



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulations at a public hearing on or after **October 15, 2020**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **October 13, 2020**.

BACKGROUND/OVERVIEW:

Sections 83115, 83115.5 and 83116 address the Commission's authority to generally investigate alleged violations of the Act, find probable cause that a violation of the Act has occurred, and hold an administrative hearing to determine if a violation of the Act has occurred, respectively. Under Section 83116, the APA is applicable to the enforcement proceedings, including the authority of the Commission to seek a default finding where no timely notice of defense is submitted. Moreover, pursuant to Section 84214, committees must terminate their filing obligation as required by Commission regulations. Finally, Section 83111 states that "[t]he Commission has primary responsibility for the impartial, effective administration and implementation of this title."

Section 83112 provides that "[t]he commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of this title, and to govern procedures of the Commission."

The Commission has identified several areas of improvement to multiple regulations governing enforcement matters including revised procedures and requirements for probable cause proceedings, administrative hearings, briefing procedures associated with proposed decisions, and administrative terminations. These recommended improvements would modify existing regulations in accordance with governing statutes to promote and facilitate compliance with, and enforcement of, the Act, while ensuring fairness and due process for persons subject to enforcement proceedings. In addition to proposed substantive amendments to Regulations 18360, 18361.1, 18361.4, 18361.5, 18361.9, 18361.11 and 18404.2, the Commission also proposes numerous non-substantive changes intended to clarify existing regulations.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

REGULATORY ACTION:

Adopt 2 Cal. Code Regs. Section 18360 – Enforcement Complaints

The Commission will consider the adoption of proposed Regulation 18360 to reflect the application of its new Electronic Complaint System (“ECS”), as well as several technical changes to clarify and improve the existing provisions. At a minimum, the Commission may consider:

- A provision to post information available to the public with respect to complaints and referrals on the Commission website; and
- A provision allowing for the rejection of complaints without notice to the respondents where duplicate complaints or referrals are submitted by the same complainant or filing officer, or where the Chief of Enforcement determines nonsworn or anonymous complaints fail to allege facts that could result in a violation of the Act.

Repeal 2 Cal. Code Regs. Section 18360 – Enforcement Complaints

The Commission will consider repealing current Regulation 18360.

Amend 2 Cal. Code Regs. Section 18361.1 – Administrative Subpoenas

The Commission will consider amending Regulation 18361.1 to add a provision requiring the subject of an administrative subpoena issued by the Commission to provide a privilege log, containing specified information, to accompany any objection to the production of responsive records in their possession.

Amend 2 Cal. Code Regs. Section 18361.4 – Probable Cause Proceedings

The Commission will consider amending Regulation 18361.4 to rearrange the regulatory provisions to correspond with the sequence of events that occur in a probable cause proceeding; rephrase the existing probable cause standard; clarify and simplify filing deadlines, service requirements and scheduling procedures; and eliminate existing regulatory procedures and requirements that, in practice, provide little or no benefit to the parties and make the process less efficient. At a minimum, the Commission may consider:

- A provision amending the probable cause standard to a simpler more straightforward standard conspicuously located in new subdivision (a);
- A provision requiring the Enforcement Division to send respondent a checklist form that explains all of the possible actions and associated deadlines available at the probable cause stage, and requests specified information from the respondent;
- A provision authorizing a hearing officer to grant a respondent’s late request for a probable cause conference based on good cause unless an order to file an accusation against the respondent has already been issued.
- A provision requiring the Enforcement Division, upon request by a respondent, to produce all records in the possession of the Enforcement Division obtained for purposes

- of the investigation, except records that it claims are confidential, were received in response to an administrative subpoena, or otherwise contain protected information.
- A provision that requires the Enforcement Division to provide a respondent with a privilege log, containing specified information, to accompany any objection to the production of responsive records related to respondent's request pursuant to Regulation 18361.4(d)(3).
- A provision imposing a 75-day deadline, to begin when the Commission Assistant receives a request for a probable cause conference, or on the date the Enforcement Division serves discovery if respondent made such request, for the conference to proceed subject to extension for good cause; and
- A provision that requires any respondent seeking witness testimony to submit a request to the Commission Assistant at least 7 days before the conference.

Amend 2 Cal. Code Regs. Section 18361.5 – Administrative Hearings

The Commission will consider amending Regulation 18361.5 to update, clarify and rearrange the regulatory provisions implementing the Commission's authority under Section 83116 to hold a hearing once it determines there is probable cause to believe a violation of the Act has occurred. At a minimum, the Commission may consider:

- A provision requiring that the Commission must vote to have a hearing before the Commission itself rather than an administrative law judge alone;
- A provision adding factors to be considered by an administrative law judge and Commission in an order following the finding of a violation of the Act or a stipulated order following a negotiated settlement to include "comparable cases" and "sophistication of the respondent" while amending the existing factor in subdivision (d)(1) to eliminate the term "seriousness," replacing it with a factor that takes into account the public harm or the type of violation.

Amend 2 Cal. Code Regs. Section 18361.9 – Briefing Procedure of Proposed Decision by an Administrative Law Judge; Reconsideration

The Commission will consider amending Regulation 18361.9 to rearrange and clarify the existing provisions concerning briefing procedures by the parties prior to the Commission's consideration of an administrative law judge's proposed decision. At a minimum, the Commission may consider:

- A provision eliminating the factor to be considered by the Enforcement Division in its opening brief concerning additional material evidence that could not, with reasonable diligence, have been discovered during the administrative hearing (subdivision (b)(1)(c)) as it is duplicative of the factor used in Petitions for Reconsideration in subdivision (c)(2)(A).
- A provision requiring the Executive Director to submit the briefs to the Commissioners "no later than 14 days after the Enforcement Division's deadline to file a reply brief" rather than "in a timely fashion."

- A provision expressly prohibiting oral argument by the parties and/or public comment concerning the ALJ's proposed decision to be considered by the Commission in closed session.

Amend 2 Cal. Code Regs. Section 18361.11 – Default Proceedings

The Commission will consider changing the method in which default orders are served on respondents from certified mail to personal service.

Amend 2 Cal. Code Regs. Section 18404.2 – Administrative Termination

The Commission will consider amending Regulation 18404.2 to authorize the Chief of Enforcement to administratively terminate a recipient committee based on two additional grounds: (1) The committee filed a Statement of Organization in error; and (2) The Chief of the Enforcement Division obtains sufficient evidence to show the individual responsible for the committee is deceased or incapacitated.

SCOPE:

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or any related issues.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state entity or program.

AUTHORITY: Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE: Sections 82103, 83108, 83110, 83111, 83112, 83115, 83115.5, 83116, 84212

CONTACT: Any inquiries should be made to Jack Woodside, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.