



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

To: Chair Miadich and Commissioners Baker, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Toren Lewis, Commission Counsel

Subject: Prenotice Discussion of Proposed Amendments to Regulation 18115, Duties of Filing Officers and Filing Officials - Statements of Economic Interests; and Regulation 18360, Complaints Filed with the Commission.

Date: May 9, 2022

Proposed Commission Action

Staff presents amendments to Regulations 18115 and 18360, concerning the duties of filing officers under Act¹ and requirements for referrals to the Enforcement Division for prenotice discussion. The proposed amendments provide a comprehensive list of information filing officers must include in both campaign and statement of economic interests (SEI) non-filer referrals, as well as steps filing officers should take to avoid submitting referrals missing critical information.

The proposed amendments are intended to facilitate discussion, and to allow the Commission to provide guidance and instruction to staff prior to presenting the amended regulations for approval at a subsequent Commission meeting. The amended regulations will be presented to the Commission for adoption on or after July 21, 2022, the scheduled date of the Commission's July meeting.

Background

Filing officers² play an important role in helping to ensure provisions of the Act are effectively and efficiently administered. To this end, Section 81010 of the Act requires filing officers to perform specific duties, including notifying non-filers, reviewing filed statements for errors and omissions, and referring non-filers to the Commission's Enforcement Division. Filing officers submit referrals through the Electronic Complaint System (ECS) via the Commission's public website. To submit a referral, a filing officer must complete the electronic complaint form, which prompts the filing officer to provide their contact information and contact information for the respondent, whether they are an individual, committee, or candidate, amongst other information. The ECS referral form has certain fields designated as required for the filing

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Section 82027 defines "filing officer" as "the office or officer with whom any statement or report is required to be filed under [the Act]."

officer to fill in. In addition to completing the required fields, a filing officer is able to upload documents to the ECS. In practice, Enforcement intake staff reject referrals if they do not include the following documents:

- At least two written notifications the filing officer has sent in an effort to get the respondent to comply;
- A copy of the most recently filed form (i.e., SEI, campaign statement), if there is one; and
- For SEI referrals (87300 filers), a copy of their agency's conflict of interest code.

The duties of filing officers with respect to processing campaign statements and SEIs are contained in Regulations 18110 and 18115, respectively, while the requirements for referrals to the Enforcement Division are found in Regulation 18360(a)(3). Despite these specified duties and criteria for referrals, the Enforcement Division—which receives around 100 referrals per month, on average—has observed a pattern of referrals containing insufficient, unclear, outdated, or incorrect information. Following up on these issues and resolving them requires significant staff time and resources. Some of these issues stem from a lack of clarity as to what information referring filing officers must provide and what steps they must take to avoid or cure deficient referrals.

Campaign Non-filer Referrals

According to the Enforcement Division, campaign referrals often lack information to process a campaign referral, such as up-to-date contact information for the committee, candidate, or treasurer. Enforcement also notes that, when providing a copy of the most recent campaign statement, referring filing officers sometimes fail to attach all applicable schedules or when providing a copy of the most recent campaign statement, the permissible filing method allowed at the agency, such as paper or electronic filing, is not provided. Other errors and omissions include referring filing officers failing to notify the Enforcement Division when the filing officer receives an outstanding statement from a filer after they have been referred.

SEI Non-filer Referrals

Similarly, the Enforcement Division notes that SEI referrals also often lack information to process a referral, such as copies of written notifications sent to the non-filer, a copy of the most recent SEI, and a copy of the filer's agency's conflict of interest code (in the case of 87300 filers). Other problems, according to the Enforcement Division, include filing officers sending Leaving Office SEI notifications to non-filers' agency email addresses after the non-filer has left the position and no longer has access to the email account; filing officers sending notifications to the non-filer's agency via US Postal service, which never reach the non-filer; not including the contact information at which the filing officer notified the SEI non-filer; not providing that a filer is on a leave of absence which may have affected the non-filing; not providing whether the filer is still employed with the agency; and filing officers failing to timely notify the Enforcement Division when a non-filer files a missing SEI.

Proposed Regulatory Changes

Staff proposes amendments to two existing regulations in order to address the aforementioned referral issues. First, staff proposes amending Regulation 18115 subsections (a)(3) and (a)(4), to require filing officers to send at least one notice to the filer's personal email or personal mailing address and to obtain updated contact information including the filer's personal email address, mailing address, and telephone number. Staff also proposes amending subparagraph (b)(3)(D) to include that a filing official notify the filing officer when a filer's lack of filing has been due a leave of absence and when the filer's expected return date would be.

Second, staff recommends amending Regulation 18360(a)(3)(C) to require filing officers to include, as part of information regarding attempts to obtain compliance, the email address, mailing address, and phone number at which the referred person or entity was contacted. Next, staff recommends adding two new subparagraphs, (D) and (E), to Regulation 18360(3), in order to specify what a filing officer must include in a referral to the Enforcement Division. Proposed subparagraph (D) would specify that campaign non-filer referrals should include:

- (i) A copy of the most recently filed campaign statement, if any, including all relevant schedules.
- (ii) Committee name and identification number and, in the case of a candidate-controlled committee, the candidate's name.
- (iii) Office sought or held, if applicable.
- (iv) The name of the committee's treasurer.
- (v) Current contact information for the committee, candidate, if applicable, and the committee's treasurer.
- (vi) Required filing methods available to filer at their agency, such as paper or electronic filing.

Meanwhile, Proposed subparagraph (E) would specify that SEI non-filer referrals should include:

- (i) A copy of the most recently filed statement of economic interests, if any.
- (ii) A copy of the agency's conflict of interest code, in the case of Section 87300 filers.
- (iii) Written confirmation from the filer's agency on whether the filer is still active or employed. If the filer is out on leave, also provide that information along with expected return date if any.

Finally, staff proposes adding subsection (a)(4) to Regulation 18360, which would provide that if a filing officer receives a filing from a referred candidate, committee, or statement of economic interests filer, the filing officer shall notify the Enforcement Division within 7 days of receipt of the filing.

Summary

The proposed amendments to Regulations 18115 and 18360 would help streamline the Enforcement Division's intake and processing of the many referrals it receives every month by specifying what information referring filing officers must provide and what remedial steps they must take to cure deficient referrals.

Attachments

Proposed Amendments to Regulation 18115

Proposed Amendments to Regulation 18360