



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

EXECUTIVE STAFF REPORTS

August 16, 2018 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of July 4, 2018 through August 1, 2018, the Enforcement Division received 52 complaints, opened 12 for investigation, and rejected 23. The Enforcement Division received 72 non-filer referrals during this time.

During this time, the Enforcement Division closed a total of 128 cases including:

- 70 warning letters,
- 2 advisory letters,
- 40 no action closure letters,
- 12 as a result of the adoption of stipulations at the July Commission meeting, and
- 4 committees were administratively terminated.

The Division had 1069 cases in various stages of resolution at the time of the July Monthly Report and currently has approximately 1058 cases in various stages of resolution, including the 41 cases before the Commission as listed in the August 2018 agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 9 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 17 remain pending. We are receiving 2015, 2016, and 2017 referrals periodically through the new Electronic Complaint System.

On the next page, you will find a chart that details the annual statistics for enforcement complaints, referrals and cases. The information in the chart has been gathered from public reports, information from the defunct and inactive database, and data that has been converted into current form, so the numbers are close estimates in some instances.

	Year	2014	2015	2016	2017
1	Complaints Received	1,228	609	1,180	564
2	Referrals Received	614	596	350	1,616
3	Total Complaint and Referrals Received	1,842	1,205	1,530	2,180
4	Cases opened	1,405	2,273 ¹	1,315	1,480
5	Cases closed	1,869	1,253	1,803	1,477
6	Cases with resolutions approved by the Commission ²	332	333	311	340
	a Streamline cases approved by Commission	234	258	234	262
	b Mainline cases approved by Commission	86	69	70	66
	c Default cases approved by Commission	12	6	7	12
7	Total fines imposed by the Commission	\$744,868	\$703,821	\$894,257	\$1,126,933
8	Warning letters issued	673	442	489	505
9	Administrative terminations	69	116	668	297
10	Cases closed with violations found ³	1,074	891	1,468	1,142
11	Advisory letters issued	10	19	14	17
12	No action closure letters	453	343	321	318

¹ In 2015, the Enforcement Division received information regarding 2,460 \$50 Annual Fee non-payers in May and another 1,786 in October of that year. None of these came through the typical “referral” process and had to be evaluated for: whether the committee had been terminated locally or with SOS, whether the committee never qualified, whether the fees were paid prior to the referral, and whether records existed to evaluate the committee, before the information could be opened into a case. Therefore, these do not appear in the Referral line since they did not follow that process.

² Total for lines 6a, 6b, and 6c.

³ Total for lines 6, 8, and 9.

II. LEGAL DIVISION

STAFF:

BRIAN LAU, ACTING GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JOHN FESER, SENIOR COMMISSION COUNSEL IV

A. Pending Litigation

Howard Jarvis Taxpayers Association, et al. v. Edmund Brown, et al.

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds to finance campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act⁴ (the Act) because it does not “further the purposes of the Act,” an express requirement in the Act for legislative amendment. The Attorney General’s Office is representing both Governor Brown and the Commission in this litigation. A hearing was held in Superior Court on August 4, 2017. After taking the matter under submission, the Court issued a Ruling, dated August 23, 2017, “entering a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107.”

In closed session at its meeting on September 21, 2017, the Commission voted to appeal the Superior Court decision. The Notice of Appeal was filed with the Third District Court of Appeal on January 9, 2018.

Frank J. Burgess v. Fair Political Practices Commission

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission’s decision and order in *In re Frank J. Burgess*, Case No. 12/516.

⁴ The 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 this source, unless otherwise indicated.

Mr. Burgess's case was first heard by an Administrative Law Judge (ALJ), and then Mr. Burgess challenged the ALJ's decision to the Commission. On March 19, 2015, the Commission rejected the ALJ's decision and decided the case based on the record and the parties' supplemental briefing. Ultimately, the Commission found that Mr. Burgess had violated Section 87100 of the Act and imposed a \$5,000 fine on July 7, 2015.

Mr. Burgess challenged that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On September 15, 2016, the Superior Court issued its judgment granting the petition on due process grounds. The Court further ordered the Commission to file a Return to the Writ on or before November 7, 2016.

After a closed session discussion at the Commission meeting on October 20, 2016, the Commission voted to let the Superior Court's judgment stand and to vacate and set aside its Decision and Order in the underlying matter, thereby dismissing the administrative proceedings against Mr. Burgess. The Commission timely filed a Return to the Writ.

On November 14, 2016, Burgess filed a Motion for Attorney's Fees under Code of Civil Procedure section 1021.5 (private attorney general). The FPPC, in conjunction with the Attorney General's, office prepared an opposition to this motion which was filed on January 25, 2017. The fee motion was heard on April 3, 2017, and the Superior Court took the matter under submission after argument by the parties. On April 10, 2017, the Superior Court granted Burgess's motion for attorney's fees. The Commission voted in closed session to appeal the Superior Court's order granting Burgess attorney's fees at the June meeting.

The parties' respective appellate briefs have been timely filed: Appellant's opening brief on November 6, 2017; Respondent's opposition brief on December 5, 2017, and Appellant's reply brief on December 26, 2017.

On June 14, 2018, the appellate court issued a tentative opinion affirming the trial court's award of attorney's fees.

The Attorney General's office requested oral argument, and the Commission voted to move forward with oral argument at the July 2018 Commission meeting. Oral argument is set for Tuesday, August 7, 2018, at 8:30 a.m. at the California Court of Appeal, Fourth Appellate District in Riverside.

B. Outreach and Training

None to report.

C. Advice

In July 2018, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and attorneys collectively responded to more than 936 e-mail and telephone requests for advice.
- **Advice Letters:** Legal Division received 16 new advice letter requests under the Political Reform Act and completed 13 letters.
- **Section 1090 Letters:** Legal Division received 11 new advice letter requests concerning Section 1090 and completed five letters. This year to date, we have received 43 advice requests regarding Section 1090.

D. Miscellaneous Decisions

None to report.

E. Potential Upcoming Regulations

August 16, 2018.

- Parent, Subsidiary, Otherwise Related Business Entity Definition (Adoption) – The Commission will discuss and vote on possible amendments to conflict of interest rules defining parent and subsidiary corporations and otherwise related business entities and clarifying disqualification requirements when an official has an interest in a business entity and the decision implicates a parent, subsidiary, or otherwise related business entity of the business entity.

September 20, 2018.

- Bitcoin (Discussion/Adoption) – Commission staff will present an overview of Bitcoin, and other cryptocurrency, and the Commission will discuss, and may adopt a regulation addressing, the use of Bitcoin, or other cryptocurrency, to make a contribution.

October 18, 2018.

- Top contributor disclosure requirements under Assembly Bill 249 (the Disclose Act) (Prenotice) – The Commission will consider the potential adoption of regulations identifying top contributor disclosure requirements when contributions may not legally be used for the advertisement at issue or have been earmarked for other purposes.

Scheduling to be Determined.

- Enforcement Streamline Settlement Program – The Commission will discuss the potential adoption of regulations codifying the Enforcement Division’s Streamline Settlement Program, which was established for prosecution of those violations with a lesser degree of public harm.
- Discussion of the definition of nondonor funds for purposes of Section 84222.
- Discussion of campaigning by governmental agencies under Commission Regulations 18420.1 and 18901.1.
- Discussion of materiality thresholds under the Act’s conflict of interest provisions including bright-line materiality standards and clarification of the 500-foot property rule.

F. Conflict of Interest Codes

Adoptions and Amendments

State Agency Conflict of Interest Codes

- FISCal (Financial Information System for California)
- Institute of Regenerative Medicine, California
- Lands Commission, State
- Pesticide Regulation, Department of
- Senate, California State

Multi-County Agency Conflict of Interest Codes

- Authority for California Cities Excess Liability
- Bay Area Schools Insurance Cooperative
- Clean Power Alliance of Southern California
- Compass Charter Schools
- Marysville Joint Unified School District

Exemptions

None to report.

Extensions

- California Actuarial Advisory Panel

G. Probable Cause Hearings

Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.

The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.

1. In the Matter of Eric Payne and Eric Payne for SCCCD 2016 Trustee Area 2, FPPC No. 16/19917. On July 11, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

- Count 1: Payne failed to timely file a statement of intention prior to the solicitation or receipt of any contribution or loan in connection with the 2016 re-election campaign, in violation of Section 85200.
- Count 2: Payne and the Committee failed to timely file an amended statement of organization to redesignate the Committee for the 2016 re-election campaign, due on or about August 12, 2016, in violation of Section 84103.
- Count 3: Payne and the Committee failed to timely file a preelection campaign statement for the reporting period of July 1, 2016 through September 24, 2016, due on September 29, 2016, in violation of Section 84200.5 and 84200.8.
- Count 4: Payne and the Committee failed to timely file a preelection campaign statement for the reporting period of September 25, 2016 through October 22, 2016, due on October 27, 2016, in violation of Section 84200.5 and 84200.8.
- Count 5: Payne and the Committee failed to timely file a semi-annual campaign statement for the reporting period of October 23, 2016 through December 31, 2016, due on January 31, 2017, in violation of Section 84200.
- Count 6: Payne and the Committee failed to timely file a semi-annual campaign statement for the reporting period of January 1, 2017 through June 30, 2017, due on July 31, 2017, in violation of Section 84200.
- Count 7: Payne and the Committee failed to timely file a 24-hour contribution report for a \$1,300 contribution received on September 26, 2016, due on September 27, 2016, in violation of Section 84203, subdivision (a).
- Count 8: Payne and the Committee failed to timely file a 24-hour contribution report for a \$1,000 contribution received on October 10, 2016, due on October 11, 2016, in violation of Section 84203, subdivision (a).
- Count 9: Payne and the Committee failed to timely file a 24-hour contribution report for a \$2,000 contribution received on October 14, 2016, due on October 17, 2016, in violation of Section 84203, subdivision (a).

- Count 10: Payne and the Committee failed to timely file a 24-hour contribution report for a \$2,000 contribution received on October 28, 2016, due on October 31, 2016, in violation of Section 84203, subdivision (a).
- Count 11: In or about August 2016, Payne and the Committee received cash contributions of \$100 or more totaling approximately \$3,000, in violation of Section 84300, subdivision (a).
- Count 12: In or about August 2016, Payne and the Committee made cash expenditures of \$100 or more, totaling approximately \$605, in violation of Section 84300, subdivision (b).
- Count 13: Payne and the Committee failed to accurately report all contributions and expenditures, and failed to disclose all required contributor and payee information, on the Committee's campaign statements for the reporting periods of July 1 through September 24, 2016, and September 25 through October 22, 2016, in violation of Section 84211, subdivisions (a), (b), (c), (d), (f), (i), (j), and (k).
- Count 14: Payne and the Committee failed to maintain supporting records for contributions received and expenditures made, in violation of Section 84104.
- Count 15: On or about September 24, 2016, Payne spent campaign funds to purchase campaign, business, or casual clothing totaling \$471.50, in violation of Section 89513, subdivision (d).
- Count 16: Payne failed to timely file his 2012 Annual SEI, due on April 2, 2013, and failed to timely disclose required economic interests in sources of income and business positions, in violation of Sections 87200, 87207, and 87209.
- Count 17: Payne failed to timely file his 2013 Annual SEI, due on April 1, 2014, and failed to timely disclose required economic interests in sources of income and business positions, in violation of Sections 87200, 87207, and 87209.
- Count 18: Payne failed to timely file his 2014 Annual SEI, due on April 1, 2015, and failed to timely disclose required economic interests in sources of income and business positions, in violation of Sections 87200, 87207, and 87209.
- Count 19: Payne failed to timely file his 2015 Annual SEI, due on April 1, 2016, and failed to timely disclose required economic interests in sources of income and business positions, in violation of Sections 87200, 87207, and 87209.
- Count 20: Payne failed to timely file his 2016 Candidate SEI, due on August 4, 2016, and failed to timely disclose required economic interests in sources of income and business positions, in violation of Sections 87200, 87207, and 87209.

Count 21: Payne failed to timely file his 2016 Annual SEI, due on April 3, 2017, and failed to timely disclose required economic interests in sources of income and business positions, in violation of Sections 87200, 87207, and 87209.

2. In the Matter of Friends of Francisco R. Garcia for Twin Rivers School Board Area 7 2016, Francisco R. Garcia, and Margie Cisneros-Garcia, FPPC No. 16/595. On July 18, 2018, probable cause was found to believe that Respondents committed the following violations of the Act

- Count 1: The Committee, Garcia, and Cisneros-Garcia failed to timely file the pre-election campaign statement due April 28, 2016, in violation of Government Code Section 84200.5.
- Count 2: The Committee, Garcia, and Cisneros-Garcia failed to timely file the pre-election campaign statement due May 26, 2016, in violation of Government Code Section 84200.5.
- Count 3: The Committee, Garcia, and Cisneros-Garcia failed to timely file the semi-annual campaign statement due August 1, 2016, in violation of Government Code Section 84200.
- Count 4: The Committee, Garcia, and Cisneros-Garcia failed to file the 24-hour contribution report within 24 hours of receiving late contributions from Twin Rivers United Educators in violation of Government Code Section 84203.
- Count 5: The Committee, Garcia, and Cisneros-Garcia failed to file the 24-hour contribution report within 24 hours of receiving late contributions from Sacramento County Democratic Committee in violation of Government Code Section 84203.
- Count 6: The Committee, Garcia, and Cisneros-Garcia failed to file the 24-hour contribution report within 24 hours of receiving late contributions from California State Employee Association in violation of Government Code Section 84203.
- Count 7: The Committee, Garcia, and Cisneros-Garcia failed to file the 24-hour contribution report within 48 hours of receiving a late non-monetary contribution from Twin Rivers United Teachers PAC in violation of Government Code Sections 84203 and 84203.3.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: DEBORAH HANEPHIN, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to over 1,000 requests for technical assistance via phone in July.

Training & Outreach

Due to the anticipated high volume of requests for phone advice, staff did not deliver workshops in July. However, our video tutorials were accessed nearly 400 times. The Form 700 videos continue to be the most watched with 242 views in July. The Candidate/Treasurer video was viewed 96 times while filing officer videos received 60 views.