



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*July 19, 2018 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of June 7, 2018 through July 4, 2018, the Enforcement Division received 49 complaints, opened 5 for investigation, and rejected 20. The Enforcement Division received 209 non-filer referrals during this time.

During this time, the Enforcement Division closed a total of 61 cases including:

- 18 warning letters,
- 1 advisory letter,
- 18 no action closure letters,
- 18 as a result of the adoption of stipulations at the April Commission meeting, and
- 6 committees were administratively terminated.

The Division had 919 cases in various stages of resolution at the time of the June Monthly Report and currently has approximately 1069 cases in various stages of resolution, including the 13 cases before the Commission as listed in the July 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, 18 remain pending. We are receiving 2015, 2016, and 2017 referrals periodically through the new Electronic Complaint System.

At former Commissioner Audero's direction, the Enforcement Division is in process of gathering and organizing the case pendency by type data. This project is difficult because the new Case Management System was only recently implemented and contains no simple method to obtain accurate and useful case pendency by type data.

However, we have provided what information we have currently on the next page. This chart 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.

	<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
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 <sup>1</sup>	1,315	1,480
5	Cases closed	1,869	1,253	1,803	1,477
6	Cases with resolutions approved by the Commission <sup>2</sup>	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 <sup>3</sup>	1,074	891	1,468	1,142
11	Advisory letters issued	10	19	14	17
12	No action closure letters	453	343	321	318

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<sup>1</sup> 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 do not follow that process.

<sup>2</sup> Total for lines 6a, 6b, and 6c.

<sup>3</sup> Total for lines 6, 8, and 9.

## II. LEGAL DIVISION

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**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 Act<sup>4</sup> (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.

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<sup>4</sup> 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.

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.

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, which 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**

On June 22, Assistant Chief Trish Mayer traveled with Philip Ung, Director of Legislation and External Affairs, to present to the California Political Treasurer's Association Conference in San Diego. Pending legislation and an overview of FPPC's activities were discussed as well as a question and answer session.

### C. Advice

In June 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 824 e-mail and telephone requests for advice.
- **Advice Letters:** Legal Division received 21 new advice letter requests under the Political Reform Act and completed 19 letters.
- **Section 1090 Letters:** Legal Division received eight new advice letter requests concerning Section 1090 and completed seven letters. This year to date, we have received 32 advice requests regarding Section 1090.

### D. Miscellaneous Decisions

None to report.

### E. Potential Upcoming Regulations

**August 16, 2018.**

- **Enforcement Streamline Settlement Program (Prenotice)** – 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.
- **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.

**Scheduling to be Determined.**

- 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.
- Discussion of accepting and making contributions using Bitcoin, or other cryptocurrency, and possible regulatory guidance.

## F. Conflict of Interest Codes

### Adoptions and Amendments

#### *State Agency Conflict of Interest Codes*

- Traffic Safety Office
- Unemployment Insurance Appeals Board

#### *Multi-County Agency Conflict of Interest Codes*

- Eastside Water District
- Galt Joint Union High School District
- Gavilan Joint Community College District
- Mojave Desert Air Quality Management District
- Monterey Bay Community Power Joint Powers Agency

### Exemptions

None to report.

### Extensions

None to report.

## 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 Ray “Coach” Curtis Riverside County Office of Education Board 2016 and Ray Curtis, FPCC No. 16/793.** On June 12, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

Count 1: The Committee and Curtis failed to timely file a pre-election statement for the period ending May 21, 2016 and due on May 26, 2016 in violation of Section 84200.5 and 84200.8.

Count 2: The Committee and Curtis failed to timely file a late contribution report to disclose receipt of a nonmonetary contribution of \$5,092 made on May 11, 2016 within 48 hours of receiving the contribution in violation of Section 84203 and 84203.3.

Count 3: The Committee and Curtis failed to timely file a late contribution report to disclose receipt of a nonmonetary contribution of \$4,409 made on May 13, 2016 within 48 hours of receiving the contribution in violation of Section 84203 and 84203.3.

Count 4: The Committee and Curtis failed to timely file a late contribution report to disclose receipt of a nonmonetary contribution of \$38,108 made on May 19, 2016 within 48 hours of receiving the contribution in violation of Section 84203 and 84203.3.

Count 5: The Committee and Curtis failed to make all expenditures from a designated campaign bank account, in violation of Section 85201.

2. **In the Matter of Charles Roberson, FPPC No. 16/19898.** On June 12, 2018, probable cause was found to believe that Respondent committed the following violations of the Act:

Count 1: Charles Roberson failed to timely file a 2015 Annual SEI by April 1, 2016, in violation of Section 87203.

Count 2: Charles Roberson failed to timely file a 2016 Annual SEI by April 3, 2017, in violation of Section 87203.

Count 3: Charles Roberson failed to timely file a Leaving Office SEI by April 21, 2017, in violation of Section 87204.

3. ***In the Matter of Committee to Elect Brent A. Fernandes MUSD Trustee Area 7 2014 and Brent A. Fernandes, Case No. 17/646.*** On June 14, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

Count 1: The Committee and Fernandes failed to timely file the semi-annual campaign statement due February 2, 2015, in violation of Government Code Section 84200.

Count 2: The Committee and Fernandes failed to timely file the semi-annual campaign statement due July 31, 2015, in violation of Government Code Section 84200.

Count 3: The Committee and Fernandes failed to timely file the semi-annual campaign statement due February 1, 2016, in violation of Government Code Section 84200.

Count 4: The Committee and Fernandes failed to timely file the semi-annual campaign statement due August 1, 2016, in violation of Government Code Section 84200.

Count 5: The Committee and Fernandes failed to timely file the semi-annual campaign statement due January 31, 2017, in violation of Government Code Section 84200.



Count 6: The Committee and Fernandes failed to timely file the semi-annual campaign statement due July 31, 2017, in violation of Government Code Section 84200.

Count 7: The Committee and Fernandes failed to timely file the semi-annual campaign statement due January 31, 2018, in violation of Government Code Section 84200.

4. ***In the Matter of Noah Levy, Case No. 17/1440.*** On June 14, 2018, probable cause was found to believe that Respondent committed the following violations of the Act:

Count 1: Respondent failed to timely file an Assuming Office SEI by February 27, 2014, in violation of Section 87202(a).

Count 2: Respondent failed to timely file a 2014 Annual SEI by April 1, 2015, in violation of Section 87203.

Count 3: Respondent failed to timely file a 2015 Annual SEI by April 1, 2016, in violation of Section 87203.

Count 4: Respondent failed to timely file a 2016 Annual SEI by April 3, 2017, in violation of Section 87203.

5. ***In the Matter of Terence Later for Santa Monica City Council 2014 and Terence Later, Case No. 16/19672.*** On June 29, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

Count 1: The Committee and Later failed to timely file the pre-election campaign statement for the reporting period of July 1, 2014 through September 30, 2014, due October 6, 2014, in violation of Section 84200.5 and 84200.7, subdivision (b).

Count 2: The Committee and Later failed to timely file the pre-election campaign statement for the reporting period of October 1, 2014 through October 18, 2014, due October 23, 2014, in violation of Section 84200.5 and 84200.7, subdivision (b)

Count 3: The Committee and Later failed to timely file the semi-annual campaign statement for the reporting period of October 19, 2014 through December 31, 2014, due February 2, 2015, in violation of Section 84200.

Count 4: The Committee and Later failed to timely file the semi-annual campaign statement for the reporting period of January 1, 2015 through June 30, 2015, due July 31, 2015, in violation of Section 84200.

Count 5: The Committee and Later failed to timely file the semi-annual campaign statement for the reporting period of July 1, 2015 through December 31, 2015, due February 1, 2016, in violation of Section 84200.

- Count 6: The Committee and Later failed to timely file the semi-annual campaign statement for the reporting period of January 1, 2016 through June 30, 2016, due August 1, 2016, in violation of Section 84200.
- Count 7: The Committee and Later failed to timely file the pre-election campaign statement for the reporting period of July 1, 2016 through September 24, 2016, due September 29, 2016, in violation of Section 84200.5 and 84200.8, subdivision (a).
- Count 8: The Committee and Later failed to timely file the pre-election campaign statement for the reporting period of September 25, 2016 through October 22, 2016, due October 27, 2016, in violation of Section 84200.5 and 84200.8, subdivision (b).
- Count 9: The Committee and Later failed to timely file the semi-annual campaign statement for the reporting period of October 23, 2016 through December 31, 2016, due January 31, 2017, in violation of Section 84200.
- Count 10: The Committee and Later failed to timely file the semi-annual campaign statement for the reporting period of January 1, 2017 through June 30, 2017, due July 31, 2017, in violation of Section 84200.
- Count 11: The Committee and Later failed to timely file the semi-annual campaign statement for the reporting period of July 1, 2017 through December 31, 2017, due January 31, 2018, in violation of Section 84200.
- Count 12: The Committee and Later failed to pay the 2013 annual fee by the February 15, 2013 due date, and failed to pay the resulting \$150 late penalty, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 13: The Committee and Later failed to pay the 2014 annual fee by the January 15, 2014 due date, and failed to pay the resulting \$150 late penalty, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 14: The Committee and Later failed to pay the 2015 annual fee by the January 15, 2015 due date, and failed to pay the resulting \$150 late penalty, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 15: The Committee and Later failed to pay the 2016 annual fee by the January 15, 2016 due date, and failed to pay the resulting \$150 late penalty, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 16: The Committee and Later failed to pay the 2017 annual fee by the January 15, 2017 due date, and failed to pay the resulting \$150 late penalty, in violation of Section 84101.5, subdivisions (c) and (d).
- Count 17: The Committee and Later failed to pay the 2018 annual fee by the January 15, 2018 due date, and failed to pay the resulting \$150 late penalty, in violation of Section 84101.5, subdivisions (c) and (d).

### III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: DEBORAH HANEPHIN, MANAGER

#### **Phone Advice Requests**

The External Affairs and Education Division responded to 491 requests for technical assistance via phone in June.

#### **Training & Outreach**

Staff delivered the following workshops:

Glen Bailey presented a workshop to candidates and treasurers in Chico, and another to candidates and treasurers in Beaumont. Glen also delivered a workshop to campaign filing officers in Beaumont. Finally, Glen presented a combination SEI and campaign workshop to filing officers in Hesperia.

Deborah Hanephin and Glen Bailey presented a New Law and combination SEI and campaign workshop to filing officials in Thousand Oaks. Approximately 35 clerks attended.

John Kim delivered a workshop in Hollister for SEI and campaign filing officers. Approximately 26 clerks attended. John also delivered a workshop to SEI filing officers for San Joaquin County where over 50 people attended. Finally, John presented a workshop for 32 candidates and treasurers in Santa Clara.

Alexandra Castillo conducted an SEI outreach session to filing officers in Woodland.

## IV. EXECUTIVE DIRECTOR UPDATE

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STAFF: ERIN V. PETH, EXECUTIVE DIRECTOR

At the May Commission meeting, Commissioner Hayward requested staff to review the feasibility of holding a future Commission meeting in a location other than Sacramento. Pursuant to the Commission's instructions, staff has worked with the Los Angeles City Ethics Commission to arrange for the FPPC to meet on Thursday, September 20, 2018, in the Public Works Board Room on the 3<sup>rd</sup> Floor of Los Angeles City Hall. Chair Germond has expressed interest in holding additional Commission meetings outside of Sacramento. Staff is seeking additional direction from the Commission on proposed locations and dates for an additional future Commission meeting outside of Sacramento.