

1 Amend 2 Cal. Code Regs. Section 18360 to read:

2 **§ 18360. Complaints.**

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

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

8 (1) Be in writing.

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

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

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

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

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

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

20 (c) This regulation does not prevent a person from complaining by telephone to the
21 Commission or requesting anonymity when doing so, but only a sworn complaint filed

1 substantially in conformity with subdivision (b) entitles the complainant to the procedural rights
2 set forth in Section 83115 and in this regulation.

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

6 (1) With respect to sworn complaints received since the last report:

7 (A) The name of the complainant unless the complainant is a confidential informant.

8 (B) The name of the person or persons complained against.

9 (C) The date the sworn complaint was received.

10 (D) The alleged violation or violations of the Act.

11 (2) With respect to a staff-initiated investigation commenced since the last report:

12 (A) The name of the person who is the subject of the investigation.

13 (B) The date the staff initiated the investigation.

14 (C) The alleged violation or violations of the Act.

15 (3) The Commission staff shall also provide additional information a Commissioner
16 requests to that Commissioner, including a copy of a sworn complaint, unless the Executive
17 Director determines, in consultation with the Chief of Enforcement, the information will
18 compromise the impartiality of the Commissioner on matters alleged in a complaint.

19 (e) The Chief of Enforcement, with the authorization of the Executive Director, shall
20 provide information about sworn complaints and staff-initiated investigations to other
21 governmental agencies that have an official and specific interest in the information, and make
22 every effort to cooperate with other governmental agencies in a position to assist the

1 Commission with an investigation. However, the Commission may decline to disclose the
2 identity of a confidential informant.

3 (f) The Executive Director shall take the following actions with respect to complaints:

4 (1) Notify the complainant in writing within 14 calendar days of receipt of a sworn
5 complaint that the Commission will do one or more of the following:

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

10 (B) Refer the complaint to another governmental agency.

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

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

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

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

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

1 person except to a law enforcement agency on a confidential basis. If the sworn complaint is
2 otherwise made public, a copy of the complaint shall be promptly sent to the subject of the
3 complaint.

4 (4) ~~Inform the subject of a staff initiated investigation of the alleged violation or~~
5 ~~violations not later than the time the information is provided to the Commissioners. Send~~
6 notification of a potential staff-initiated investigation to the subject of the potential investigation
7 and inform the subject of the potential staff-initiated investigation that the subject may respond
8 in writing to any allegations set forth in the notification within 10 calendar days from the date the
9 notification is sent. The notification shall also inform the subject of the potential staff-initiated
10 investigation that no final determination on full investigation of the allegations set forth in the
11 notification will be made until at least 10 calendar days have passed from the date the
12 notification was sent. Notification of a potential staff-initiated investigation must be sent to the
13 subject of the potential staff-initiated investigation at the same time information of the potential
14 investigation is provided to the Commissioners. The Executive Director shall ~~and~~ ensure that
15 Commission staff does not disclose information relating to the staff-initiated investigation, to
16 anyone other than Commission staff and those listed in subdivision (e) of this Regulation, except
17 for purposes of investigation, until at least 5 business days have passed from the time the subject
18 of the investigation is informed or sent notification of the investigation. However, upon the
19 recommendation of the Chief of Enforcement that providing the information would jeopardize
20 the investigation, the Executive Director may decline to inform the subject of the complaint. If
21 the Executive Director makes this determination, he or she shall prepare a memorandum setting
22 forth justification for the declination, which shall be retained in the enforcement case file. If the

1 subject of the complaint is not informed of the complaint, the existence of the complaint may not
2 be disclosed except to a law enforcement agency on a confidential basis.

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

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

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

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

10 (h) If the person who filed the sworn complaint disagrees with the response sent pursuant
11 to subdivision (f)(1)(C) or (D), he or she may submit in writing, within 20 calendar days of
12 receipt of the response, a request for reconsideration that shall be directed to the Executive
13 Director, who shall forward the correspondence to each member of the Commission for
14 consideration.

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