

Background

Over the last several years, the length of time it takes to resolve a complaint or referral submitted to the Enforcement Division has grown unacceptably long. Many enforcement matters now take several years to come to resolution, sometimes not until after a respondent has been reelected to the office they held at the time a complaint was filed or out of office entirely. It appears that a confluence of several factors has contributed to this development, including recent statutory changes that add to and/or increase the complexity of the Act's requirements; increasing numbers of complaints/referrals without corresponding increases in Enforcement staff; an increasing number of "old" cases being carried over year after year without resolution; and the absence of consistent management-driven standards, priorities and deadlines for Enforcement staff.

While some of these factors are beyond the FPPC's control, it is our collective responsibility to identify ways in which our internal processes can be improved to resolve Enforcement Division matters more fairly and efficiently. For example, since 2017, the Enforcement Division has "carried over" an average caseload of approximately 1,450 "open" cases per year, many of which were originally opened several years earlier. The carryover caseload then becomes the base on top of which an average of 2,600 *new* case complaints and referrals are added each year. The resulting combined caseload of carryover and new cases cannot be resolved in an acceptable timeframe based on existing Enforcement Division policies and staff.

The Chair and Executive Director solicited input from the Chief of Enforcement and all staff members of the Enforcement Division in an effort to better understand both the current challenges faced by the Enforcement Division as well as viable solutions to those challenges. The policy directives contained in this document reflect changes to our internal operations that the Commission believes will assist staff in alleviating the unsustainable burden of large carryover caseloads, reducing the unacceptably long timeframe for resolving most complaints and referrals, while preserving staff's ability to direct the necessary time and resources on the most egregious violations of the Act.

Policy Directives

I. Annual Carryover Caseload

A. The Chief of Enforcement ("Enforcement Chief") is hereby directed, in consultation with the Executive Director, to take all appropriate actions within their discretion to reduce by 75% the number of open cases existing prior to January 1, 2023 as quickly as possible, and in no event later than December 31, 2024. In so doing, priority should be given to resolving inadvertent and minor violations through the appropriate mechanisms such as the PREP and Streamline programs.

B. In consultation with the Executive Director, the Enforcement Chief will identify and implement such policies and procedures as are necessary to ensure that, for the foreseeable future, the annual number of carryover cases does not exceed 625.

C. Beginning in July 2023, the Enforcement Chief will make quarterly progress reports to the Commission on achieving the goals stated in this section, as well as any observations/recommendations the Enforcement Chief may have concerning the need for additional policies/resources to achieve those goals.

II. Enforcement Procedures and Timelines

A. The goal of the Enforcement Division shall be to resolve complaints and referrals within two years of receipt, except where the Enforcement Chief determines that circumstances warrant a longer period of time.

B. The Enforcement Chief, in consultation with the Executive Director, shall establish and maintain a system for the efficient allocation and completion of Enforcement Division workload consistent with the policy to resolve cases within two years. The system shall be set forth in writing and periodically reviewed by the Enforcement Chief for the purpose of determining whether refinements are needed based on Division performance.

Copies of the written policies that comprise the system for the allocation and completion of Enforcement workload will be made available to any member of the Commission upon request.

The system shall, at a minimum, provide for:

- a. Fair and efficient allocation of work among Enforcement Division staff, including:
 - i. Prioritization of cases based on factors such as age of the case, the applicable statutes of limitations, the priorities of the Commission, and participation and contact from the Respondent to resolve the case;
 - ii. Assignment of the most complicated matters to senior staff and assignment of less complicated matters to less experienced staff members; and
 - iii. Reassignment of matters to more appropriate staff members if they are determined to involve violations that are more or less complicated than what was believed at the time of initial assignment to staff.
- b. For each complaint or referral assigned to Enforcement staff, assignment of specific target deadlines for completion of tasks at each stage of an Enforcement matter, including, but not limited to:
 - iv. Evaluation of complaints/referrals and recommendations for disposition by Intake;
 - v. Assignment of staff for investigation of opened cases;
 - vi. Preparation and completion of investigative plans by assigned staff;
 - vii. Issuance of informal and formal requests for information and witness interviews;
 - viii. Review of evidence gathered during investigations;
 - ix. Preparation of draft investigative summary reports by Special Investigators;
 - x. Review and approval of investigative summaries by Supervising Special Investigator;
 - xi. Evaluation of investigative summary by Commission Counsel;
 - xii. Drafting closure memos;
 - xiii. Drafting requests for settlement authority;
 - xiv. Review of closure memoranda and requests for settlement authority by the Chief or their designee;
 - xv. Drafting/transmitting closure documents (i.e., advisory, warning, or closure letters);
 - xvi. Drafting/transmitting settlement offers;
 - xvii. Ending settlement discussions and proceeding with probable cause proceedings (e.g., Respondent has 30 days to respond to FPPC offer; FPPC has 30 days to

consider counteroffer by Respondent; Respondent has 30 days to consider FPPC response to counteroffer; negotiations end at 90 days and FPPC proceeds to probable cause unless Chief determines that good cause exists to permit another 30 days of settlement negotiations);

- xviii. FPPC's production of records to Respondent following Respondent's request for records under FPPC Reg 18361.4 (d)(3);
- xix. Prepare closure letter if probable cause is denied;
- xx. Drafting and service of accusation if probable cause is found;
- xxi. If notice of defense is filed, placement of notice of hearing on FPPC meeting agenda and submission of request to OAL to schedule administrative hearing;
- xxii. If no notice of defense is filed,
 - 1. preparation of notice of default and placement on FPPC meeting agenda
 - 2. transmission of demand for payment
 - 3. issuance of closure letter if default paid
 - 4. filing of request for clerk's judgment in superior court if default not paid
 - 5. transmission of default collections paperwork to Administrative division after receipt of clerk's judgment.

Note: It is not the Commission's intention that every stage of every case must adhere to the same intermediate deadlines. Rather, the Commission's direction is that the Enforcement Chief and/or their designee will exercise their judgment in determining the appropriate deadlines for each case assigned to staff, consistent with the overall policy objective of resolving most cases within two years.

c. Regular meetings between the Enforcement Chief or their designees and staff to communicate workload assignments, expectations and deadlines, and any other appropriate information to ensure the timely and efficient resolution of enforcement matters.

d. Written standards for use by intake staff to ensure consistency in evaluating whether to open or close a matter at the intake stage, including but not limited to, when intake staff should request additional information from a complainant or respondent and when intake staff should request assistance on questions of legal interpretation from FPPC attorneys.

e. Written standards for investigators to use in creating investigative plans and summaries, and policies/procedures for quality control of the work performed by investigators, including policies whereby senior investigators may serve as reviewers of work performed by more junior/less experienced investigators.

f. Written standards for use by attorneys in determining when it is appropriate, and by what process, an attorney may request additional work by an investigator after the initial investigative plan is complete.

g. Tracking of statutes of limitations applicable to potential violations of the Act under investigation by the Enforcement Division to ensure that Enforcement staff complete their work in accordance with the applicable statute of limitations and minimize the need to seek negotiated tolling agreements.

h. Tracking of Enforcement Division compliance with the deadlines and procedures for workload allocation and completion. When feasible, an electronic system should be designed and implemented in a manner that, at a minimum, accepts data entry by staff in real time as tasks are

completed and allows the Chief and their designees to generate automated tracking reports such that performance under the policy can be evaluated by objective metrics for individual staff members, groups of staff members (e.g., investigators, attorneys, PRCs, etc.) as well as the division as a whole in order to evaluate the timelines for update and feasibility.

i. Monthly reviews by the by the Enforcement Chief to analyze workload data tracking information, division operations, and any other appropriate matters to ensure the Division's progress towards meeting the goals of reducing the carry over caseload and most cases within two years. Among other things, the Enforcement Chief and their management team should consider whether there are internal procedures/policies that can be amended or streamlined to improve the timely resolution matters (e.g., the process for identifying and routing matters from intake to the Streamline and/or PREP program) and whether staff needs additional trainings/other resources. Such meetings should occur as often as needed to ensure consistent progress towards these goals, but in no event less than once a month.

j. Quarterly reports by the Enforcement Chief to the Chair and Executive Director on the Enforcement Division's progress towards implementing the requirements of this section and overall policy goals identified herein. The Chief will provide updated reports to the Chair and Executive Director more frequently if requested.

k. Biannual reports by the Chief to the Commission, usually in June and January, detailing the Enforcement Division's progress towards implementing the requirements of this section and overall policy goals identified herein. In addition to any other information requested by the Commission, Chair or Executive Director, the reports by the Chief to the Commission will include detailed information about the Enforcement Division's performance during the reporting period compared to the Enforcement Division's performance during the same period from each of the preceding four years, including but not limited to:

- i. a comparison of the total number of complaints/referrals received, cases/investigations opened, cases/investigations closed, cases referred to other agencies;
- ii. a comparison of the average monthly rate of cases/investigations opened, cases/investigations closed, for each class of Enforcement staff (e.g., attorneys, investigators, PRCs, etc.); and
- iii. a detailed explanation for any differences in Enforcement Division performance during the reporting period compared with the prior years' data.

This update will be in addition to any other informational reports the Commission may direct the Chief to provide concerning the performance of the Enforcement Division.

III. Enforcement Resources

A. The Executive Director shall implement a plan to reassign initial responsibility for evaluating and resolving matters identified through the AdWatch Program and Pre-election Compliance programs from the Enforcement Division to Political Reform Education Program (PREP) staff. PREP staff shall thereafter refer to the Enforcement Division those matters that require further evaluation or resolution by Enforcement Division staff.

B. The Executive Director, in consultation with the Enforcement Chief and Chief of Administration, shall annually evaluate the staffing needs of the Enforcement Division relative to its workload and when appropriate, take such action as is necessary to obtain additional staff positions for the Enforcement Division. The Executive Director and/or Enforcement Chief shall report to the Commission on their efforts to identify Division staffing needs and obtain positions consistent therewith at annually.¹

C. The Executive Director, in consultation with the Enforcement Chief and Chief of Administration, shall periodically evaluate the information technology needs of the Enforcement Division to ensure the Division has adequate information technology resources to track, analyze, and report on Division workload and progress towards achieving the goals identified herein. To the extent additional resources are needed, the Executive Director, in consultation with the Enforcement Chief and Chief Administration, shall cause such resources and their cost to be identified for the Commission's information and approval.

¹ The Governor's proposed Budget for 2023-24 includes approximately 13 new positions for the FPPC, seven of which are designated for the Enforcement Division. While it is anticipated these new positions will assist the Enforcement Division in resolving matters in a more timely and efficient fashion, the Commission believes it is important to regularly monitor the staffing levels in the Enforcement Division to ensure the number of positions is appropriate given the Division's workload.