would have enforcement actions brought against them in December 2000, and that the process may be faster once staff has worked with it for awhile. She also noted that these cases involve people who do not have to file a report until after the election.

Mr. Herndon pointed out that the potential filers were notified long before the filing deadline occurred. He also noted that less than 10% of the filers had not yet filed, and that staff was able to notify people and get compliance before those people needed to be fined.

Chairman Getman compared the program with the Commission's Form 700 SEI program, noting that they both deal with people who do not file on time, but that staff is able to get to those people to file within a few weeks or months after they miss the filing deadline.

Commissioner Scott noted that the major donors are people who deal with a lot of money.

Chairman Getman noted that these cases are all situations where the donations have been reported by the recipient committees.

Commissioner Scott pointed out that, if the recipient committee does not report the contribution, then staff does not find out about it.

Mr. Rickards agreed, noting that in those cases the only way staff finds out about the donation is if someone reports it.

Commissioner Deaver stated that staff had done a great job.

Commissioner Swanson commented that the first letter sent to the major donors should include the name of the person being notified.

Mr. Wroten responded that, in those cases where an individual was involved, the envelope was addressed to the individual.

Chairman Getman explained that the Enforcement Division has been understaffed and commended Enforcement staff for what they had accomplished.

Commissioner Scott agreed that the name of the contributor should be included on the letter, noting that, without the name, this type of letter could be mistaken for unimportant information.

Commissioner Swanson suggested that the consequences of failing to file be included in the letter, even though those consequences may have to be stated in a general manner. She also requested that phone calls be made whenever possible.

Commissioner Swanson stated that it is important to protect the public interest, and that making a deal with the person to get compliance is not as important as protecting the public by letting them know who is in violation of the major donor obligations as quickly as possible.

Commissioner Scott agreed, and suggested that the letter include a "re:" line.

Mr. Wroten stated that it would be easy to incorporate a "re:" line. He pointed out that staff is already in the process of preparing to send out the letters for the next reports that must be filed.

Commissioner Deaver reiterated his commendation of the Enforcement Division, noting that resources are the only problem. He commended the process, noting that it will probably increase compliance with the law and the spirit of the law.

Chairman Getman pointed out that the Form 700 SEI program has had a remarkable impact on compliance in one year.

Chairman Getman reminded the Commission that there was a motion on the table to approve the idea of an expedited stipulated settlement, and asked for a second on the motion. Commissioner Deaver seconded the motion. There being no objection the motion carried.

Action Item III

Mr. Herndon presented the proposed fine schedule for major donor reporting violations, which included three fine levels. He asked that the Commission approve the predetermined fine schedule for prosecution of reporting violations by major donors. He explained that staff had tried to design a program that would encourage voluntary compliance, and noted that the three proposed fine levels were designed on a sliding scale, depending on how late the filing was made.

Mr. Herndon suggested that those persons who filed late but before receiving the first letter from FPPC staff should not be fined. He pointed out that those persons will be subject to late filing penalties from the filing officers.

Mr. Herndon suggested that the first fine level include those persons who did not file before the first letter was sent, but did file before the second letter was sent, and recommended a fine of $200. He noted that the contributor would also be subject to late filing penalties from the filing officers.

Mr. Herndon suggested that the second fine level of $500 include those persons who filed after receiving the second letter, but before the requested due date in that letter, recognizing that they, too, would be subject to late filing penalties from the filing officers.

Mr. Herndon stated that the third fine level should include those persons who do not file after the second letter. He suggested that those cases should be considered aggravated situations and should be fined 15% of the amount contributed, or 25% of the amount contributed if there is a prior enforcement history.

Mr. Herndon compared the fine levels to the program that was approved by the Commission in September 1999 (involving cases where the filings were filed well after the deadline). He noted that the $400 - $600 fine levels approved by the Commission last year were based on dollar amounts contributed, and recommended approval of the fines proposed by staff.

Commissioner Scott stated her concern that the contributions involved a lot of money, and that she believed that the first two fine levels of the proposal were too low to encourage compliance or be viewed as a penalty. She supported increasing those fine level amounts to $400 and $600. She also stated that Enforcement may be undercutting their position, taking a proactive approach and then stepping back on the fines. She encouraged staff to take the proactive approach so that the process will be easier, but not lower the fines. She pointed out that people do not get a warning on traffic tickets, and noted that these contributions involve a lot of money.

Commissioner Swanson agreed, and added that Enforcement efforts to be helpful are creating a lot more work for staff. She suggested that staff eliminate the $200 fine, retaining the $500 fine and the percentage fine.

Mr. Herndon explained that staff felt that there should be a distinction between people who comply after one letter versus two letters versus not complying at all.

Chairman Getman stated that she was not against raising the fine levels, but supported the tiered fine structure proposed by staff because of the success of the similar Form 700 SEI enforcement program.

Mr. Rickards agreed that the fines could be raised but requested that the proposed fine structure be retained. He pointed out that staff would be studying this program and the LCR program and would be asking the Commission for a shortened document for the SEI program. He requested that staff be allowed to try the Major Donor program, and noted that it can be changed later.

Commissioner Deaver motioned that the Commission approve the proposed streamlined fine schedule, changing the fine amounts from $200 to $400 in the first fine level, and from $500 to $600 in the second fine level. Commissioner Swanson seconded the motion.

Commissioner Scott asked that the process be watched and that Commissioner Swanson's suggestion be considered as an alternative.

Mr. Rickards agreed.

There being no objection, the motion carried.

Item II

Mr. Rickards explained that this proposal would eliminate the $49,999 cap so that staff could treat any amount under this program having exercised their discretion.

Commissioner Swanson motioned that the elimination of the cap be approved. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Items #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18

Commissioner Deaver motioned that the following items be approved on the consent calendar:

Item #6. ***In the Matter of Richard Meruelo, FPPC #99/406.*** (1 count).
Item #7. ***In the Matter of SCPIE Indemnity Company, FPPC #99/390.*** (1 count).
Item #8. ***In the matter of Elmy Bermejo, #99/548.*** (2 counts).
Item #9. ***In the Matter of Pablo Alvarado. FPPC No. 2000/575.*** (1 count).

Item #10.

- **a.** ***In the Matter of Pachenga Band of Mission Indians, FPPC No. 2000-425.*** (1 count).
- **b.** ***In the Matter of Daniel Renberg, FPPC No. 2000-452.*** (1 count).
- **c.** ***In the Matter of Bruce Stuart, FPPC No. 2000-501.*** (1 count).

Item #11. ***In the Matter of John McLemore, FPPC No. 98/160***. (1 count).

Item #12. ***In the Matter of Crosby, Mead, Benton & Associates, FPPC No. 98/635.*** (16 counts).

Item #13. ***In the Matter of Ken Moser and the San Diego County Conservative Political Action Committee, #97/501.*** (7 counts).

Item #14. ***In the Matter of Edwin Palmquist, Measure K, Yes for Kids and Local Schools, #2000/226.*** (3 counts).

Item #15. ***Yes on A, (Committee for Measure A) and Adele Stoler, #2000/225***. (2 counts).

Item #16. ***In the Matter of Jim Morrissey, Morrissey for Assembly, and Betty Presley, FPPC No. 2000/63.***

Item #17. ***In the Matter of Craig Wilson, Friends of Craig Wilson, and David Hawkins, treasurer, FPPC No. 98/304.*** (2 counts).

Item #18. ***In the Matter of California Association of Sheet Metal and Air Conditioning Contractors PAC.*** (3 counts).

Commissioner Swanson thanked and commended Enforcement Chief Cy Rickards for briefing her on the enforcement calendar.

Commissioner Scott seconded Commissioner Deaver's motion. There being no objection, the motion carried.

Commissioner Scott requested that Enforcement Chief Cy Rickards and Executive Director Wayne Strumpfer present at the next meeting a discussion of the numbers of old Enforcement cases, not including any confidential information, reporting the status of those cases and discussing whether staff is faster at resolving old cases. She asked that the report include statistics regarding the current status of the old cases, how long the cases take to resolve, the types of cases that take longer, the reasons cases take longer, and whether staff can do something to get the cases to move faster. She suggested a monthly enforcement report discussing those issues.

Mr. Rickards responded that many of her requests were possible and could be done. He pointed out that staff has been making a concerted effort to clear up old cases, and that a number of them were handled on this agenda. He agreed that this could be discussed and that staff would work with the Commission to provide the requested information.

Commissioner Scott stated that she understood that Enforcement Division had made a good effort at having lawyers and investigators work together.

Chairman Getman pointed out that the Major Donor cases would now be handled by investigators which could make a difference in handling these cases more quickly.

Item #19. Executive Director's Report.

Executive Director Wayne Strumpfer stated that the new Public Education Unit has now been almost fully staffed. He announced that John Mathews, a veteran reporter for the Sacramento Bee, has been hired to oversee the unit. Additionally, Hal Dasinger, from the Secretary of State's Office, would be working as the Political Reform Consultant for that unit. He reported that Jason Painter, from Administration Division, would be moving over to the new Public Education Unit, and that one position remained to be filled.

Item #20. Litigation Report.

There were no changes or additions to the Litigation Report.

The meeting adjourned at 12:00 p.m.

Dated: January 12, 2001

Respectfully submitted,

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Sandra A. Johnson
Executive Secretary

Approved by:

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Chairman Getman