



(Approved November 18, 2021)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, October 21, 2021
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Cardenas, Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Angela Brereton, Chief of Enforcement
Dave Bainbridge, General Counsel
Loressa Hon, Chief of Administration
Toren Lewis, Commission Counsel
Kevin Cornwall, Commission Counsel
Lindsey Nakano, Legislative Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:03 AM.

- 1. Public Comment for Items not on Agenda.**
- 2. Approval of September 2021 Commission Hearing Minutes.**

MOTION: To approve the September 2021 meeting minutes. Moved by Commissioner Baker, seconded by Commissioner Wilson. Motion approved 5-0.

- 6. Adoption of Proposed Regulations Related to Behested Payment Reporting**

Chair Miadich stated the Commission would be taking item six out of order so that any recommendations by the Commissioners can be edited in a redline edit can be presented near the end of the meeting to be voted on. Karen Harrison, Senior Commission Counsel, presented the proposed regulations that relate to Behested Payment Reporting including the four areas of concern that were previously identified by the Commission.

In discussion of 18424, Chair Miadich asked if today, when a public official files a behested payment report, do they have any obligation to disclose relationships of their family members or staff with the organization that is receiving a behested payment at their request. Ms. Harrison responded that these

public officials do not have to, and if this proposed regulation was adopted, public officials will have to report this information. Chair Miadich further inquired if the only way to know this information today is through the press or third party to find a connection between the organization and the public official and stated this proposed regulation would make it easier to see those relationships. Ms. Harrison stated that statement is correct. Chair Miadich asked if a public official behests a payment and the payment is made, and the person making that payment has business before the public official, would the public official have to disclose that information publicly. Ms. Harrison stated that is not a current requirement but with the proposed regulation that relationship would need to be reported.

Chair Miadich talked about the decision point on including executive campaign or executive officeholder staff and discussed his concern that including executive campaign staff not being equitable but that the statute makes it that way, so the suggestion is removing the term executive but keep campaign and office holder. Chair Miadich agreed with the option presented on line 14 and went on to discuss section (b)(2), stating this language might be too far and the scope should be narrowed. Ms. Harrison responded with suggested language that would address the Chair's concern.

Commissioner Baker agreed both campaign and office holder staff should be included, and executive should be removed. Commissioner Baker asked if the structure of the proposed regulation will require the office holder to have constructive knowledge that there's a staff member involved. Ms. Harrison confirmed that to be true. Commissioner Baker asked if the language might be conflicting because in proposed regulation 18424 it states at the time of the behested payment and 12 months prior, and in the attached staff memo it also talks about what happens in the future. Ms. Harrison responded there was a discussion on determining what proceedings could be captured and what would be foreseeable for the official so that no traps are created, and no unrealistic expectations are set. Ms. Harrison maintains that it is consistent with conflict-of-interest requirements. Commissioner Baker discussed the additional language presented is that the official knows that a document was submitted and played a role in the decision. Ms. Harrison agreed and stated the code reference 18704 is a conflict-of-interest regulation and defines when an official is participating, making, or influencing a decision.

Commissioner Wood asked if subsection (b) of the proposed regulation is limited just to agencies as

defined in section 18249, and if so, wanted clarification if this is limited to agencies or if all elected officials should be covered by subsection (b). Ms. Harrison stated that agency is understood that if you are an elected state officer, that would be your agency. The same would be for the legislature.

Chair Miadich summarized the discussed changes to be: keeping option one while removing the term executive in both places it appears, include option four, and insert the language in (b)(2) that Ms. Harrison suggested previously.

In discussion of 18424.1, Chair Miadich wanted clarification on if this regulation is creating a new duty to file a behested payment report on something the official doesn't know about as stated in the public comment received. Chair Miadich stated this was not his understanding. Ms. Harrison agreed, this is not correct.

Commissioner Baker discussed the creation of a sample letter to help give examples of good faith.

Commissioner Wilson asked Ms. Harrison how they would go about defining or determining whether an official acted in good faith, and if there are any parameters to make that assessment. Ms. Harrison responded that it would require reasonable efforts and stated that it is defined in the regulation and gives examples of reasonable efforts and how it can be met.

Ms. Harrison discussed a change made during the Law and Policy Committee meeting where subdivision (b) should be changed from payee to official.

Chair Miadich shared concerns in proposed regulation 18424.2, subsection (c), where there is language singling out guest speakers and seems underinclusive. Chair Miadich discussed the approach of deleting subsection (c) and finding an alternate route of providing guidance and information to provide clarity to the community. Commissioner Baker wanted clarification on what would occur should subsection (c) be removed, and what the status quo would be. Ms. Harrison responded that it would be the standard that exists right now, which is if you are featured in a solicitation and you have met the other cooperated, consented, coordinated, standard language, then you have made a behested payment and you have a behested payment reporting duty. Chair Miadich inquired if a solicitation merely identified a guest speaker and the officials involvement in the fundraising solicitation didn't extend beyond the role of guest speaker, under subsection (a)(1) and (b) there would not be a behesting payment reporting obligation. Ms.

Harrison stated if the guest speaker did not coordinate with the organization, there will not be a behested payment reporting obligation. Commissioner Baker asked if subsection (c) is removed, does the Commission have other means or options to respond to lack of clarity on this topic. Ms. Harrison responded that there are the opinion and advice letters that can address specific facts that are key to this determination, as well as adding frequently asked questions to the Form 803. Commissioner Wilson stated in addition to advice letters and opinions, within a year from now, the Commission can adopt an additional regulation to address any issues. Ms. Harrison confirmed that to be true.

In discussion of 18424.3, Chair Miadich wanted to confirm that if a donor-advised fund is used to make a behested payment and it is anonymous there is no other obligation by the public official to try and ascertain the identity of the donor or provide any additional information as it stands today. Ms. Harrison confirmed that to be true and stated proposed regulation 18424.3 will allow information to be provided while protecting the anonymity of the donor-advised fund.

Commissioner Cardenas had a question on (a)(3) of the proposed regulation, in which it states that if sponsoring organization withholds the donor information, the official shall report the name as anonymous donor, is the advisor also listed as anonymous. Ms. Harrison stated that if the donor is choosing to be anonymous for a payment, the donor advisor is also anonymous. Ms. Harrison agrees that if the information is available and the donor advisor is exercising authority, they should be disclosed, and it should be clarified in proposed regulation 18424.3.

Commissioner Cardenas inquired on proposed regulation 18424, in section (a), if salaried employees are listed on organizations then contractors should also be included. Ms. Harrison stated that this was not discussed before. Commissioner Wilson asked Ms. Harrison if contractors include campaign consultants. Ms. Harrison responded that if the Commission is looking at a campaign consultant it would be more so looking at a relationship of a staff member or official family member. The Commission agreed that the Law and Policy Committee should discuss and investigate the inclusions of contractors at a later date. The Commissioners also agreed that the results of these new regulations should be reviewed in a year for effectiveness.

Commissioner Wilson asked how many officials throughout the state would be impacted by these

regulations. Ms. Harrison responded elected officials and PUC members have the duty to report when they make a behested payment to the extent that the provisions apply to them.

Nick Sanders, Sutton Law Firm, discussed the concerns that the proposed regulations are only addressing isolated incidents, and doesn't create a workable framework for officials to understand what constitutes a behested payment. Mr. Sanders addressed the point of what specific knowledge an official must have before those officials fundraising efforts could be considered to curry favor and require a report. Mr. Sanders believes this can be addressed through Frequently Answered Questions or other examples.

Rob Quan, Unrig LA, had concerns about the possible guest speaker loophole in the proposed regulations. He also discussed the need for frequently asked questions. Mr. Quan's concern includes elected officials using the \$5,000 threshold to not have to report behested payments.

Chair Miadich suspended the consideration of item six to give Ms. Harrison time to provide red line edits of the regulations based on the discussion today.

3-5. Approval of Enforcement Consent Calendar

Chair Miadich pulled item three, In the Matter of Charles Grace, from the Consent Calendar for separate consideration.

Commissioner Wood asked what the relevance was that the gift was from an employee that Mathis has authority over for item 5. Angela Brereton, Chief of Enforcement, responded that when they were evaluating a case they focus on the eight factors of the regulation, as well as the facts and circumstances surrounding the case itself. Ms. Brereton discussed the fact was expressed in the stipulation because Mr. Mathis had control over the employee and Staff believed that to be an important factor. Mr. Mathis did not understand receiving the gift was not included in the exception because he had a close relationship with the person he received the gift from. Commissioner Baker followed up on item 5 and asked if the relationship between the official and the person, a staff member, who the gift is coming from, is one of good friends and is something that we would note in the stipulation. Ms. Brereton responded that if it was important to an actual case, this specific information would be included. Commissioner Baker further inquired during the investigation at the time where this housing arrangement was in place were the two in question friends. Ms. Brereton responded that information is outside the stipulation that is placed before

the Commission.

MOTION: To approve items 4 and 5. Moved by Commissioner Baker, seconded by Commissioner Cardenas. Motion approved 5-0.

The Commission adjourned for a break at 11:45 a.m. and reconvened at 11:58 a.m.

Ms. Brereton stated item 3, In the Matter of Charles Grace, is the first stipulation being presented to the Commission related to Government Code Section 1090. Ms. Brereton gave background on the agency's ability to enforce Section 1090 and stated the contract would be void if the stipulation is approved.

Chair Miadich asked where in the stipulation it states that the contract is going to be void if the stipulation is approved. Ms. Brereton responded that it is not stated in the stipulation, but rather in Government Code Section 1092, where it dictates that whenever there is a contract that violates 1090 its void as a matter of law. In discussion, Chair Miadich mentioned that the harm could have been stated more clearly and asserted that the public was harmed. He stated that the language should be much stronger going forward. Chair Miadich asked if Mr. Grace sought advice before or after he was negotiating his own contract. Ms. Brereton responded that to their understanding is that advice was sought in 2017, after the contract occurred. Chair Miadich asked Ms. Brereton if there was any knowledge from Mr. Grace's part that he was aware in 2017 that he potentially violated Government Code 1090 with his earlier transaction. Ms. Brereton responded by stating that they do not have that information. Chair Miadich stated he agreed with the fine amount but asked if there could be requirement that Mr. Grace goes through 1090 training, so this kind of action doesn't happen in the future.

Commissioner Baker agreed with Chair Miadich's points and stated she was very intrigued with the possibility of requiring training. Commissioner Baker discussed the penalty amount and inquired why two contracts were rolled into one count. Ms. Brereton stated the statute of limitations was already passed for the 2014 contract by the time the information was received by the Enforcement Division. Commissioner Baker asked about the language in the stipulation regarding the respondent having counsel and why that information was important enough for the stipulation. Ms. Brereton stated counsel was involved in creating and negotiating the contract, as well as, bringing it before the district for approval. This is included in the stipulation because Mr. Grace's contention believed the attorney should have alerted him

to any conflict. Commissioner Baker also asked what inadvertent means within the stipulation. Ms. Brereton explained the language choice as coming from counsel on the other side and Mr. Grace inadvertently violated the code as there was no evidence to show that he didn't rely on the district counsel's involvement.

Commissioner Cardenas asked if Ms. Brereton knows who the General Manager of the District is. Ms. Brereton responded that Mr. Grace was the General Manager during the time of the violation. Mr. Cardenas inquired about related matters. Ms. Brereton responded that if the Commission were to receive complaints or new information about another contract, including amendments, there can be another investigation but doesn't believe this stipulation should be held in hopes of more information forthcoming. Commissioner Cardenas asked when the tolling agreement expires. Ms. Brereton responded November 30, 2021.

Commissioner Wood agreed that the language should be more specific regarding the public harm and consider both informational harm and democratic harm.

Commissioner Baker ask if the Commission can initiate its own investigation in a 1090 setting like what they can do in the campaign finance area. Ms. Brereton responded that it would have to following the 1090 rules, which include reaching out to the local DA's office and request authorization to investigate for a 1090 code violation.

Hank Krzciuk, a resident of San Simeon, raised concerns on the harm that was caused in this case. Mr. Krzciuk discussed Charles Grace's position within the District and how it changes depending on the situation which causes a lot of confusion for the public.

Amber Maltbie, attorney for Charles Grace and Grace Environmental Services, stated how in Governmental Code 1090 an amendment is tricky territory, especially for a contractor, and discussed how this limits the public harm and said Mr. Grace demonstrated good faith by extending the tolling agreement four times.

MOTION: To reject the stipulation in item 3 with the direction to Enforcement to negotiate new language making the significant public harm clear. Moved by Chair Miadich, seconded by Commissioner Baker. Motion approved 5-0.

AMEND THE MOTION: To include training, if it's within the Commission's authority. Moved
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by Commissioner Baker, seconded by Commissioner Wood. Motion approved 5-0.

7. Law and Policy Committee Update

Chair Miadich stated the Law and Policy Committee met and discussed legislative ideas and the behested payment regulations.

8. Legislative Development

Lindsey Nakano, Senior Legislative Counsel, gave a summary of how the legislative year went, reporting that all five PRA related bills that were passed by the Legislature, and were Commission sponsored, were signed by the Governor, and will take effect on January 1st. Ms. Nakano presented legislative concepts for the Commission to discuss and decide to move forward with.

Commissioner Wood asked about one of the proposals regarding violations for over disclosure on ads, specifically if the Commission was penalizing over disclosure on ads or elsewhere. Galena West, Executive Director, responded that it is perceived as a violation, and Enforcement doesn't prosecute these currently. Ms. West discussed the change to make it not a violation to avoid complaints and Adwatch submissions, and make it common sense, hence the reason for the proposal.

Commissioner Baker inquired if there is a plan to assess what was learned as an agency during the recall election that might be beneficial legislation. Dave Bainbridge, General Counsel, responded that there were a lot of questions during the last recall election and noted that the rules are not written with the recall elections in mind. Mr. Bainbridge stated this topic was on everyone's radar.

9. Executive Staff Reports

Mr. Bainbridge reported that the CSAC v. FPPC case that had been appealed by CSAC, has been dismissed, hence the appeal has been closed. Mr. Bainbridge also discussed the amended Form 700 on the FPPC website listed for public comment. Commissioner Baker asked Mr. Bainbridge if there is a training on behested payment reporting. Mr. Bainbridge responded with there is not, and the Commission is open to create training on behested payment reporting and will create additional educational materials after these regulations go into effect, consistent with our current practices.

Commissioner Wilson asked if there is an archived record of the Form 700 changes available if a Commissioner wants to look at the past 10-15 years or maybe more. Mr. Bainbridge responded that there

are archived records of the changes to the Form 700.

Loressa Hon, Chief of Administration, reported that Staff found software that could help implement the ADA requirement more effectively and efficiently. Ms. Hon stated since there was no additional funding provided, Staff is reallocating our state operation budget to absorb the additional cost for the license. A proposal was submitted and the procurement process started with the Department of General Services for the approval to procure this license, which will cost \$74,800 annually.

6. Adoption of Proposed Regulations Related to Behested Payment Reporting

Ms. Harrison returned to the meeting to present a redline edit of the proposed regulations to the Commission.

MOTION: To approve the proposed regulations. Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 5-0.

Chair Miadich stated he agreed with Commissioner Baker on establishing trainings for public officials to provide more knowledge on behested payment reporting and mentioned how frequently asked questions on behested payment reporting could prove very beneficial. Commissioner Wilson also recommended if plausible a training video on behested payment reporting.

7. Commissioner Comments and Proposed Future Agenda Items

Commissioner Baker asked for a list of topics that will be presented at the December Enforcement update to be presented in November so that the Commissioners can provide the Enforcement team possible topics to include.

MOTION: To adjourn the meeting. Moved by Chair Miadich, seconded by Commissioner Wilson. Motion approved 5-0.

The meeting concluded at 1:18 PM.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved November 8, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission