

## INTAKE MEMORANDUM

December 21, 2022

To: Galena West, Executive Director  
Angela J. Brereton, Enforcement Chief

From: Tara Stock, Intake Manager  
& Intake Political Reform Consultants (PRCs)

We appreciate and share the Commission's commitment to a swift, fair, and transparent enforcement process. We also understand and share the expectation of the Commission, the media, and the public that enforcement cases be investigated and prosecuted in a timely manner.

The proposed Enforcement Policy Goals ("Goals") are a good starting point. However, we are concerned that too stringent of rules could muddle the efficiency of the Intake PRCs. If the aim of the Goals is to speed up the case closure process, we believe that strict deadlines for action and additional data input may overwhelm the Intake Unit. But we are amenable and open to making changes which could improve our database (Salesforce) to allow tracking of certain dates, complaint/case statuses, or other information as deemed necessary.

Additionally, from the explanation we have received regarding these Goals, it appears that the Commission wants the Goals to set the priorities for staff – rather than the Commission setting the priorities. We think this is misguided. When "everything" that comes into Enforcement is considered a priority, nothing can be a priority.

If the Intake PRCs are given substantive priorities set by the Commission (i.e., what types of Intake-level cases to expedite), PRCs can direct their focus so they are working to ensure that their work-product is in line with the expectations of the public (by proxy of the Commission). We feel it would be helpful for the Commission to give a written policy to the Intake PRCs regarding priorities we should have. There are so many kinds of cases that the PRCs handle, particularly with the codifying of Streamline and the inclusion of "Tier 2" violations, that cases will inevitably sit longer than anticipated because of the limited staffing in the Intake team. Additionally, the PRCs are often overwhelmed by their Complaints and thus do not have time to work on their cases. This is especially true during election seasons. Not only do the number of Complaints received increase significantly, the Intake team is also tasked with the proactive pre-election outreach program, which adds an exponential workload on top of an already large workload. In short, we feel that we need direction on what types of cases the Commission wants to see expedited, not necessarily strict deadlines for action. We also feel that changes could be made to the Intake team and workflow that would help with expediting resolutions on both complaints and cases.

This document contains: **broader suggestions for what could make the Intake Team's workload more efficient, and our thoughts regarding the Commission's proposed Enforcement Policy Goals, as discussed at the November 8, 2022 Law & Policy Meeting.** While the bulk of the Goals relate to Mainline (Investigator/Attorney) cases, some of the sections apply to Intake. They have been excerpted with comments from the Intake Team.

## **Current Workflow**

The “Intake Unit” is currently comprised of one Manager (Tara), three Political Reform Consultants (Ginny, Amber, Laura), and one Staff Services Analyst (Taylor). The Manager and PRCs are assigned a five day period (called our “Intake Week”) where the Manager or PRC is responsible for all complaints and non-filer referrals received by Enforcement during that week. The person on Intake is also tasked with receiving incoming phone calls to Enforcement and responding to the e-mails received by our general mailbox, [complaint@fppc.ca.gov](mailto:complaint@fppc.ca.gov).

There are three types of complaints: Sworn, Non-Sworn, and Anonymous. Sworn complaints have strict statutory deadlines that must be adhered to (3 days to send a notification letter; 14 days to inform the complainant of the intended action on their complaint).

Non-filer referrals are received from State/Local filing officers, and include many types (The most common are Campaign (Form 460/470) Non-filer and Statement of Economic Interest (Form 700) Non-filer, in addition to many others). Currently, the Manager and PRCs have no control over the complaints/referrals that are received during their week. Everything is assigned to the person who is “on Intake” that week.

Consequently, a new PRC with limited experience and knowledge of the Political Reform Act will receive complaints and referrals that cover *all potential violation types* of the Act. Being a PRC in Intake can feel like “trial by fire” – there are so many types of complaints and non-filer referrals, it is a scramble to educate and train the PRCs to handle their assigned workload. Further, the Manager does not know what their PRC’s whole workload is comprised of.

After a complaint or non-filer referral is reviewed by the Manager or Intake PRC, we make a recommendation to the Enforcement Chief as to whether it should be opened into an Enforcement case. Cases with a lower violation type that fits in to the Streamline Program (and does not need to go to a “full investigation”) are often considered “Intake Level” cases -- and are assigned to the PRC who reviewed the complaint and opened the case. With the codifying of the Streamline Program<sup>1</sup> and the recent inclusion of “Tier 2” Streamline violations<sup>2</sup>, many cases are now considered “Intake Level”. Consequently, both new and seasoned PRCs have caseloads that run the gamut of possible violations of the Act. In short, the PRC’s own knowledge of the Act can become the bottleneck that prevents a timely resolution on a complaint or case.

## **Proposed Changes – Intake Unit**

We think this could be an opportunity for changes in the way the Intake Unit runs. Specifically:

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<sup>1</sup> Regulation 18360.1 and 18360.2

<sup>2</sup> Regulation 18360.3

- 1. Instead of the Intake Manager being included on the Intake rotation, letting the Intake Manager review the incoming complaints and then assign them to a PRC, rather than have a PRC be responsible for “whatever is received on their week”.**
  - a. This would give the Manager the ability to slowly train a PRC on specific sections of the Act over time. The Manager could also create “subject matter expert” PRCs, and the Manager would be able to keep the most complex complaints for their own review.
  - b. This would give the Manager the ability to immediately review and reject complaints that do not contain a violation of the Act.
  - c. Currently, it is a detriment to Enforcement if a lesser experienced PRC is reviewing a complex complaint that they have no familiarity with, as the PRC is unable to “issue spot” and identify potential violations.
  
- 2. Rejecting complaints with no (or very minimal) violations of the Act**
  - a. Intake receives many non-sworn and anonymous complaints which contain little information or evidence to substantiate the made allegations. Current unofficial policy conflicts with the regulations here – Regulation 18360 states that a complaint may be rejected if it does not contain sufficient evidence. But our policy has been to contact the complainant (when possible) to get more information about what they are alleging. In these situations, PRCs have been obligated or told to use any hint of information the complainant provided in order to interpret the complaint. As a standard, the PRCs would like more leniency on when Intake may reject a complaint due to lack of evidence.
  - b. Enforcement will open a case on any violation of the Act, no matter how small. The PRCs would like more leniency on rejecting complaints where the violation is *de minimis*.
  
- 3. Removing some “types” of cases from the PRCs, even though the violations fall into the Streamline Program. These are the cases that drag due to outstanding legal questions or the complexity of the law that is applied. We propose removing these subject matter cases from Intake:**
  - a. Statement of Economic Interest (Form 700) Non-Reporter
    - i. These cases often have outstanding legal questions (which is often why the economic interest was not reported/disclosed in the first place, and is the subject of an Enforcement complaint). These cases would be better resolved with an Attorney.
  - b. Advertisements
    - i. These cases can be complex since the sections of the Act that govern advertisements are so nuanced. There are often outstanding legal questions on ad rules, and PRCs are asked to communicate with Enforcement Attorneys on a resolution. These cases would be better resolved with an Attorney from the onset.
  - c. Cases with more than 1-2 violation types
    - i. A case that includes violations across multiple subject areas (for example: campaign nonfiler, campaign late reporter, and committee naming) will take

much longer to resolve due to the complexity of the case. These cases would be better resolved with a junior level Attorney.

In short: simpler cases with minimal legal questions can be resolved easily/efficiently, and will allow the Intake PRC to resolve their cases quicker.

#### 4. Adding “Intake Attorneys”

- a. When the Respondent for an “Intake Level” case does not respond to multiple contact attempts from the PRC, the case will be transferred to an Enforcement attorney for prosecution/compliance. If the PRCs could transfer their lower level cases to (junior level?) Intake Attorneys, the Intake attorney would gain necessary experience on lower level cases/violations.
- b. Intake Attorneys could also handle the types of cases that are eligible for Streamline but should be moved from Intake (see 3(a) and 3(b) above).

### Proposed Changes - Updates to the Complaint Portal

In theme with making the process more transparent for the public, information about the Enforcement Process or filing a Complaint should be easily available and digestible to complainants without the need for staff interaction/hand-holding. **Some complainants have no sense of the level of or quality of information they should provide**; the Commission should make clear that complainants need to provide specific information and that we will not investigate complaints with only generic information or no information at all.

This could be achieved without a Regulatory change – perhaps the Commission could amend the Enforcement Complaint page/portal to add clarity about what the complainant should submit with their complaint. The PRCs would be happy to assist with brainstorming these ideas, because we feel it would substantially cut down the amount of time the PRC spends interacting with soon-to-be-complainants. A summary of some ideas is below:

- Complaint about an advertisement/mailer – *please provide a copy of the advertisement*
- Complaint about conflicts of interest – *please provide information about the date of the governmental decision(s) made; any relevant agendas; the nature of the official’s financial (or other) interest, etc.*
- Complaint about Form 700s – *please provide copies of the Form 700s*
- A statement on the website that “Multiple Complaints About the Same Issue” do not need to be filed. Complainants are not aware that when they band together to file complaints on the same issue against the same Respondent(s), they are slowing down the PRCs processing of those complaints. Each complaint must be evaluated to see if the subject matter is the same, if the evidence is the same, and if all the allegations are the same.
  - For reference, Intake received 19 complaints during a 30 day period on substantially the same conduct regarding one County official.
    - 5 Sworn complaints, 1 Non-Sworn, and 13 Anonymous. This is duplicative work for the PRCs, when many of the complaints were the same.

- A re-statement that a Sworn Complaint will be notified within 14 days of their sworn complaint's submission. Too often Intake will receive "Status Request" e-mails after only 1-2 days have passed since the complainant filed their complaint.

### **Proposed Policy - Amnesty**

The Intake Unit is in favor of an "amnesty" policy for SEI Nonfiler cases, where the Respondent's missing SEIs are from 2017, 2018, or 2019, *and* the Respondent has left office/is no longer in a public position. These cases could be resolved with Warning Letters for the missing Annual and Leaving Office SEIs, which would give the Respondent a "prior violation," and make them eligible for an automatic Tier 1 Streamline penalty should they be referred to Enforcement in the future. This would help tremendously with the backlog of old SEI referrals/cases currently sitting with Intake.

### **"Goals" -- Proposed Policies + Comments**

Proposed Policy/Regulation: It is the goal of the Enforcement Division to complete investigations and prosecutions of alleged violations of the Act quickly and efficiently. **In general, the Enforcement Division should endeavor to complete an investigation and, when warranted, prosecution of a violation within two years of the case being opened, except where circumstances clearly indicate a reason for a longer period of time.**

The PRCs agree that 2 years of time should be enough to resolve an "Intake Level" case. However, case progression is delayed by a multitude of factors, such as:

- New staff
  - We ask our PRCs to be experts in the Political Reform Act, but the Act is a very complex body of law. Our Intake Team is comprised of mostly newer staff, and the longest serving PRC has been with Enforcement for only ~4 years. A possible solution to this would be to 1) limit the types of cases that stay with Intake PRCs, and 2) let the Intake Manager assign complaints, to grow a PRC's knowledge base over time.
- Complaint volume
  - During an election year, PRCs will receive up to 30 sworn complaints on their Intake weeks. There are some weeks where PRCs can only draft and send letters, because of the strict statutory deadlines for action. In these busy times, the PRC's time is not elastic, and PRCs do not have a choice between working on their sworn complaints or working on cases.
- Passionate complainants
  - At any given time, PRCs may deal with intense interest from an outside source (typically a complainant) who will drain time from the PRCs via repeated e-mails, phone calls, and demands for action. By being "public-facing" and immediately responsive to e-mail and phone, PRC's time is drained from working on their cases.
- Volume

- There are areas of the Act with a high rate of violation (e.g. advertisement disclosure violations). These are generally easy cases but doing this volume of these cases means that other cases (especially with non-responsive Respondents) will be put off beyond the proposed 2-year deadline. Moving “advertising cases” away from the PRC workload would solve this.
- Necessary Hand Holding
  - Once a matter is opened into a case, Intake PRCs work with many Respondents who simply do not understand their obligations under the Act. Working with a Respondent takes time and can stretch a case resolution over many months, particularly if the PRC must send the Respondent for help from the FPPC’s Advice Team.

If the Commission wishes for all Intake level cases to be resolved within 2 years, then perhaps the PRCs should be allowed to transfer their “cases older than 2 years” to new staff/Junior level attorneys for settlement/prosecution/resolution.

To assist the Enforcement Division in achieving these goals, the Enforcement Chief shall, in consultation with the Chair and Executive Director, establish and maintain a system for the efficient allocation and completion of Enforcement Division workload. ... The system shall, at a minimum, provide for: ... **Specific target deadlines for completion of tasks at each stage of an Enforcement matter, including, but not limited to:**

**i. Evaluation of complaints/referrals and recommendations for disposition by Intake**

The PRCs agree that it has been an unofficial Intake policy that sworn complaints be resolved within 90 days. This has been our guiding principle when evaluating a sworn complaint. Generally, PRCs meet this deadline, with some exceptions (i.e., the Enforcement Chief requires more time to consider the allegations, so the complaint lingers past the 90th day). The PRCs propose keeping, and adopting as a policy, the 90-day deadline for sworn complaints.

For other kinds of complaints (anonymous and non-sworn), we are open to proposed deadlines for these types. If we allow the Manager to assign complaints to PRCs, it would make it so that the PRCs are not immediately swamped with anonymous/non-sworn complaints “on their Intake week.” This would in turn allow for additional breathing room, and more time for the PRC to send a letter of inquiry or do more internet research in a timely manner.

**Specific target deadlines for completion of tasks at each stage of an Enforcement matter, including, but not limited to:**

- xii. Drafting/transmitting closure documents (i.e., advisory, warning, or closure letters)**
- xiii. Drafting/transmitting settlement offers**

The PRCs are not certain that “specific deadlines” for transmitting settlement documents would change our workload. In late November, each PRC had 100+ open cases, and 130+ open complaints. If the Commission wants complaints resolved during specific deadlines, then cases will need to wait.

Additionally, PRCs can be overwhelmed with “Spinoff Case” (see: early 2022, when a PRC opened ~25 Major Donor Spinoff cases stemming from an Enforcement investigation in to 2018 activity). Most of those cases required the Respondent to file an outstanding Form 461, which required significant hand-holding by the PRC to get that compliance, in addition to juggling the other active complaints and cases. Sticking a deadline to those spinoff cases (i.e., “settlement document/WL sent within X amount of days”) would be too much stress all at once.

**Written standards for use by intake staff in evaluating whether to open or close a matter at the intake stage, including but not limited to, when intake staff should request additional information from a complainant or respondent and when intake staff should request assistance on questions of legal interpretation from FPPC attorneys.**

PRCs are not sure if having a “chart of guidelines” would be helpful, and would like to think that the Commission would trust its PRCs judgement when the PRC makes a recommendation on a complaint. Intake PRCs lean on each other for guidance about the complaint they are reviewing, and frequently ask other PRCs for comparable complaints. PRCs communicate directly with the Chief regarding all Enforcement complaints, and the Chief makes the final decision on whether the complaint should be rejected or opened into a case. It does not make sense to add another “Chart” that PRCs have to remember to check.

Regarding “when Intake staff should request assistance on questions of legal interpretation” – the PRCs will farm out their complaints for an attorney’s review/analysis if the complaint alleges violations of:

- Conflicts of Interest Rules (§87100 et seq.)
- Government Code §1090
- Mass Mailing at Public Expense/Public Mailer complaints

The above could be codified in the Goals.

Tracking of Enforcement Division compliance with the deadlines and procedures for workload allocation and completion. When feasible, **an electronic system should be designed and implemented in a manner that, at a minimum, accepts data entry by staff in real time as tasks are completed and allows the Chief and their designees to generate automated tracking reports such that performance under the policy can be evaluated by objective metrics for individual staff members, groups of staff members (e.g., investigators, attorneys, PRCs, etc.) as well as the division as a whole in order to evaluate the timelines for update and feasibility.**

If this is found to be necessary by the Commission, this tracking should be done in a way that does not require too much added staff time to input the data in a separate system. If the goal is efficiency, added tasks to the Intake Team will not help us reach that goal. The PRCs feel that there are already so many items to track and “fill in” in Salesforce, that we are not sure if *more items to track* would be beneficial. However, there are a few fields that could assist the PRCs. For examples, Salesforce fields for **Cases** for:

- “Date PREP Offer Sent”
- “Date 1<sup>st</sup> Streamline Settlement Offer Sent”
- “Date 2<sup>nd</sup> Streamline Offer Sent”
- “Date Referred to Attorney for Analysis”

Currently, the above statuses are written in the “Case Comments” box, which is not very useful if the Commission is wanting to generate reports.

For **Complaints**, we could have separate drop-down status fields for each complaint (e.g. “waiting on response from respondent”, “waiting for more information from complainant”, “drafting memo for review”). These are things that are already a part of our current workflow and would not be difficult to track in Salesforce.

These are other items that could be added into the body of the complaint rather than just appearing in the files of the complaint (therefore harder to search for specifically):

- Letter of Inquiry/3 day letter sent
- Need More Time Letter Sent
- Request for Attorney Analysis sent
- Response from respondent received
- Request for Information or Compliance Sent.

It should be feasible for the Commission to work with the Salesforce system we have to create changes that could track these items.

Additionally, the PRCs think some items in Salesforce could be retooled for better user functionality. For instance, some of the drop-down menus are not alphabetized or in numerical order (see: “Violations” section of a case, which is not alphabetized).

Data Regarding Complaints/Referrals:

|      |      |      |      |      |      |                          |
|------|------|------|------|------|------|--------------------------|
| Year | 2017 | 2018 | 2019 | 2020 | 2021 | 2022*<br>*as of 12/14/22 |
|------|------|------|------|------|------|--------------------------|



|                     |       |       |       |       |       |       |
|---------------------|-------|-------|-------|-------|-------|-------|
| Complaints Received | 564   | 1,352 | 744   | 1,390 | 606   | 1,353 |
| Referrals Received  | 1,616 | 1,529 | 1,950 | 1,518 | 1,751 | 1,630 |
| Total               | 2,180 | 2,881 | 2,694 | 2,908 | 2,357 | 2,983 |

1,353 complaints received in 2022 = ~339 complaints reviewed/resolved per Intake member