



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Commissioners Audero, Cardenas, Hatch, and Hayward
From: Chair Remke
Subject: Proposed Regulation 18308: Statement of Governance
Date: April 18, 2018

A review of the existing Statement of Governance Principles, adopted in January 2001, is a worthwhile endeavor to ensure that the agency is following best practices, and to encourage more oversight by the four commissioners. But the current proposed regulations by the ad hoc committee are legally problematic and unworkable. And while I share the legal concerns raised in the April 17, 2018 Legal Division memo, my greatest concern is that the expansive scope of the proposal will paralyze the agency with excessive bureaucracy without corresponding justification.

Since the structure of a two-person ad hoc committee does not allow for any input or discourse with other commissioners between meetings, there has not been an opportunity to share concerns before or between drafts. And rather than attempting to go line-by-line through the ad hoc committee's proposed regulations to highlight concerns at the upcoming Commission meeting, it seemed more productive to offer an alternative approach for consideration. (See Proposed Regulation 18308, pp. 2-8.)

While the primary focus of attached proposed Regulation 18308 is to provide commissioners more oversight of the agency, it also recognizes that:

- The Chair, Executive Director and staff must be able to communicate between Commission meetings to examine any proposed new policies or potential problems that impact the agency without violating open meeting laws;
- To avoid underground regulations, any new policy, rule or procedure that is recommended by one of the proposed committees and seeks to govern the agency must be adopted pursuant to Administrative Procedures Act; and
- Assigning staff to research and publicly brief issues raised by commissioners (e.g., enforcement process, case priorities, advice letters), as opposed to committees, is a more efficient and effective use of public resources and promotes greater transparency.

Having served as Chair for almost four years, and as the only full-time member of the Commission, I urge the Commission to consider the attached proposed Regulation 18308 as an alternative approach that balances the desire for more oversight by commissioners with the practical requirements of the agency.

1 Adopt 2 Cal. Code Regs., Section 18308 to read:

2 **§ 18308. Commission Governance**

3 (a) Purpose. This regulation is established to:

4 (1) Set forth policies that govern the Fair Political Practices Commission (Commission)
5 consistent with its statutory authority, duties and responsibilities.

6 (2) Guide the Commission in managing the effectiveness and integrity of the
7 Commission's processes, including oversight, accountability, transparency, efficiency and
8 decision-making.

9 (3) Identify and distinguish between the roles of the Commission, the Chair, and the
10 Executive Director.

11 (b) Governance Principles. The following governance principles will guide the conduct,
12 decision-making and behavior of the Commission and provide a framework for the development
13 of policies and practices that will drive the achievement of the Commission's goals. To this end,
14 each commissioner will:

15 (1) Comply with the statutory qualification requirements, the Statement of Incompatible
16 Activities adopted by the Commission, and all other laws applicable to the Commission.

17 (2) When communicating by email, use only his or her official Commission email
18 account for official business.

19 (3) Prepare for and govern through the regularly scheduled Commission meetings.

20 (4) Between meetings communicate with staff through the Executive Director or division
21 chiefs. Subject to opening meetings laws, the Executive Director will ensure that all
22 commissioners receive the benefit of information and advice provided to each individual
23 commissioner.

1 (5) Maintain the confidentiality of all confidential information acquired during the
2 Commission's work.

3 (6) Consult with the General Counsel about any relationship or interest that the
4 commissioner may be concerned about creating a possible conflict of interest relating to the
5 Commission's work.

6 (7) Set exemplary ethical standards that reflect positively on the Commission, while
7 refraining from engaging in biased or partisan activities that may reflect poorly on the
8 Commission.

9 (8) As ethical leaders, the Commission and executive team will work together with
10 mutual respect in a constructive partnership. Together, the Commission and executives set the
11 tone at the top that permeates the agency.

12 (c) **Delegation of Authority.** Pursuant to Section 83108, and under the direction of the
13 Commission, the Commission delegates to the Chair and Executive Director the authority to
14 execute established Commission policy, procedures and objectives. All other authority granted
15 by statute to the Commission is retained, except as specifically delegated herein or by other
16 regulation.

17 (d) **Structure and Role of Committees.** To ensure proper oversight and governance of
18 the Commission, there are four advisory committees: Budget, Personnel, Legislative, and Law
19 and Policy.

20 (1) Each committee will have two members. The Budget and Personnel Committees will
21 consist of the Executive Director and one advisory commissioner. The Legislative and Law and
22 Policy Committees will consist of the Chair and one advisory commissioner. Each commissioner
23 will serve on only one committee.

1 (2) Subject to approval by the Commission, the members of each committee will be
2 appointed annually by the Chair, with consideration given to the expressed desires of individual
3 commissioners and the value of periodic rotation of committee members to provide direct
4 exposure to differing Commission responsibilities.

5 (3) Each committee will be responsible for:

- 6 i. Reviewing and recommending to the full Commission those policies, goals,
7 regulations and other action items that are pertinent to its subject matter
8 jurisdiction. Any recommendation to adopt, amend or rescind policies, rules or
9 regulations that govern procedures of the Commission must be accomplished in
10 accordance with the Administrative Procedures Act.
- 11 ii. Annually reviewing matters that were recommended and adopted by the
12 Commission during the prior year to evaluate whether these matters represented
13 an effective and efficient method of achieving the Commission's goals.
- 14 iii. Reporting regularly on its discussions and deliberations of significant issues and
15 present its recommendations with any supporting documentation to the full
16 Commission to promote transparency and ensure that all Commission members
17 and the public are adequately informed.

18 (4) Each committee operates to assist the Commission in adopting key policies, goals,
19 regulations and other action items, and is not intended to direct the daily operations or
20 management of the Commission.

21 (5) Unless expressly provided otherwise, a committee does not have delegated authority
22 to act on behalf of the Commission, and may not take any action that requires Commission
23 approval.

1 (e) **Authority of the Commission.** The Commission’s statutory duty is to ensure that the
2 Political Reform Act is impartially and effectively administered and implemented. The
3 Commission accomplishes that duty by:

4 (1) Approving or revising annual policy goals and strategic objectives, and evaluating
5 efforts made to meet those goals and objectives.

6 (2) Approving or revising the annual budget.

7 (3) Interpreting the Act through regulations and opinions.

8 (4) Setting enforcement priorities and procedures for the effective operation of the
9 Enforcement Division.

10 (5) Enforcing the Act by initiating or hearing administrative actions, authorizing civil
11 actions, and approving stipulations to resolve enforcement cases.

12 (6) Authorizing or initiating legal actions to defend the Commission’s interpretations of
13 the Act.

14 (7) Taking positions on efforts to amend the Act, including legislation fiscally impacting
15 the operations of the Commission.

16 (8) Authorizing issuance of forms and manuals used to comply with the Act.

17 (9) Ensuring the proper management of the Commission by selecting, evaluating, and, if
18 necessary, disciplining or dismissing the Executive Director and division chiefs.

19 (10) Ensuring the integrity of the financial control and reporting system, and the
20 Commission’s compliance with all laws governing the agency.

21 (f) **Authority of the Chair.** The Chair, appointed by the Governor, is the presiding
22 officer of the Commission. The Chair provides oversight and guidance to the Executive Director
23 and staff regarding all aspects of Commission established policy, including short and long-term

1 goals. In conformance with Commission established policy, and under the direction of the
2 Commission, the Chair:

3 (1) Acts on behalf of and in the name of the Commission between meetings of the
4 Commission, including certifying actions taken by the Commission. This authority does not
5 include any action that requires Commission approval, including establishing or revising
6 Commission policies, promulgating or amending rules or regulations, issuing or revising
7 Commission opinions, or approving or revising positions on legislation.

8 (2) Speaks for and represents the Commission in communications with the public, the
9 press and government institutions, ensuring that communications are forthright and accurate.

10 (3) After seeking input from Commissioners and staff, sets the agenda prioritizing and
11 scheduling items in conformance with Commission goals and agency resources; however, any
12 item proposed for a Commission agenda by two or more Commissioners will be placed on that
13 agenda in the form requested.

14 (4) Conducts Commission meetings with reference to Robert's Rules of Order and other
15 rules adopted by the Commission.

16 (5) Pursuant to the oversight of the Law and Policy Committee, recommends to the
17 Commission for approval the short and long-term goals and priorities of the Commission.

18 (6) Reports to the Commission in writing on achievement of its goals and priorities.

19 (7) Reports in writing each month to the Commission on actions taken on behalf of the
20 Commission, ensuring that the information provided to the Commission is comprehensive,
21 timely, impartial and not unduly burdensome.

22 (g) **Authority of the Executive Director.** The Executive Director is delegated the
23 authority to oversee the daily operations and management of the agency. In conformance with

1 Commission established policy, and under the direction of the Commission, the Executive
2 Director:

3 (1) Ensures that the Commission is fully informed regarding the daily operations and
4 management of the agency.

5 (2) Pursuant to the oversight of the Personnel Committee, recommends for consideration
6 by the Commission the selection and, when necessary, the discipline or dismissal of division
7 chiefs.

8 (3) With the input of the division chiefs, hires, promotes and, when necessary, disciplines
9 or dismisses other staff pursuant to civil service statutes and rules, other applicable laws, and
10 Commission policies.

11 (4) Pursuant to the oversight of the Personnel Committee, as necessary, prepares and
12 recommends office policies for consideration by the Commission.

13 (5) Coordinates and prioritizes requests from commissioners for assistance from staff.

14 (6) Acts as the chief budgetary and administrative officer of the agency, and pursuant to
15 the oversight of the Budget Committee:

16 i. Prepares and submits an initial budget proposal to the Commission for its review
17 and consideration.

18 ii. Reports regularly to the Commission on the status of Commission finances,
19 including any developments during the State budget process.

20 iii. Prepares and submits budget change proposals, requests for deficit funding and
21 other budgetary documents.

22 iv. Reviews and approves all fiscal analyses prepared in response to legislation or
23 proposals affecting the FPPC.

1 (7) May authorize unbudgeted expenditures up to \$25,000, and retains final approval for
2 all other expenditures.

3 Note: Authority Cited: Section 83108, Government Code. Reference: Sections 83100-83114,
4 and 83117, Government Code.