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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Cardenas, Hatch, and Hayward

From: Jack Woodside, General Counsel
Adam Silver, Commission Counsel

Date: March 12, 2018

Re: Available Methods for Reviewing Enforcement Division Policies and Procedures

At its February 2018 meeting, the Fair Political Practices Commission (Commission) agreed to conduct a holistic review of the Enforcement Division's practices and procedures. The stated purpose of the review is to inform and achieve the following three goals:

- 1) The establishment by the Commission of step-by-step procedures that Enforcement will follow going forward, which shall include task lists, timelines, exceptions to timelines, procedures for obtaining extensions on those timelines from the Commission, investigations, and contact with the press regarding existing matters;
- 2) The reduction of those procedures to a writing subject to Commission approval in the form of a procedures manual that can be reviewed/ revised with public comment from time to time as the Commission deems fit; and
- 3) The making public of said procedures manual, as it is created and/or revised, by placing and maintaining it on the Commission's website.

As the commissioner who proposed the review, Commissioner Audero also requested that the Legal Division prepare a memorandum discussing the advantages and disadvantages of each available method for conducting the review, including any limitations imposed on each method by California open meetings laws.

This memorandum discusses various review methods available to the Commission and the potential pros and cons for each approach. It also details what processes other ethics agencies have employed to review their enforcement policies and procedures. Lastly, in hopes of streamlining the process, we have highlighted several existing Enforcement Division materials that could be used as the basis for any "procedures manual" the Commission may decide to adopt.

A. Background

1. Past Reviews Conducted by Commission and Recent Amendments to the Enforcement Procedures

Our research indicates that the Commission has reviewed its enforcement policies and procedures on numerous prior occasions – often in collaboration with the California Political Attorney Association (CPAA) and the public in general. The Commission typically reviews and revises these items through the adoption of staff memoranda and the regulatory process.

For example, in March 2015, the CPAA requested review of the Enforcement Division’s policies related to document production and streamlined settlements. The Commission addressed the former item via the regulatory process with the repeal and adoption of Regulation 18360 and the amendment of Regulation 18362.¹ The latter item was addressed through a comprehensive internal review conducted by the Enforcement Division. The Enforcement Division presented their findings and recommendations to the Commission via a staff memorandum, which was formally adopted by the Commission at its May 2015 Commission meeting. The regulated community praised the Commission and its staff for effectively addressing their concerns.

The Commission has also engaged task forces to review Commission policy. The most recent task force review occurred in 2010 at the direction of former Chair Dan Schnur. The purpose of the task force was to present recommendations to the Commission on how the Act could be condensed and simplified. The task force consisted of 21 members from varying backgrounds, including Commission staff, the reform community, and the CPAA. The task force’s recommendations led to the amendment, adoption and repeal of several regulations.

The Commission also has a history of creating subcommittees to review Commission policies, including the current ad hoc committee charged with reviewing the Commission’s governance principles.

Please note that we are still actively researching past enforcement-related reviews conducted by the Commission through the review of prior agendas and discussions with attorneys from the defense bar and other members of the regulated community. As we continue to gather relevant material, we will place it on the new “Enforcement Review” page added to our website: <http://www.fppc.ca.gov/enforcement/enforcement-review.html>.

2. Recent Reviews Conducted by Local Ethics Commissions

Both the Los Angeles City Ethics Commission and San Francisco Ethics Commission conducted reviews of their enforcement policies and procedures in 2017. Each review took roughly nine months, and resulted in amendments to their respective enforcement regulations.

¹ The Political Reform Act (Act) is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code. The regulations of the Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

While the reviews were not identical, they generally followed the same process: 1) commissioners, staff and members of the public identified areas of concern for review; 2) staff then conducted internal reviews, which were informed by public comment; and 3) staff's findings and recommendations were subsequently presented to their respective commissions for consideration and adoption. Administrators from each agency found the above process to be efficient and effective. One administrator we spoke with emphasized the crucial role the public played in the review process, and indicated that they would encourage even more public participation in future reviews.

3. Existing Enforcement Division Materials

As noted during the February Commission meeting, the Enforcement Division began drafting a comprehensive manual prior to the Commission's decision to review the enforcement process. The manual details the Enforcement Division's operations, resources, and procedures. While it is not finalized, Enforcement Division Chief Galena West provided us with a draft copy, which is attached as Exhibit 1. Ms. West describes the draft manual as a "working document" still subject to change. We consider the document to be an excellent starting point for any "procedures manual" as it directly addresses the concern expressed about the public having access to the Enforcement Division's procedures.

Please note that the draft manual is also available on the "Enforcement Review" page referenced above. Also displayed on that page are the following enforcement-related informational materials: (1) Overview of Enforcement Procedures PowerPoint Slideshow (published February 2018); and (2) Streamline Settlement Program Memorandum (published May 2015). These items are attached to this memo as Exhibit 2 and 3, respectively.

Lastly, we believe the information provided in the "Enforcement" tab on the website would be helpful in understanding the enforcement process and preparing any procedures manual. The "Enforcement" tab includes copies of the Enforcement Division's Annual Reports (2011 to 2017); instructions on how to file a complaint; and a brief description of the enforcement process. This page was initially published in 2012. It can be accessed at the following link: <http://www.fppc.ca.gov/enforcement.html>.

B. Methods for Conducting Review

After conferring internally with staff and externally with members of the CPAA, and other agencies who have conducted similar reviews, we have identified the following three methods of review:²

² Note a fourth approach, hiring an outside consultant, was also considered. However, even assuming a consultant is not cost prohibitive, any contract must comply with state contracting rules, and would likely require approval by the Department of General Services. In this regard, hiring an outside consultant is the least expedient of the approaches identified. Additionally, the pool of qualified consultants with expertise in the Act is particularly limited, consisting primarily of political law firms also representing clients in enforcement proceedings.

1. Review by Commission

The Commission typically reviews and revises its enforcement policies through the adoption of staff memoranda and the regulatory process. This approach ensures transparency, promotes public participation, and provides for direct, real-time feedback from all five commissioners.

However, Commission review can lack efficiency during the initial research phase because Commission meetings are subject to the notice and public meeting requirements of the Bagley-Keene Open Meeting Act (the “Open Meeting Act”).³ While the Open Meeting Act’s requirements are based in sound public policy -- promoting deliberation and encouraging public involvement -- they can cause delayed decision-making and unnatural communication patterns under certain circumstances. Nonetheless, with adequate planning, Commission review should not take substantially more time than a review not subject to the Open Meeting Act (e.g., review by a subcommittee with two or less members that cannot act on behalf of the Commission).⁴ In fact, opting for Commission review could potentially expedite the process because commissioners may be able to come to a consensus more quickly if they are fully involved in the process from start to finish.

Lastly, as an ethics commission charged with supporting transparency and the public trust, we would advise erring on the side of transparency over efficiency unless absolutely necessary.

Should the Commission opt to conduct the review, including utilizing staff and holding Interested Persons Meetings, we recommend conducting it similarly to the Los Angeles City Ethics Commission and San Francisco Ethics Commission’s recent reviews. In that scenario, the Commission and the public would initiate the review process by citing their concerns with the procedures either included or omitted from the Enforcement Division’s draft manual at a regularly scheduled Commission meeting. The Enforcement Division would then prepare staff memoranda addressing the concerns related to their procedures and policies, for review by the public at an Interested Persons Meeting and then presented to the full Commission for further review. This approach would capitalize on the institutional knowledge that only those in the Enforcement Division have regarding its internal policies and procedures, and maximize public input so that the Commission’s “procedures manual” can effectively meet the needs of the thousands of people subject to the Act.

³ In general, the Open Meeting Act imposes three duties upon entities qualifying as a “state body”: (1) to provide timely and adequate public notice of meetings; (2) to provide for public comment; and (3) to conduct its meetings in open session, except where a closed session is specifically authorized. (Sections 11120 et seq.)

⁴ For example, to the extent that additional meetings are required for discussions related to the review, additional meetings of the Commission could be called with a 10-day notice period.

2. Review by a Commission Subcommittee

Subcommittees of a parent board or commission can be utilized as advisory bodies to collect information and present recommendations back to the parent entity. In this context, subcommittees typically consist of two or less persons and cannot act on behalf of the Commission. This is because a subcommittee consisting of two or less persons without the authority to act on behalf of their parent entity is not considered a “state body” for purposes of the Open Meeting Act subject to the notice and public meeting requirements.

To the extent that a subcommittee decides not to hold public meetings, it can individually engage with interested persons in researching pertinent issues including stakeholders who may not typically comment at public meetings. Accordingly, a subcommittee may reach certain individuals that encourage public involvement because it allows the public to participate anonymously. The other potential benefit for a subcommittee is that it can be more expedient in conducting initial research if not required to hold noticed public meetings.

Nonetheless, a subcommittee will ultimately have to submit its recommendation to the Commission at a noticed public meeting. The amount of time saved by utilizing a subcommittee will depend on how quickly the Commission reaches a consensus on the recommendation. If the Commission reaches a consensus on the recommendation relatively quickly, the time saved in not conducting public meetings in the research phase may be significant. However, as noted above, excluding commissioners from the initial research phase may act to delay the final decision if the Commission cannot reach a consensus upon the recommendation of the subcommittee.⁵

Should the Commission opt to have a subcommittee conduct the review, we strongly suggest that the committee still hold public hearings and solicit feedback from Commission staff, the regulated community, the reform community and other ethics agencies. Because public meetings are not required, using a subcommittee can act to reduce transparency. Holding public meetings, even if not required, helps to assure the public that the process is open and fair.

3. Review by a Task Force

In general, a task force is a group of persons commissioned to study and present recommendations on a specific topic. Task forces typically utilize a diverse membership, including the staff of the agency commissioning the task force as well as members of the regulated community, policy advocates and government reform groups. This organizational structure provides diverse perspectives and experience, which is valuable when addressing a concern that affects a broad group of persons.

A task force is subject to the Open Meeting Act if it has three or more members, or is delegated the authority to act on behalf of the Commission. As such, it cannot collect information or act as quickly as a subcommittee not subject to the Open Meeting Act.

⁵ Please note that if the subcommittee meets with staff or members of the public at unnoticed meetings, commissioners not assigned to the subcommittee are prohibited from participating under the Open Meeting Act.

Additionally, organizing the task force and coordinating efforts with public participants can be a significant administrative burden. While a task force may encourage public participation by engaging stakeholders at the initial phases of the project, interested stakeholders would nonetheless have ample opportunity to participate without the commissioning a task force. Accordingly, the administrative burden associated with commissioning the task force group could outweigh the benefits of utilizing a diverse body that includes members of the public.

C. Scope of Review

As directed by the motion approved by the Commission at the February meeting, the current scope of review includes “Enforcement priorities and the cradle-to-grave procedures and practices of the Enforcement Division with respect to every type of case it handles.” This is obviously a broad scope that effectively touches on every aspect of the Enforcement Division’s policies and procedures. To more effectively address the time and resources of the general public and the regulated community, the Commission may want to consider narrowing the scope of its review, or at least segmenting it into specific areas of identified concern, based on feedback from staff and other interested persons.

D. Concerns Related to Election Year

The workload for Commission staff, especially management-level staff who would likely be involved with the review and preparation of the “procedures manual,” increases significantly in election years like 2018. Perhaps the greatest burden internally during this period is on Enforcement Division staff, who are responsible for ensuring the Act is “vigorously enforced.” (Section 81002, sub. (f).)

First, enforcement complaints typically double during election years.⁶ Second, the Enforcement Division engages in pro-active compliance efforts during this period, which stretch then already strained staff resources. These efforts are particularly time-consuming because the Enforcement Division staff must coordinate with numerous elections officials in all 58 counties to identify non-filers, and in some circumstances, seek injunctive relief to force candidates and committees to file their reports. While time-consuming, these pro-active efforts resulted in 100% pre-election compliance by candidates appearing on 2016 primary and general election ballots.

An election year is also an extremely busy period for the regulated community (e.g., candidates, treasurers, etc.) who must comply with ten separate filing deadlines in the next seven months.

Therefore, considering the increased workload in election years, we recommend postponing the requested review until after the 2018 election cycle unless the Commission still considers the review to be an urgent, top priority for the Commission. With the publishing of a draft Enforcement Division manual, we find the issue of transparency in regards to enforcement procedures to no longer be one of immediate concern. But of course, this is a determination to be made by the Commission.

⁶ The enforcement division received 1,180 complaints in the last election year and only 564 in the last non-election year. (See 2016 FPPC Annual Report.)

Exhibit 1



Enforcement Division Manual

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I. Purpose

The purpose of this Enforcement Division Manual is to describe the mission, resources, and basic practices of the Enforcement Division of the Fair Political Practices Commission in carrying out its duty to enforce the Political Reform Act of 1974. It is intended to provide basic information about the operation of the Enforcement Division. This manual is a living document that will be updated as necessary to reflect changes to the Enforcement Division operations, resources, and procedures.

II. Mission Statement

The mission of the Enforcement Division is to fairly, effectively, and efficiently enforce the provisions of the Political Reform Act.

III. Background on the Role of the Enforcement Division

The Political Reform Act of 1974 (the “Act”)¹ created the Fair Political Practices Commission (“FPPC”)² and charged it with, among other things, the duty to enforce the provisions of the Act. In adopting the Act, the voters declared that “(p)revious laws regulating political practices have suffered from inadequate enforcement by state and local authorities” and that “(a)dequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.” (Gov’t Code §§ 81001, subd. (h) and 81002 subd. (f).)

During the first few years of its existence, the FPPC staff focused their efforts on educating the public regarding the provisions of the Act and prosecuted only a few cases. Since then, the FPPC has strived to make enforcement of the Act a priority, while also having an entire division focused on public education. The Enforcement Division now handles thousands of complaints and cases every year.

The FPPC is required to investigate possible violations of the Act and, if violations occur, issue an order requiring a violator to do any of the following: cease and desist the violation; file delinquent statements or reports required by the Act; pay a monetary penalty. (Gov’t Code §§ 83115 and 83116.)

The Enforcement Division is responsible for conducting investigations on behalf of the FPPC and serves as the prosecuting attorney for suspected violations. Additionally, the Enforcement

¹ Gov’t Code § 81000 et seq.

² Throughout this manual “FPPC” refers to the agency as a whole, and the term “Commission” is used to refer collectively to the commissioners.

Division has statutory and contractual obligations to perform audits of state and local campaigns. (Gov't Code §§ 83123.5 and 90006.)

The Act, the FPPC regulations³, and the Administrative Procedures Act⁴ largely govern the Enforcement Division's administrative enforcement processes and procedures. Guidance from the Commission also informs the Enforcement Division policies and actions. But since the Commission sits as the adjudicator in enforcement cases, the Commission is not made aware of the facts in a specific case until it appears before the Commission, or is otherwise made public. The Commission necessarily exerts no specific authority over a case's investigation, preliminary enforcement determination, or settlement negotiations, which are conducted by the Enforcement Division staff but sets the general policy and priorities for the Enforcement Division to follow and implement.

IV. Enforcement of the Political Reform Act

a) Categories of Violations Under the Act

- Financial Reporting by Public Officials (Statements of Economic Interests)
- Conflicts-of-Interest for Public Officials (Gov't Code §§ 87100 and 1090)
- Gifts and Honoraria
- Post-Governmental Employment (state & local)
- Mass Mailings & Advertising Disclosure
- Campaign Finance and Reporting
- State Lobbying

b) Avenues for Enforcement

Numerous state and local agencies, as well as private citizens, can enforce the Act. Enforcement of the Act can occur through criminal, civil, or administrative proceedings. The FPPC primarily enforces the Act through administrative proceedings.

1. Criminal Enforcement

Violations of the Act can be prosecuted criminally as misdemeanors by a district attorney, a city attorney, or the State Attorney General. (Gov't Code §§ 91001 and 91001.5.) The Enforcement Division does not serve as a criminal enforcement agency. However, the FPPC does work cooperatively with all federal, state, and local law enforcement agencies to both make them aware of criminal activity and provide investigative and technical support to their criminal cases. The following types of cases result in an automatic notification of the appropriate law enforcement agencies by the Political Reform Consultants (PRCs) as a part of the intake process:

³ California Code of Regulations, title 2, division 6 ("CCR").

⁴ Gov't Code § 11370 et seq.

Government Code:			
§ 84300	Cash Contribution	§ 84307	Commingling of Campaign Funds
§ 84301	Laundering Source	§ 84308	Conflict of Interest
§ 84302	Laundering Intermediary	§ 87100	Conflict of Interest
§ 84304	Anonymous Contribution	§ 89001	Mass Mailings at Public Expense
§ 84305	Sender Identification	§ 89503	Gift Limits

2. Civil Enforcement

Violations of the Act can also be pursued through a civil action by a member of the public, or a government agency designated as the “civil prosecutor” with jurisdiction over the violation. (Gov’t Code § 91001, subd. (b).) The FPPC is the “civil prosecutor” for state officials and any state agency. The Attorney General is the civil prosecutor for the FPPC. Local district attorneys are the civil prosecutors for all other agencies within their respective jurisdictions. (Gov’t Code § 91001.)

The Enforcement Division can initiate a civil action against the state or a state agency in an enforcement action, with the consent of the Commission. Or, if the FPPC receives a 120-day demand from a member of the public under Gov’t Code § 91007, the FPPC must file a suit in the case or issue an order within 120 days from receipt of the written request for civil action, or the complainant may file a civil action in the matter.

Civil enforcement is generally only pursued by the FPPC in circumstances where the Act allows for greater penalties through a civil action, and a penalty in excess of that permitted for administrative prosecutions (i.e. \$5,000 per count) is warranted. The FPPC may also seek a civil injunction to enforce provisions, or compel compliance with the Act. (Gov’t Code §§ 90009 and 91003.)

3. Administrative Enforcement

The FPPC is solely responsible for administrative prosecutions of the Act. The FPPC resolves most of its cases through settlement and the administrative enforcement process. The administrative process is available for all violations of the Act, and can result in penalties of up to \$5,000 per violation. The primary focus of the Enforcement Division is the effective, timely prosecution of administrative enforcement cases. All personnel, processes, and efforts are utilized to support this focus.

The administrative process of the Enforcement Division is discussed in more detail below.

V. Staff

The Enforcement Division when fully staffed has a Chief, Assistant Chief, seven Commission Counsels, a Supervising Special Investigator, eight Special Investigators, an Intake Manager, three Political Reform Consultants, Supervising Management Auditor, three Program

Specialists, and five support staff. Retired annuitants, interns, and law clerks are a valuable addition whose numbers vary based on workload, funding, and school schedules.

a) **Roles and Responsibilities**

1. Chief

The Chief provides management, guidance, and supervision over all aspects of the Enforcement Division. Duties include:

- Review complaints to determine whether a violation of the Act has been alleged. Work with Political Reform Consultants to develop sufficient information to determine whether a full investigation should be initiated regarding complaints and referrals. And review and approve recommendations for complaints and referrals for investigation and prosecution.
- Review and approve recommendations for audit findings, either internal or from the Franchise Tax Board, for investigation and prosecution.
- Provide personnel supervision and management directly and indirectly over all Enforcement Division staff.
- Provide guidance and management over all cases and investigations.
- Review current procedures and processes to implement ways to increase efficiency, consistency, and overall effectiveness.
- Review all documents requiring the signature of the Executive Director, including subpoenas and requests for reconsideration.
- Represent the Enforcement Division at the Commission meetings and presentations to other agencies and associations.
- Develop the Training Plan for the Enforcement Division staff.
- Respond to media requests for information and other agency requests for cooperation or information.
- Work with Executive Staff to develop the FPPC policy.

2. Assistant Chief

This position is a working supervisor who handles complex cases, works with the Chief to implement the FPPC policy, and supervises Commission Counsels. Duties include:

- Provide supervision, management, and training for Commission Counsels including review of their work and management of their caseloads.
- Manage a caseload to determine whether violations of the Act have occurred, including making recommendations to the Chief regarding the appropriate disposition of the case.
- Work with special investigators to devise and implement an investigative plan then review testimonial and documentary evidence gathered to formulate a resolution recommendation.
- Make and defend against all appropriate motions that arise in the ordinary course of litigation. Appear in all of the courts of record in this state to prosecute actions on behalf of the FPPC.
- Consult with the Chief to review current procedures and processes to implement ways to increase efficiency, consistency, and overall effectiveness.

- Represent the Enforcement Division at some Commission meetings and presentations to other agencies and associations.
- In coordination and consultation with the Chief, act as liaison to the General Counsel regarding the Enforcement Division's regulatory and legislative needs.
- Assist in developing the Training Plan for the Enforcement Division staff.
- Respond to media requests for information and other agency requests for cooperation or information.
- Facilitate disputes regarding the application of the California Public Records Act.
- Coordinate and oversee the Enforcement Division law clerk program.
- Act for the Chief in his or her absence.

3. Commission Counsel IV

This position is reserved for the most senior attorney, who handles the most complex cases and provides advice to other Commission Counsels. Duties include:

- Manage a caseload to determine whether violations of the Act have occurred, including making recommendations to the Chief regarding the appropriate disposition of the case for some of the most complex and highly publicized cases that involve difficult issues of proof and complex statutory and regulatory legal issues.
- Work with special investigators to devise and implement an investigative plan then review testimonial and documentary evidence gathered to formulate a resolution recommendation.
- Prosecute cases including making and defending against all appropriate motions that arise in the ordinary course of litigation. Appear in all of the courts of record in this state to prosecute actions on behalf of the FPPC.
- In a lead capacity, review work of Commission Counsels and mentors less experienced and/or knowledgeable staff regarding all aspects of prosecuting a case.
- Assist in the training of the Enforcement Division staff.
- Initiate and complete special projects for the advancement of the goals of the Enforcement Division and the FPPC.
- Acts for the Chief and the Assistant Chief for the Enforcement Division in their absence.

4. Senior Commission Counsel

Senior Commission Counsels are experienced Commission Counsels responsible for directing the course of their cases from initial assignment through resolution, and for supporting other Commission Counsels. Duties include:

- Manage a caseload to determine whether violations of the Act have occurred, including making recommendations to the Chief regarding the appropriate disposition of the case.
- Work with special investigators to devise and implement an investigative plan then review testimonial and documentary evidence gathered to formulate a resolution recommendation.
- Prosecute cases including making and defending against all appropriate motions that arise in the ordinary course of litigation. Appear in all of the courts of record in this state to prosecute actions on behalf of the FPPC.

- Mentor the Enforcement Division staff.
- Assist in the training of the Enforcement Division staff.
- Initiates and completes special projects for the advancement of the goals of the Enforcement Division and the FPPC.
- On occasion, review complaints to determine whether to recommend that a full investigation should be initiated.

5. Commission Counsel

Commission Counsels are responsible for directing the course of their cases from initial assignment through resolution. Duties include:

- Manage a caseload to determine whether violations of the Act have occurred, including making recommendations to the Chief regarding the appropriate disposition of the case.
- Work with special investigators to devise and implement an investigative plan then review testimonial and documentary evidence gathered to formulate a resolution recommendation.
- Prosecute cases including making and defending against all appropriate motions that arise in the ordinary course of litigation. Appear in all of the courts of record in this state to prosecute actions on behalf of the FPPC.
- Assist in the training of the Enforcement Division staff.
- Initiates and completes special projects for the advancement of the goals of the Enforcement Division and the FPPC.
- On occasion, review complaints to determine whether to recommend that a full investigation should be initiated.
- Review and segregate closed investigative files for disclosure to the public under the California Public Records Act.

6. Supervising Special Investigator

The Supervising Special Investigator is an experienced investigator who is responsible for providing management and case investigative guidance to all Enforcement Division Special Investigators. Duties include:

- Manage and monitor the progress of the investigation of allegations of suspected violations of the Act through direct supervision of the activities of the Special Investigators.
- Assist the Chief in creating, coordinating, and implementing the Enforcement Division policies. Specifically creates and implements a continuous training program for investigators.
- Direct others, including the Analyst, Investigative Support, to manage and train the Enforcement Division intern program as well as the proactive identification of violations programs.
- Establish and maintain cooperative relationships with federal, state, and local officials and agencies.
- Supervise and manage staff resources and personnel matters of the Special Investigators.
- Assist in establishing uniform standards for investigations and investigative reports.

- Ensure staff performs investigations consistent with high standards and specific training/experience on investigative techniques.
- Assign Special Investigators to cases.

7. Senior Special Investigator

Senior Special Investigators work closely with assigned attorneys to provide evidentiary support to complaint allegations referred for complex investigation. This includes:

- Analyze and evaluate facts, statements, and other evidence obtained from investigations which relate to possible violations of the Act in accordance with an investigative plan formulated in conjunction with the assigned Commission Counsel.
- Gather, analyze, and report on testimonial and documentary evidence obtained. Articulate and present a summary of findings to the Commission Counsel and Supervising Special Investigator.
- Prepare and issue subpoenas for records and appearance after approval from the Commission Counsel.
- Obtain, analyze, and evaluate public documents filed with the Secretary of State, FPPC, and other state and local agencies.
- Establish and maintain cooperative relationships with federal, state, local officials and agencies and provide advice and input regarding investigations of violations of the Act.
- Serve legal papers, subpoenas, and other legal documents. Appear as a witness at civil or administrative proceedings.
- Assist in the recruitment, training, work, and performance evaluations of investigative interns.
- Mentor the Enforcement Division staff.
- Assist in the training of the Enforcement Division staff.
- Initiate and complete special projects for the advancement of the goals of the Enforcement Division and the FPPC.

8. Special Investigator

Special Investigators work closely with assigned attorneys to provide evidentiary support to complaint allegations referred for investigation. This includes:

- Analyze and evaluate facts, statements, and other evidence obtained from investigations which relate to possible violations of the Act in accordance with an investigative plan formulated in conjunction with the assigned Commission Counsel.
- Gather, analyze, and report on testimonial and documentary evidence obtained. Articulate and present a summary of findings to the Commission Counsel and Supervising Special Investigator.
- Prepare and issue subpoenas for records and appearance after approval from the Commission Counsel.
- Obtain, analyze, and evaluate public documents filed with the Secretary of State, FPPC, and other state and local agencies.
- Establish and maintain cooperative relationships with federal, state, local officials and agencies.

- Serve legal papers, subpoenas, and other legal documents. Appear as a witness at civil or administrative proceedings.
- Assist the Supervising Special Investigator in the training of new Special Investigators.
- Support special projects as assigned by the Supervising Special Investigator.

9. Political Reform Consultant (PRC)

PRCs are the main public point of contact for the Enforcement Division and provide expertise in the Act. Duties include:

- Review complaints and referrals upon receipt, demands for civil action, and supporting evidence, to determine whether violations of the Act likely occurred and to recommend to the Chief how the Enforcement Division should respond.
- Perform preliminary information gathering on complaints, where appropriate, under the direction of the Chief.
- Under the direction of the Chief, write closure letters and streamline settlement offers to provide violators an opportunity to resolve their violations through a streamline stipulated resolution.
- Respond orally to complainants, alleged violators, and other law enforcement agencies regarding inquiries about whether a violation likely occurred, what information would be needed to evaluate a complaint, and the basis for the resolution of specific complaints.
- Confer with staff regarding questions and problems pertaining to the application of provisions of the Act to specific factual situations.

10. Intake Manager

The Intake Manager is a working PRC who also directly supervises the PRCs, the intake process, and the Analyst – SEI and CPRA Coordinator. The Intake Manager has all the duties listed above, but additional duties include:

- Prepare the schedule for PRC complaint intake coverage.
- Respond to questions from PRCs/Analyst and interns regarding the process and review of complaints.
- Review standard intake letter for consistency.

11. Program Specialist

The Program Specialists are the auditors and campaign reporting specialists for the Enforcement Division. Their workload includes:

- Perform audits independently and as a team member on audits and projects for both, mandatory and discretionary audits.
- Perform investigations in complex campaign and reporting cases. Analyze and evaluate facts, statements, and other evidence obtained from investigations which relate to possible violations of the Act in accordance with an investigative plan formulated in conjunction with the assigned Commission Counsel.
- Perform selection and draw of committees and lobbyists for inclusion in a list of Franchise Tax Board (“FTB”) mandatory audits.
- Complete special projects assigned by the Chief.

- Serve as technical specialists on accounting and auditing issues and policy.
- Secure documentary evidence, including draft and serve subpoenas.
- Provide recommendations to Commission Counsels on case resolutions.
- Provide investigative and case support on other Enforcement Division cases.

12. Supervising Management Auditor

The Supervising Manager Auditor is a working Program Specialist who also directly supervises the Program Specialists and the audit process. The Supervising Management Auditor has all the duties listed above, but additional duties include:

- Plan, direct, and manage the duties and work of the Program Specialists.
- Supervise the investigations performed by the Program Specialists.
- Update and maintain the Audit Manual and Desk Manuals for the Program Specialist positions.
- Create and maintain training programs as well as identify and submit for approval continuing education for the Program Specialists.
- Review of FTB audit reports and make recommendations to the Chief regarding resolution.
- Identify and select audits, including assigning and managing audit case load.
- In coordination with the Chief, provide guidance and assistance to the FTB Political Reform Audit Program and other local, state, and federal enforcement programs, in administering their requirements under the Act.
- Implement and review of the audit program.

13. Analyst – Legal Support

The Analyst – Legal Support provides support to the entire Enforcement Division with the following specific duties:

- Provide research and analytical support to the Chief and Commission Counsels.
- Draft documents at the direction and under the supervision of Commission Counsels.
- Organize and maintain the Enforcement Division’s prior cases chart and archive.
- Perform, organize, and catalog legal research.
- Coordinate and process non-filer and annual fee referrals for possible streamline stipulated settlements, closure, or transfer to the Enforcement Division’s attorney.
- Under the direction of the Chief, write closure letters and streamline settlement offers to provide violators an opportunity to resolve their violations through a streamline stipulated resolution.
- Provide support to the Enforcement Division’s attorneys, including evidentiary and documentary matters such as exhibits for default cases, discovery productions, and administrative hearings.
- Provide administrative support, including proofreading and fact and citation checking.
- Complete special projects.
- Update and maintain the Enforcement Division Manual.

14. Analyst – Investigative Support

The Analyst – Investigative Support provides support to the entire Enforcement Division, but specifically the Special Investigators, with the following duties:

- Support and assist Special Investigators in completing their assigned investigations, including assisting with travel and timekeeping.
- Create spreadsheets and timelines from available data.
- Assist in locating and interviewing witnesses and persons suspected of violations.
- Manage and implement the financial records translation software for the Enforcement Division staff.
- Manage the tracking and issuance of administrative subpoenas and other legal documents, as well as the hiring and billing of process servers and occasional service of subpoenas.
- Assist to coordinate with other state and local agencies on the Enforcement Division matters.
- Communicate with the Secretary of State's office, clerks, and filing officers to obtain records and campaign statements.
- Coordinate the recruitment, training, work, and performance evaluations of investigative interns.

15. Analyst – Chief Aide and Agenda Coordinator

The Analyst – Chief Aide and Agenda Coordinator provides support to the entire Enforcement Division to produce the Commission agenda each month, but specifically the Chief, with the following duties:

- Support and assist the Chief, including providing research and analysis and case tracking reports.
- Analyze and evaluate data to create spreadsheets and timelines.
- Facilitate the production of the agenda by gathering all items from staff, organizing the information, and checking for errors.
- Develop and prepare of a variety of routine and specialized reports.
- Assist in processing media requests for documents.
- Administer the administrative termination program.

16. Analyst – SEI and CPRA Coordinator

The Analyst – SEI and CPRA Coordinator provides support to the entire Enforcement Division, but specifically assists the PRCs, and has the following duties:

- Support and assist the PRCs, including providing research and analysis, contacting clerks, the Secretary of State's office, and filing officers, and assisting with leaving office SEI cases.
- Analyze and evaluate data to create spreadsheets and timelines.
- Develop and prepare of a variety of routine and specialized reports.
- Coordinate and process requests for documents submitted under the California Public Records Act.
- Analyze all complaints received by the Enforcement Division and identify key information for entry into the database system.
- Collect and process stipulations and checks.
- Post closure letters onto the FPPC's website and maintain the Enforcement Division's page.
- File Clerk's Judgment for default collection under the direction of the Assistant Chief.

17. Support Staff – MST/OT

The Support Staff – MST/OT provides support to the entire Enforcement Division and has the following duties:

- Conduct final review, preparation, and processing of the Enforcement Division case closures.
- Organize and maintain the Enforcement Division’s timesheets and mail.
- Assist with the FPPC’s committee and lobbyist audit draws.
- Redact and upload documents to the FPPC’s website.
- Manage records kept at the State Records Center and in on-site file room.
- Provide administrative support.

b) Teams

Prosecution of cases is handled by three “teams” (Team A, B, and C) of Commission Counsels, Special Investigators, PRCs, and Program Specialists. Teams are established as follows:

<u>Team A</u>	<u>Team B</u>	<u>Team C</u>
Com. Counsel IV	Senior Com. Counsel	Asst. Chief
Com. Counsel	Senior Com. Counsel	Com. Counsel
Senior Special Investigator	Com. Counsel	Com. Counsel
Special Investigator	Senior Special Investigator	Senior Special Investigator
Program Specialist	Special Investigator	Special Investigator
Program Spec/Sup Mgmt Auditor	Special Investigator	Special Investigator
PRC	Program Specialist	Program Specialist
PRC	PRC	PRC/Intake Manager

Teams meet regularly for team case reviews to discuss investigations plans and timeframes as well as investigation and prosecution progress.

The purpose of the team structure is to:

- Facilitate mentorship on case investigation and prosecution between more senior and junior staff.
- Increase input and suggestions on case investigation and prosecution.
- Expose staff to a greater number of cases and how they are handled.
- Utilize the expertise and skills of the PRCs and Program Specialists in case investigation and prosecution.

c) Training

The Enforcement Division staff develop and present training courses for new and existing staff. Training topics include substantive law, skill development, and internal systems and procedures. Trainings are offered when new employees start, and on an as needed basis throughout the year. Enforcement Division staff are encouraged to suggest and create new

trainings. Materials developed for trainings, as well as other written training materials, are available on the Enforcement Division shared drive at I:\TRAINING and ORIENTATION. Enforcement Division staff also attend trainings conducted by other FPPC employees, and outside sources such as other agencies and private parties.

To provide mentoring and on-the-job training, new and junior staff are assigned one or more senior staff to act as mentors. Senior staff are expected to take time to provide advice and assistance to junior staff, and junior staff are expected to seek out guidance when necessary. Also, staff who have developed significant skill or knowledge are expected to share their knowledge and expertise with other staff.

Each staff is encouraged to build a broad base of knowledge regarding the various subject areas within the Act, as well as become experts in a few specific areas of the law.

VI. Intake Process

The intake process is the first step in the enforcement process. All complaints and referrals go through the intake process. Each item and the evidence provided or gathered is evaluated, and intake staff make a recommendation to the Chief whether to open a case for investigation and/or prosecution, or reject the complaint.

a) Complaints and Referrals

1. Receipt

The intake function for the FPPC is handled by the Political Reform Consultants (PRCs) and their Intake Manager under the direction of the Chief. They process all of the complaints from the public and referrals from other agencies. Each complaint filed with the FPPC is reviewed for the validity of the alleged violations by the intake unit who provides notice to complainants and respondents as required by statute and regulation, as discussed in more detail below.

2. Evaluation

For each complaint and referral, PRCs evaluate: whether the FPPC has jurisdiction over the alleged violation, the evidence of the allegation – both what is provided and what is needed to make a further determination, the seriousness of the alleged violation, the existence of prior related enforcement matters, the Act's statute of limitations, and any relevant Legal Division advice. This evaluation requires a detailed analysis of facts provided by complainants and the application of interpretations of the Act to the complainant's information.

3. Recommendation

After each evaluation, at the direction of the Chief, the PRC prepares a confidential memo with a recommended course of action for the review and approval of the Chief. Complaints

with allegations that contain sufficient facts or information to pursue an investigation within the FPPC's jurisdiction are opened into cases to be resolved. Complaints that do not allege violations of the Act, or lack an evidentiary basis for finding a violation of the Act, are rejected. PRCs prepare all required letters and forms upon the opening of a case or rejection of a complaint.

4. Letter of inquiry

Some complaints have an allegation but without enough supporting evidence to make a determination. In those cases, the PRC will generally submit a memo asking to send a letter of inquiry to the respondent to obtain vital information or contact the complainant for additional evidence and information.

5. Case opened

The case has been opened because the initial review identifies sufficient evidence to merit further investigation. Each case opened either requires an investigation or audit or does not. For the ones that do not require additional information to be gathered or analyzed, the case will either remain with the intake unit to pursue resolution with the respondent (typically cases involving minor filing violations) or is assigned to a Commission Counsel for resolution. If more information or analysis is required to resolve the matter, the case will be assigned to a Commission Counsel along with a Special Investigator or Program Specialist for investigation and resolution.

b) Cases

The sources of cases are varied. Since the Act mandates that the Enforcement Division investigate possible violations of the Act upon the sworn complaint or on its own initiative, and states that previous laws were not adequately enforced so the Act should be vigorously enforced, the Enforcement Division evaluates and pursues violations no matter the source of the information. (Gov't Code §§ 81001, subd. (h), 81002, subd. (f), 83115, 90003.)

1. Sources of Cases

- Complaints (sworn, non-sworn or anonymous)
- Referrals from the FPPC SEI Unit and filing officers
- Audits and audit referrals
- Media reports
- Staff-initiated investigations
- Tips
- Referrals from law enforcement or other agencies

2. Filing Complaints

Members of the public can file complaints with the FPPC through the Electronic Complaint System (ECS) on the FPPC website at <http://www.fppc.ca.gov/enforcement/electronic->

[complaint-system.html](#). Complaints filed using the ECS are received electronically by the Enforcement Division through its internal case management system. Anyone who files a complaint receives an email confirming receipt of the complaint if they provide a return email address. If they file a sworn complaint, they receive notifications regarding the complaint as required by statute.

3. Sworn Complaints

Sworn complaints are signed under penalty of perjury, and the filer is entitled to notifications under the Act. (Gov't Code § 83115.) A sworn complainant is entitled to notice regarding what course of action the Enforcement Division plans to take regarding the complaint and the resolution. Pursuant to CCR § 18360 subd. (a), to file a sworn complaint, the complainant must:

- File the complaint with the Enforcement Division on a form made available by the FPPC.
- Identify the person(s) who allegedly violated the Act and, if known, the specific provision(s) of the Act allegedly violated.
- Describe the facts constituting each alleged violation.
- State the facts that support the complainant's belief that a person has violated the Act and include any documents or other evidence supporting this conclusion.
- Include or describe evidence or means of obtaining evidence in support of the complaint.
- Include names and addresses of potential witnesses, if known.
- Sign (or electronically verify) the complaint under penalty of perjury.

After receipt of a sworn complaint, the Enforcement Division provides each respondent with a copy of the complaint within three business days. (CCR § 18360 subd. (b).) Within 14 calendar days, the Enforcement Division is required to notify the complainant(s) and respondent(s) of the action, if any, the FPPC has taken or plans to take on the complaint. (Gov't Code § 83115 and CCR § 18360 (c) and (e).)

In response to the complaint, the Enforcement Division may:

- Open a case to further investigate the allegations.
- Refer the complaint to another governmental agency.
- Take no action (actions not governed by the Act, insufficient or no evidence of a violation).
- Take additional time to investigate the complaint and then provide the complainant with subsequent notice. (CCR § 18360 subd. (c).)

A sworn complainant who disagrees with the response by the Enforcement Division may submit a written request for reconsideration to the Executive Director within 20 days. The Executive Director may deny the request or, based on good cause, direct the Chief to take specified action. (CCR § 18360 subd. (d).)

The Enforcement Division sends a notice of resolution to each complainant who filed a sworn complaint when a case is resolved. (CCR § 18360 subd. (h).)

4. Other Complaints

All complaints that do not meet the criteria for sworn complaints as specified in Gov't Code § 83115 and CCR § 18360 subd. (a) are classified as non-sworn complaints, anonymous complaints, or Commission-initiated complaints.

Cases that do not result from a sworn complaint are opened on the initiative of the Enforcement Division. (Gov't Code § 83115.) The intake unit may send a letter of inquiry to the respondent(s) to gather additional information to determine whether to open a case. After a case is opened, the intake unit will notify the respondent(s) about the investigation and provide them with a copy of any document submitted to the Enforcement Division. (CCR § 18360 subd. (f).)

5. Notice Exception

Although the majority of complaints and cases follow the format listed above, in some instances the Chief determines that disclosing information would jeopardize the investigation, or if the information is privileged, private or confidential, then the Enforcement Division may withhold any document, the identity of any person providing information, or the notice and existence of an investigation. (CCR § 18360.)

6. Confidential Informants/Witnesses/Complainants

As a matter of policy, the Chief may grant a witness confidential informant status. This is granted in cases where the revelation of the witness's identity would either compromise the investigation or subject the complainant to retaliation. This is rarely granted, particularly as there is no specific statute or regulation applicable to this status, and there is no guarantee that the confidential informant's identity could be withheld under the California Public Records Act. If a person asks to be kept confidential, the staff member will refer the matter to the Chief, who will assign a Commission Counsel to weigh the necessity of the request as well as the likelihood that a judge would support maintaining confidentiality of the witness's identity. Then, the Chief, generally in consultation with the Executive Director, will make a decision based on those criteria and communicate the decision to the requestor.

c) Media and public inquiries

In order to create consistent handling of public and media inquiries, the Enforcement Division proposed including in the complaint regulation details regarding when information is available for release. This regulation, an amendment to CCR § 18360, went into effect in January 2016. CCR § 18360, subd. (g), states that the FPPC may confirm receiving a sworn complaint at any time but will not provide a copy of the complaint until five calendar days after a copy of the complaint is sent to the respondent(s). The FPPC staff do not disclose any action the Enforcement Division intends to take on a sworn complaint, other than no action, before

sending the required notice to the complainant. The purpose of this regulation is to give respondent(s) an opportunity to review the allegations before the complaint is provided to other parties, including the media. The intake unit may gather supporting evidence to make a determination on how to proceed during this five-day period.

In all cases other than sworn complaints, the FPPC may confirm sending a letter of inquiry and may provide a copy of the letter and any documents submitted to the Enforcement Division five calendar days after sending the letter of inquiry. The FPPC may confirm opening a case on its own initiative and provide a copy of the notice sent to the respondent(s) five calendar days after sending the notice.

The FPPC will confirm receiving a referral from a filing officer upon receipt and will provide a copy of the referral upon request.

VII. Investigations

The Act requires the FPPC to investigate possible violations of the Act relating to any agency, official, election, lobbyist or legislative or administrative action, and permits investigations with respect to any reports or statements required by the Act. (Gov't Code §§ 83115 and 90003.) The Enforcement Division Special Investigators and Program Specialists, working in conjunction with the Commission Counsels, are responsible for conducting the FPPC's investigations.

a) Process

Prior to starting an investigation, the staff assigned to a case meet (typically within two weeks of a case opening) to review the case and develop an investigation plan. The plan is reviewed and discussed at the next team case review. An investigation plan includes a breakdown of each of the elements of the alleged violations, and the specific pieces of evidence that need to be acquired to prove or disprove these elements, along with the potential sources of this evidence and a timeline for acquiring the evidence and completion of the investigation.

Special Investigators obtain evidence through document requests, subpoenas, interviews, public records searches, proprietary database searches, internet searches, and various other means. Upon reviewing and analyzing evidence collected, Special Investigators prepare reports summarizing and documenting the evidence.

At the end of an investigation, the Special Investigator prepares a summary report documenting all relevant evidence obtained during the investigation. Summary reports are reviewed and approved by the Supervising Special Investigator and Commission Counsel assigned to the case.

b) Duration

Each investigation presents a unique set of facts, witnesses, and other issues that impact the speed at which an investigation can be completed. Investigations generally continue until the elements of a suspected violation outlined in the investigation plan can be proven or disproven, except in instances where the Chief determines continuing an investigation is not a good use of resources.

c) Scope

Investigations initially focus on specific suspected violations such as those alleged in a complaint and detailed in the investigation plan. But the Enforcement Division staff should expand the scope of an investigation if there is a reasonable likelihood that other or additional violations occurred, such as more recent filings also not filed or financial records show suspicious activity inconsistent with what is reported. (Gov't Code § 83115.) Scope is discussed at case review meetings and meetings with the Supervising Special Investigator.

d) Subpoenas

The FPPC is authorized to issue administrative subpoenas for personal appearance and production of records. (Gov't Code §§ 11181 and 83118.) But the Enforcement Division staff must make reasonable efforts to obtain information on a voluntary basis prior to the issuance of an administrative subpoena, except in those instances where the Executive Director determines seeking voluntary compliance could negatively impact the investigation. (CCR § 18361.1.) Subpoenas are prepared by Special Investigators or Program Specialists, reviewed by Commission Counsels and the Chief, and issued by the Executive Director. The Executive Director will only approve and sign a subpoena if the records sought by subpoena are material to the matter, and it is reasonable to believe the subpoenaed party possesses the records. (CCR § 18361.7.)

e) Inter-agency Cooperation

Enforcement Division staff work in cooperation with law enforcement and other government agencies to conduct joint investigations and assist other agencies. This type of inter-agency cooperation can be useful in cases involving alleged violations of state and local campaign laws, as well as instances where one agency has specialized knowledge or expertise.

VIII. Case Resolution

This section details the ways in which an enforcement case can be resolved and provides a general overview of the processes. A flow chart detailing the basic case resolution can be found at the end of this manual.

a) Types of Case Resolutions

1. **No Action closure letter** – If there is insufficient evidence to prosecute a case, and no further information would be helpful or informative.
2. **Advisory letter** – If there is insufficient evidence to prosecute a case, but the person complained about appears to need information about the Act to ensure future compliance.
3. **Warning letter** – If a violation of the Act is found, but the seriousness of the offense is low, public harm is minimal, or other mitigation is found so that a monetary fine is not warranted.
4. **Stipulation, decision and order** – Negotiated settlement with the respondent. Settlements are either streamline or mainline.
5. **Default judgment** – Respondent does not participate in settlement or administrative hearing process.
6. **Administrative Law Judge Decision** – The decision is issued after an administrative hearing conducted pursuant to the Administrative Procedures Act. The decision must be approved by the Commission before being final.
7. **Civil action** – Judgment issued by a superior court.

b) Closure Letters

In cases where staff concludes a no action closure letter, advisory letter, or warning letter is the appropriate resolution, staff drafts a closure memo and proposed letter and submits it for approval to the Chief. If approved, the letter is sent to the respondent with a copy to any complainants or referring agencies. Since a warning letter concludes the respondent violated the Act, a respondent may reject a warning letter within 10 days of it being sent and proceed with an administrative hearing. The Enforcement Division does not consider a warning letter a prior violation by the respondent for purposes of determining proposed fines in subsequent cases involving the same respondent or qualification for the streamline program.

c) Streamline Cases

In the interest of maximizing the Enforcement Division resources, a streamline process has been developed for the following types of cases:

- Statement of Economic Interest (SEI) non-filers/SEI non-reporters
- Campaign statement and report non-filers and non-reporters
- Lobbying report non-filers

The streamline process takes cases involving less serious violations that can be handled effectively with the use of templates and form letters. The PRCs are responsible for the handling of most streamlined cases until the probable cause stage, then a Commission Counsel is assigned. Some streamline cases are handled by Commission Counsels if an investigation has been completed, and the information gathered indicates that the respondent qualifies for the streamline program. Fillable pdf versions of the streamlined stipulations can be found in the INTAKE folder on the I drive.

The criteria for qualifying for streamline penalty and the method of determining the penalty to be assessed are contained in the streamline programs memorandum approved by the Commission at its May 2015 meeting. See <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2015/May/Streamline%20memo%20-%20205-11-15.pdf> for the streamline memo.

d) Cases Resolution After Investigation

Upon completion of an investigation, the Commission Counsel is responsible for analyzing and proposing a resolution to the case. Here is the typical process employed to resolve a case:

1. **Review Investigation Summary:** Review the evidence collected to ensure sufficient efforts were made to obtain evidence to prove or disprove each of the elements of the charged violations of the Act.
2. **Evaluate Evidence:** Determine whether a case has sufficient evidence to support prosecution. If there is insufficient evidence to support prosecution, the Commission Counsel prepares an advisory letter or closure letter for review and approval by the Chief.
3. **Evaluate Public Harm:** The public harm caused by the violation is determined by examining, amongst other factors, the seriousness of the violation, whether the respondent attempted to conceal the violation, whether there was a pattern of violations, previous cases and penalties, whether the violations were inadvertent, negligent, or deliberate, and the presence or absence of good faith. (Gov't Code § 91001, subd. (c); CCR § 18361.5, subd. (d).) If the public harm is low, a warning letter may be issued to resolve the case.
4. **Request for Settlement:** Settlement, as opposed to the full administrative or civil process or default decision, is the FPPC's preferred method for resolving most cases involving violations of the Act. If a case merits a fine, the Commission Counsel prepares a Request for Settlement Authority (RSA) for review and approval by the Chief. The RSA provides a summary of the facts and violations of the case, and a proposed penalty based on the public harm caused by the violations, recent penalties imposed by the FPPC for similar violations, and any other relevant aggravating or mitigating factors.
5. **Settlement Offer:** The Enforcement Division usually attempts to reach a proposed stipulated settlement with a respondent prior to initiating an administrative action. Settlements typically conserve public and private resources, take less time to resolve a case, and result in greater public disclosure.

The Enforcement Division staff assigned to a case prepares a proposed stipulation, decision and order ("stipulation") and presents it to the respondent. Language in the stipulation may be negotiated, but the stipulation must be factually accurate and include an admission of liability by the respondent. Also, as a condition of

settlement, in most cases, the respondent must file delinquent statements and reports to disclose information to the public not previously disclosed. Staff then works with respondent, or respondent's attorney, to reach a mutually agreeable result.

Proposed stipulations are presented to the Commission at a public meeting. The Commissioners may discuss the matter with the Chief, and if present, the respondent. If the respondent is not present, the Chief is limited to discussing only the facts and law presented in the stipulated agreement as well as other public information so as not to engage in ex parte communications regarding the settlement. If the Commission approves a proposed settlement, a Commission order is issued and the case is resolved. If not, the case returns to the Enforcement Division, typically with guidance from the Commission as to how the Enforcement Division should proceed with the case.

6. **Probable Cause:** If the parties cannot reach a settlement, the Commission Counsel initiates the administrative hearing process by preparing and serving a probable cause report ("PC Report") on the respondent. The PC Report contains a summary of the applicable law and relevant evidence gathered during the investigation, including any exculpatory or mitigating information. (Gov't Code § 83115.5 and CCR § 18361.4.)

After service of the PC Report via certified mail or personal service, the respondent has 21 days to request a probable cause conference, provide a written response to the PC report, or request discovery. (CCR § 18361.4.) If respondent requests discovery, respondent has 21 days from the date the discovery is served to submit a written response.

If respondent does not respond to a PC Report within 21 days of service of the PC Report, the Commission Counsel will make an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served ("Ex Parte Request") to the FPPC Legal Division hearing officer. Along with the Ex Parte Request, the Commission Counsel prepares and submits a proposed Finding of Probable Cause and Order to Prepare and Serve an Accusation for the hearing officer's signature. A copy of these documents is mailed to the respondent at the time they are submitted to the hearing officer.

If the respondent requests a probable cause conference, the Commission Assistant is responsible for contacting all parties and scheduling the conference as soon as practicable. Typically, a PC conference should take place within 30 days of respondent requesting the conference. An attorney from the FPPC's Legal Division typically serves as a neutral hearing officer for a probable cause conference. The standard of proof for the probable cause conference is "if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation." (CCR § 18361.4.)

If a hearing officer finds probable cause on one or more violations, either after a probable cause conference, or as the result of an Ex Parte Request, the hearing officer issues a finding of probable cause and an order that the Enforcement Division prepare an accusation to be served on the respondent. The Commission Assistant serves both the respondent and the Enforcement Division with the finding of probable cause and order to issue an accusation. If probable cause is not found as to any violations, the case is closed.

Findings of probable cause are published in the Legal Division's Executive Staff Report that appears on the agenda for each Commission meeting.

7. **Accusation:** After a finding of probable cause, the Enforcement Division prepares and serves an Accusation by personal service on all respondents. The Accusation must include a statement of the acts or omission that caused the alleged violations as well as the applicable law. A respondent has 15 days from the date of being served with an Accusation to request an administrative hearing by delivering or mailing a Notice of Defense to the Enforcement Division. (Gov't Code §§ 11503, 11506, and 83116; CCR § 18361.4.)
8. **Administrative Hearing:** If a Notice of Defense is filed, the matter will be resolved at an administrative hearing. The Enforcement Division prepares a memorandum to the Executive Director, including a copy of the Accusation, for the Executive Director to present to the Commission with his or her recommendation as to whether the Commission should hear the matter itself or have the issue presided over by an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. Hearings are usually presided over by an ALJ. The ALJ conducts an administrative hearing at which Enforcement Division staff represent the FPPC. Upon completion of a hearing, the ALJ issues a proposed decision. That decision is then presented to the Commission at its next meeting for approval. If the Commission adopts the decision, an order is issued.
9. **Default Decision:** If a respondent does not file a Notice of Defense, the Commission Counsel prepares a default decision and order to be considered by the Commission. Notice of the default decision and order must be sent to respondents no later than 15 days before the Commission meeting at which the default will be heard, but in practice, the Enforcement Division typically provides 30-day notice to allow respondents to cure filing defects and reach a settlement, if possible. (CCR § 18361.11.) By failing to file a Notice of Defense, a respondent has waived all rights to a hearing on the allegations contained in the Accusation. (Gov't Code § 11520.) But a respondent may provide any response or materials regarding a default decision and order at least five days before the Commission meeting. (CCR § 18361.11, subd. (b)(2).)
10. **Review of Commission Orders:** Respondents have the right to request reconsideration by the Commission of a decision adopted by the Commission. A

respondent also may file a writ of mandate in superior court challenging a final Commission decision. (Gov't Code § 11520, subd. (c).)

e) Statute of Limitations

The statute of limitations for initiating an administrative action under the Act is five years from the date of the alleged violation. (Gov't Code § 91000.5.) An administrative action begins by serving a probable cause report on a respondent. (Gov't Code § 91000.5, subd. (a).) If a person alleged to have violated the Act fraudulently conceals a violation, the statute of limitations is tolled as well. (Gov't Code § 91000.5, subd. (b).) Further, failure to comply with an administrative subpoena also tolls the statute of limitations. (Gov't Code § 91000.5, subd. (c).) The statute of limitations for bringing a criminal case under the Act is four years. (Gov't Code § 91000.)

f) Collections

For cases that result in a default decision and order imposing a fine, or an Administrative Hearing that is adopted by the Commission, collections action will be undertaken. The collection process begins with a demand letter sent to respondents by the Enforcement Division after the Commission approves the default or administrative penalty. If the penalty is not paid within 30 days of the demand letter, the Enforcement Division staff file an application with the Sacramento Superior Court for a clerk's judgment. Once the judgment is obtained, the Enforcement Division transfers the matter to the FPPC's Administrative Division to undertake collection efforts.

IX. Audits

The Act mandates the FPPC and FTB perform certain audits. (Gov't Code § 90001.) The Enforcement Division and FTB are also authorized by statute and regulation to perform discretionary audits. (Gov't Code §§ 90003 and 90008.) The Act also provides guidelines for an ongoing program of mandatory audits. (Gov't Code §§ 90000 - 90008.) The program encompasses campaign statements filed by all candidates for elective office, from statewide offices to special local jurisdictions, as well as the reports filed by lobbying firms and lobbyist employers. It also includes campaign statements filed by state ballot measure committees and state general purpose committees. The majority of the audits are conducted by the Political Reform Audit Program of the Franchise Tax Board ("FTB").⁵ Statements filed by candidates

⁵ FTB is responsible for conducting audits of the following when certain thresholds are met and draws are held to select the remaining audits: Candidates for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer, Attorney General, Insurance Commissioner, Superintendent of Public Instruction, State Senate, State Assembly, State Supreme Court, Court of Appeals, and Superior Court Judge, and their controlled committees. As well as committees supporting or opposing state candidates and/or statewide measures, and state and general purpose committees, (including county central committees of political parties), and lobbying firms, lobbyist employers, and lobbyists whose activities influence the legislative or administrative actions of California. In addition, FTB is responsible for conducting audits of candidates for local offices. (Gov't Code § 90001; CCR § 18991.)

for State Controller, Public Employees Retirement Board, and state Board of Equalization, however, are audited by the FPPC. (Gov't Code §§ 90001 and 90006.) The FPPC also has a contract with the County of San Bernardino to audit their candidate committees. (Gov't Code § 83123.5.)

a) Purpose of Audits

The Act requires full disclosure of receipts and expenditures of candidates and committees and disclosure of the finances of lobbyists. The purpose of the audits is to encourage compliance and detect violations of the Act by determining the level of compliance of the subject of the audit with the Act's recordkeeping and disclosure provisions. (Gov't Code §§ 90000 and 90007.) Each audit report includes an opinion of whether the information contained in the filings is presented fairly and in conformity with the provisions of the Act and related rules and regulations. (CCR § 18995 (c)(3).) The audit reports are public documents and used as a basis for enforcement action. (Gov't Code § 90004; CCR § 18993.) But records obtained to conduct the audit are not public documents. (Gov't Code § 90005.) When conducting the audits, the Program Specialists and FTB follow standards and guidelines for auditing statements and reports. (Gov't Code § 90007, CCR §§ 18994 and 18995.)

All candidates and committees are required to keep detailed accounts, records, bills, and receipts as necessary to prepare their campaign statements and reports. These records will be requested and must be produced in response to a notice that the FPPC or FTB is conducting an audit of your campaign. (Gov't Code §§ 84104, 86110, and 90002; CCR §§ 18401, 18610, and 18612.)

b) Discretionary Audits

The FPPC Enforcement Division and FTB are statutorily authorized to conduct discretionary audits in addition to those proscribed by statute. (Gov't Code § 90003.) These are done with approval of the Chief. The Chief and the Supervising Management Auditor develop a work plan with timeframes to conduct and complete the discretionary audit in as swift a timeframe as possible.

c) Audit Reports

Audit reports prepared by the FPPC and FTB also explain instances of material noncompliance with the disclosure and recordkeeping requirements of the Act. (CCR § 18995.) FTB's audit reports are sent to the FPPC, the Secretary of State ("SOS"), and the Attorney General ("AG"). If the reports relate to local candidates and their controlled committees, the reports are sent to the local filing officer with whom the candidate or committee is required to file the original campaign statements, the FPPC, and the District Attorney of that county. Audit reports issued by the FPPC for candidates/committees filing at the SOS are sent to the SOS and AG. Audit reports issued by the FPPC for local jurisdictions under contract are sent to the local filing officer and any other entity requested by the local

jurisdiction under contract. Copies of audit reports are also sent to the entity audited. (Gov't Code § 90004)

Additionally, FTB audits conducted on a random basis pursuant to Gov't Code § 90001 are required by statute to be completed within two years (Gov't Code § 90004). When completed, the FTB audits are transmitted to the FPPC Enforcement Division, and the Supervising Management Auditor then reviews the findings included in the audit report to determine if an enforcement action is warranted. The Supervising Management Auditor then makes a recommendation to the Chief as to whether enforcement action should be taken. The Chief makes the final determination of enforcement action.

d) Audit Standards

The audit guidelines and standards are based on the FPPC regulations. The Commission adopted audit guidelines and standards which govern audits and field work conducted pursuant to Gov't Code § 90001. For the purpose of the audit, auditing standards consist of general standards, standards of field work, and standards of reporting. (Gov't Code § 90007; CCR §§ 18994 and 18995.)

X. Case Records and File Management

The Enforcement Division seeks to utilize technology to operate more effectively and efficiently. The Enforcement Division also strives to ensure transparency by providing the public with access to available records, while maintaining the integrity of an investigation and respecting the privacy rights of respondents and witnesses.

a) Enforcement Case Management System

Beginning in September of 2016, the Enforcement Division implemented a paperless file system through the creation of an internal case management system. The Enforcement Division case management system directly receives complaints submitted through the FPPC website. Complaints and related documents, as well as case files and audit files, are stored on the case management system. Additionally, the Enforcement Division case management system provides enhanced case management capabilities and efficiency by allowing staff to:

- Transmit documents electronically for internal review and approval;
- Automatically generate basic letters and other documents;
- Create a dashboard and reports to track workload;
- Identify and redact documents for California Public Records Act request; and
- Access and sort records from prior cases to ensure consistency in prosecuting cases.

The Enforcement Division also transmits letters and documents electronically when possible to increase efficiency, shorten response time, and decrease the use of paper.

b) Case Resolution Documents

All warning, advisory, and closure letters are posted on the FPPC website upon completion of the case. Support staff uploads and posts the letters on the website. All stipulations, decision and orders, default, decision and orders, and Commission-approved administrative judgments are available on the FPPC website as well.

c) California Public Records Act Requests

Members of the public can make a California Public Records Act request on the FPPC website (<http://www.fppc.ca.gov/transparency/public-records-request.html>)
The Enforcement Division responds to California Public Records Act requests consistent with California Public Records Act and the FPPC policy.

XI. Continuity of Operations

Continuity of operations is an important part of the planning process designed to:

- Identify the emergency plan for the evacuation and safety of all employees in a natural or man-made emergency;
- Identify essential functions of the Enforcement Division;
- Identify essential records of the Enforcement Division;
- Articulate a plan to continue the essential functions of the Enforcement Division in the case of an emergency; and
- Articulate a plan to preserve the essential records of the Enforcement Division in the case of an emergency.

a) Emergency Plan

The Enforcement Division Emergency Plan is consistent with the FPPC agency-wide plan for providing for the evacuation and safety of all employees during an emergency.

b) Essential Division Functions

In the case of an emergency, the only essential Enforcement Division function is to ensure that cases that are nearing their statute of limitations are preserved for prosecution through either stipulated tolling agreement or through the serving of a probable cause report.

c) Continuity of Essential Functions

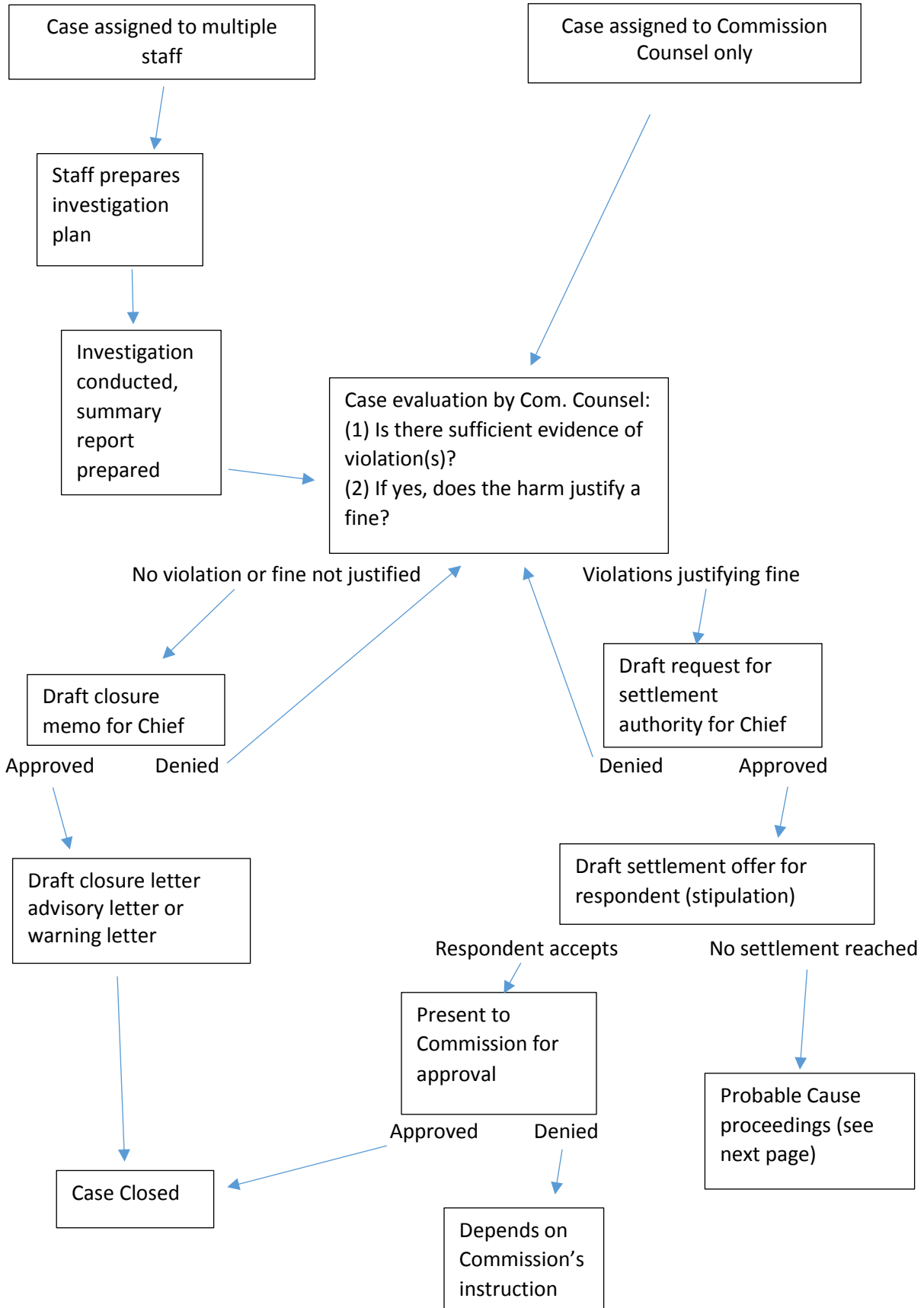
In the case of an emergency requiring evacuation of the FPPC office for an extended period of time, the Enforcement Division will work with the IT staff to determine how to:

- Access the on-site computer system remotely or access the backup data preserved off-site.
- Identify through the Enforcement Division case management system those cases that are

nearing their statute of limitations.

- Work remotely to draft and serve probable cause reports on and, if necessary, conduct probable cause hearings at an off-site location or telephonically.
- Notify the public of new contact information and possible delays in response time.

Case Resolution Flow-chart



Case Resolution Flow-chart

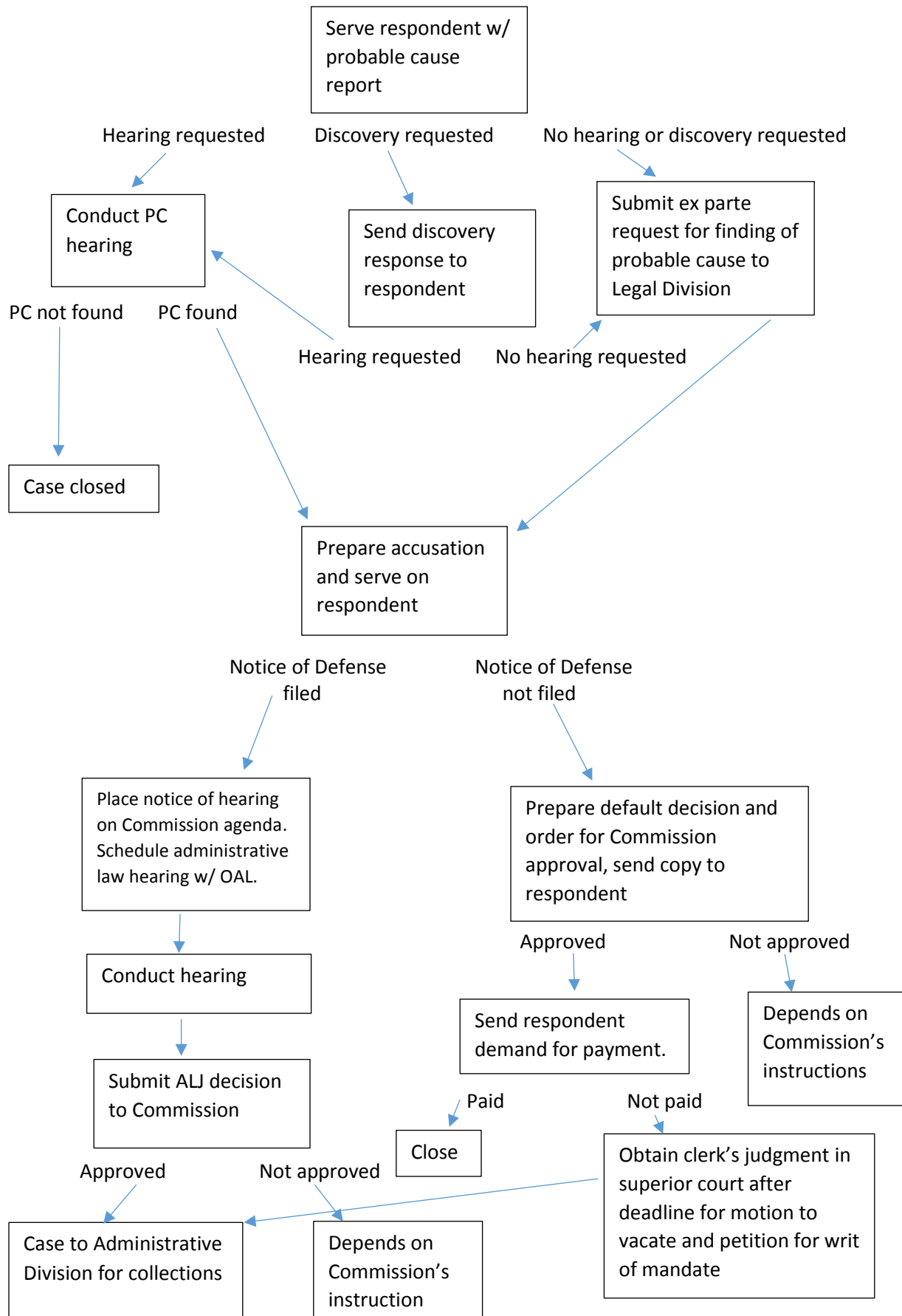


Exhibit 2

FAIR POLITICAL PRACTICES COMMISSION



Mission of the Commission

- The mission of the Fair Political Practices Commission is to promote the integrity of state and local government in California through fair, impartial interpretation and enforcement of political campaign, lobbying and conflict of interest laws.
- Advice, Train and Educate - Legal and Education Divisions
- Audit, Investigate, and Prosecute - Enforcement Division

Enforcement Division Mission

To fairly, effectively and efficiently enforce the provisions of the Political Reform Act.

Enforcement Division

- 30 Employees
- 9 Attorneys
- 9 Investigators
- 8 Specialists
- 4 Support Staff

Enforcement Under the PRA

- “In enacting the Political Reform Act, the people find and declare that previously laws regulating political practices have suffered from inadequate enforcement by state and local authorities.” (Gov’t Code § 81001(h))
- “Adequate enforcement mechanisms should be provided to public officials and private citizens in order that the Political Reform Act will be vigorously enforced.” (Gov’t Code § 81002(f))

Duty to Investigate

- “Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or administrative action.” (Gov’t Code § 83115)
- “...the Commission may make investigations and audits with respect to any reports or statements required by this title.” (Gov’t Code § 90003)

Administrative Investigations

- Gov't Code § 11180 authorizes investigations and prosecutions concerning “all matters relating to the business activities and subjects under the jurisdiction of the department” including “violations of any law.”
- Gov't Code § 11181 provides that in connection with investigations, the department head may “issue subpoenas for the . . . production of papers, books, accounts, documents . . . and testimony in an inquiry, investigation, hearing or proceeding pertinent or material thereto in any part of the state.”
 - FPPC has administrative subpoena power through this section and from within the Act itself (Gov't Code § 83118)

Administrative Investigations

(cont.)

The California Supreme Court stated in *Brovelli v. Superior Court of Los Angeles County* (1961) 56 Cal.2d 524, 529:

“As has been said by the United States Supreme Court, the power to make administrative inquiry is not derived from a judicial function but is more analogous to the power of a grand jury, which does not depend on a case or controversy in order to get evidence but can investigate **‘merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.’**” (*United States v. Morton Salt Co.*, 338 U.S. 632, 642-643.)
(emphasis added)

What the Commission Enforces

- Financial Reporting by Public Officials (SEIs)
- Conflicts-of-Interest for Public Officials (GC 87100 & 1090)
- Gifts and Honoraria
- Post-Governmental Employment (State & Local)
- Mass Mailings & Advertising Disclosure
- Campaign Finance and Reporting
- State Lobbying

Enforcement Options

Most violations of the Act can be prosecuted three ways:

- Administrative
- Civil
- Criminal

Administrative Prosecution

- Most common type of FPPC action
- Can seek penalties of up to \$5,000 per violation
 - More for certain advertising violations
- Statute of Limitations – 5 years
 - Can be tolled with a PC Report, tolling agreement, or if intent to conceal
- Applicable to all violations of Act
- Faster and more efficient resolution than civil court

Civil Prosecution

- Can be initiated by FPPC, private citizens, Attorney General or District Attorneys (Gov't Code § 91001)
- FPPC – State or any State agency, or local with written DA permission
- Attorney General – FPPC only
- District Attorneys – Any other agency
- Private Citizens – Must request action from DA, FPPC or AG first.
 - 120 days to respond.

Criminal Prosecution

- Must knowingly or willfully violate Act (Gov't Code § 91000)
- Violations are misdemeanors
- Statute of Limitations – 4 years
- If convicted, can't be candidate or lobbyist for four years
 - Judge may waive this, but must do so explicitly
 - Violation of this is a felony

Sources of Cases

Enforcement cases are initiated by:

1. Complaints (Sworn, Non-sworn or Anonymous)
2. FPPC SEI Unit and filing officer referrals
3. Audits and audit referrals
4. Media reports
5. Staff-initiated investigations
6. Tips
7. Referrals from law enforcement agencies

Cases, Complaints and Referrals

2016 (Election year)

- 1,180 Complaints
- 350 Referrals
- 1,530 Total

2017 (Non-election year)

- 564 Complaints
- 1,616 Referrals
- 2,180 Total

Intake

- All complaints and referrals go through the intake process to determine whether Enforcement should open a case.
- In determining whether to open a case, intake staff review the complaint or referral, any additional information provided by the complainant, publicly available information, and any material submitted by the subject of a complaint.
- If the Intake staff determines sufficient evidence is present to suggest a violation may have occurred then a case is opened.

Intake Timeline (Regulation 18360)

- Sworn Complaints:
 - Within 3 days, respondent is sent a copy of the complaint
 - Enforcement staff has 14 days to send investigate/won't investigate letter/need more time letter to complainant with a copy to respondent (Gov't Code § 83115)
- Commission-initiated cases (includes everything else):
 - No legally-mandated deadlines
 - Letter of Inquiry sent when appropriate
 - Generally, 10 days to respond
- Enforcement sends respondents notice of allegations against them 5 days prior to disclosure to the public/media.

Investigations

- Investigators and attorneys work together to gather the evidence to prove or disprove violations occurred. Auditors and other staff assist with these investigations.
- FPPC has subpoena power but must seek voluntary compliance prior to issuing subpoena unless:
 - Bank/business records
 - Threat of record destruction
- Executive Director authorizes issuance of administrative subpoenas if:
 - Records are material to the matter, and
 - the ED reasonably believes the person has the information under their control.

Audits

- The PRA requires the FPPC perform audits of the candidates and their committees for State Controller, Public Employees Retirement Board and State Board of Equalization
- FTB performs all other statutorily required audits
- FPPC has the authority to perform discretionary audits
- Contract with County of San Bernardino
- Auditors also routinely assist with complicated campaign investigations

Types of Resolutions

- **No Action closure letter** – If there is insufficient evidence to prosecute a case and no further information would be helpful or informative. (318)
- **Advisory letter** – If there is insufficient evidence to prosecute a case but the person complained about appears to need information about the Act to ensure future compliance. (17)
- **Warning letter** – If a violation of the Act is found but the seriousness of the offense is low, public harm is minimal, or other mitigation is found so that a monetary fine is not warranted. (505)
- **Stipulation** – negotiated settlement. (Mainline (66)/Streamline (262))
- **Default judgment** – Respondent does not participate in settlement or administrative hearing process. (12)
- **Administrative Law Judge Decision** – The decision is issued after an administrative hearing conducted pursuant to the Administrative Procedures Act. The decision must be approved by the Commission before being final. (1)
- **Civil action** – Judgment issued by a superior court. (0)

Streamline Program

- 77% of all cases prosecuted with fines go through the streamline program.
- Commission approved (May 2015): lower fines based on a formula for violations involving small amounts of contributions rec'd or expenditures made as well as SEI non-filing and SEI non-reporting.
- Commission will start discussions regarding modifying the program to change the fine amounts and possibly add additional violations, like advertising and recordkeeping violations.

Mainline Settlements

- Work with respondent (or counsel) to negotiate a mutually agreeable result, which must include:
 - An admission of violations,
 - Agreement on relevant facts, and
 - Public disclosure of any previously undisclosed information.
- “Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.” (*Hanlon v. Chrysler Corp.*, (1998) 150 F.3d 1011, 1027.)

Penalties

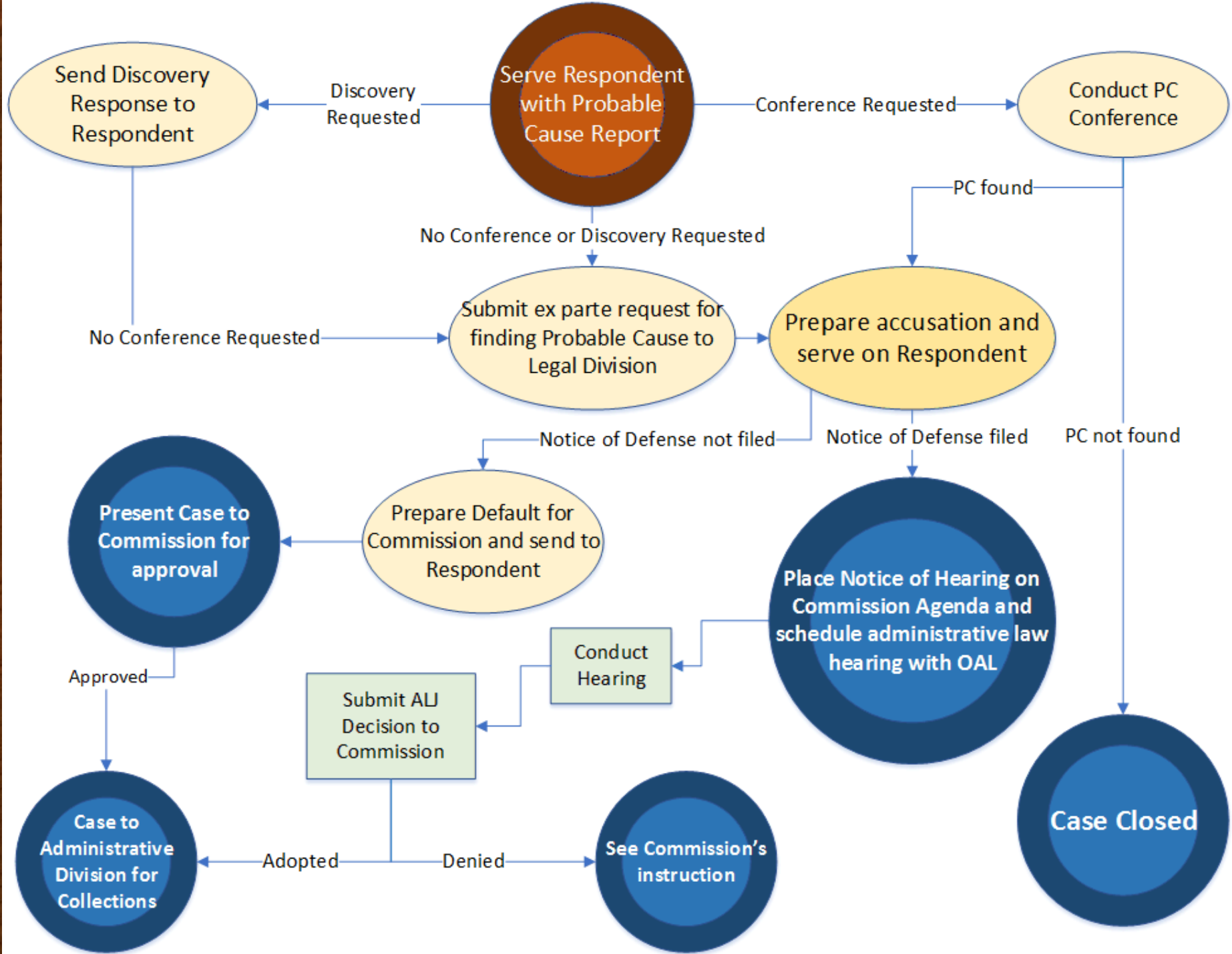
Recommended penalties determined by:

- Prior similar cases
- Commission Direction
- Factors set forth in Regulation 18361.5, subdivision (d):
 - the seriousness of the violations;
 - the presence or lack of intent to deceive the voting public;
 - whether the violation was deliberate, negligent, or inadvertent;
 - whether the Respondent demonstrated good faith in consulting with Commission staff; and
 - whether there was a pattern of violations.
- Public harm

Approval of Penalties

All penalties are approved by Commission

- 3 votes are required to approve or reject
- Can accept or reject stipulated agreements
- Enforcement cannot discuss facts not included in stipulations, except otherwise public information
- For defaults, Enforcement can discuss facts and penalty and Commission can unilaterally change the proposed penalty



Probable Cause

- Probable Cause Report. Enforcement Division files a probable cause report by serving it on the respondent. The respondent has the right to submit written argument, request discovery of evidence, and request a hearing at which respondent may submit evidence, including witness testimony.
- Probable Cause Conference. A neutral hearing officer determines whether there is sufficient evidence to lead a reasonable person to believe, or entertain a strong suspicion, the respondent violated the PRA. Respondent may request that an ALJ act as hearing officer for a probable cause hearing.

Administrative Hearings

- Administrative Hearing. If a hearing officer finds probable cause, the hearing officer orders the Enforcement Division to issue an Accusation and the case proceeds to administrative hearing pursuant to the California Administrative Procedures Act. Hearings may be conducted by the Commission, or an administrative law judge from the Office of Administrative Law. If the hearing office does not find probable cause, the case is closed.
- ALJ Finding. If an administrative law judge finds a respondent violated the PRA, the Commission may adopt or reject the ALJ's decision. The respondent may submit a brief to the Commission prior to its determination on a proposed decision.
- Further Review. Respondents have the right to request reconsideration of a decision adopted by the Commission, and may file a writ of mandate in superior court challenging a final Commission decision.

Exhibit 3



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

Fair Political Practices Commission

Memorandum

To: Chair Remke and Commissioners Casher, Eskovitz, Wasserman, and Wynne

From: Galena West, Acting Chief of Enforcement
Milad Dalju, Commission Counsel

Subject: Review and Proposed Changes to Enforcement Division's Streamlined Programs

Date: May 11, 2015

INTRODUCTION AND BACKGROUND

The Enforcement Division analyzes and processes over 1,500 complaints per year. Throughout its history, Enforcement has grappled with the correct level of prosecution for individuals and committees who have violated the Political Reform Act ("Act")¹ but have a lesser degree of public harm associated with their violation for a variety of reasons. As a result, as early as 1999, Enforcement proposed handling these cases through a streamlined procedure where the fines are reduced and the *Stipulation, Decision and Orders* ("Stipulation") presented to the Fair Political Practices Commission (the "Commission") are more abbreviated and standardized. Enforcement has been successfully managing the streamlined programs since their inception.

The purpose of this memorandum is to present the Commission with Enforcement's recommendations for the existing streamlined programs and propose additional types of violations for new streamlined programs. This comprehensive overview of all streamlined programs includes proposed guidelines, penalty amounts, and a stipulation template for each program. The recommendations for the criteria presented follow a review and analysis of Enforcement cases both presently being considered and those previously adopted by the Commission.

¹ All statutory references are to the Political Reform Act of 1974 found in Government Code Section 81000 et seq.

RECOMMENDATIONS

The streamlined programs presented include:

- 1) Failing to timely file a Statement of Economic Interests (“SEI”).
- 2) Failing to timely report an economic interest on an SEI.
- 3) Failing to timely file a campaign statement or report.
- 4) Failing to timely report information regarding contributions received or expenditures made.
- 5) Failing to timely file a lobbyist, lobbying firm, lobbyist employer, lobbying coalition, or \$5,000-filer report.
- 6) Failing to timely pay the recipient committee \$50 annual fee.

1. SEI Non-Filer

Public officials and candidates for public office are required disclose their economic interests by filing SEIs. SEIs are required to be filed when a candidate for elective office declares his or her candidacy, when a public official assumes office, on an annual basis while serving as a public official, and when the public official leaves office. The Commission has determined that there is a strong public interest in the timely filing of SEIs and a need to resolve SEI non-filing cases expeditiously to obtain prompt compliance with the law.

The failure to timely file a SEI qualifies for the streamlined program if:

- a. The SEI is filed with the appropriate agency prior to the Stipulation being presented to the Commission;
- b. The filer does not have other violations under review for prosecution;
- c. The filer has not received a penalty from the Commission² for failing to timely file an SEI or failing to timely report a qualifying economic interest; and
- d. There is no evidence of intent to conceal.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, gifts or income that were received from a source that was regulated by or had business before the filer’s agency during the period covered by the SEI, or accompanying violations. Mitigating circumstances include: no longer in office, illness, or other extenuating circumstances.

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 1) with a penalty based on the following tiered structure:

² This does not include filing fines issued by the Technical Assistance Division of the Fair Political Practices Commission.

Tier	Penalty per SEI not timely filed
1 – Compliance in response to first Enforcement contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to issuance of an accusation.	\$600 – \$800
4 – Compliance prior to adoption of a default decision.	\$800 – \$1,000

2. SEI Non-Reporter

Public officials are required to report all defined, disclosable economic interests on their SEIs. The requirements to disclose fall into two categories: (1) officials holding positions specified in Section 87200, who are required to disclose the broadest range of financial interests; and (2) officials holding agency positions that involve participation in government decisions that have financial impacts. These latter positions are designated in the agency's conflict-of-interest code and disclosure for each position is tailored to the scope of the official's job duties.

The failure to timely report an economic interest on an SEI qualifies for the streamlined program if:

- a. The SEI is amended to include all pertinent economic interests and filed with the appropriate agency prior to the Stipulation being presented to the Commission;
- b. The unreported economic interests did not cause the filer to have a conflict of interest;
- c. The filer does not have other violations under review for prosecution;
- d. The filer has not received a penalty from the Commission³ for violating the annual gift limit, failing to timely file an SEI, or failing to timely report a qualifying economic interest; and
- e. There is no evidence of intent to conceal.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, accompanying violations, or gifts or income were received from a source that was regulated by or had business before the filer's agency during the period covered by the SEI. Mitigating circumstances include: no longer in office, level of sophistication, information is reported

³ This does not include filing fines issued by the Technical Assistance Division of the Fair Political Practices Commission.

on another schedule, value of gifts received is below \$100, illness, or other extenuating circumstances.

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 2) with a penalty based on the following tiered structure:

Tier	Penalty per SEI that did not include all qualifying economic interests
1 – Compliance in response to first Enforcement contact.	\$100
2 – Compliance prior to issuance of a probable cause report.	\$300
3 – Compliance prior to issuance of an accusation.	\$600 – \$800
4 – Compliance prior to adoption of a default decision.	\$800 – \$1,000

3. Campaign Statement/Report Non-Filer

Candidates, elected officers, and committees are required to timely file semiannual statements, preelection statements, 24-hour reports,⁴ 10-day reports,⁵ supplemental preelection statements, and supplemental independent expenditure reports. Many times, the committees that fail to timely file these statements or reports are part of a losing effort, have raised and spent little to no money, missed a deadline, or are unsophisticated filers. The Major Donor Streamlined Program and the Late Contribution Report Streamlined Program are included in this more comprehensive program that addresses violations that are similar in type and harm as those already in the Major Donor and Late Contribution Report programs. To treat these cases more equitably, Enforcement is proposing expanding these programs so that the analysis can be based on the public harm and identified criteria instead of cataloged by type of report or statement.

The failure to timely file a campaign statement or report qualifies for the streamlined program if:

- a. The statement or report is filed disclosing all reportable activity prior to the Stipulation being presented to the Commission;
- b. The filer has not has not received a penalty from the Commission in the past five years for failing to timely file a campaign statement or report, or failing to timely report a contribution received or expenditure made;

⁴ “24-hour reports” refers to reports pursuant to Sections 84203, 84204, 85309, subds. (a) and (b), and 85500, subd. (a).

⁵ “10-day reports” refers to reports pursuant to Section 85309, subds. (c) and (d) as well as Paid Spokesperson Reports (Section 84511) and Verification of Independent Expenditures Form 462 (Section 84213).

- c. The committee does not have more than \$25,000 of contributions received or expenditures made per campaign statement; and
- d. There is no evidence of intent to conceal.

Additional factors include:

- a. The amount the committee raised or spent with regard to the relevant election;
- b. Whether all paper statements and reports were timely filed and the committee was a first-time electronic filer;
- c. Whether the filer is in office, or was at the time of the violation;
- d. Whether the majority or large amount of contributions or expenditures were not disclosed prior to the relevant election;
- e. Whether contributions made or received were reported timely at the other end of the transaction; and
- f. Whether major donors were notified of their filing obligation.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, or accompanying violations. Mitigating circumstances include: filer is no longer in office or never obtained office, the committee had less than \$1,000 of activity, all electronic statements were filed timely, the committee meets the requirements for administrative termination, or filer was ill or other extenuating circumstances.

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 3) with a penalty based on the following tiered structure:

Tier	Penalty⁶ per statement not timely filed (for preelection, supplemental, and semiannual) or per day for reports
1 – Compliance in response to first Enforcement contact.	\$200, plus 1% of contributions received or expenditures made, whichever is greater.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of contributions received or expenditures made, whichever is greater.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of contributions received or expenditures made, whichever is greater.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of contributions received or expenditures made, whichever is greater.

⁶ No streamlined program penalty will exceed the statutory limit of \$5,000 per violation (Section 83116).

4. Campaign Statement/Report Non-Reporter

Section 84211 requires that every campaign statement disclose for each cumulative contribution of \$100 or more (including loans) - the name, address, occupation, and employer of the contributor, and the date and amount of the contribution. Each campaign statement must also disclose for each expenditure of \$100 or more - the name and address of the payee, the amount of the payment, and a brief description of the consideration for which the payment was made. In addition, when a committee's agent or independent contractor makes a payment of \$500 or more on behalf of the committee, that information regarding those expenditures must also be disclosed. Such payments are commonly referred to as "subvendor payments." Enforcement proposes adding these violations to the streamlined program so that persons who timely file campaign statements and attempt to disclose information to the public are not treated more harshly than those who do not file campaign statements timely at all.

The failure to timely report contributions received, and expenditures made, qualifies for the streamlined program if:

- a. The filer amended the statement or report to include all required information regarding contributions received and expenditures made prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission in the past five years for failing to timely file a campaign statement or report or failing to timely report a contribution received or expenditure made,
- c. The total amount unreported was less than \$25,000, or 20% of the total contributions or expenditures for the committee for the relevant election, whichever is greater, and;
- d. There is no evidence of intent to conceal.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, majority or large amount of contributions or expenditures not disclosed prior to the relevant election, or accompanying violations. Mitigating circumstances include: filer is no longer in office or never obtained office, the committee had less than \$1,000 of activity unreported, all information was filed before the election but on another report or statement, the committee is a candidate for administrative termination, or filer was ill or other extenuating circumstances.

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 4) with a penalty based on the following tiered structure:

Tier	Penalty⁷ per incomplete stmt. or report filed
1 – Compliance in response to first Enforcement contact.	\$200, plus 1% of all unreported contributions received and expenditures made.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of all unreported contributions received and expenditures made.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of all unreported contributions received and expenditures made.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of all unreported contributions received and expenditures made.

5. Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Report Non-Filer

Lobbyists, lobbying firms, lobbyist employers, and lobbying coalitions are required to file quarterly reports, regardless of the level of activity, during each two-year session in which they register to lobby. Lobbyists provide their reports to their firm or employer, then the firm or employer files their own report, attaching each lobbyist's report. \$5,000 filers are persons who do not employ a lobbyist or contract with a lobbying firm but who make payments to influence legislative or administrative action aggregating \$5,000 or more in a calendar quarter. They file only for each calendar quarter in which the person spends \$5,000.

The failure to timely file a lobbyist, lobbying firm, lobbyist employer, lobbyist coalition, or \$5,000 filer report qualifies for the streamlined program if:

- a. The filer filed the report and disclosed all reportable activity prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission in the past five years for failing to timely file a lobbyist, lobbying firm, lobbyist employer, lobbying coalition, or \$5,000 filer report;
- c. The total amount not timely reported is less than \$25,000 per quarter; and
- d. There is no evidence of intent to conceal.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, number of reports not timely filed, majority or large amount of activity not disclosed in connection with legislative or administrative actions actively lobbied during the period, or accompanying violations. Mitigating circumstances include: filer is unsophisticated or newly registered, the lobbyist provided the statement to the employer or firm who did not file their statement, the activity for the period was \$0, or filer was ill or other extenuating circumstances.

⁷ No streamlined program penalty will exceed the statutory limit of \$5,000 per violation (Section 83116).

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 5) with a penalty based on the following tiered structure:

Tier	Penalty ⁸ per report not timely filed
1 – Compliance in response to first contact by Enforcement.	\$200, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.

6. Failing to timely pay the recipient committee \$50 annual fee.

At the beginning of 2013, a new fee was instituted in Section 84101.5 of the Act. All recipient committees in existence as of January 1, 2013, are required to pay a \$50 fee annually until they terminate as a committee. If the fee is not paid, the Secretary of State’s office will impose a \$150 penalty in addition to the \$50 fee. If the committee fails to pay the fee and penalty, a referral is made to Enforcement for collection of the fee, a \$150 penalty, and, if applicable, any penalty imposed for violating the Act. Enforcement has received our first referral from the Secretary of State’s office to prosecute the committees who have failed to pay, and we are proposing the Enforcement penalties be applied through a streamlined program.

The failure to timely pay the \$50 annual fee qualifies for the streamlined program if:

- a. The filer paid the fee and penalty prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission for failing to pay the \$50 annual fee within the past five years.

Enforcement has discretion to exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior Enforcement prosecutions or accompanying violations. Mitigating circumstances include: filer is no longer in office or never obtained office, the committee had less than \$1,000 of activity unreported, the committee is a candidate for administrative termination or has terminated, or filer was ill or other extenuating circumstances.

⁸ No streamlined program penalty will exceed the statutory limit of \$5,000 per violation (Section 83116).

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 6) with a penalty based on the following tiered structure:

Tier	Penalty per \$50 Annual Fee not paid
1 – Compliance in response to first Enforcement contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to issuance of an accusation.	\$600 – \$800
4 – Compliance prior to adoption of a default decision.	\$800 – \$1,000

CONCLUSION

Enforcement requests that the Commission approve the six aforementioned streamlined programs, including each program’s guidelines, penalty-structure, and attached stipulation template.

Attachments:

- Exhibit 1: SEI Non-Filer Streamlined Stipulation Template
- Exhibit 2: SEI Non-Reporter Streamlined Stipulation Template
- Exhibit 3: Campaign Statement/Report Non-Filer Streamlined Stipulation Template
- Exhibit 4: Campaign Statement/Report Non-Reporter Streamlined Stipulation Template
- Exhibit 5: Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Non-Filer Streamlined Stipulation Template
- Exhibit 6: \$50 Annual Fee Violation Streamlined Stipulation Template