



(Approved June 15, 2023)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, April 20, 2023
10:00 a.m.

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

Staff Present: Galena West, Executive Director
Christopher Burton, Acting Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Loressa Hon, Chief of Administration
Lindsey Nakano, Senior FPPC Legislative Counsel
Sasha Linker, Commission Assistant
Julianna Contreras, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:08 a.m.

2. Approval of Commission Minutes.

MOTION: To approve the April 2023 meeting minutes. Moved by Commissioner Baker; seconded by Commissioner Wilson. The motion passed 4-0.

3. Consent Calendar.

Christopher Burton, Acting Chief of Enforcement, responded to a question asked by Commissioner Baker regarding Item 3 of the Consent Calendar. Mr. Burton stated the information and amendments were reported as soon it was available and has been viewed as a mitigating factor. Commissioner Baker asked what standard would apply for this scenario. Mr. Burton answered that sub vendor reporting requirements are a strict liability violation. Commissioner Baker requested that if in the future there is information and they make best efforts and it is used as mitigation factor, it will be helpful to be able to see it. Commissioner Wilson asked, when the experience of the committee treasurer is considered and how could it possibly impact the ultimate decision and penalty. Mr. Burton explained, the consideration depends on the level of experience and sophistication for all

parties involved. Chair Miadich asked for clarification on the mitigating factors of the stipulation and whether the information on amended reports upon receiving from the vendor was considered a mitigating factor. Mr. Burton confirmed that was the case – all the information received, including when the information was received from the vendor – is considered when evaluating mitigating and aggravating factors.

MOTION: To approve item 3. Moved by Commissioner Wilson; seconded by Commissioner Wood. The motion passed 4-0.

4. Enforcement Division Update.

Christopher Burton, Acting Chief of Enforcement presented the Enforcement Division Update identifying Enforcement’s processing of complaints and referrals, AdWatch, pro-active preelection referrals and statute of limitations for Enforcement matters. Chair Miadich asked that for complaints that go beyond the 14-day period, which party is requesting to extend the 14-day period. Mr. Burton doesn’t have a percentage estimate but it can be dependent on the complexity of the case and in some cases, attorneys will need additional time. Staff will send a letter with a written detail explaining the reason for additional time to process the complaint since the statute requires a reasonable reason for additional time. Additionally, non-sworn cases do not have a statutory deadline for the FPPC to respond. Mr. Burton will research the percentage of sworn complaints and referrals resolved within the 14-days. In addition, Mr. Burton explained that sworn complaints are prioritized more than non-sworn complaints and referrals. Chair Miadich asked if there are internal guidelines or standards for non-sworn complaints and referrals giving a period to process them. Mr. Burton stated moving forward under the policy directive which was passed by the Commission and implementing the reorganization of the enforcement division, Enforcement will develop clear deadline driven goals for complaint processing. The Enforcement Division works collaboratively when they are evaluating their complaints. Attorneys are always available when questions arise and for more complex types of violations such as conflict of interest.

AdWatch submissions are being process as non-sworn complaints. Mr. Burton stated the number of AdWatch submissions, the average number of days that takes enforcement to resolve at the intake stage is 20 days, after that time the submission is either opened into a case or rejected. Chair Miadich asked that after AdWatch submission, when does the case start, before or after the compliance has been determined? Mr. Burton clarified that the submission stays in the intake stage while they focus on the compliance efforts because the importance of pre-election corrections. After reviewing the case and the compliance efforts are made, that's when intake recommends to open it into a case and determine how to resolve the case via warning letter or any other action applicable. Commissioner Baker asked about the substance of the ads, which are not FPPCs jurisdiction, could those cases be rejected or are they not included in the chart? Mr. Burton confirmed those cases are included in the chart and on the AdWatch submission page there's a disclaimer which states the FPPC doesn't have jurisdiction over those ads, and they will get process accordingly. Commissioner Woods asked if an incumbent with prior past violations and that already been stipulated cannot repeat the same violation on the next election. Mr. Burton explained that if there was a prior violation, then that would count as a prior Ad violation so it would be aggravating for current violations. Mr. Burton also confirmed that mitigation doesn't excuse the existing violation but can result in a warning letter to resolve the matter. Chair Miadich asked about the 2022 number of cases on the Pre-Election Referrals chart where 160 cases are unaccounted for. Mr. Burton confirmed that they do not open every single one of the referrals and there are only 44 open cases. Commissioner Baker shared her gratitude to Mr. Burton's achievement to keep these cases low. Also, Commissioner Baker would like a clarification about the 40 cases that were expired due to being Low Public Harm. Mr. Burton clarify that these cases came in close to the statute of limitations and the severity of these cases were deemed low priority and they can focus on other cases that carried a higher-level public harm. Chair Miadich asked about the average rejection rate of complaints involving behested payments and the amount of behested complaints currently in intake. Mr. Burton will come back with that answer. Commissioner Wilson asked about the average time to resolve these cases once there's been a complaint filed. Mr. Burton

explained that these cases are resolved in a timely manner and can be quicker because they are mostly reporting violations. Commissioner Baker requested clarification of the Warning Letter and Advisory Letter categories for 2021. Mr. Burton explained that in the interest of fairness since this category of cases was going to be added to streamline, enforcement held back on some cases to wait for the streamline program to pass and direction from the Commission. Then once that occurred some cases were resolved together. An advisory letter would be use as an enforcement resolution where there is insufficient evidence to show a violation. Advisory letter is a no action closure letter which is provided to educate the respondents. Galena West, Executive Director added that this change was a policy decision during 2021, as the Commission worked through the Streamline regulations which included the criteria for warning letter. Cases were held to treat them all in correspondence with the Commission direction. Advisory letters and warning letters were given to get everyone into compliance. These are the tools used during a time of transition.

5. Prenotice Discussion of Amendments to Regulation 18361.1

John Feser, Senior Counsel Legal Division presented amendments to Regulation 18361.1 regarding administrative subpoenas. The current regulation requires Commission staff to make reasonable efforts to obtain information voluntarily before issuing an administrative subpoena. The Executive Director has the discretion to forego this procedure for an investigation in progress. Under this new standard, Commission staff would not be permitted to serve a subpoena sooner than 21 days after making a written request for the voluntary disclosure of information from a prospective subpoena recipient. This will remove any confusion and undo delay caused by attempts to comply with an undefined subjective requirement. Commissioner Wilson asked the options to expedite the service of an administrative subpoena before the 21-day time frame. Mr. Feser discussed that with the discretion of the Executive Director, a subpoena can be served before the time frame. Commissioner Wilson also expressed the opinion that 21 days may be too long and asked how the number was achieved.

Mr. Feser stated that he requested feedback from the Enforcement Division and 21-days was the number they came back with.

6. Prenotice Discussion of Disclose Act Regulations.

Erica Boyd, Senior Commission Counsel gave an overview of the regulation package, going through each regulation one by one for changes. In Section 84502, advertisements must include the words “Ad Paid for by” followed by the full name of the committee as it’s found on the statement of organization that’s file with the Secretary of State, and a new subdivision was added to this section following for a shortened committee name in specific instances. Ms. Boyd discussed as the new regulation get adopted, the public will have questions and advice which they can benefit from it.

Chair Miadich and the Commissioners stated that some committee names could possibly not interpret their actual name and it could concern and confused the public.

7. Collection Procedures.

Valerie Nuding, Commission Counsel presented the Collections Procedures where she stated that the purpose of the collections procedure presentation is to help illustrate and provide the Commission with information on some of the numbers facing the collections program and the plan moving forward. In general, states agencies are required to provide ongoing accounts receivable training to staff to ensure proper recordkeeping and to keep up to date a collections procedure that is in accordance with the law and best practices and that will assure prompt follow-up with account receivables due to the State. Chair Miadich asked when discussing staff offers are all reasonable opportunities to resolve the debt and the different options such as payment plans. Ms. Nuding confirmed that payment plans are available. Chair Miadich asked about the process time for staff members when processing a renewal of judgment. Ms. Nuding stated the time process varies because of everyone involved, such as Administration, Enforcement, Attorneys, and Investigators.

Commissioner Wilson asked for clarification on why the FPPC does not have control once the debt

goes into a certain stage. Ms. Nuding explained that is because the State of California does have an interest in collecting their debts. The FPPC Enforcement Division will make multiple attempts to collect the debt before it goes to default. Commissioner Baker asked once the individual has complied and chosen a payments plan, what interest rate will apply to it. Galena West, Executive Director and Valerie Nuding, Commission Counsel will provide this information later. The current collections procedure has successfully settled 15% of the debt collections from 2019- 2023 from the original amount and 7% including interest. Different options are available for the Commission such as tax refunds, Lottery winnings, liens on the Debtor's real or personal property, wage garnishment, payment plans, a levy on debtor's bank account and in extreme measure, other collections mechanisms. Commissioner Wilson asked if these methods are being applied to the pending cases. Ms. West stated that based on the current policy, we use the offset method which is Tax Refund, Lottery Winnings and unclaimed property payable by Franchise Tax Board, and we will be adding liens to properties with new judgements and renewals of judgements. Other recommendations we are discussing include adding liens with new judgements and renewal of judgements, prioritizing addition of liens for more serious violations identified by the Commission, and lastly clarifying FPPC's authority to negotiate settlement of debt after reasonable efforts to collect debt. Ms. West will provide yearly updates on these cases to keep up-to-date and enforce the collections process. Loressa Hon, Chief of Administrations clarified that Administrative Division has never done a lien and it will be a learning process to understand the lien process and how the different counties work since a lien has not been applied in the last decade. Commissioner Wilson asked if judgements would appear on their credit report. Dave Bainbridge, General Counsel clarified that judgements do not appear in your credit report, but it will affect your ability to apply for credit. The upcoming regulation will clarify the delegation of authority to the Executive Director and negotiate a settlement. The Commissioners agreed that it should be considered an exception in placed for an

individual facing financial hardship and/or health issue when dealing with each case to come a resolution and move forward with the settlements and/or payment.

8. Legislative Update.

Lindsey Nakano, Senior Legal Counsel presented updates on legislation. AB 1170 – Electronic filing SEIs is on pause until next year due to concerns by legislatures to retain the paper filling and electronic filing. SB 678 regarding the disclaimers on paid third-party social media posts was presented earlier in the meeting by Commission Counsel, Erika Boyd which highlighted the ambiguities in existing law as a result of last year’s bill SB 1360. Ms. Nakano is attempting to resolve those ambiguities by adding some clarifications to SB 678 this year.

Chair Miadich asked for clarification regarding SB 888 and the purpose of it. Ms. Nakano stated there was no discussion in committee and it passed on consent unanimously. The amendments relating to the Commissioners were intended as a clarification for the phrases “term of appointment” and “seek election” in existing law that were thought to be ambiguous. However, FPPC staff see this as a substantive policy change that goes beyond clarification, no other discussion was made about the Chair of Commission. Chair Miadich asked about the possibility of reimbursement when a campaign member leaves the office and there were provided a home security under bill AB37. Ms. Nakano confirmed there is not provision relating to reimbursement as the bill is silent therefore it’s not required to reimburse. Commissioner Baker asked for clarification about AB37 under existing version of the bill, if campaign funds are used for security purposes, the expenditure will appear on their reports and statements but it will no longer be required for be provided to the FPPC. Ms. Nakano agreed. In addition, Commissioner Baker asked if there is a definition of immediate family as it states on the bill that immediate family are allowed to have a security system with no prior or post justification. Ms. Nakano stated that this bill doesn’t define immediate family. Chair Miadich confirmed Section 82029 in the PRA defines and limits this

expenditure to spouse and dependent children only. Commissioner Baker would like improvements to this bill since it is not well addressed, and it should be required to provide reimbursement from staff once they leave the office. She would like to propose that it should be required to request reimbursement of the fair market value of the equipment.

Motion: To approve SB 328. Moved by Chair Miadich; and seconded by Commissioner Wood. The motion passed 4-0.

9. Executive Staff Reports.

The Executive Staff Reports were accepted as submitted.

10. Commissioner Comments and Proposed Future Agenda Items.

MOTION: To Adjourn the meeting. Moved by Commissioner Wilson; seconded by Commissioner Baker. The motion passed 4-0.

The meeting adjourned at 1:15 p.m.

Respectfully Submitted,
Julianna Contreras
Commission Assistant
Approved
May 09, 2023

Richard C. Miadich, Chair
Fair Political Practices Commission