



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

January 17, 2019 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of December 6, 2018 through January 2, 2019, the Enforcement Division received 91 complaints, opened 19 for investigation, and rejected 34. The Enforcement Division received 82 non-filer referrals during this time.

During this time, the Enforcement Division closed a total of 135 cases including:

- 88 warning letters - campaign violations (50), and Statement of Economic Interests violations (38);
- 1 advisory letter alleging - advertisement violation (1);
- 11 no action closure letters alleging - campaign violations (7), and Statement of Economic Interest violations (4);
- 29 approved stipulations at the December Commission meeting; and
- 6 committees were administratively terminated.

The Division had 1424 cases in various stages of resolution at the time of the December Monthly Report and currently has approximately 1372 cases in various stages of resolution, including the 23 cases before the Commission as listed in the January 2019 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, 12 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 an updated chart that details the annual statistics for enforcement complaints, referrals and cases. This chart now includes the data from 2018, where consistent with other years, 966 cases were closed with violations found. The penalties collected decreased as the emphasis on providing warnings increased. 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.

	Year	2015	2016	2017	2018
1	Complaints Received	609	1,180	564	1,352
2	Referrals Received	596	350	1,616	1,529
3	Total Complaint and Referrals Received	1,205	1,530	2,180	2,881
4	Cases opened	2,273 ¹	1,315	1,480	1,561
5	Cases closed	1,253	1,803	1,477	1,243
6	Cases with resolutions approved by the Commission ²	333	311	340	235
	a Streamline cases approved by Commission	258	234	262	173
	b Mainline cases approved by Commission	69	70	66	56
	c Default cases approved by Commission	6	7	12	6
7	Total fines imposed by the Commission	\$703,821	\$894,257	\$1,126,933	\$499,606
8	Warning letters issued	442	489	505	554
9	Administrative terminations	116	668	297	177
10	Cases closed with violations found ³	891	1,468	1,142	966
11	Advisory letters issued	19	14	17	20
12	No action closure letters	343	321	318	252

¹ In 2015, the Enforcement Division received information regarding 2,460 \$50 Annual Fee non-payors 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 do not follow that process.

² Total for lines 6a, 6b, and 6c.

³ Total for lines 6, 8, and 9.

II. LEGAL DIVISION

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. At the continued trial setting conference on December 19, 2018, the court set trial on the merits for August 14, 2019, at 9:30 a.m.

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 Act⁴ (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

⁴ 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 was timely filed on December 10, 2018. Appellants’ Reply Brief is currently due January 30, 2019.

Frank J. Burgess v. Fair Political Practices Commission
Riverside County Superior Court, Case No. RIC 1510656

After prevailing on the Commission’s appeal of plaintiff’s motion for attorney’s fees at trial, plaintiff Frank J. Burgess has filed a motion for attorney’s fees and costs on appeal. The hearing on this motion in Superior Court is January 17, 2019. Representing the Commission, the Attorney General’s Office filed an opposition to the motion prior to the January 4, 2019, deadline.

B. Outreach and Training

- On December 13, Assistant Chief Trish Mayer made a presentation to more than 300 city clerks and others at their annual New Law and Elections seminar in San Francisco. In this comprehensive session, topics included a recap of campaign and Form 700 rules, discussion regarding the 800 series forms, and an overview of the legislation that will affect the Political Reform Act in 2019 and recent regulatory changes.
- General Counsel Dave Bainbridge will participate in a panel at the lobbyist ethics training put on by the Senate and Assembly on January 10, 2019 in Sacramento.

C. Advice

In December 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 458 e-mail and telephone requests for advice. Four questions were not responded to within 24 hours.
- **Advice Letters:** Legal Division received 15 new advice letter requests under the Political Reform Act and completed 16 letters.
- **Section 1090 Letters:** Legal Division received five advice letter requests concerning Section 1090 and completed three letters. In 2018, we received 67 advice requests regarding Section 1090.

D. Miscellaneous Decisions

None to report.

E. Potential Upcoming Regulations

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

- Toxic Substances Control, Department of

Multi-County Agency Conflict of Interest Codes

- Alta Irrigation District
- Association of California Water Agencies Joint Powers Insurance Authority
- Dry Creek Joint Elementary School District
- Los Rios Community College District
- Monterey Bay Air Resources District
- Sierra Joint Community College District

Exemptions

- Office of Governor-elect and Office of Outgoing Governor Transition Teams (Department of Finance)

- Independent Emissions Market Advisory Committee (California Environmental Protection Agency)

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.

1. ***In the Matter of McKinnon for City Council 2012 and Richard McKinnon, Case No. 17/376.*** On December 21, 2018, after a probable cause conference, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The McKinnon Committee and McKinnon failed to timely file a Late Contribution Report by November 1, 2012 after receiving a non-monetary contribution of \$8,093 from SMRG in the form of mailers on October 30, 2012, in violation of Government Code sections 84203 and 84203.3.

Count 2: The McKinnon Committee and McKinnon failed to timely file a Late Contribution Report by November 2, 2012 after receiving a non-monetary contribution of \$5,450 from SMRG in the form of robo calls and walkers on October 31, 2012, in violation of Government Code sections 84203 and 84203.3.

Count 3: The McKinnon Committee and McKinnon failed to timely file a Late Contribution Report by November 4, 2012 after receiving a non-monetary contribution of \$12,994 from SMRG in the form of a phone bank and mailers on November 2, 2012, in violation of Government Code sections 84203 and 84203.3.

Count 4: The McKinnon Committee and McKinnon failed to timely file a Late Contribution Report by November 5, 2012 after receiving a non-monetary contribution of \$1,800 from SMRG in the form of walkers on November 3, 2012, in violation of Government Code sections 84203 and 84203.3.

Count 5: The McKinnon Committee and McKinnon failed to timely file a Late Contribution Report by November 7, 2012 after receiving a non-monetary contribution of \$9,127 from SMRG in the form of mailers, robo calls and email blasts on November 5, 2012, in violation of Government Code sections 84203 and 84203.3.

Count 6: The McKinnon Committee and McKinnon failed to timely report receiving approximately \$685 of non-monetary contributions in the form of slate mailers from SMRG during the preelection reporting period of October 1, 2012 – October

20, 2012, due by October 25, 2012, in violation of Government Code section 84211 subdivisions (a), (c) and (f).

Count 7:

The McKinnon Committee and McKinnon failed to timely report receiving approximately \$37,466 of non-monetary contributions from SMRG during the reporting period of October 21, 2012 through December 31, 2012, due by January 31, 2013, in violation of Government Code section 84211 subdivisions (a), (c) and (f).

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: DEBORAH HANEPHIN, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 486 requests for technical assistance via phone in December. The total number of calls taken in 2018 was over 10,000. This is an increase of nearly 50% over 2017.

Training & Outreach

Deborah Hanephin participated in a panel discussion on gifts at the annual conference of the California School Boards Association in San Francisco. Approximately 30 people attended the session.

Political Reform Consultant Glen Bailey delivered a workshop on the Form 700 and 800 series forms to the California Association of Clerks and Elections Officials. Approximately 75 county clerks attended this event in Sacramento.

Additional Training

Our video tutorials were accessed a total of 230 times in December. The Form 700 videos received 139 views while the Candidate/Treasurer video received 39 views. Filing officer videos were viewed 52 times.

Filing Schedules

Staff created 3 filing schedules for local elections in San Marino School District, Compton, and Ventura.

IV. EXECUTIVE DIRECTOR UPDATE

STAFF:

LORESSA HON, ACTING EXECUTIVE DIRECTOR

PHILLIP UNG, LEGISLATIVE AND EXTERNAL AFFAIRS DIRECTOR

1. The 2019 Political Reform Act booklet was publicly released on January 4, 2019. Under Government Code Section 83113(e), the Commission is required to publish a booklet setting forth the provision of the title no later than March 1 of each year. The public will notice several changes between the 2018 and 2019 versions including:
 - Added amendments from AB 2155 and AB 2880, two bills chaptered in 2018.
 - Updated regulation references to reflect new regulations adopted in 2018.
 - Moved references to repealed sections of the Act to a new Appendix IV.
 - Created new Appendix V for newly chaptered laws with future operative dates. Adding those amendments to the Act would cause confusion because the provisions not operative for at least another year.
 - Made various formatting changes to improve readability and navigability of the Act. Formatting changes reduced the booklet's size by 34 pages.
 - Created new Table of Contents for each Chapter and Article to help readers find sections efficiently.
 - New cover page and redesigned introduction page.
 - Updated the Index to reflect new regulations and statutes. Reformatted index for improved readability.

The redesign and update of the 2019 booklet was a team effort with contributions from all of the Commission's divisions. Acknowledgments go to Loressa Hon, Dave Bainbridge, Brian Lau, Galena West, Phillip Ung, Sasha Linker, Sara Puricelli, Rieko Ivaska, Trish Mayer, Ginny Lambing, Sean Nichols, and Sonia Rangel.

STAFF:

LORESSA HON, ACTING EXECUTIVE DIRECTOR

PHILLIP UNG, LEGISLATIVE AND EXTERNAL AFFAIRS DIRECTOR

RIEKO IVASKA, INFORMATION TECHNOLOGY SPECIALIST

2. Staff will present the 2018 Annual Report. The report features the agency's achievements, statistics, and major enforcement cases from 2018. The report also highlights new laws and regulations adopted in the prior year.