



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*November 15, 2018 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of October 4, 2018 through November 1, 2018 the Enforcement Division received 319 complaints, opened 44 for investigation, and rejected 128. The Enforcement Division received 207 non-filer referrals during this time.

During this time, the Enforcement Division closed a total of 90 cases including:

- 39 warning letters,
- 5 advisory letter,
- 14 no action closure letters,
- 18 as a result of the adoption of stipulations at the September Commission meeting, and
- 14 committees were administratively terminated.

The Division had 1096 cases in various stages of resolution at the time of the October Monthly Report and currently has approximately 1314 cases in various stages of resolution, including the 14 cases before the Commission as listed in the November 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, 7 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 14 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.

	<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 did 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:

DAVID BAINBRIDGE, GENERAL COUNSEL

BRIAN LAU, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JOHN FESER, SENIOR COMMISSION COUNSEL IV

### A. Pending Litigation

*California State Association of Counties and California School Boards Association v. FPCC*

On September 11, 2018, petitioners served a first amended petition for writ of mandate and complaint for declaratory relief. The complaint was filed in Los Angeles County Superior Court, Central District. Petitioners allege that Regulations 18420.1 and 18901.1 are invalid as a matter of law, that the Commission has exceeded its jurisdiction in adopting these Regulations, and that the Regulations are unenforceable.

The Attorney General's Office is representing the Commission and timely filed an answer to the petition/complaint. A trial setting conference is set for November 14, 2018, at 9:30 a.m. in Dept. 86.

*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

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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.

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. Appellants’ Opening Brief was timely filed on September 21, 2018. Respondents’ Brief is due December 10, 2018, and Appellants’ Reply Brief is currently due December 31, 2018.

### **B. Outreach and Training**

On October 24, Trish Mayer spoke at the California Special District Association’s annual Board Secretary/Clerk Conference in South Lake Tahoe. During this comprehensive session, close to 100 attendees received an overview of the rules as they apply to Statements of Economic Interests. Also discussed were conflict of interest codes and how they relate to the Form 700, and general information was provided about conflicts of interests, gifts, and ticket disclosure.

### **C. Advice**

In October 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 1,329 e-mail and telephone requests for advice.
- ***Advice Letters:*** Legal Division received 21 new advice letter requests under the Political Reform Act and completed 28 letters.
- ***Section 1090 Letters:*** Legal Division received three new advice letter requests concerning Section 1090 and completed 12 letters. This year to date, we have received 60 advice requests regarding Section 1090.

### **D. Miscellaneous Decisions**

None to report.

### **E. Potential Upcoming Regulations**

**December 20, 2018.**

- Regulation 18756. Electronic Filing System Certification (Adoption) – The Commission may consider additional certification requirements for Form 700 Electronic Filing System Certification under Section 87500.2 to ensure systems can exchange data with the Commission’s electronic filing system.

**January 2018.**

- Regulation 18702.2. (Adoption) – Discussion of materiality thresholds under the Act’s conflict of interest provisions for real property interests including clarification of the 500-foot property rule.

**Scheduling to be Determined.**

- Review of procedures for probable cause proceedings under Commission Regulation 18361.4.
- Discussion of gift rules as applicable to agency provided tickets or passes under Commission Regulation 18944.1.
- 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.

**F. Conflict of Interest Codes****Adoptions and Amendments***State Agency Conflict of Interest Codes*

- Treasurer’s Office

*Multi-County Agency Conflict of Interest Codes*

- Desert Community College District
- Exclusive Risk Management Authority of California
- Golden Sierra Job Training Agency
- Independent Cities Finance Authority
- Riverside Schools' Insurance Authority JPA
- Riverside Schools Risk Management Authority JPA
- Tri County Water Authority
- Westlands Water District

**Exemptions**

None to report.

## Extensions

- Green Ribbon Science 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.*

1. ***In the Matter of G. Rick Marshall and G. Rick Marshall for School Board, Case No. 15/2013.*** On October 5, 2018, after hearing, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: The Committee and Marshall paid for over 500 substantially similar telephone calls that failed to announce the Committee as the source of the calls in violation of section 84310.
- Count 2: Marshall and the Committee failed to file a 24-hour report to disclose the late contribution of \$1,600 from Janice Marshall to the Committee in violation of section 84203, subdivision (a).
- Count 3: Marshall and the Committee made a cash expenditure of \$500 to Janice Marshall as partial repayment of a loan in violation of section 84300, subdivision (b).

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

2. ***In the Matter of Thom Bogue and Dane Besneatte, Case No. 15/1549.*** On October 15, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: Bogue and Besneatte, on behalf of All Silver Lining, acted as agents for compensation for the purpose of influencing the amendment of the General Plan and the re-zoning of property, a quasi-legislative action, when they both made appearances in front of the Dixon Planning Commission and when Bogue contacted two Dixon City Council members and three Dixon Planning Commissioners to discuss the Dixon Crossings Partnership Project, within 1 year of leaving public office. Thus, Bogue and Besneatte violated Section 87406.3 of the Government Code.

3. ***In the Matter of Eric Swanson for Hesperia School Board 2014, Eric Swanson, and Rebekah Swanson, Case No. 16/133.*** On October 25, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: The Committee, Swanson, and the Treasurer 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 2: The Committee, Swanson, and the Treasurer 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 3: The Committee, Swanson, and the Treasurer 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 4: The Committee, Swanson, and the Treasurer 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 5: The Committee, Swanson, and the Treasurer failed to timely file the semi-annual campaign statement for the reporting period of July 1, 2016 through December 31, 2016, due January 31, 2017, in violation of Section 84200.
- Count 6: The Committee, Swanson, and the Treasurer 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 7: The Committee, Swanson, and the Treasurer failed to timely file the semi-annual campaign statement for the reporting period of July 1, 2017 through December 27, 2017, due January 31, 2018, in violation of Section 84200.
- Count 8: The Committee, Swanson, and the Treasurer 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 9: The Committee, Swanson, and the Treasurer 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).

4. ***In the Matter of Friends of Joe Aguirre for Delano City Council 2014 and Joe Aguirre, Case No. 17/193.*** On October 31, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: The Committee and Aguirre failed to timely file the pre-election statement for the period of July 1, 2014 through September 30, 2014, due October 6, 2014, in violation of Sections 84200.5 and 84200.7.



- Count 2: The Committee and Aguirre failed to timely file the pre-election statement for the period of October 1, 2014 through October 18, 2014, due October 23, 2014, in violation of Sections 84200.5 and 84200.7.
- Count 3: The Committee and Aguirre failed to timely file the semi-annual campaign statement for the period of October 19, 2014 through December 31, 2014, due February 2, 2015, in violation of Section 84200.
- Count 4: The Committee and Aguirre failed to timely file the semi-annual campaign statement for the period of January 1, 2015 through June 30, 2015, due July 31, 2015, in violation of Section 84200.
- Count 5: The Committee and Aguirre failed to timely file the semi-annual campaign statement for the period of July 1, 2015 through December 31, 2015, due February 1, 2016, in violation of Section 84200.
- Count 6: The Committee and Aguirre failed to timely file the semi-annual campaign statement for the period of January 1, 2016 through June 30, 2016, due August 1, 2016, in violation of Section 84200.
- Count 7: The Committee and Aguirre failed to timely file the pre-election statement for the period of July 1, 2016 through September 24, 2016, due September 29, 2016, in violation of Sections 84200.5 and 84200.8.
- Count 8: The Committee and Aguirre failed to timely file the pre-election statement for the period of September 25, 2016 through October 22, 2016, due October 27, 2016, in violation of Sections 84200.5 and 84200.8.
- Count 9: The Committee and Aguirre failed to timely file the semi-annual campaign statement for the period of October 23, 2016 through December 31, 2016, due January 31, 2017, in violation of Section 84200.
- Count 10: The Committee and Aguirre failed to timely file the semi-annual campaign statement for the period of January 1, 2017 through June 30, 2017, due July 31, 2017, in violation of Section 84200.
- Count 11: The Committee and Aguirre failed to timely file the semi-annual campaign statement for the period of July 1, 2017 through December 31, 2017, due January 31, 2018, in violation of Section 84200.
- Count 12: The Committee and Aguirre failed to timely file the semi-annual campaign statement for the period of January 1, 2018 through June 30, 2018, due July 31, 2018, in violation of Section 84200.

## 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 1383 requests for technical assistance via phone in October.

### **Training & Outreach**

Political Reform Consultant John Kim delivered an outreach session on lobbying to a filer in Sacramento.

### **Additional Training**

Our video tutorials were accessed a total of 216 times in October. The Form 700 videos received 119 views while the Candidate/Treasurer video received 67 views. Filing officer videos were viewed 30 times.

### **Forms, Manuals, and Other Materials**

Division staff drafted updates to the 2018/2019 Form 700 and related documents. The following materials have been updated and will be presented for your approval at the November 15, 2018, Commission Meeting:

- Form 700 – Statement of Economic Interests
- Form 700 Reference Pamphlet
- Form 700-A – Auditors, Claims Managers/Adjusters, and Other Eligible Filers
- Form 700-U – University Principal Investigators

### **Filing Schedules**

Staff created 9 filing schedules for regular 2019 elections, and 3 filing schedules for special local elections in 2019.

## IV. EXECUTIVE DIRECTOR UPDATE

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STAFF: LORESSA HON, ACTING EXECUTIVE DIRECTOR

Staff has been working with the City of Oakland Public Ethics Commission to arrange for the FPPC to meet on Thursday, January 17, 2019, in Hearing Room 1 of Oakland City Hall.