

1 Amend 2 Cal. Code Regs., Section 18361.5 to read:

2 **§18361.5. Administrative Hearings.**

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

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

19 (c) Hearing by the Commission. ~~If~~ When the Commission decides to participate in a
20 hearing on the merits, the ~~Chairman~~ of the Commission may ~~decide that~~ assign to the
21 administrative law judge, prior to the hearing on the merits, the duty to hear any or all motions as
22 to procedural matters, validity or interpretation of the Political Reform Act, disqualification of
23 any member of the Commission, or any other matters not related to the truth ~~or falsity~~ of the

1 factual allegations in the accusation ~~shall be heard by an administrative law judge alone prior to~~
2 ~~the hearing on the merits. The Chair shall provide notice of assignment to the administrative law~~
3 ~~judge and the parties. Except as ordered otherwise by the Chair, the parties shall file, and the~~
4 ~~assigned administrative law judge shall hear and issue written decisions on, Any such motions~~
5 ~~or matters consistent with 1 CCR § 1022 shall be noticed in a timely fashion. Any person~~
6 ~~requesting reconsideration by the Commission of any decision of the administrative law judge~~
7 ~~shall submit, at least 14 days prior to the hearing on the merits, a written request for~~
8 ~~reconsideration setting forth the reasons for the request and including any appropriate points and~~
9 ~~authorities or affidavits.~~

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

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

18 (1) The extent and gravity of the public harm caused by the specific seriousness of the
19 violation;

20 (2) The level of experience of the violator with the requirements of the Political Reform
21 Act;

22 (3) Penalties previously imposed by the Commission in comparable cases;

23 (4) The presence or absence of any intention to conceal, deceive or mislead;

1 (53) Whether the violation was deliberate, negligent or inadvertent;

2 (64) Whether the violator demonstrated good faith by consulting the Commission staff or
3 any other government agency in a manner not constituting a complete defense under
4 Government Code section 83114(b);

5 (75) Whether the violation was isolated or part of a pattern and whether the violator has a
6 prior record of violations of the Political Reform Act or similar laws; and

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

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

20 Note: Authority cited: Section 83112, Government Code. Reference: Sections 83115,
21 83115.5 and 83116, Government Code.