

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18361.5. Administrative Hearings.

(a) Administrative Hearing Brief. Not later than seven days prior to a contested administrative hearing that is to be heard by the Commission itself, the Enforcement Division shall, and any respondent may, submit to the Commission a written brief describing the evidence to be presented at the hearing and outlining significant legal arguments expected to be raised. Any brief submitted to the Commission by any party pursuant to this section shall also be provided to all other parties to the administrative action within one business day.

(b) Preliminary Matters and Hearing on Merits. If the Enforcement Division determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), the Enforcement Division shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available. All Commissioners are eligible to participate in the hearing, regardless of whether they voted to hear the matter themselves or not.

(c) Hearing by the Commission. If the Commission decides to participate in a hearing on the merits, the Chair of the Commission may assign to the administrative law judge, prior to the hearing on the merits, the duty to hear any or all motions as to procedural matters, validity or interpretation of the Political Reform Act, disqualification of any member of the Commission, or any other matters not related to the truth of the factual allegations in the accusation. The Chair shall provide notice of assignment to the administrative law judge and the parties. Except as

ordered otherwise by the Chair, the parties shall file, and the assigned administrative law judge shall hear and issue written decisions on, any such motions or matters consistent with 1 CCR § 1022.

(d) Standard of Proof. When an administrative hearing is conducted under Government Code section 83116, findings shall be made on a preponderance of the evidence and it shall require the concurrence of at least three members of the Commission to find a violation or impose any order.

(e) Factors to be Considered by the Commission. In framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the Commission and the administrative law judge shall consider all the surrounding circumstances including but not limited to:

- (1) The extent and gravity of the public harm caused by the specific violation;
- (2) The level of experience of the violator with the requirements of the Political Reform Act;
- (3) Penalties previously imposed by the Commission in comparable cases;
- (4) The presence or absence of any intention to conceal, deceive or mislead;
- (5) Whether the violation was deliberate, negligent or inadvertent;
- (6) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (7) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(8) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

(f) Stipulated Orders. At any time before or during an administrative hearing and in lieu of such a hearing, the Chief of Enforcement and the person who is the subject of the investigation may stipulate to the entry of an order. If a stipulation has been agreed upon and the scheduled date of the hearing is set to occur before the next Commission meeting, the Enforcement Division will apply for a continuance of the hearing. The order must be approved by the Commission, which may consider the matter in executive session. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under Government Code section 83116. In determining whether to approve a stipulated order, the Commission shall consider the same factors as listed in subdivision (e). The stipulated order shall be released publicly and shall have the force of an order of the Commission.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116. Government Code.

HISTORY

1. New section filed 3-15-94; operative 3-15-94 (Register 94, No. 11).
2. Renumbering of former section 18361.5 to section 18361.9 and new section 18361.5 filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).
3. Amendment filed 11-16-2020; operative 1-1-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative

Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2020, No. 47).