

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18361.10. Administratively Adjudicated Enforcement Decisions As Precedent.

(a) This regulation applies to administratively adjudicated enforcement decisions, not resulting from a default judgment, pursuant to Government Code section 11425.60, and which issue as proposed decisions after the adoption of this regulation. The Commission may designate as a precedent decision part or all of a decision that contains a significant legal or policy determination of general application that is likely to recur. The Commission may also overrule its prior precedent designations. Such a designation or overruling thereof may be made upon the Commission's own motion, or at the request of any person.

(b) The Commission shall maintain an index of significant legal and policy determinations contained in precedent decisions.

(1) The index shall be updated at least annually, unless no new precedent decisions were designated or overruled that year.

(2) The index shall be made available to the public by subscription and on its website.

(3) The availability of the index shall be publicized annually in the California Regulatory Notice Register.

(c) In determining whether all or part of a decision should be designated or overruled as a precedent decision, the Commission may consider whether the decision:

(1) Addresses a legal or factual issue of general public interest;

(2) Resolves a conflict in the law;

(3) Provides an overview of existing law or policy;

(4) Clarifies existing law or policy;

(5) Establishes a new rule of law or policy; or

(6) Would be more appropriately addressed by regulatory amendment, the advice process, or the opinion process.

(d) At the Commission's meeting at which a proposed decision is considered for adoption on the merits, the Commission may make a tentative ruling regarding whether all or part of the proposed decision should be deemed precedent, and whether all or part of a previous related precedent should be overruled. In their briefs on the merits of a proposed decision, the parties to the action may include argument regarding precedent and overruling. Any tentative ruling issued shall be acted upon by the Commission within 120 days after a decision on the merits becomes final. A tentative ruling is not final and shall have no precedential effect until it is separately acted upon. For purposes of this regulation, and with reference to 2 Cal. Code Regs. section 18361.9(c), a decision becomes "final" when the Commission has made a decision on the merits and, either the time to file a petition for reconsideration has expired, or a petition for reconsideration has been granted or denied and the reconsideration process has concluded.

(e) After a decision on the merits is final, any person may submit a request, in the form of a concise written brief stating the reasons for the request and pursuant to this regulation, that all or part of such a decision be deemed precedent, not be deemed precedent, or that all or part of a previous related precedent be overruled. Requests regarding precedent shall be delivered to the Executive Director no later than 30 days after a decision on the merits is final. Within 14 days after a request is submitted, the person making the request shall be notified in writing of the Executive Director's decision to grant or deny the request.

(f) The grant or denial of a request by the Executive Director shall be based upon one or more of the following criteria:

- (1) The timeliness of the request;
- (2) Whether the request is clear and unambiguous; and
- (3) The factors contained in subdivisions (c)(1) through (c)(6).

(g) If a request is granted, the Executive Director shall deliver copies of the request pursuant to subdivision (h) of this regulation. If the request is denied, the Executive Director shall inform the Commission of the denial, state the reason for the denial and advise the requestor of the requestor's right to appeal the denial to the Commission. Any member of the Commission, or person who has submitted a request that was denied, may ask the Commission to review a denied request at the next meeting of the Commission following the issuance of a denial. If a majority of the Commission approves the granting of a request, the denial shall be rescinded, the requestor shall be notified in writing that the request is granted, and the Executive Director shall deliver copies of the request pursuant to subdivision (h) of this regulation.

(h) The Executive Director will deliver all granted requests to the Commissioners, the Chief of the Enforcement Division, and parties to the decision, within seven days of the request having been granted.

(i) Within 60 days of delivery of a granted request by the Executive Director, the Commission shall decide which part or parts, if any, of the final decision will be designated as precedent and what portions, if any, of previous precedent; will be overruled.

(j) Notwithstanding subdivisions (e) through (i) of this regulation, a Commissioner may request that all or part of a final decision be deemed precedent, not be deemed precedent, or that the Commission's designation of all or part of a final decision as precedent be overruled, by formal motion and approval by a majority of the Commission.

(k) The designation or overruling of all or part of a decision as precedent is not

rulemaking. The Commission's designation of all or part of a decision, or the lack of such designation, as precedent is not subject to judicial review.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83111 and 83116, Government Code.

HISTORY

1. New section filed 2-21-2006; operative 3-23-2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil CO10924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 8).