



(Approved August 15, 2024)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, June 13, 2024
10:00 a.m.

Present: Chair Silver, Commissioner Baker, Commissioner Ortiz, and Commissioner Wilson

Staff Present: Galena West, Executive Director
James M. Lindsay, Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Jue Wang, PhD, Acting Chief of Administration
Lindsey Nakano, Senior FPPC Legislative Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Silver called the meeting to order at 10:06 a.m.

- 1. Public Comments for items not on the agenda.**
- 2. Approval of Commission Meeting Minutes.**

Commissioner Baker highlighted an edit needed in the minutes.

MOTION: To approve the May 2024 meeting minutes with Commissioner Baker's edit. Moved by Commissioner Ortiz, seconded by Commissioner Wilson. The motion passed 4-0.

3-4. Consent Calendar.

Item 3. James Lindsay, Chief of Enforcement, pulled item 3, In the Matter of Ramos for City Council 2018, Committee to Elect Daniel Ramos Adelanto City Council 2020, Daniel Ramos, Ricardo Ramos, Arley Arsineda; FPPC No. 19/464 from the agenda., Mr. Lindsay stated he received some communication from Mr. Ramos, and also, Mr. Ramos has filed a lot of the requested materials and believes the Enforcement Division could be able to reach a potential resolution.

Angelo Meza, Public Commenter, thanked the Commission for holding item 3 so that Mr. Ramos can continue doing great things for his city.

Diana Esmeralda, Resident of the City of Adelanto, expressed her discomfort about Mr. Ramos' disclosures not being honest and discussed the potential conflicts that don't appear on the disclosure forms.

Item 4. Updated Campaign Disclosure Manuals 3 – 7. Chloe Hackert, Manager of Education and External Affairs, presented the updated disclosure manuals. Ms. Hackert thanked all the commenters for providing comments during the comment period and noting that while most of the comments were implemented into the presented drafts, there were some comments from CPAA that have been held for further research. Commissioner Baker asked if the CPAA comments that are being held are due to them being substantive and needing further research. Ms. Hackert stated that, yes, they need further research and outreach and the goal is to ensure that the comments provided are applicable to everyone when presented in the manual. Commissioner Ortiz asked if the update happens once a year. Ms. Hackert responded by saying they have been trying to update once a year, but there were changes in staff and in the law, which has made it difficult to do the last update. Additionally, Ms. Hackert stated the manuals had been updated for CARS and when the CARS implementation was pushed back, the manuals had to be amended to remove the information relevant to CARS.

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

5. Prenotice Discussion of Proposed Amendments to Regulations 18991, 18993 and 18994, Audits and Investigations.

Dave Bainbridge, General Counsel, presented the prenotice regulation package.

Commissioner Ortiz asked what a discretionary audit is and what makes it discretionary. Mr. Bainbridge responded that the FTB and FPPC have mandatory audits that they are required to do by law, but there is a provision that allows discretionary audits, which means any instance where an auditor believes an audit is justified.

6. Adoption of Proposed Repeal and Adoption of Regulation 18392.3, Honorarium Ban Exception, Definition of "Predominant Activity."

Karen Harrison, Senior Commission Counsel, presented the regulation package.

Chair Silver sought clarification on whether the surgeon described in Ms. Harrison's hypothetical, who is paid to speak on their area of medical expertise, would fall under the earned income exception. Ms.

Harrison responded that if more than 50% of the surgeon's total income comes from paid speeches, then speaking would be considered their predominant activity and the exception would not apply.

Commissioner Wilson clarified that Prop 112 was adopted to target specific elected officials since they were speaking to large audiences of 100-300 people, but officials who weren't targeted were captured by the law as well. Ms. Harrison said the honorarium ban tried to encompass several problems, not just one situation.

Chair Silver asked whether the greater than 50% threshold for determining predominant activity applies when considering whether a trade or profession is bona fide. Ms. Harrison responded that the same threshold applies regardless of whether the official is engaging in a business, trade or profession. Chair Silver then asked about the application of the rule to individuals who engage in a trade or profession, such as teaching or medical surgery, bona fide where part of their job includes giving speeches. Ms. Harrison explained that a different regulation governs when an official is engaging in the bona fide profession of teaching. Chair Silver asked whether the law treats a surgeon who is employed differently than a surgeon who owns their own medical practice. Ms. Harrison stated if someone has a business, and a component of that business is giving lectures, it is not bona fide in the regulation. She further explained that the rules as to bona fide employment can be tricky.

Chair Silver asked if the regulation governing when an official is engaging in the bona fide profession of teaching is a presumption or a requirement. Ms. Harrison stated that although it is phrased as a presumption, it is one criterion that has to be satisfied within the regulation. Regulations from this time period were written using the term presumption but it was used in the context of a requirement.

Commissioner Baker asked if the surgeon in the example posed by Ms. Harrison is asked to give a speech but is not paid for that speech, is that okay? Ms. Harrison said yes, that is okay.

Dave Bainbridge, General Counsel, provided the regulation that speaks to bona fide trades and professions.

Commissioner Ortiz asked how the threshold would be calculated: annually or every three years. Ms. Harrison replied that it is calculated by looking back 36 months, each month, to see if there is a change of 50% more or less than before.

Commissioner Baker asked if, under the existing rules, Jane Doe could push back the speech and still receive the payment because the 12-month period had changed. Ms. Harrison responded that what should be looked at is the change in income, which is 50% more or less. Chair Silver clarified the question to ask whether promised income should be counted towards the honorarium threshold.

Commissioner Wilson questioned what the potential consequences are if someone makes a mistake in calculating whether they are officially engaged in the speech-making business. Ms. Harrison responded by saying it was already included in the memo, and there is a provision in the statute where you can return the payment in a certain time with certain conditions.

Chair Silver noted that the Legal Division did an excellent job threading the needle to apply this law without excluding people from running for office. He expressed concern about removing the presumption. Ms. Harrison responded that the removal of the presumption is merely clean up and affirmed that it will not change the analysis under the regulation.

Commissioner Baker asked what would be the lookback period if someone opens a business and then runs for office.

Ms. Harrison responded that since it would be a new business then the 36-month lookback period would apply.

Commissioner Baker asked if staff had any reservations about this regulation change and wanted clarification that the FPPC has the authority to make that change.

General Counsel Dave Bainbridge stated that the ban was adopted by ballot measure so any expansion should be done by statute. What this regulation does is a reasonable interpretation of the law and is within the FPPC's authority.

Gary Winuk, representing Julia Lythcott-Haims, gave public comment saying that adopting the amendments to the honorarium ban is a contraction of the law and not an expansion because if adopted with this accompanying conversation, the previous advice letters defining speech would not be in effect. He stated this interpretation overrules existing advice letters and the length of time you are successful should not matter. The advice letters should be de-published if they are overruled. He recommended that the Commission reject this amendment and come up with a different solution that allows a broadening of "speech given."

Commissioner Baker expressed sympathy for the public but noted that change should come from the legislature.

KC Jenkins, California Political Attorneys Association, gave public comment stated the association stands by what was presented in their letter and the comments Mr. Winuk made.

MOTION: To approve item 6. Moved by Chair Silver; seconded by Commissioner Ortiz. The motion passed 4-0.

7. Adoption of New Regulation 18450.10 and Amendment of Regulation 18450.9, Website

Advertisements Disclosure Requirements

Katelyn Baeta-Orick, Commission Counsel, presented the regulation package.

KC Jenkins, California Political Attorneys Association, gave public comment stating CPAA is in support of these changes to the regulations.

MOTION: To approve item 7. Moved by Chair Silver; seconded by Commissioner Baker. The motion passed 4-0.

8. 2023/2024 Fiscal Year Third Quarter Expenditure Report

Chair Silver congratulated Jue Wang for promoting to Chief of the Administration and Technology Division.

Jue Wang, Chief of Administration, presented the Third Quarter Expenditure Report.

9. Legislative Update

Lindsey Nakano, Senior Legislative Counsel, presented her legislative update.

Chair Silver disclosed ex parte communications with Senator Glazer regarding SB 1404 and the 84308 bill. During that discussion, Senator Glazer suggested that through regulation, the FPPC requires 25% of the top 100 lobbying entities to be in a mandated lobbying audit program and suggested that we look at the expenditures made by lobbying employers. Commissioner Wilson asked if we knew what the fee would generate and the potential impact of the charge. Ms. Nakano responded the fee would generate 1.2 million, and the total fee is per lobbyist so for smaller firms it would be less than larger firms.

Commissioner Baker stated her displeasure with having a cap so that the bill stays within the budget but would rather have all the authority. Ms. Nakano clarified that 65 is not the cap but the minimum. Chair Silver asked if we see the same level of violations that we saw in the discretionary audits, which would provide enough evidence to go back to the legislature to ask for more funding to complete additional audits. In addition, Chair Silver spoke with representatives of IGA (Institute of Governmental Advocates) and stated that it is their opportunity to show compliance with the rules through these audits being completed.

Marissa Roy, President of California Women's List, gave public comment to discuss the amendments on SB 1170. Chair Silver stated that a position decision wouldn't be made without the full Commission present.

Commissioner Baker reiterated that she has strong concerns with the Dodd bill stating the bill goes further than is necessary in amending Section 84308. She further said she would be comfortable if the contribution limit is \$1,000. Chair Silver asked if the Dodd bill went through and if it still included the removal of the agent, would that open us to a lawsuit. Ms. Nakano replied, saying she did not want to weigh in on the situation until she had more information from the Legal Division. Commissioner Wilson asked if the issue of the threshold would come up at the hearing. Chair Silver mentioned that another suggestion from Senator Glazer would be to raise the gift limit to match the contribution limit created in these proposed bills.

Commissioner Wilson asked if the threshold was mentioned at the hearings on these bills. Ms. Nakano stated there was not specific conversation about the contribution limit other than Common Cause stating the McKinnor bill threshold was high, and they would continue to work with the author's office.

Chair Silver asked about AB 2355 and whether the Clean Money Campaign or Common Cause has reached out about this yet. Ms. Nakano said she was not sure.

10. Executive Staff Reports.

The Executive Staff Reports were accepted as submitted.

The Enforcement presentation was made by Chief Lindsay. Commissioner Wilson asked how the streamline program had impacted meeting the Enforcement goals. Chief Lindsay stated that they have had a major impact and so has the PREP program.

Chair Silver noted that there would be an increase in cases if the lobbying audits are being conducted.

Commissioner Baker asked how far off from the stated 625 cases open goal does the Chief anticipate being at the end of the year.

Chief Lindsay stated that Enforcement has never really been at that number, but that staff is doing great.

We should revisit the goals and directives as we analyze more data maybe in January.

Chair Silver asked Chief Lindsay whether the Enforcement presentation could be concluded in August due to time constraints and Chief Lindsay agreed.

Public Comment - Andrew Sandoval, a complainant in an Enforcement case, called in to express concern about the Salinas Valley streamline stipulation. He asserts that there are possibly more violations and that the Commission is lacking all necessary facts. He also stated that the violations committed six years ago should have been taken into account.

11. Commissioner Comments and Proposed Future Agenda Items.

Commissioner Baker requested a presentation regarding the closure letter in the matter of John McCann.

She had a few questions relating to the case but did not want to go into the details. First, the statement in the letter that there was insufficient evidence to establish a violation occurred within the statute of limitations. Was that standard language and what does it mean? Second, how the statute limitations was

calculated and whether it was tolled. Third, should we revisit for the issue of the need of legal defense fund audits?

Commissioner Baker left the meeting at 1:08 p.m.

MOTION: To Adjourn the meeting. Moved by Chair Silver; seconded by Commissioner Wilson.
The motion passed 3-0.

The meeting adjourned at 1:16 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved August 5, 2024

Adam E. Silver, Chair
Fair Political Practices Commission