

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

**§ 18361.9. Procedure for Commission's Consideration of Proposed Decision by an Administrative Law Judge; Reconsideration.**

(a) Service of Process. Within 14 days of receipt of a proposed decision by an administrative law judge following a hearing held pursuant to Government Code section 83116, the Executive Director shall serve a copy of the proposed decision on all parties that shall include notification of the date, time and place the matter will be considered by the Commission.

(b) Briefing Procedure of Proposed Decision by an Administrative Law Judge.

(1) Opening Brief. No later than 14 days after the date of service of the proposed decision, the Enforcement Division shall file an opening brief. The Enforcement Division shall file the original opening brief, with proof of service attached, with the Executive Director of the Commission. The Enforcement Division shall serve a copy of the brief, with proof of service, on the respondent. The opening brief may only address the following:

(A) Whether the facts stated in the proposed decision are consistent with the evidence presented;

(B) Whether the proposed decision contains an accurate statement and/or application of the law;

(C) Which of the dispositions provided for in Government Code section 11517 is recommended by the Enforcement Division and why; and

(2) Response Brief. No later than 14 days after the date of service of the Enforcement Division's opening brief, the respondent may file a response brief. The respondent shall file the original response brief, with proof of service attached, and six copies with the Executive Director

of the Commission. The respondent shall serve a copy of the response brief, with proof of service, on the Enforcement Division.

(3) Reply Brief. No later than 14 days after the date of service of the respondent's brief, the Enforcement Division may file a reply brief. The Enforcement Division shall file the original reply brief, with proof of service attached, and six copies with the Executive Director of the Commission. The Enforcement Division shall serve a copy of that reply brief, with proof of service, on the respondent.

(4) Extensions. The Executive Director may, for good cause, extend the time requirements set forth in this subdivision.

(5) Service on Commissioners. No later than 14 days after the Enforcement Division's deadline to file a reply brief, the Executive Director shall submit a copy of each brief to each Commissioner.

(6) Oral Argument. Any party may request oral argument before the Commission on a proposed decision by an Administrative Law Judge. The request for oral argument must be made no later than 14 days of service of the Enforcement Division's opening brief. Oral argument shall be limited to evidence in the underlying administrative record.

(7) Consideration by the Commission. After any oral argument heard in open session, the Commission will consider a proposed decision in an executive session and may take any action on the proposed decision authorized by Government Code section 11517, subdivision (c). The Commission will not take public comment as provided by Government Code section 11125.7, subdivision (e), regarding the proposed decision by the Administrative Law Judge. Pursuant to Government Code section 11425.50, subdivision (c), the Commission shall only consider

evidence in the underlying administrative record when taking any action authorized by Government Code section 11517, subdivision (c).

(c) Petitions for Reconsideration.

(1) Any party to the proceeding may petition the Commission for reconsideration within 15 days of service of the Commission decision by filing the petition with the Executive Director. A petition shall be deemed filed with the Commission on the date indicated on the proof of service; or, if there is no proof of service, the postmark date or date of hand delivery to the Commission's office.

(2) The petition shall set forth in full detail the issues to be considered by the Commission and contain specific references to the record and applicable principles of law. The petition shall be based upon one or both of the following grounds:

(A) The petitioner has discovered new material evidence that the petitioner could not, with reasonable diligence, have discovered and produced at the administrative hearing;

(B) The decision contains prejudicial errors of law or fact.

(3) An opposing party may file an answer within 10 days of service of a petition for reconsideration. The answer shall be served on all parties of record.

(4) A petition for reconsideration is deemed denied unless it is granted or denied in writing no later than 30 days after service of the Commission's decision. The Executive Director may extend the time for considering a petition for up to 10 days.

(5) The Executive Director may grant or deny a petition for reconsideration or extend the time in which to consider the petition.

(6) If the petition is granted, the case shall be assigned to the full Commission or to an administrative law judge, either of whom may order the taking of additional evidence, or may

affirm, rescind, alter or amend the decision on the basis of the record previously submitted. The decision after reconsideration shall be in writing and shall specify the reasons for the decision. If assigned to an administrative law judge, the decision is a proposed decision subject to the procedure set forth in Government Code section 11517.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83108 and 83116, Government Code.

### **HISTORY**

1. Renumbering and amendment of former section 18361.5 to new section 18361.9 filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).
2. Amendment of section heading and section 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).