



**(Unapproved and subject to change)**  
**CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION**  
**MINUTES OF HEARING, Public Session**  
**Thursday, October 20, 2022**  
**10:00 a.m.**

Present: Chair Miadich, Commissioner Baker, Commissioner Gómez, Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director  
Angela Brereton, Chief of Enforcement  
Dave Bainbridge, General Counsel  
Shrdha Shah, Chief of Audits and Assistance  
Loressa Hon, Chief of Administration  
Karen Harrison, Senior Commission Counsel  
Katelyn Baeta-Orick, Commission Counsel  
Erika Boyd, Senior Commission Counsel  
Lindsey Nakano, Senior FPPC Legislative Counsel  
Sasha Linker, Commission Assistant

**Call to Order.**

Chair Miadich called the meeting to order at 10:02 AM.

Chair Miadich welcomed Commissioner Gómez to the Commission.

**1. Public Comment for Items not on Agenda.**

**2. Approval of Commission Minutes.**

**MOTION:** To approve September 2022 Commission Meeting Minutes. Moved by Commissioner Baker, seconded by Chair Miadich. The motion passed 4-0, with Commissioner Gómez abstaining.

**3-5. Consent Calendar.**

Angela Brereton, Chief of Enforcement, pulled item five from the agenda.

Commissioner Baker stated she had questions regarding item four. Chair Miadich stated he would pull item four for separate consideration.

**MOTION:** To approve consent calendar item 3. Moved by Commissioner Wilson; seconded by Commissioner Baker. The motion passed 5-0.

Ms. Brereton gave an overview of item four and discussed why the item is not a streamline settlement but that the violations that would have been included in a streamline are being used as aggravation.

Chair Miadich had a question about why this case is just now before the Commission based on the language stating the Respondent had remedied their outstanding filings in 2021. Ms. Brereton stated that even though the outstanding filing was rectified, the Enforcement Division still had investigation to complete in order to bring the most accurate settlement to the Commission.

Commissioner Baker stated her questions also related to the length of time between correction and settlement, specifically, the stipulation shows communications prior to the correction but were there communications after the correction. Ms. Brereton stated this case was unique because the Division already had an investigation happening and then another complaint of a similar nature in a different timeframe was received that required investigation. Because of this, the Division chose to include the investigation from the second complaint in the same stipulation.

Commissioner Baker asked if the tolling agreement was used as a sign of cooperation instead of a procedural action. Ms. Brereton stated the tolling agreement was used as a sign there was no intent to conceal.

Commissioner Wilson asked why the maximum penalty listed is only \$5,000. Ms. Brereton stated that the stipulation was for one violation and that the other violations are only listed as aggravation and not offenses being charged. Commissioner Wilson went on to state he disagreed with the low fine amount.

Commissioner Wood and Commissioner Baker agreed with the fine amount being too low.

Chair Miadich asked if there are timeframes or parameters for how long investigations should take. Ms. Brereton stated there is some guidance that we want cases completed within a couple of years and that it's a manager and supervisor duty to reiterate the guidance when dealing with their staff workload.

Commissioner Wilson asked if there was a report of cases open at any one time. Ms. Brereton pointed to the numbers provided in the Executive Staff Report. Chair Miadich discussed the mitigation presented in the case.

**MOTION:** To approve item 4. Moved by Chair Miadich; seconded by Commissioner Gómez. The motion passed 5-0.

The Commission adjourned for break at 10:25 a.m. and reconvened at 10:40 a.m.

**6. Adoption of Proposed Amendments to Regulation 18410 Requiring Disclosure of Individuals Authorized to Access a Committee’s Bank Records.**

Katelyn Baeta-Orick, Commission Counsel, gave an overview of the regulation package.

Chair Miadich asked if Ms. Baeta-Orick could respond to the latest CPAA letter that raises a concern with privacy. Ms. Baeta-Orick stated amending the record keeping requirement would require the candidate or treasurer to maintain the information, however, if the records aren’t maintained or we are unable to contact those people, we would not be able to receive those records or contact the people who have it.

Chair Miadich recommended adding an effective date of January 1, 2024 in order to give CPAA or the Commission time to sponsor legislation to amend the PRA to align more clearly with modern privacy standards.

Commissioner Baker asked if additional contact information can be added to the form as an optional field in order to get additional helpful information. Dave Bainbridge, General Counsel, stated he does not know if people would do this voluntarily and stated there is nothing stopping an individual from adding this information on the form at this time. Galena West, Executive Director, stated the request for additional information could be included in the manual or instructions.

KC Jenkins, California Political Attorneys Association, gave public comment pointing the Commission to suggestion on the comment letter that would be alternatives to adding the additional information to the Form 410. Chair Miadich asked Ms. Jenkins if there is a reason CPAA hasn’t pursued a legislative fix on this issue. Ms. Jenkins stated she did not know of a specific reason.

Ms. Baeta-Orick stated a change in the effective date would change the following dates in the proposed regulation: the grace period date of July 1, 2023 would change to July 1, 2024, and the committees existing prior to January 1, 2023 would change to January 1, 2024.

**MOTION:** To adopt the regulation package with amendments and a January 1, 2024 effective date. Moved by Chair Miadich, Seconded by Commissioner Baker. The motion passed 5-0.

**7. Adoption of Proposed Amendments to Regulation 18531.5, Recall Elections.**

Erika Boyd, Senior Commission Counsel, gave an overview of the regulation package.

Commissioner Wilson asked if there are any proposed statutory changes in the works or have been proposed. Ms. Boyd stated there is nothing currently proposed. Chair Miadich discussed the hearings the legislature held on the recall process and stated there were no outcomes to those hearings.

Commissioner Baker discussed the requirement that pre-election reports and 24-hour reports are required for all controlled committees and asked what the rationale for those reports is. Ms. Boyd stated her understanding was to increase transparency for those who are up for election and support the limits associated with those elections. Commissioner Baker then asked whether the constitution was as explicit about question one of the recall as it is on question two. Ms. Boyd stated the recall is defined as a measure within the PRA and stated the interpretation of the Constitution comes from the definitions within the Act. Commissioner Baker clarified that when something is in the Act, it does not mean it is also in the Constitution. Commissioner Baker stated the agency has reached a long-standing conclusion that the target officer from question one is a measure and not a candidate. Commissioner Baker further stated that the question getting to the ballot is similar to a measure, but the target officer is akin to a candidate and she cannot get to the current understanding based on the constitution.

Chair Miadich stated requiring the pre-election reports from everyone does increase transparency. He further discussed the 1989 *Roberti* Advice letter (A-89-358) that asked whether campaign contribution limits would apply to a target official in the context of a recall where the analysis given identified a provision in the constitution that supports that the target official is a measure and not a candidate because those provisions require that the state pay the target official for the cost of the recall if they successfully fend off the recall. The Act then says candidates cannot receive public funds as part of a recall. Chair Miadich then stated this regulation is taking our advice and putting it into a regulation.

Commissioner Baker stated she appreciates the *Roberti* letter and agreed the action taken shouldn't be based on personal preference. She further stated that recalls are different and that the Constitution is not explicit on the first question like it is on the second and that maybe what comes of this is that the Commission encourage the legislature to be explicit.

Commissioner Wilson stated there is long standing precedent that the target officer is not a candidate and that the recall laws in this state allow a recall to happen without proving the official is not doing their job but rather after meeting various thresholds. He then stated the FPPC should not be defining what a recall is without further guidance from the voters or the legislature.

Commissioner Baker stated supports some of the regulation today but believes the voluntary expenditure limits should not be in the regulation without a legislative change first. Commissioner Wood asked why this is Commissioner Baker's stance. Commissioner Baker clarified that she supports everything in the proposed amended regulation, including the voluntary expenditure limits, but does not support taking a position on the pre-election statements and stated there is different defining rationales that are consistent with the Constitution when presented in other regulations for the general election but that there is a different conclusion when the target officer is not a candidate.

**MOTION:** To strike the underlined additions on page 2, lines 15-20. Moved by Commissioner Baker, seconded by Chair Miadich. The motion failed 1-1, with Chair Miadich voting no and Commissioners Gómez, Wilson, and Wood abstaining.

Commissioner Baker stated she wishes to support the other provisions of the regulation but does not support the additional language added on page 2, lines 15-20.

**MOTION:** To adopt the regulations as presented. Moved by Chair Miadich, seconded by Commissioner Wood. The motion passed 4-0, with Commissioner Baker abstaining.

## **8. Advice Services.**

Mr. Bainbridge presented on the advice services provided by the FPPC.

Chair Miadich clarified that advice is provided based on the material facts provided by the requestor but that there could be additional facts not provided.

Commissioner Baker asked if an advice letter causes a presumption or legal effect by the Enforcement Division if a complaint comes in. Mr. Bainbridge stated there are no presumptions, but the legal effect would be immunity based on the facts in the letter. Commissioner Baker further asked if intake would then be bound to presume the facts in an advice letter are true. Mr. Bainbridge stated no, and that advice would only be given if the action has not yet happened.

Commissioner Wilson asked about the difference between advice letters and email advice and whether email advice is public. Mr. Bainbridge stated it is public and disclosable upon a public records request.

Commissioner Wilson asked if anyone can request advice on behalf of a public official. Mr. Bainbridge stated the request can come from anyone authorized to act on behalf of an official.

Chair Miadich asked if there is an auditing system for email and phone advice. Mr. Bainbridge discussed the current auditing process.

Commissioner Baker asked how the public can get answers. Mr. Bainbridge described how guidance is given to the public.

Commissioner Wilson asked how far emails are kept. Mr. Bainbridge said it's based on the agency retention policy.

Commissioner Baker asked if phone advice is tracked. Mr. Bainbridge said there is not a written log of who calls, and advice given but that the phone system tracks amount of calls received.

Commissioner Baker asked if the advice line has ever gone down. Mr. Bainbridge said the lines were down for a little while when the office transitioned to telework at the beginning of COVID but that there is not a time the line has gone down. He further stated there is not a voicemail service for this line but a recorded message that gives the phone hours and the advice email.

## **9. Legislative Update.**

Lindsey Nakano, Senior Commission Counsel, updated the Commission on the status of FPPC related bills.

## **10. Executive Staff Reports.**

The Executive Staff Reports were accepted as submitted.

## **11. Commissioner Comments and Proposed Future Agenda Items.**

Chair Miadich stated there will be a legislative development discussion in November and asked that Ms. Nakano include proposals that address redacting bank account numbers and possible recall ideas.

Commissioner Baker asked for an update on what SB 1439 implementation will look like.

**MOTION:** To Adjourn the meeting. Moved by Commissioner Wilson; seconded by Commissioner Baker The motion passed 5-0.

The meeting adjourned at 12:36 p.m.

Respectfully Submitted,  
Sasha Linker  
Commission Assistant  
Approved November 7, 2022

Richard C. Miadich, Chair  
Fair Political Practices Commission