



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*December 20, 2018 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of November 2, 2018 through December 5, 2018, the Enforcement Division received 161 complaints, opened 45 for investigation, and rejected 66. The Enforcement Division received 226 non-filer referrals during this time.

During this time, the Enforcement Division closed a total of 141 cases including:

- 71 warning letters - advertisement violations (1), campaign violations (21), lobbying violations (3), and Statement of Economic Interests violations (46);
- No advisory letters;
- 38 no action closure letters alleging - advertisement violations (4), campaign violations (18), conflict of interest violations (1), gift violations (1), non-PRA violations (3), revolving door violations (1), and Statement of Economic Interest violations (10);
- 14 approved stipulations at the November Commission meeting; and
- 18 committees were administratively terminated.

The Division had 1314 cases in various stages of resolution at the time of the November Monthly Report and currently has approximately 1424 cases in various stages of resolution, including the 27 cases before the Commission as listed in the December 2018 Agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 6 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 13 remain pending. We are receiving 2015, 2016, 2017, and 2018 referrals periodically through the new Electronic Complaint System.

On the next page, you will find a chart that details the annual statistics for enforcement complaints, referrals and cases. The information in the chart has been gathered from public reports, information from the defunct and inactive database, and data that has been converted into current form, so the numbers are close estimates in some instances.

	<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
1	Complaints Received	1,228	609	1,180	564
2	Referrals Received	614	596	350	1,616
3	Total Complaint and Referrals Received	1,842	1,205	1,530	2,180
4	Cases opened	1,405	2,273 <sup>1</sup>	1,315	1,480
5	Cases closed	1,869	1,253	1,803	1,477
6	Cases with resolutions approved by the Commission <sup>2</sup>	332	333	311	340
	a Streamline cases approved by Commission	234	258	234	262
	b Mainline cases approved by Commission	86	69	70	66
	c Default cases approved by Commission	12	6	7	12
7	Total fines imposed by the Commission	\$744,868	\$703,821	\$894,257	\$1,126,933
8	Warning letters issued	673	442	489	505
9	Administrative terminations	69	116	668	297
10	Cases closed with violations found <sup>3</sup>	1,074	891	1,468	1,142
11	Advisory letters issued	10	19	14	17
12	No action closure letters	453	343	321	318

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<sup>1</sup> In 2015, the Enforcement Division received information regarding 2,460 \$50 Annual Fee non-payers in May and another 1,786 in October of that year. None of these came through the typical “referral” process and had to be evaluated for: whether the committee had been terminated locally or with SOS, whether the committee never qualified, whether the fees were paid prior to the referral, and whether records existed to evaluate the committee, before the information could be opened into a case. Therefore, these do not appear in the Referral line since they did not follow that process.

<sup>2</sup> Total for lines 6a, 6b, and 6c.

<sup>3</sup> Total for lines 6, 8, and 9.

## II. LEGAL DIVISION

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STAFF:

DAVID BAINBRIDGE, GENERAL COUNSEL

BRIAN LAU, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JOHN FESER, SENIOR COMMISSION COUNSEL IV

### A. Pending Litigation

***California State Association of Counties and California School Boards Association v. FPPC***  
Los Angeles County Superior Court, Central District, Case No. BS174653

On September 11, 2018, petitioners served a first amended petition for writ of mandate and complaint for declaratory relief. Petitioners allege that Regulations 18420.1 and 18901.1 are invalid as a matter of law, that the Commission has exceeded its jurisdiction in adopting these regulations, and that the regulations are unenforceable.

The Attorney General's Office is representing the Commission and timely filed an answer to the petition/complaint. The court conducted the trial setting conference on November 14, 2018, but continued it without setting trial. The continued trial setting conference is December 19, 2018.

***Howard Jarvis Taxpayers Association, et al. v. Edmund Brown, et al.***  
Court of Appeal, Third Appellate District, Case No. C086334

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds to finance campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act<sup>4</sup> (the Act) because it does not "further the purposes of the Act," an express requirement in the Act for legislative amendment. The Attorney General's Office is representing both Governor Brown and the Commission in this litigation. A hearing was held in Superior Court on August 4, 2017. After taking the matter under submission, the Court issued a Ruling, dated August 23, 2017, "entering a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and

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<sup>4</sup> The Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source, unless otherwise indicated.

an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107.”

In closed session at its meeting on September 21, 2017, the Commission voted to appeal the Superior Court decision. The Notice of Appeal was filed with the Third District Court of Appeal on January 9, 2018. Appellants’ Opening Brief was timely filed on September 21, 2018. Respondents’ Brief is due December 10, 2018, and Appellants’ Reply Brief is currently due December 31, 2018.

### **B. Outreach and Training**

Chief of Enforcement Galena West and Legal Division Senior Counsel Sukhi Brar attended the Council on Governmental Ethics Laws (COGEL) conference in Philadelphia, PA from Dec. 9-12<sup>th</sup>. COGEL is an international professional organization for government agencies, organizations, and individuals with responsibilities or interests in government ethics, elections, campaign finance, lobbying and freedom of information. COGEL’s annual conference is known as the premier conference in North America on these issues. Senior Counsel Sukhi Brar serves on COGEL’s Program Committee which is responsible for planning each session topic for the conference. Sukhi also both organized and participated in panels on political corruption and online regulation of social media ads at the conference and put together an informational display for the conference’s Innovation Showcase on the FPPC’s Ad Watch program. Galena West presented at two panels for the conference, one covering emerging trends in investigations and enforcement and the other covering trial skills with a focus on witness testimony in workshop format. Other presentations at the conference included a post-Watergate breakdown of where reform is now, a discussion on how agencies should react to the erosion of ethical norms, a discussion with the Director of the short film, *Dark Money*, and a #MeToo presentation on how to combat a harassment culture.

### **C. Advice**

In November 2018, the Legal Division responded to the following requests for advice:

- ***Requests for Advice:*** Legal Division Political Reform Consultants and attorneys collectively responded to more than 534 e-mail and telephone requests for advice. Only one question was not responded to within 24 hours.
- ***Advice Letters:*** Legal Division received 17 new advice letter requests under the Political Reform Act and completed 19 letters.
- ***Section 1090 Letters:*** Legal Division received two new advice letter requests concerning Section 1090 and completed one letter. This year to date, we have received 62 advice requests regarding Section 1090.

## **D. Miscellaneous Decisions**

None to report.

## **E. Potential Upcoming Regulations**

### **January 2018.**

- Regulation 18702.2. (Adoption) – Discussion of materiality thresholds under the Act’s conflict of interest provisions for real property interests including clarification of the 500-foot property rule.
- Enforcement Streamline Regulations (Adoption) – Discussion of the Enforcement Streamline Settlement Program including eligible violations, aggregating and mitigating factors, and penalty amount and structure.

### **Scheduling to be Determined.**

- Discussion of advice letter procedure including possible criteria for elevating requests for advice to opinion requests.
- Review of procedures for probable cause proceedings under Commission Regulation 18361.4.
- Discussion of gift rules as applicable to agency provided tickets or passes under Commission Regulation 18944.1.
- Discussion of the definition of nondonor funds for purposes of Section 84222.
- Discussion of campaigning by governmental agencies under Commission Regulations 18420.1 and 18901.1.

## **F. Conflict of Interest Codes**

### **Adoptions and Amendments**

#### *State Agency Conflict of Interest Codes*

- Cannabis Control Appeals Panel
- Public Health, Department of
- Teacher Credentialing Commission

#### *Multi-County Agency Conflict of Interest Codes*

- Alameda Contra Costa Transit District

- Beaumont Cherry Valley Water District
- BETA Healthcare Group Risk Management Authority
- Caliber Schools
- California Automated Consortium Eligibility System
- Colton Joint Unified School District
- Fresno Kings Madera Regional Health Authority
- Livermore Valley Joint Unified School District
- Marin Clean Energy
- Marysville Joint Unified School District
- Mid-Peninsula Regional Open Space District
- North Central Counties Consortium
- Oakdale Irrigation District
- Public Agency Risk Sharing Authority of California
- Sacramento Municipal Utility District
- Upper Kings Basin Integrated Regional Water Management Authority

### **Exemptions**

None to report.

### **Extensions**

None to report.

## **G. Probable Cause Hearings**

*Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.*

*The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.*

- 1. *In the Matter of Santa Ana Committee for Safe Neighborhoods and Safe Access Supporting Measure BB and Opposing Measure CC and Van Ton, Case No. 15/004.*** On November 28, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee and Ton failed to fully and accurately disclose contributor information on a semiannual campaign statement for the period July 1, 2013 through December 31, 2013 in violation of Section 84211, subdivision (f).

Count 2: The Committee and Ton failed to fully and accurately disclose the Committee's contribution and expenditure information on a pre-election campaign statement for the period of July 1, 2014 through September 30, 2014 in violation of Section 84211.

- Count 3: The Committee and Ton failed to timely file the pre-election campaign statement due on October 23, 2014, in violation of Section 84200.5 and 84200.7.
- Count 4: The Committee and Ton failed to timely file a 24-hour report to disclose the \$4,000 contribution made on or about October 24, 2014, in violation of Section 84203.
- Count 5: The Committee and Ton failed to timely pay the 2015 annual fee by the January 15, 2015 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 6: The Committee and Ton failed to timely file the semiannual campaign statement due on February 2, 2015, in violation of Section 84200.
- Count 7: The Committee and Ton failed to timely file the semiannual campaign statement due on July 31, 2015, in violation of Section 84200.
- Count 8: The Committee and Ton failed to timely pay the 2016 annual fee by the January 15, 2016 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 9: The Committee and Ton failed to timely file the semiannual campaign statement due on February 1, 2016, in violation of Section 84200.
- Count 10: The Committee and Ton failed to timely file the semiannual campaign statement due on August 1, 2016, in violation of Section 84200.
- Count 11: The Committee and Ton failed to timely pay the 2017 annual fee by the January 16, 2017 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 12: The Committee and Ton failed to timely file the semiannual campaign statement due on January 31, 2017, in violation of Section 84200.
- Count 13: The Committee and Ton failed to timely file the semiannual campaign statement due on July 31, 2017, in violation of Section 84200.
- Count 14: The Committee and Ton failed to timely pay the 2018 annual fee by the January 16, 2018 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 15: The Committee and Ton failed to timely file the semiannual campaign statement due on January 31, 2018, in violation of Section 84200.



Count 16: The Committee and Ton failed to timely file the semiannual campaign statement due on July 31, 2018, in violation of Section 84200.

2. ***In the Matter of Richard Parks, Case No. 17/789.*** On November 28, 2018, probable cause was found to believe Respondent committed the following violations of the Act:

Count 1: Parks failed to timely file a 2014 Annual SEI by the April 1, 2015 deadline, in violation of Section 87300.

Count 2: Parks failed to timely file a 2015 Annual SEI by the April 1, 2016 deadline, in violation of Section 87300.

Count 3: Parks failed to timely file a 2016 Annual SEI by the April 3, 2017 deadline, in violation of Section 87300.

Count 4: Parks failed to timely file a Leaving Office SEI by the July 30, 2017 deadline, in violation of Section 87300.

## III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: DEBORAH HANEPHIN, MANAGER

### **Phone Advice Requests**

The External Affairs and Education Division responded to 391 requests for technical assistance via phone in November.

### **Training & Outreach**

Deborah Hanephin and Katie Trumbly delivered a workshop on post-election duties to campaign filing officers in Lodi. 12 clerks were in attendance.

### **Additional Training**

Our video tutorials were accessed a total of 241 times in November. The Form 700 videos received 117 views while the Candidate/Treasurer video received 85 views. Filing officer videos were viewed 39 times.

### **Filing Schedules**

Staff created 1 filing schedule for a special local election in 2019.