



(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Timestamps from [Commission Meeting 02/15/2018](#)
Thursday, February 15, 2018

Under Government Code section 11123(a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The section further states that the portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting. The Commission may take action on any item listed on this agenda.

CALL TO ORDER

Chair Remke called the meeting to order at 10:01 am on February 15, 2018, at the Fair Political Practices Commission, 1102 Q Street, Suite 3800, Sacramento, CA 95811. Chair Remke and Commissioners Audero, Cardenas, Hatch, and Hayward were present.

Welcome

Chair Remke: Okay, good morning. Let's go, take roll, please, Sasha.

Sasha: Commissioner Audero?

Commissioner Audero: Here.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Here.

Sasha: Commissioner Hatch?

Commissioner Hatch: Here.

Sasha: Commissioner Hayward?

Commissioner Hayward: Here.

Sasha: Chair Remke?

Chair Remke: Here. Okay, good morning. Welcome, everyone. So, we'll start with the public comment for items not on the agenda. Any public comment for an item not on the agenda? Okay, seeing or hearing none, moving on to item two, approval of the January 2018 minutes. Any comments or corrections from the Commissioners? Is there a motion?

Public Comment

- 1. Public Comment for Items not on Agenda.** During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Commission and before any action is taken.

Approval of Commission Minutes

- 2. Approval of January 2018 Commission Hearing Minutes.**

Commissioner Hayward: Move approval.

Commissioner Hatch: Second.

Sasha: Commissioner Audero?

Commissioner Audero: So, I would vote yes, except as to Item 4, because I recused myself. So, I don't know how to handle that, but that's my vote. I don't think it matters.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Is this a roll call for the approval? Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes.

Sasha: Motion passes.

Consent Calendar 3-15

Chair Remke: Okay, moving on to the consent calendar items three through 15, the enforcement matters. To start with, do the Commissioners have any items they'd like to pull from consent to vote on separately? Any items to pull? Okay, hearing none, are the -- do the Commissioners have any questions regarding consent items, and we can take them one at a time.

Commissioner Hayward: Madam Chair, I have questions on item five.

Chair Remke: Okay, let's start with item five.

Commissioner Hayward: I was just wondering, I don't think this is from the Franchise Tax Board, and I'm just wondering why it is as old as it is.

Ms. West: Good morning, Galena West -- oh, can't look through those. Galena West, Chief of Enforcement. That's a -- that's a good question, but the more challenging cases are the ones where there's no filings at all. So, a lot of these cases come through the Annual Fee Program, so it takes a little while to get to the bottom of what's going on, and that was one of the -- the cases here.

Commissioner Hayward: Okay. That was my only question.

Chair Remke: Okay. Any other questions for the remaining items on the consent calendar? I would just take the opportunity to congratulate the Enforcement Division on items three, the Susan Kennedy matter. I know that it's far and few between that we see lobbying cases, especially for a failure to register, because those are difficult to find and difficult to prove, and I know that this was a long investigation and a good outcome. So, I just wanted to congratulate everyone who worked on it.

Ms. West: Thank you. Yes, it really was. It was a referral from the Attorney General's Office, and so we wanted to give a shout-out to our compadres over at the AG. But -- but yes, it -- it was very challenging, because as you know, lobbying is -- is an attempt to influence, so you have to prove the context in the attempt to influence and getting paid for it. So, the staff did a terrific job doing the research and getting all the information that they needed, and I would thank them for their hard work.

Chair Remke: Okay, any other questions or comments from the Commissioners? All right, is there any public comment on the consent calendar? All right, seeing or hearing none, is there a motion?

Commissioner Audero: I'll move approval of the consent calendar.

Chair Remke: Is there a second?

Commissioner Hayward: I'll second.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes.

Sasha: The motion passes.

Lobbying

3. In the Matter of Susan Kennedy and Susan P. Kennedy, Inc.; FPPC No. 17/563.

Staff: Assistant Chief of Enforcement David Bainbridge and Special Investigator Ann Flaherty and Rooney Peterson. Susan Kennedy qualified as a lobbyist as the result of attempting to influence commissioners and staff of the California Public Utilities Commission from 2012 through 2014 on behalf of her clients: Lyft, Inc. and San Gabriel Valley Water Company. Susan P. Kennedy, Inc. is Kennedy's consulting company that received payment for Kennedy's lobbying thereby qualifying as a lobbying firm. Kennedy and Susan P. Kennedy, Inc. failed to timely register as a lobbyist and lobbying firm, in violation of Government Code Sections 86100 and 86101 (1 count); and failed to timely file quarterly lobbyist and lobbying firm reports for seven calendar quarters, in violation of Government Code Sections 86113, 86114, and 86117 (7 counts). **Total Proposed Penalty: \$32,500.**

Mass Mailings

4. In the Matter of Committee to Improve Hermosa Schools – Yes on S, Michael Collins, and John Friberg; FPPC No. 16/568. Staff: Commission Counsel Christopher Burton. Committee to Improve Hermosa Schools – Yes on S was a primarily formed ballot measure committee in support of Hermosa Beach City School District Measure S, on the June 7, 2016 Primary Election ballot. Michael Collins was the Committee's principal officer. John Friberg was the Committee's treasurer. The Committee, Collins, and Friberg failed to print the language "Paid for by" and disclose the name of the Committee on certain advertisements, in violation of Government Code Section 84504 and Regulation 18450.4, subdivision (b)(1) (1 count). **Total Proposed Penalty: \$2,500.**

Campaign Non-Filer

5. In the Matter of Yes on P for Quality Schools and James Rod Borba; FPPC No. 15/1559. Staff: Senior Commission Counsel Neal Bucknell and Special Investigator

George Aradi. In 2012, Yes on P for Quality Schools was a ballot measure committee primarily formed to support Proposition P on the November 6, 2012 General Election ballot for voters in the Folsom Cordova Unified School District in Sacramento County. James Rod Borba was the Committee's treasurer. The Committee and Borba failed to file two pre-election campaign statements for the reporting periods covering January 1, 2012 through October 20, 2012, in violation of Government Code Sections 84200.5, subdivision (b); and 84200.7, subdivision (b) (1 count); failed to timely file one semiannual campaign statement for the reporting period covering October 21, 2012 through December 31, 2012, in violation of Government Code Section 84200, subdivision (a) (1 count); and failed to timely file four 24-Hour Reports, in violation of Government Code Section 84203, subdivision (b) (1 count). **Total Proposed Penalty: \$7,000.**

- 6. In the Matter of District 3 Democratic Club, Arthur Chang, and Chris Schulman; FPPC No. 15/1416 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson and Staff Services Analyst Dominika Wojenska. District 3 Democratic Club is a local general purpose committee. Arthur Chang and Chris Schulman served as the Committee's treasurers. The Committee, Chang, and Schulman failed to timely file five semiannual campaign statements for the reporting periods covering July 1, 2014 through December 31, 2016, in violation of Government Code Section 84200 (5 counts). **Total Proposed Penalty: \$3,229.**
- 7. In the Matter of Mayor Manuel Lozano 2013 and Manuel Lozano; FPPC No. 15/280 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Manuel Lozano was a successful incumbent candidate for Mayor of Baldwin Park in the November 5, 2013 General Election and is currently holding office. Mayor Manuel Lozano 2013 was his candidate-controlled committee. The Committee and Lozano failed to timely file one pre-election statement covering the reporting period of January 1, 2013 through September 21, 2013, in violation of Government Code Section 84200.5 (1 count); one semiannual statement covering the reporting period of October 20, 2013 through December 31, 2013, in violation of Government Code Section 84200 (1 count); and three 24-Hour Reports, in violation of Government Code Section 84203 (3 counts). **Total Proposed Penalty: \$2,310.**
- 8. In the Matter of Payne for Palmdale 2015, Vajezatha Payne, and Sasha Cass; FPPC No. 16/19988 (Streamline Settlement).** Staff: Commission Counsel Christopher Burton. Vajezatha Payne was an unsuccessful candidate for the Palmdale School District Board of Trustees in the November 3, 2015 General Election. Payne for Palmdale 2015 was her candidate-controlled committee. Sasha Cass served as the Committee's treasurer. The Committee, Payne, and Cass failed to timely file one semiannual campaign statement covering the reporting period of October 18, 2015 to December 31, 2015, in violation of Government Code Section 84200 (1 count); and failed to timely file one 24-Hour Report, in violation of Government Code Section 84203 (1 count). **Total Proposed Penalty: \$1,685.**

9. In the Matter of Esplanade League and Paul Friedlander; FPPC Case No. 16/15961 (Streamline Settlement). Staff: Commission Counsel Michael W. Hamilton and Special Investigator Jeffrey Kamigaki. Esplanade League is a county general purpose committee. Paul Friedlander is the Committee's treasurer. The Committee and Friedlander failed to file three 24-Hour Reports, in violation of Government Code Section 84203 (3 counts). The Committee and Friedlander failed to report making expenditures in support of Chico City Council candidates: Ann Schwab, Randall Stone, Tami Ritter, and Kimberly Rudisill and in support of Measure K on the semiannual statement covering the reporting period of October 21, 2012 through December 31, 2012; and failed to timely report making an expenditure for a mailer supporting Lupe Arim-Law for Chico City Council, Forough Molina for Chico City Council, Scott Gruendl for Chico City Council, supporting Measure B and opposing Measure A on the semiannual campaign statement covering the reporting period of October 19, 2014 through December 31, 2014, in violation of Government Code Section 84211 (2 counts). **Total Proposed Penalty: \$1,087.**

10. In the Matter of Rick Johnson for Monterey Peninsula College Trustee Area 3 and Rick Johnson; FPPC No. 17/351 (Streamline Settlement). Staff: Commission Counsel Theresa Gilbertson and Staff Services Analyst Dominika Wojenska. Rick Johnson was the successful candidate for Trustee for the Monterey Peninsula College Board of Trustees in the November 8, 2011 General Election and was unopposed in 2016 for a second term. Rick Johnson for Monterey Peninsula College Trustee Area 3 was his candidate-controlled committee. The Committee and Johnson failed to timely file two semiannual campaign statements covering the reporting periods of July 1, 2016 through June 30, 2017, in violation of Government Code Section 84200 (2 counts). **Total Proposed Penalty: \$405.**

11. In the Matter of Friends of Robla School Kids – Yes on Measure K 2014 and Michael Henkel; FPPC No. 17/838 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Staff Services Analyst Hayley Porter. Friends of Robla School Kids – Yes on Measure K 2014 was a local primarily-formed ballot measure committee in support of Measure K on the November 4, 2014 General Election ballot in Sacramento County. Michael Henkel was the Committee's treasurer. The Committee and Henkel failed to timely file one semiannual campaign statement covering the reporting period of July 1, 2014 through December 31, 2014, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$362.**

Statement of Economic Interests Non-Filer

12. In the Matter of Lola Skelton; FPPC No. 16/19779 (Default Decision). Staff: Commission Counsel Theresa Gilbertson. Lola Skelton has been a member of the Governing Board for the Hughes-Elizabeth Lakes Union School District since 1988 and her current term extends through 2022. Skelton failed to timely file 2015 and 2016 Annual Statements of Economic Interests, in violation of Government Code Section 87300 (2 counts). **Total Proposed Penalty: \$10,000.**

13. In the Matter of Edward Chell; FPPC No. 17/993 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Edward Chell, as an Alternate Commissioner of the California Pepper Commission, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$400.**

Statement of Economic Interests Non-Reporter

14. In the Matter of William Goddard; FPPC No. 17/1002 (Streamline Settlement). Staff: Senior Commission Counsel Angela Brereton. William Goddard, a Director for the Big Bear Airport District Board, failed to timely disclose investments in and income from Goddard Aircraft Services on his Candidate Statement of Economic Interests, in violation of Government Code Sections 87206 (1 count); and on his Assuming Office Statement of Economic Interests, in violation of Government Section Code 87207 (1 count). **Total Proposed Penalty: \$200.**

15. In the Matter of Jerry Thorne; FPPC No. 16/19805 (Streamline Settlement). Staff: Senior Commission Counsel Angela Brereton and Supervising Special Investigator Jay Martin. Jerry Thorne, Mayor for the City of Pleasanton, failed to timely disclose his investment interest in Costco on his 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87206 (1 count). **Total Proposed Penalty: \$100.**

General Items 16-18

16. Assignment of Hearing to Administrative Law Judge (ALJ): In the Matter of Juan Sandoval Elect for County Superintendent of Schools 2014, Juan Sandoval and Vangie Urias; FPPC No. 14/434. Staff: Executive Director Erin V. Peth, Chief of Enforcement Galena West, and Commission Counsel Michael W. Hamilton. The Executive Director and the Chief of Enforcement are recommending that a hearing be conducted before an ALJ pursuant to Government Code Section 11512, subdivision (a). The ALJ will make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then have the opportunity to review the proposed decision and make the final determination on the case. If the Commission agrees with this recommendation, no action is required.

Staff Memo

Chair Remke: Okay. Item 16 is the assignment of hearing to an ALJ. As stated, and this is a recommendation from the Executive Director and the Chief of Enforcement that a hearing be conducted pursuant the request, one party. If the Commission agrees with this recommendation, no action is required by us. It will go to an ALJ hearing. There will be a proposed decision by that ALJ. It will be brought back to the Commission for review and final approval and determination, at which time we could request the transcript or any additional information we

may need if we so desire. Any questions or comments from the Commissioners?

Commissioner Hayward: Madam Chair, I have a question on this one.

Chair Remke: Commissioner Hayward.

Commissioner Hayward: And this is sort of a -- I feel like I should know the answer. So, we have a principal in this campaign committee who is responding, showing up, and a Treasurer who seems not to be, and they're jointly and severally reliable. What do we do with that situation when you've got part of the group showing up and partly no? Is there some -- is there some default potential in here with the Treasurer or is that a matter for Sandoval and the Treasurer to work out on their own?

Ms. West: That's actually a great question, and it is not an easy answer, so it's not something that you would just know by the face of looking at this. But the answer is we err on the side of more due process protection even for the -- the Treasurer who didn't respond. So, we include them in all the documents that go to the Administrative Law Judge in order for -- if Mr. Sandoval is successful at the hearing, then even the counts against the Treasurer could be dropped by the -- the ALJ as well. And so it -- it's more -- it's more fair and equitable. We give them even additional chances to -- to be found, cleared, and -- and I think that is the right thing to do, because if we did a default separately, then the joint and several liability would come into play, and then you'd have double charging. So, with joint and several liability specifically, it's -- it's for them to work out amongst themselves once there's a judgment that would come back to you for your approval.

Commissioner Hayward: So, as a -- as a -- from our perspective, they're basically riding together through the process.

Ms. West: Right. And then the ALJs --

Commissioner Hayward: But the -- the one feels about that, but that's not my problem.

Ms. West: And then -- and then the -- the ALJs are -- they already face this on a regular basis, because we have hearings scheduled where the respondent never shows up, and so they ask, do you want us to issue the default here and now or would you prefer to take the matter back to your Commission to have them -- and issue the default through your Commission? And so they are faced with this on a regular basis for respondents that don't show up and some parties that don't show up and some do, but we have the extra wrinkle of joint and several liability.

Commissioner Hayward: Okay, thank you.

Chair Remke: Any other questions or comments from the Commissioners?

Commissioner Hatch: Yes.

Chair Remke: Commissioner Hatch?

Commissioner Hatch: Galena, would you school me a little bit on -- on how we select that ALJ?

Ms. West: Oh, I wish we could. So, like, the ALJ, it's -- there's a general pool of ALJs that handle a wide variety of areas of administrative law, and we get an ALJ from that pool. So, they aren't specifically knowledgeable in the PRA.

Commissioner Hayward: When you say that you get one from the pool, you mean it's like on the blinds?

Ms. West: We're assigned.

Commissioner Hayward: And who does that?

Ms. West: I believe the Chief of Office of Administrative --

Commissioner Hayward: Okay. So, it's outside our control.

Ms. West: Yeah.

Commissioner Hayward: Okay. That's kind of what I wanted to know. And there was a follow-up, but I can't remember it now, so I'll just let it go, next time.

Chair Remke: Any other questions or comments from the Commissioners? Any public comment on item 16? Seeing or hearing none, okay, that recommendation will occur, and no action will be taken by us.

17. Adoption of Amendment to Regulations 18746.1 and 18746.4. Staff: Matthew F. Christy, Commission Counsel, Legal Division. Staff proposes amendments, relating to the state one-year ban as it applies to members of the Legislature, to bring Regulations 18746.1 and 18746.4 into conformity with Government Code section 87406 as amended by AB 1620. Additionally, the proposed amendments make non-substantive changes to improve readability.

Staff Memo

Proposed Amendment of Regulation 18746.1

Proposed Amendment of Regulation 18746.4

Chair Remke: Moving on to item 17, adoption of amendment to regulations 18746.1 and 18746.4. Thank you, Ms. West. Good morning.

10:00 **Mr. Christy:** Good morning, Commissioners. My name is Matthew Christy, and I am here on behalf of the Legal Division to present proposed amendments to the Commission's post-government employment regulations. The first set of amendments up for your consideration today are to regulations 18746.1 and 18746.4. These are the Commission's regulations implementing the state one-year ban. The state one-year ban is set forth in Section 87406 of the Act. These proposed amendments are in response to the enactment of Assembly Bill 1620, which amended Section 87406. The state one-year ban prohibits certain officials for one year after leaving state service from representing any other person by appearing before or communicating with the official's former agency in an attempt to influence certain agency actions or proceedings. Prior to the enactment of AB 1620, Section 87406 provided that the ban's prohibition period for a member of the legislature was one year from when the member left office. Section 87406 as amended by AB 1620 now specifies that the ban's prohibition period for a member of the legislature who resigns from office commences with the effective date of the member's resignation and concludes one year after the final termination of the regular session in which the resignation occurred. Regulation 18746.1 breaks down the component elements of the state's one-year ban, including the ban's prohibition period. Proposed amendments to this regulation would specify that for a member of the legislature who resigns from office, the prohibition period instead commences with the effective date of the resignation and concludes one year after the (inaudible) DA of the session in which the resignation occurred. Regulation 18746.4 defines when an official has permanently left office for purposes of the ban and proposed amendments to that regulation would clarify that the date of a member of the legislature who resigns from office permanently leaving office is the effective date of the resignation. Now might be a better time in case any of the Commissioners have questions about those regulations before I move on to the local one-year ban.

Commissioner Hatch: Yes, I have a question. Madam Chair?

Chair Remke: Commissioner Hatch?

Commissioner Hatch: I noticed, you know, the term permanent is used in certain context. How do you determine what's permanent and what's not other than a resignation?

Mr. Christy: You raise a really good question and I think one that's directly relevant to the regulations you're considering today. Prior to AB 1620, which amended the state one-year ban

with respect to members of the legislature who resign from office, the prohibition period commenced when an official permanently left office or had a leave of absence. That's actually defined by regulation, and this amendment would change that specifically for members of the legislature who resign; otherwise, it would still be defined as it was beforehand by the regulation.

Commissioner Hatch: So, like, if I was termed out of the assembly and was trying to keep alive until I could run for a Senate seat, that's not permanent.

Mr. Christy: You would have permanently left that office.

Commissioner Hatch: That office, okay, so you're still permanent. Okay.

Mr. Christy: And in that scenario, if you didn't resign the previous prohibition period commencing, when you actually left office would be the applicable one.

Commissioner Hatch: Kind of a variation on that theme, if it was while we have a reinforcement, right, every ten years? Every ten years, excuse me -- well, I'll learn. So, if I get bumped from one district and I'm going to run in another to get back in, is that permanent or temporary?

Mr. Christy: You raise a really good question that I haven't specifically addressed for the purposes of these regulations, and I would hate to lead you astray, but I would be happy to research that question and get back to you, Commissioner.

Commissioner Hatch: Okay. Yeah, because I think a lot of people would like to know that over there in that other building.

Chair Remke: Okay, did you want to go ahead and talk about the local ones since it's related on the same issue? So, that's 18. Give us an overview on that.

Mr. Christy: So, the next set of amendments up for your consideration are to regulation 18746.3, and this is the Commission's regulation implementing the local one-year ban. The local one-year ban is set forth in Section 87406.3 of the act, and the proposed amendments in front of you are in response to the enactment of Assembly Bill 551 and that bill's amendment of that section. The local one-year ban prohibits certain high-level officials for one year after leaving local government service from representing any other person for compensation by appearing before or communicating with the official's former agency in an attempt to influence certain agency actions or proceedings. AB 551 amended section 87406.3 to clarify that the prohibition applies to a former covered official who is now an independent contractor of a local government

agency or public agency appearing before or communicating on behalf of that agency. The proposed amendment of Regulation 18746.3 would update that regulation to incorporate the changes made by AB 551 and would also make other non-substantive changes, and on that note, I have to point out to the Commissioners that there was additional non-substantive change that was made to the regulation in paragraph two of subdivision B where we're just changing 12 months back to one year just to conform it to how we discussed the prohibition period elsewhere in the rates.

Chair Remke: So, that --

Mr. Christy: Sure. So, there was one further typo that was late addition to the regulation we addressed, and that's in paragraph two of subdivision B.

Chair Remke: On page one of the proposed amendment.

Mr. Christy: And if you see, we changed 12 months to one year.

Chair Remke: He's proposing to change 12 months to one year. It's not in the (inaudible) that we have.

Commissioner Hayward: I see. Okay.

Chair Remke: So, page one, line 15, where it says 12 months, you're proposing a change to one year to be consistent with the other changes and the statute.

Mr. Christy: Correct.

Commissioner Hatch: Question.

Mr. Christy: Sure.

Commissioner Hatch: So, this is not just elected officials. This is highly placed individuals, like a City Manager or a Director of Public Works or -- correct?

Mr. Christy: You're absolutely correct, Commissioner. The actual covered parties are laid out in the regulation in subdivision A, and it would include, as you said, a City Manager as one of the enumerated aside from just elected officials.

Commissioner Hatch: Thank you.

Chair Remke: Any other questions or comments from the Commissioners on item 18?

Commissioner Hayward: Just a little point of clarification. An individual covered by this rag, is there any limit on them appearing before a meeting in their own personal capacity and speaking to a Commission or a panel or a special district or whatever it is?

Mr. Christy: It's a good question, Commissioner, and I think it's actually been specifically addressed within the regulation.

Commissioner Hayward: Okay, then I missed that.

Mr. Christy: If you look at -- I'm sorry. I mistook this regulation for one of the state regulations. If you look to Regulation 18746.4, which addresses whether a party is permanently left for the purposes of both the state or the local ban, if you look in subdivision B on page one --

Commissioner Hayward: And that's -- I'm sorry.

Mr. Christy: No problem.

Commissioner Hayward: What's the number again?

Mr. Christy: It's .4, 18746.4.

Chair Remke: Way in the back.

Mr. Christy: And I'm --

Commissioner Hayward: Okay, so --

Mr. Christy: I want to make sure I'm addressing the question. Could you repeat it again, Commissioner?

Commissioner Hayward: Yeah. When an official who's otherwise covered by this appears before, say, their special district as a private citizen, I would assume that this does not impose any restrictions on doing that.

Mr. Christy: You are correct, and I directed you to the wrong provision. I apologize for that.

Commissioner Hayward: All right, because that one didn't quite look like what I was after.

Mr. Christy: You're right, and I apologize. That was my misstep.

Chair Remke: There is an exception. So, should we just --

Mr. Christy: There is. I'm not identifying it correctly.

Commissioner Hayward: Hold on. I'll just -- let's just stipulate that there is an exception.

Mr. Christy: It's actually in the statute.

Commissioner Hayward: Okay.

Mr. Christy: It does cover the personal appearance.

Commissioner Hayward: Perfect. I can see somebody coming to this tomorrow, next week, and saying, oh, my gosh, this is -- this is a broad effect on -- because people misconstrue things. I just want to make sure that that was part of today's articulation.

Mr. Christy: And I think you can be reassured on that issue. This doesn't open up that issue at all.

Commissioner Hayward: Thank you.

Chair Remke: Any other questions from the Commissioners? All right, any public comment on item 17 or 18? Seventeen or 18? Okay, seeing or hearing none, we'll take it one at a time, is there a motion on item 17?

Commissioner Hayward: I move approval.

Commissioner Hatch: Second.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes.

Sasha: The motion passes.

18. Adoption of Amendment to Regulations 18746.3. Staff: Matthew F. Christy, Commission Counsel, Legal Division. Staff proposes amendments, relating to the local one-year ban, to bring Regulation 18746.3 into conformity with Government Code section 87406.3 as amended by AB 551. The proposed amendments remove redundant language, harmonize new statutory language, and improve readability.

Staff Memo

Proposed Amendment of Regulation 18746.3

Chair Remke: Okay, then on item 18, is there a motion, including the proposed amendment 12, amounts to one year that was suggested?

Commissioner Audero: I'll move adoption of item 18.

Commissioner Cardenas: My turn? Second.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas? Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes.

Sasha: The motion passes.

Chair Remke: Thanks, Matt.

Mr. Christy: Thank you for your consideration.

19. Repeal of Regulation 18901. Staff: Ryan P. O'Connor, Commission Counsel, Legal Division. Staff proposes repealing Regulation 18901, relating to mass mailings sent at public expense, because of recently enacted SB 45 which incorporated the full text of that regulation into Section 89002.

Staff Memo

Proposed Repeal of Regulation 18901

Chair Remke: Okay, next, item 19, repeal of regulation 18901. Should be a little shorter. Good morning.

Mr. O'Connor: I'm Ryan O'Connor, Counsel in Legal Division. This morning, I'm going to briefly discuss Regulation 18901 in light of Senate Bill 45. So, Section 89001 states general prohibition, that no newsletter or mass mailing shall be sent at public expense. Mass mailing is defined by statute to mean over two hundred substantially similar pieces of mail sent in response to an solicited request. Regulation 18901 implements prohibition as applied to mailings that reference an elected officer with the agency is sending the mailing. The regulation also provides 11 exceptions. Senate Bill 45 provides -- excuse me -- prohibits a candidate on a ballot from sending a mailing that would otherwise qualify for one of the enumerated exceptions within the 60-day window preceding an election. The bill will also codify the full tax of the regulation into Section 89002. As such, Regulation 18901 is now redundant to the statute, and the staff's opinion is no longer necessary. Thank you.

Chair Remke: Thank you. Any questions from the Commissioners on item 19? Any

public comment on item 19?

Commissioner Audero: Madam Chair, did we take public comment on 17 or 18?

Chair Remke: Yes.

Commissioner Audero: Okay, I don't remember.

Chair Remke: Okay, is there a motion?

Commissioner Hayward: I'll move approval

Chair Remke: I'll second.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes.

Sasha: The motion passes.

20. The Bagley-Keene Open Meeting Act, Proposed Questions for Attorney General Opinion. Staff: John Feser, Senior Counsel, Legal Division. At the October 2017 Commission meeting, Deputies Attorney General Ted Prim and Julia Zuffelato presented an overview of the Bagley-Keene Open Meeting Act. At the January 2018 meeting, the Commission discussed the feasibility of soliciting an Attorney General's opinion to clarify some of the advice provided at the presentation. In accordance with the Commission's instructions at the January 2018 meeting, staff worked with interested Commissioners to prepare proposed questions for discussion at the February 2018 meeting.

Staff Memo

Chair Remke: All right. Thank you, Ryan. Okay, number -- item 20 is a continuation of our Bagley-Keene open meeting discussion regarding the possibility of proposed questions to the Attorney General for an Attorney General opinion. Pursuant to our last discussion, staff worked with Commissioners to develop common questions and put them in a form that the AG may or

may not answer. So, at this point, I think the issue is we could discuss these questions and see if they address the concerns, and I'll give it to Commissioner Hayward and see how you would like to proceed on this.

Commissioner Hayward: Yes, thank you. I think this generally reflects pretty well my concerns based on the sort of ambiguities that I felt were present when we were briefed on Bagley-Keene a couple of months ago. I guess the one -- the one aspect of this that I'm not sure -- it's very, very last-section on substantial compliance, and I'm not sure -- I think it's just a wording thing, but the very -- item two, okay, so, it starts out, "Is the Bagley-Keene act violated if the Commission votes on an agenda item where," colon, "the item is part of an executive staff report that covers other issues and staff has proposed recommended action for the Commission to take on the item?" There's three items in that sentence, and I think it's a little confusing. So, I think the question is can the Commission vote on a recommendation that is in an Executive Staff Report where the Executive Staff Report suggests that they want yea or nay; is that right? Is that what we're trying to capture there?

Chair Remke: I can take a guess. I assumed that this was in response to the concern where legislative reports were contained in the Executive Staff Report and in -- within that larger Executive Staff Report, there was a recommendation from staff as -- for the Commission to take proposed action with the specific action and reasoning, and then there was a dispute about whether or not that was sufficient. So, that's the circumstances, I believe, it comes from. So, agenda item is the executive -- I'm just trying to go through your issue. Agenda item would be the Executive Staff Report, for example, where the requested action maybe is the --

Commissioner Hayward: Yeah.

Chair Remke: -- is the first action.

Commissioner Hayward: Well, I'm just -- couldn't we just make item two sound a lot more like the specific circumstance we had? I mean, I -- I -- if I were the Attorney General's staff, and I looked at that, I'm not sure I would know what to make of it, because it's written at a fairly high level of abstraction, and so if Bagley can't violate -- if the Commission votes on an item -- because we're not sure if it's an agenda item, right? Where the item, I guess, is part of the Executive Staff Report that -- part of Executive Staff Report, and it covers other issues, and staff has proposed recommended action. And Commissioner, such as recommended position on

legislation or something like that. I mean, I think that would be less confusing to an outsider who doesn't know that we had this experience a couple months ago.

Chair Remke: So, yeah, it dials in a little bit more. So, on an agenda item where the proposed action is part of an Executive Staff Report that covers other issues and staff has proposed recommended action for the Commission, comma, such as a position on legislation? Okay.

Commissioner Hayward: Does anybody have a problem with that?

Chair Remke: I do not.

Commissioner Audero: I have a comment.

Chair Remke: Commissioner Audero?

Commissioner Audero: So, I don't think that this accurately reflects what happened, and if I think it -- and if what we're going to do is ask about what happened, I think we should tell all the facts, and what's missing here is that the Staff Report was not included in the agenda, but was only linked to the agenda, because I think there's case law specifically on that issue. So, I think that we have to add all the facts.

Commissioner Hayward: I don't have a problem with that. I'm just not -- it wasn't -- I guess my impression was that the problem -- the Bagley-Keene type problem we were having was that it wasn't broken out as a separate agenda item as has sometimes occurred in the past. So, there wasn't -- you know, item 14, position on SB 1, it was a staff report that had some -- let's say it -- controversial conclusions in it, or controversial advice in it that attracted a lot of attention. And we weren't sure that it was a matter that could be voted on, because it wasn't broken out in that fashion. I think if substantial compliance means anything, it means that, you know, when people have that notice, then it is fair game, but if people disagree with me, I'm not going to, you know, stand or fall on that. I just felt at the time and feel today that it was appropriate for us to vote on that, but anyway --

Chair Remke: I'm not sure, Commissioner Audero, what you're referring to, because the Legislative Report was part of the Executive Staff Report, which was on the agenda and produced. The Legislative Staff Report also often has links to actual bills, but the discussion and recommendation as to that issue in the past was within the report that we all had in front of us. I would also just comment the concern about setting out an exact fact pattern that occurred in the

30:00

past, because as I understand it, the AG will not issue an opinion as to past conduct.

Commissioner Audero: I have a comment.

Commissioner Hayward: I do, too.

Commissioner Audero: Okay, yeah.

Commissioner Hayward: On that real quick.

Sasha: Commissioner Hayward?

Commissioner Hayward: I think -- I fully agree that the AG doesn't want to pass judgment on things that have happened, but this is something that could happen again, and so I think we're asking about it perspectively, but the tighter I think we dial in the problem that we had, the less likely they are to say, you know, this is just way too vague and we have no idea what you're talking about, and so we can't answer it. I'm kind of trying to get at the balance from the other side.

Chair Remke: I agree. I have no problem with your suggested -- okay.

Sasha: Commissioner Audero?

Commissioner Audero: So, still I would like to know the answer to whether -- and I'm happy to make it as a third question. Does your answer change if the Staff Report is not attached to the agenda, but is only linked to the agenda? And then that way, you get -- you get the answer the way you want it. You get the question the way you prefer, and then -- and then we just put in another fact and see if then that changes. I have no problem with that. I mean, I'm not sure -- I'm not going to prejudge what I think the answer is, but yeah, sure, let's ask.

Chair Remke: Okay. So, are you going to write a third question?

Mr. Feser: Yes, this is John Feser. What's the direction on this at this point, because the process of the AG's opinion would be for a legal staff to prepare its analysis and provide the Attorney General -- or an internal analysis before passing it on. So, is this something that we will do at this step, and then at the next meeting, the Commission will take up that analysis and vote on whether we go forward? I'm just looking for some direction on this.

Chair Remke: Well, let's first -- can I just get a clarification? Are there any more questions or comments on the questions as proposed? So, let's just -- are we clear on what the questions are standing now or do we have any more modifications to the questions?

Commissioner Audero: I have some.

Chair Remke: Okay, so, you have more modifications, Commissioner Audero.

Commissioner Audero: Okay, so -- excuse me. In the first question, public communications to Commissioners -- I should say the second question in that -- in that section, one member is Bagley-Keene Act violated if, colon number two, one member of the public sends an email to five FPPC Commissioners? And one Commissioner responds in a reply, all email. I think we need to -- we can leave it like this, but I think that there are two types of responses, and I think the answer might be different. One is a substantive response to the issue, and the other one is a non-substantive, hey, I didn't get the attachment. Did anybody get it. And I think that the answer would be different, but doesn't matter to me. But I think that we should make that clarification.

Mr. Feser: Okay. And again, I think I articulated -- I think I articulated this last month as well, is that I'm hoping our analysis will provide some insight on this as well, and we may even be able to narrow these down further. So, we'll go through that process.

Commissioner Audero: Sure, sure.

Commissioner Hatch: Question. So, does that mean --

Chair Remke: Commissioner Hatch?

Commissioner Hatch: Does that mean you do it two different ways or just propose to modify that question?

Commissioner Audero: I don't care.

Mr. Feser: Either way, substantively, whether --

Commissioner Audero: I mean, yeah, make it 2A, 2B. I don't care.

Chair Remke: Or you could just address it in your analysis under different scenarios.

Commissioner Audero: Well, except that if we address it in the analysis and don't really pose the question to the AG, the AG might not answer the question.

Mr. Feser: It's fine. I think a freestanding question is fine.

Chair Remke: Any other --

Commissioner Hatch: Madam Chair, I actually -- I don't want to pick in on any of these. I have three more that I want to slip under the rug.

Chair Remke: Okay. Why don't you start?

Commissioner Hatch: Okay. I'll just read them, and then I got a copy for John here so

that he can -- didn't have to write it down. In light of Commission repeal of 18306, has the court case cited in footnote three of the AG opinion no longer to be relied on?

Commissioner Hayward: I think you're anticipating item number 21.

Commissioner Hatch: Oh, you're right. That's my bad, but I have another one that is Bagley-Keene here. I mixed them together. I'm sorry. Is the Bagley-Keene Act violated when there is a discussion of an issue among three or more Commissioners which takes place outside of a public meeting and which subject is not anticipated to be scheduled for a hearing in the foreseeable future? And the third question which I think is -- is Bagley-Keene, are adoption of policies that, quote, deal exclusively with internal management matters, unquote, subject to the notice or public -- is it subject to the notice or public hearing requirements of Bagley-Keene, question mark.

Chair Remke: Wait, you had two or three?

Commissioner Hatch: It was just two.

Chair Remke: Okay, two.

Commissioner Hatch: The last two.

Chair Remke: Okay.

Commissioner Audero: And then I have a couple more.

Chair Remke: Okay, so, you got those -- you -- does anyone have any comments or concerns regarding the two that Commissioner Hatch just proposed? Okay, Commissioner Audero?

Commissioner Audero: Thank you. So, in -- on the second page in Commission subcommittees, third party communications where the question is, is the Bagley-Keene Act violated if two Commissioners who serve as the only members of an FPPC subcommittee, comma, without posting an agenda or public notice, colon, I would add, five, interview a third Commissioner, because I -- and I -- I don't know how to -- and I -- I -- I'm aiming specifically at this subcommittee that has been created, and it's going to come to us, as I understand it, with a recommendation. But that -- does that recommendation include the thoughts of those Commissioners who are not in the subcommittee, and how do we go about getting our thoughts to that subcommittee without violating Bagley-Keene.

Chair Remke: Sure, we can add it, but I am assuming, and maybe someone from the

subcommittee could answer that. My understanding was that the recommendations would come to the full Commission for thoughts, contributions, and are issues and recommendations as to it, and that's when the full discussion would occur.

Commissioner Hayward: That would be my thought, too.

Commissioner Hatch: Well, to seek public input as well.

Chair Remke: Of course, but I'm saying that would be our opportunity for the other Commissioners to comment on what the recommendations are, concerns or issues are. But if you want to have the opportunity to speak separately with them, I guess we could put that question down.

Commissioner Audero: I don't necessarily need to speak separately. I just want to make sure that somebody doesn't point a finger and say that Bagley-Keene has been violated, but I do want an opportunity to contribute to that discussion. So, that's all. That's all. I mean, however -- if -- if we already have a method through which we're going to do that, that's perfectly fine. I just don't want to be precluded from contributing to that conversation and just being limited to adopting a recommendation that doesn't take into account the thoughts of the other Commissioners. That's all.

Mr. Feser: Okay.

Commissioner Audero: And then can I move on to my next question?

Chair Remke: Yes.

Commissioner Audero: So, then the other revision that I would make is on the notice agenda requirements, substantial compliance. The first question, so is Bagley-Keene Act violated if the Commission votes on an agenda item where, number one, the agenda states only that the matter will be discussed, not specifically that the Commission would take any action on the item. I would like to add or create a separate question that adds the -- but the agenda contains the statement at the top of the agenda that all of our agendas have contained, the Commission may take action on any item listed on the agenda.

Mr. Feser: Okay.

Commissioner Audero: I don't know if that comes as a separate question or however.

Mr. Feser: Sure. One way -- I think it probably is a separate question.

Commissioner Audero: That's fine.

Mr. Feser: So, we'll go ahead and add that.

Commissioner Audero: Okay, thank you.

Chair Remke: Any additional, Commissioner Audero, from you?

Commissioner Audero: No, thank you.

Chair Remke: Any other Commissioners? Okay, so, now back to the process, I believe, was your question.

Mr. Feser: Oh, you want to go back to that. Okay, yeah, so --

Chair Remke: I think -- so, I think this is the scope of the questions as I understand it as amended today and the issue being that you've laid out to us before that the legal division would now have to do their analysis on these questions and recommendations or advice would be as to each of these questions flushed out. That is then what, if we vote to, would be sent to the AG; is that correct?

Mr. Feser: That's correct.

Chair Remke: So, I guess the thing -- the question is do the Commissioners want to pursue this and have the Legal Division flushed out the answers to these questions, which they would then bring back to us and we can vote to send it to the AG for a formal opinion.

Commissioner Hayward: I do.

Chair Remke: That's still the process we're going down. Okay, so, that is what we'll do. So, I don't know how long -- sorry. Yes.

Commissioner Cardenas: I need to be --

Chair Remke: Yes, Commissioner, sorry.

Commissioner Cardenas: How long might it take before we get an answer from the Attorney General's Office?

Mr. Feser: Well, my understanding is that could last quite a while, upwards of two years, plus -- it's kind of like asking for -- how long does it take for an appellate court to get back to you. That's my understanding, is they're really backlogged, and it's taking a lot of time to get the -- to get these opinions.

Chair Remke: Which is probably partly why they have the agencies do their first own analysis to have some working document or understanding while we wait is my guess.

Mr. Feser: Yes, and I do suspect that our analysis will come up with some -- some answers

and we can narrow this down, but we'll see.

Commissioner Audero: I have a question.

Mr. Feser: Yes.

Chair Remke: Commissioner Audero?

Commissioner Audero: Are you, Madam Chair, suggesting that we then can rely on that working document while we wait and use that as the advice that as -- was phrased last time, provides some kind of immunity?

Chair Remke: Well, I don't know if it does -- I -- so, what's the question?

Commissioner Audero: So, are you suggesting that we can rely on that advice while we wait? You said that you suspected that -- I don't remember your exact words, but -- and you can repeat them if you'd like, but I thought I understood you to say that -- that you suspected that that's why the AG requires that we provide our own analysis, so -- so that it can be used in the -- I think you said in the time while we wait for an answer from the AG.

Chair Remke: My thought is that it is a good first step regardless. If we, as an agency, have questions about how we function, we should turn to our legal division and say, you know, is this within the realm? All our legal division is doing is providing their recommendation and best advice under the law. I believe it is our individual duty and obligation to follow the law to the best of our ability, relying, obviously, in good faith on the advice we're giving. But as we've seen here in this Commission, we don't always agree with the advice we're given. So, all I can say is I think it's a good first step to flush out some of these issues, and if we disagree, I guess that can be stated on the record. I don't think the legal division drafting a memo on questions we have for the AG would provide immunity, but again, I'm not sure what the concern about immunity is. I don't believe there's ever been a Bagley-Keene violation, criminal prosecution that I am aware of. So, again, I think with all of this, we are trying to follow best practices, I would say, and I would think that getting legal advice from our own agency is a first step, and then we can have discussions whether or not we agree with those determinations.

Commissioner Hayward: Madam Chair.

Chair Remke: Commissioner Hayward.

Commissioner Hayward: I think what it does do is to the extent that personal liability is hinged on intentional violations of Bagley-Keene and we've been told that something is not a

violation, we can't be intentionally violated. I think that's it. I mean, and you're right -- you're right about the absence of Bagley-Keene. I'm not really afraid that the Sheriff is going to come after me. What I am afraid of is that somebody is going to say in the press that something that was done was improper when it wasn't, and that's -- you know, erodes the -- the -- the respect people have for the Commission and is something that we should be vigilant against. So, that's all.

Mr. Feser: Yes, and if I may, our analysis may provide some answers, but that doesn't preclude you from still bringing the question up to the Attorney General for opinion. So, it just - - do you want to wait for two years? As a practical matter --

Commissioner Hatch: We discussed this at the last --

Chair Remke: Commissioner Hatch?

Commissioner Hatch: Excuse me, and I think I got a pretty clear answer from you folks that we're just pacifying ourselves, that we can't rely on it to be respected by, you know, those who enforce the Bagley-Keene Act. So, it's an exercise that you can go through, but it should not delay the effort to seek the advice of the Attorney General. That's what I learned from you guys the last time, and I don't want us to get, like, up the wrong tree and waste, say, six months while we're not in the cue at the Attorney General's Office.

Mr. Feser: Right. I think it's just complying with the requirement of the process. That's all, and in the meantime, providing assistance to the Commission, and again, not necessarily precluding whether or not we have an answer, bringing it up to the AG, so --

Chair Remke: Okay, so, with that, legal division will work out the analysis and bring that back at its earliest convenience once its developed a number of questions. And I'm sure it's going to take some time, but I think you appreciate that everyone wants this to move quickly, so we'll get it back as quickly as we can.

Mr. Feser: It's not going to be the aforementioned six months, but --

Chair Remke: Less than six months.

Mr. Feser: Yes.

Chair Remke: That's the deal. Okay.

21. Compensation for Commissioners. Staff: John Feser, Senior Counsel, Legal Division. Government Code section 83106, which governs compensation for Commission members, authorizes per diem compensation only for travel to and from and attendance at Commission meetings and hearings. Compensation for all other activities is authorized only by a clearly articulated policy that identifies permissible activities. The Commission has never adopted a formal policy. Issues to discuss include the general rule on compensation, the current two-day cap on per diem compensation, compensation for Commissioners who serve on a subcommittee, pro-rata compensation, and whether the Commission should adopt a formal policy.

Staff Memo

Chair Remke: Item 21 is regarding the compensation for Commission members, and again, Commissioner Hayward, I will ask you to go ahead and take the lead, as you requested this item.

Commissioner Hayward: Thank you. Okay, this item came about, in my cognizance, anyway, on the occasion of receiving a W2 and coming to the realization that although I had been filling out timesheets since my presence here on the Commission, I, in fact, was not being compensated according to timesheets. This was news, because our manual sets forth a process for Commissioner compensation. That manual, apparently, had not been -- been followed. I don't know for how long. I know, anecdotally, through this other governance project, that the process set forth in the manual had been used at various points in the past, but there seems to be a lot of ambiguity. So, I guess I want to turn it over to Mr. Feser to talk to -- and -- and Mr. Woodside to talk to us about what you found, and then I'll have more to say once you've done your bit.

Mr. Feser: Thank you, Commissioner. Well, just a little history. The -- there was an Attorney General opinion published in 1977 to the FPPC. You couldn't get more on point. It was from this agency to the AG, and they answered it, and so that's provided a lot of guidance. It's with the documents you have, very comprehensive, very helpful. In 1977, later the same year, our agency adopted a regulation in accordance with the AG opinion. In 1983, it was repealed, and the only stated grounds for repeal was internal management. From 1983 to the present, there is no formal policy, and it's hard to pin down, as set forth in the memorandum, what the policies have been since then. So, it seems to be some sort of informal policy, and today, we have the informal policy of the -- one day for travel, one day for a Commission

meeting per diem compensation, not -- not including expenses. So, I don't know if you want me to go further in terms of the next step or my thoughts on --

Commissioner Hayward: Yes -- yeah -- no, say your bit.

Mr. Feser: Well, the requirement in the AG opinion really hinges on -- well, let's just start off with the -- the -- the statute, Governor McCody (phonetic) 3106. The pertinent part is each remaining member, so not the Chair, but every other remaining member, shall be compensated at the rate of one hundred dollars for each day on which he engages in official duties. So, that's the statutory mandate. Compensation must be made. The legislature has spoken. That must be followed. So, you have the Attorney General's opinion, which states that, essentially, what is the scope of that? Can you, you know, have lunch with the Commissioner? Is that compensable, that sort of thing. And they said that official duties constitutes traveling to and from and attending a meeting, and anything outside of that would have to be defined specifically and clearly articulated by the Commission itself. So, for whatever reason, that hasn't been done. There was an attempt to do so, and then it was repealed, and then it's turned into some sort of internal informal policy. I think without going into the details of the footnote three, that the APA rule-making requirement is -- there's an exception that applies, possibly two, and the Commission is not subject to that. And therefore, a formal internal policy could be adopted.

Commissioner Hayward: But we don't need to put it in the regs.

Mr. Feser: No.

Commissioner Hayward: Okay. Why, in 1977, did the AG think we should do you think?

Mr. Feser: Well --

Commissioner Hayward: I mean, I know you're not psychic, but --

Mr. Feser: The state of the -- it was the state of the law at the time, and then there was a -- a sort of a seminal case called Tidwater (phonetic) on the issue, and it defined what a regulation is, and in effect, when -- when -- when a regulation has a general application, it's going to be a regulation that's subject to the APA. When it doesn't, when it involves, you know, individuals or a small group of individuals, the exception applies. And so what's now Government Code 11340.9. subdivision I, states this chapter does not apply to any of the following, and this is the exception, a regulation that is directed to a specifically-named person which would group a person's and does not apply generally throughout the state. I think that includes the five

Commissioners up here -- or the five seats up here. And the exception applies, and therefore, internal formal policy would be warranted.

Commissioner Hayward: All right, then. I would note that we've got before us a memo about the repeal, a memo with the text of the reg when it was adopted, the Attorney General's opinion, of course, and then an email from Ann Ravel from November 17th, 2011, which just happens to be my birthday. But be that as it may, you know, her email reflects, I think, what -- what you're saying, is that there seems to be a certain vaguery in -- in the -- in what the rule was and that she, because of, you know, the very dire financial situation that the -- that the Commission was in right then was -- was proposing a way of saving some money. Did you find any other emails or internal documents?

Mr. Feser: No. Legal looked into -- into all our -- our records and couldn't find anything other than this email.

Commissioner Hayward: Okay. So, we've got an email from Commissioner Ravel that -- actually, what I'm looking at is something with Penny Conroy's name on it that's an email from Tina Bass to some other people,

Chair Remke: administrative people.

Commissioner Hayward: Perfect. That was my question.

Commissioner Hayward: So -- which I guess is a way of that policy now being -- coming -- the policy that everyone is using. We're telling the admin people that's what we're going to do. Okay. So, there are no other emails from around that time that you can find?

Mr. Feser: No.

Commissioner Hayward: Back and forth, nobody -- because I -- knowing at least two of those Commissioners, I would think that at least one of them would have had at least one of them would have had some harsh words. But be that as it may, it doesn't really matter. So, I guess -- I guess the vaguery of all this is really what troubles me. It seems to me that this is the kind of thing that state auditors lick their chops over. We're spending public money, and we've got, you know, a standard imprint that, apparently, is obsolete. We've got a practice that just -- I'll just stipulate for the sake of argument is been consistent for the last -- since 2011. And that really isn't a very good way of doing this. Moreover, I just -- personally, I'm a little ticked that I -- I've been filling out sheets with a lot of detail about how I spend my time, thinking -- it was

compensable, because there was a written policy that I thought was an act that said that that was compensatable time. And if the concern is that I might be abusing my office here to make 12.50 an hour for hours I haven't been working, then I am happy to remind people that all this stuff is subject to the Public Records Act, and anybody in the public who thinks I might be guilting my lilly a bit too -- you know, unprofessionally, can go and look at my timesheets. I -- I brought one today. At the break, you want to see what my timesheet looks like, but no one thought to pick up the phone or write me an email to say, you know, what you're doing isn't something that we -- we don't need this. We're only going to give you two days' worth. You're only going to get your two hundred dollars minus whatever it is that comes up to 190.25 for a month. And I'm ticked off by that. I think -- I think people knew that I had a misunderstanding there and were not particularly interested in clarifying that for me. Now, I also have a proposal, but maybe I'll wait until after other Commissioners have had the opportunity to talk on this before I make my proposal.

Chair Remke: Commissioners?

Commissioner Hatch: Yes.

Chair Remke: Commissioner Hatch?

Commissioner Hatch: I have some questions, Mr. Feser. I'm a little concerned that research was done on this, is a little thin in the staff report. I want to ask you a series of questions here. First one is, did you examine the rule-making file per rationale for the repeal of 18306?

Mr. Feser: I did, Commissioner, and unfortunately, the only stated reason -- there's no memo in the file. The only stated reason was the internal management exception that was asserted.

Commissioner Hatch: Did you examine the records for any policy that would have been - - would have likely been adopted by the Commission within the months before or after the Commission repealed 18306?

Mr. Feser: No. I mean, there wasn't any. There were not. Other than any -- any discussion - -

Commissioner Hatch: And would you say -- careful that there wasn't any. You didn't find any, but there may have been.

Mr. Feser: Well, of course, there may have been.

Commissioner Hatch: And this is a -- this is a record-keeping issue, and it seems like a lot of records are just not available. Did you search the minutes of that September 8th meeting where they repealed 18306 to see if there was -- that would explain -- excuse me -- directly -- excuse me -- for any discussion that would explain why the Commission repealed that provision, 18306?

Mr. Feser: No, I didn't look at the minutes. I didn't look for the minutes. I didn't search for them.

Commissioner Hatch: You say you didn't search for them?

Mr. Feser: No.

Commissioner Hatch: Okay. Any reason why you wouldn't do that as a part of your due diligence?

Chair Remke: Well, they are archives. We could go to archives and see if we can -- the California State Archives now, the minutes.

Commissioner Hatch: Do we turn them all over to the Secretary of State? Okay, that's -- but they're supposed to still be available for us to look at and review, because it -- you know, I know that the Chair of the Commission at the time was a -- a skilled lawyer. Many of the members of the Commission were -- were lawyers, and I just don't believe that they would do such an irresponsible thing as to repeal this thing and not leave something in its place, whether it was, you know, a memo that was ratified by the Commission or the Executive Director wrote the memo for them under their instructions or whether the Chair made a decree on their behalf between meetings. There's something happened there.

Mr. Feser: Right, I understand, but it's sort of circumstantially just a -- I'm sorry, Commissioner. Go ahead. Just circumstantially, the Anne Ravel email, even if there was some sort of policy after 1983, by 2011, it wasn't being followed. So, I couldn't find anything. I will look to the -- to the minutes, but I couldn't find anything.

Commissioner Hatch: Okay. I got another one. Do you believe that Reg 83106, as it was adopted before it was repealed, met the requirements that the AG laid out in the opinion as to whether or not -- and I'm speaking -- I should clarify that. I'm talking as it applies to the preparing for meetings provision that's in 83106. Is it clearly articulated? Do you think it meets the Attorney General's --

Mr. Feser: 18306?

Commissioner Hatch: Yeah, the regulation that was repealed --

Mr. Feser: The regulation.

1:00:00

Commissioner Hatch: -- while it was still alive.

Mr. Feser: I'm sorry, I haven't done that analysis. Just in my cursory, you know, review of it, it appeared to follow -- I mean, we're talking about a document -- a regulation that was adopted right after --

Commissioner Hatch: Right, but -- but you supplied it.

Mr. Feser: -- right after the AG opinion.

Commissioner Hatch: Applies to the whole thing. I mean, you know, the AG opinion.

Mr. Feser: Correct.

Commissioner Hatch: Along with your analysis, and I think you -- the actual 83106, you also attached a -- a copy of that, right? I mean, you read this stuff, right?

Mr. Feser: 18306?

Commissioner Hatch: Yeah.

Mr. Feser: Yes.

Commissioner Hatch: Okay.

Mr. Feser: Whether it complied with Attorney General's --

Commissioner Hatch: Yeah, do you think it meets the clearly articulated standard that the Attorney General laid out?

Mr. Feser: I would have to take a look at it. I mean, if you want me to look at it, I -- I can do that.

Commissioner Hatch: Okay.

Mr. Feser: I mean, I'd be surprised if it didn't. We're talking about the same year that the opinion was published. So, it pretty directly applies to this agency, so --

Commissioner Hatch: Yeah, it kind of looked to me like that that opinion was framed around something they intended to adopt, and they wanted to make sure that they got it right before they adopted it. So, they waited until they got the opinion, and then bang, they adopted that -- that reg absent a better explanation or an appearance from some of these former Chairs that are beyond our reach. I don't know. Then I wanted you -- to know if you had compared the

language in that regulation as it relates to preparation for meetings to the language that's been in the governance principles since 2001 on that same subject. And just so that you don't have to look too hard, it's Provision C2 under the duties of the Commission.

Mr. Feser: No, I didn't do that.

Commissioner Hatch: Okay. I did. They are virtually the same.

Mr. Feser: Correct, and if I may --

Commissioner Hatch: And so -- and so -- and this goes to some of the flat statements in your analysis. It says there is none or I can't find it or it may not exist.

Mr. Feser: Well, hold on. Let's -- we're using pronouns. What I mean by it, I'm -- I'm referring to a formal policy, not just some piece of paper floating around.

Commissioner Hatch: I think you made a -- you made the reference that it -- the one that would meet this standard didn't exist.

Mr. Feser: No, a policy didn't exist. No policy, no formal policy. You have a regulation. Then you don't have anything after --

Commissioner Hatch: When you say formal -- let's make sure we get our terms agreed. Does that mean a regulation? I thought earlier you said no.

Mr. Feser: Well, obviously, a regulation is a formal policy. I'm talking about a formal internal policy by the FPPC where all the Commissioners consider it and vote on it and write it -- and -- and make a written document.

Commissioner Hatch: Right, and then could be lost, even though it's formally done.

Mr. Feser: Sure.

Commissioner Hatch: Okay. Well, giving you some food for thought on that. I got to tell you that as I read this, I read this -- this analysis probably eight or nine times, compared it to the Attorney General's opinion subject area by subject area, and I was appalled. I was. There are numerous misleading statements in that memo, which makes me feel compelled to at least bring a sampling of those statements to the attention of the Commission here, the rest of -- although I -- I can't talk to them in private. Certainly, I can talk to them now. On page one, in the third paragraph of -- of the staff memo, it is asserted that, quote, "Participation in the work of the subcommittee would not be considered," quote, "official duties", unquote, "unless the Commission adopted an authorizing policy whereas conclusion" -- oh, excuse -- "whereas

conclusion number one of the AG opinion places attendance of Committee meetings on par with the Commission meetings, where there is no policy need be adopted for that to be the case."

Chair Remke: Can you repeat where you are reading from? I'm lost.

Commissioner Hatch: I said on page one --

Chair Remke: Page one of the memo?

Commissioner Hatch: -- third paragraph of the memo. Yes, the FPPC memo. One, two, three. So, within that third paragraph -- got to keep close to the microphone here. That's where the clearly articulated policy reference is made, and also, it says that preparation work for the Commission meetings -- and it puts it on par with participation -- excuse me -- it adds to that at the tail end, participation in the work of a subcommittee. It's saying that in effect, you have to adopt a clearly stated articulated policy that meets the test that they laid out here. Well, that's not the case. If you look at the AG's opinion, that other document that was attached, page two of that, in conclusion one, that's on page two, the top of page two nearly, it says, "A member of the Commission is entitled to compensation for attendance at regular, special, or Committee meetings and hearings conducted by the Commission." That's self-executing. It's in the same class as Commission meetings themselves. That's indisputable, and yet your advice said it's got to be only handled as a result of that -- how was it -- well-articulated policy.

Mr. Feser: Commissioner Hatch, if I may? If you take a look at page six, paragraph one, it addresses this. It says that, yes, Committee work is compensable, but it is not an official duty by statute, statutory interpretation, that the Commission must adopt that policy that compensates the Committee.

Commissioner Hatch: No, actually, within --

Mr. Feser: Well, it's right there. So, you can --

Commissioner Hatch: Within this analysis by the Attorney General, it says, "If the Commission were to create a Committee, it would then" -- "participation in that Committee would stand in the same place without adopting a policy."

Chair Remke: Where are you reading from the AG's opinion so I can follow?

Commissioner Hayward: Top of page six.

Commissioner Hatch: Top of page six of the Attorney General's opinion. "If the Commission were to establish Committees of its members to study an issue or problems related

to its powers, duties, or authority and to report back the information and findings thereon, such action would not be considered arbitrary, and the members would be entitled to the compensation and reimbursement allowed by Section 83106 for participation in the work of the Committee."

Mr. Feser: Correct, and then --

Commissioner Hatch: Literally the same language that you say, in fact, is -- can only be done if it's pursuant to this well-articulated policy.

Mr. Feser: No, I think that --

Commissioner Hatch: They're -- they're --

Mr. Feser: If it's saying --

Commissioner Hatch: -- completely inapposite.

Mr. Feser: No. I think the -- this is referring to -- it would not be arbitrary, and therefore, it's certainly within the official duties, but it doesn't -- it's not -- I mean, if you read the prior page, is it --

Commissioner Hatch: Where they're --

Mr. Feser: What -- what -- what the --

Commissioner Hatch: What they're saying is in all cases, you participate in the Commission. That's what we do, but that if the Commission creates a Committee, then it stands in the same place as the Commission meeting itself. And that's without us adopting a policy.

Mr. Feser: It would not be arbitrary to provide compensation, and they would be entitled to it, because that is, by definition --

Commissioner Hatch: Without --

Mr. Feser: -- official duty.

Commissioner Hatch: Right.

Mr. Feser: A decision-making duty of the Commission --

Commissioner Hatch: Not the act of creating a policy, but the act of creating a Committee executes that by itself. I think we kind of wore that one out. I'll move on to the next one if you like. We can disagree, but to me --

Chair Remke: Okay -- okay, what is your next one?

Commissioner Hatch: It's a misdirection. Also on that same page, page one, in the same

1:10:00

third paragraph --

Chair Remke: Of the memo or the AG --

Commissioner Hatch: Of the memo. Isn't this fun? You know, when you get to the place where you don't trust what you're reading, it forces you to spend a lot more time on this stuff, and then to add insult to injury, we're not even going to get the minimum wage to do that. And it's almost like just come to meetings, do the voting, and leave. We don't want you to figure it out.

Mr. Feser: If I may, Commissioner Hatch, I'm simply providing the analysis based on the law.

Commissioner Hatch: All right.

Mr. Feser: I -- I said right up front the statute requires a compensation, and the formal policy by the Commission would enable you to do that. That's it.

Commissioner Hatch: Right, and I posit that the language that's been in there since 2001 is virtually identical to the language that was adopted in 18306 as it relates to doing the -- the reading of the materials and what not in preparation for the -- the meetings.

Mr. Feser: Right.

Commissioner Hatch: Okay, picking up where I left off, all the -- it's implied that compensation for preparation of the Commission meetings is theoretically possible when the AG opinion acknowledges that the Commission has already required, since its inception, agenda material to be supplied in advance and preparation work be done prior to meetings since the -- since the inception in 1975. He acknowledges that in his opinion, and he believed that it meant the test for compensating for that work and that context. There is also anecdotal evidence that since the adoption of Regulation 18306, the same policy has largely been followed by the Commission up until 2014, except for a very brief period in 2011-12 fiscal year because of an extreme budget shortfall issue that the Commission faced. But that was fixed, and they went back to the original way they were -- the previous way they were handling these things. On page two, in the second paragraph of the analysis, the Staff Report, the Commission's practice has been -- excuse me -- excuse me -- it was asserted that, quote, "For at least the past six years, the Commission's practice" -- it doesn't say policy. It says practice. Took me a while to pick up on the nuance -- "has been to reimburse Commission members up to a maximum of two days per month, including any travel expenses." I think they meant travel time, but nonetheless -- or in

that -- because travel expenses doesn't really -- that's a whole different category, reimbursement of travel expenses. It's just factually incorrect. Prior to the Remke era, there was only one brief period, again, during that 2012 -- 2011-2012 fiscal year where an emergency practice was to reimburse one day for the meeting and one day for preparation, but no reimbursement for travel time; however, up to three additional days of preparation time would be reimbursed if approved in advance by the Chair. This is the -- what I call the -- the Ravel email. So, our policy, maybe similar, is not the same. So, where do you get the six years? You have to count the Ravel period to get to six years. It's -- it's a nuance thing that kind of like --

Mr. Feser: Well, 18 minus 11 is seven, so let's say seven.

Commissioner Hatch: Pardon?

Mr. Feser: Seven years. 2011 was the Ravel email, correct?

Commissioner Hatch: Right, late in the year, yeah.

Mr. Feser: Yeah, this will be seven years.

Commissioner Hatch: About three-and-a-half years.

Mr. Feser: That's what it's referring to.

Commissioner Hatch: And -- but the period that that Ravel memo was in effect was -- I'm looking at maybe six months maximum.

Chair Remke: I could shed some light on it if you cared.

Commissioner Hatch: Will you, Chair, then?

Chair Remke: Sure. Since you discussed the Remke era.

Commissioner Hatch: I'm talking about the Ravel era at this point.

Chair Remke: I know. I'm going to bring back to that. So, when I started in 2014, and my understanding, long prior to that, Commissioners' requests for per diem are submitted to the admin office, and they do it pursuant to a standard practice they had been following. I never heard of or knew there was an issue about this until August 2017 when it was disputed, and I asked admin what was the issue or what was the problem and what was the practice. And at that point, I was told that the longstanding practice was two days, and that had worked successfully, and that is what they gave maximum. And no one had request anything over it, and it became just pretty much the standard up to two days. And in fact, there had been no objection complaints of that. So, when I was -- let me -- and prior -- and prior. That gets you to the Ravel

time. Since this 2011, my understanding is through admin, looking back at the records, since that 2011 email, no one has received more than two days is my understanding.

Commissioner Hatch: That would be an incorrect understanding.

Chair Remke: Oh, okay. You have different information that I don't have, then.

Commissioner Hatch: Yes, I do.

Chair Remke: Okay. Well, that's what was told to me. Then this became a bigger issue over disputes of payment and having had legal look into it as I said I would, we came up with the AG's opinion and looked further for any kind of formal policy or the like. Having found none, as I stated, I thought the most prudent and legally sound position was to stick to the two days maximum stated in the AG's opinion, because we had no other formal policy or at least policies had been changing over time with inconsistent approaches, which I think is --

Commissioner Hatch: Didn't really mean the AG opinion. Did you mean something else?

Chair Remke: No, I meant the AG opinion.

Commissioner Hatch: Because your policy -- or the policy in your era is directly in -- in opposition to what the AG opinion says.

Chair Remke: Are you speaking to the policy in the Commission manual?

Commissioner Hatch: No, at this point, no, I'm not. That's another issue. The AG's opinion says in, I believe, Conclusion 4A on page two, if I can -- I can't even find it now. It's buried in some of this crap. Here -- okay, thank you, 4A.

Chair Remke: Page four on the AG's opinion?

Commissioner Hatch: No, page two.

Chair Remke: Of the AG's opinion.

Commissioner Hatch: Of the AG's opinion, Conclusion 4A, and it says, "Assuming the Commission authorizes preparation activity, it may not impose a maximum monthly amount compensation for the members' preparation for meetings and hearings." It goes on to say you have other alternatives, but what you were, and still today are imposing is directly in opposition to the advice given by the Attorney General back in 1977.

Chair Remke: The --

Mr. Feser: If I --

Chair Remke: The -- I'm -- I'm not sure how I -- the AG's opinion clearly states people

are entitled to a day to attend the hearing and a day of travel. It also discusses this notion that -- but neither the hearing nor the day to travel --

Commissioner Hatch: I would ask --

Chair Remke: Let me finish, please.

Commissioner Hatch: -- you to do what you did before --

Chair Remke: If -- would you let me --

Commissioner Hatch: -- produce it.

Chair Remke: Can I please finish my thoughts before you interrupt me, because I really do think we're just trying to get out to where we're at, and I would hope at some point --

Commissioner Hatch: Quite frankly, Madam Chair --

Chair Remke: Let me finish.

Commissioner Hatch: -- you interrupted me in the first place, and I'm just trying to reassert my schedule remarks.

Chair Remke: Okay, if I interrupted you, by all means, continue. If you don't want to hear the explanation, I'm fine with that.

Mr. Feser: Commissioner Hatch, if I may, could I bring your attention to something on the last matter you raised? The -- the -- the most important part of this opinion is page five, the last two sentences. That sums it up.

Commissioner Hatch: Page five.

Mr. Feser: Starting with, "In accordance with the rule of strict construction."

Commissioner Hatch: Right, this is a Worker's Compensation ranking. So, are you in the last paragraph on the page?

Mr. Feser: Page five, correct. "In accordance with the rule of strict construction."

Commissioner Hatch: Oh, that's page four. I apologize.

Mr. Feser: "The phrase 'official duties' does not include activities of a member other than attendance at and travel to and from meetings and hearings conducted by the Commission itself unless there is a clearly articulated policy adopted by the Commission authorizing such activity. Thus, members of the Commission may receive compensation only for attendance at and travel to and from meetings and hearings of the Commission unless other activities are authorized by the Commission within the scope of its authority."

Commissioner Hatch: Right, but elsewhere, and -- and directly -- and this was the other point about the Committee meetings, that he clearly states in -- I think it's Conclusion 1, that this -- the Committee meeting, if you create a Committee, stands in the same place as the Commission meeting itself. That means just what you're talking about. You don't need an articulated policy for that. That one is a statutory requirement that we attend the meetings and we get here to attend the meetings. Those are the two things -- I don't disagree with you on that. I disagree with these other weird things that end up being directly opposed to what the Attorney General advised us. The Attorney General, you're right, says you got to have a clearly articulated policy to do the other two categories. One is preparing for the meeting. You need to show that you required them to do the -- the preparation work, and then the third category about going on junkets, he says, is pretty hard to defend those at all. He wasn't much help on that, but yet if you put it to someone else to approve it, like the example he gave where the Governor would call a meeting, then, you know, it would be considered not self-serving, in effect. So, in -- in the analysis, it implies that if you do a Committee, you got to do this -- this clearly articulated policy that's formally adopted, and I can't find the evidence that that has ever happened. Well, in fact, there are places with respect only to the policy of reimbursing or not reimbursing -- compensating for time spent in preparation. The regulation that was repealed with reference to that one issue used virtually the same language as the governance principles, provision that requires us to prepare and go to the meetings. I'm euphemizing here, because it would take me more fine time to get back to where that is. And so in two different cases here, you're doing this. The AG is saying this. You're saying something else, and we're supposed to be relying on what you're telling us to be true so that we can make decisions here, and I'm just saying we're being misled by that, and I'm just pointing it out. I'm not saying you intentionally misled us, but nonetheless, you misled us.

Mr. Feser: All right, I think what's needed, Commissioner, is -- is -- what's missing here is the formal policy aspect of it, which the AG opinion requires.

Commissioner Hatch: Certain things require formal policy. Others do not. We went through that, okay? I don't disagree with you on the policy of -- with respect to reimbursement for the -- the time spent preparing, but we did adopt a formal policy, and we've had much to do about this governance principles, the thing that we're now doing a review process on, and it uses

the same language, and it was formally adopted, and it's not lost. You know, it's -- it's ensconced in the handbook that every Commissioner gets, and yet we -- it's like the Lady Liberty. We still don't see it.

Mr. Feser: I think the -- if I'm not mistaken, the per diem conversation provisions, they are in the manual and not the -- not the governance principles.

Commissioner Hatch: No. Try it again. The governance principles specifically requires of Commission members that they prepare for -- now I'm too close -- they prepare for and --

Chair Remke: Now we're going to --

Commissioner Hatch: -- come to the meeting and -- and do the work, both of those. And if you compare that language and the governance principles to the language was -- was in the repealed regulation, that language to prepare it for is identical. It's no more sophisticated. It's no more -- what do you call it, clearly articulated, one over the other. They're virtually the same. So, why can't we find that we have been for a long period of time that certainly spans all of our tenure. There has been a clearly articulated policy, but yet whoever you want to -- triggered this to has decided that we have a -- a hard cap on what can be compensated, and that hard cap is clearly in opposition to what the Attorney General, in writing, gave us in his opinion. Okay, so, it's like somebody's not being straight someplace. This is -- this smells bad, and it took me months to get to the place, because I kept getting those, like, non-answer things, and I -- I say, well, am I filling the form out wrong? Should I label it differently? Am I supposed to call it something else? And you kept getting the no, no, no, no, but yet it never changed. I think as Allison said earlier, it's always the same dollars and sense from one month to the next regardless of how much effort or how little effort you put into it, and, you know, I'm not going to get rich off this one way or the other, but it is an insult to my integrity and to my drive and my search for the truth and to get things done properly. And I'm a bit obsessive about it, but nonetheless, this is not -- this product is not giving us an unbiased view, at least certainly it -- it came out that way, whether it was intended or not. And I'm just trying to point out some of the examples of how it -- it just is not something I could rely on.

Mr. Feser: Okay.

Commissioner Hatch: And I'm --

Mr. Feser: If I may, Commissioner Hatch, there's no agenda on my part. I mean, I --

Commissioner Hatch: No, I said --

Mr. Feser: -- I don't have an agenda.

Commissioner Hatch: I don't attribute it to an agenda on your part. I just say it -- it --

Mr. Feser: This is a road map to -- to -- for you to do what you want to do.

Commissioner Hatch: But it's not really a road map, because it -- it -- it sort of gives us the erroneous impression of what the Attorney General said --

Mr. Feser: Okay.

Commissioner Hatch: -- in the context of --

Mr. Feser: If I may, with regard to --

Commissioner Hatch: (crosstalk) went away and decide whether or not we're going to do something.

Mr. Feser: If the word preparation for that -- that phrase is in the governance principles, that's what the entire AG opinion is about. It's about all of that preparation has -- that preparation activity has to be clearly articulated in what that is. It cannot just be a blanket statement.

Commissioner Hatch: My point is it's articulated just as clear in the governance principles as it was in the regulation that was later repealed. The phrasing is virtually identical, and there's no additional detail or nuance in the -- in the -- in the regulation than there is in the governance principles on that subject matter, okay? Now, you can argue there's all kinds of other stuff in there that has nothing to do with what I'm talking about, but the fact remains AG was clear. If you allow it, you can't cap it artificially, and if you do it, you got to clearly articulate it. And the regulation that was proposed and adopted used virtually the same language as the governance principles picked -- I assure you that the governance principles incorporated that language probably picking it up from what's been going -- floating around since the regulation was repealed.

Mr. Feser: Right.

Commissioner Hatch: How else does it end up being at the same?

Mr. Feser: I think we're getting involved in some minutia here. The only thing is --

Commissioner Hatch: It's not minutia. This is --

Mr. Feser: No, because I think what it comes down to is a formal policy required, and that's it.

Commissioner Hatch: No.

Mr. Feser: The details of what constitutes preparation activity, that is not for me to decide. Now, if you want me to investigate that, I will, but the Commission decides --

1:30:00

Commissioner Hatch: I just want you to be a little more careful with this stuff, because I'm no genius, but I found that, you know, and it's like right there in plain sight, and it's very clear. What was Commissioner -- oh, shit, I lost my -- Commissioner Ravel, in her desperation, she violated the -- the letter and the spirit of the Attorney General's opinion, and our current regime extended that without the urgent need on the budget. Let me tell you, if you got to fix our budget problems over minimum wage reimbursement for this damned agenda that keeps getting thicker and thicker, we're in real trouble here, you know? This is crazy. It's just really crazy. Anyway, on to the next. On page two, on the third paragraph, it's implied that somehow the instructions in the Commissioners manual is to blame for the confusion of the last three years, when in fact, it was the lack of transparency in the undisclosed compensation practice that has caused the confusion. We all came here in good faith. We get this book that's, you know, four inches thick that's got everything a Commissioner needs to know to survive, right, how to fill out a Form 700, what the -- you know, the ethics issues are and when can you have third party communications and when can you not and all manner of things, including this governance principles that shows how the power is divided in this house. And we're supposed to read it all and take it seriously, and within that document was not a rule, but instructions on how to fill out the form every month, the timesheet, right? And we're just like any other employee. I got a W2 in the mail the other day, right? I'm an employee, but I'm a per diem employee, right, and the question is what does that mean, and how does that affect it. And it's like you can't have it both ways. You know, if you're going to have a policy that has any reimbursement at all for this, then the Attorney General says you got to do it without limiting artificially how much, how many hours can be compensated. If I did 25 hours one month because of the combination of things that I had, and that combined with the fact that my reading -- what do you call it -- speed, the -- is not as fast as perhaps yours or somebody else over here. It takes me -- sometimes harder to absorb it. I know that when I took the online ethics exam, it took me about twice the time that they estimated it would take me when I -- before I started. You know, I read the instructions before I started taking the test. So, this -- I think this has been just a -- an exercise to run me

around the tree for the last six months, and then when I read this, it seems to reinforce the stuff that's been used to run me around the tree. And I just don't -- I just don't understand why a sane man who can take the -- the ordinary language and not come up with the same conclusion, that in fact, we've been doing it wrong. Forget about whose fault it is or how long it may have been going on. It doesn't matter. It's wrong. It's wrong because the Attorney General says it's wrong. It's wrong because it's not easily represented. It hasn't been uniformly done in the last six years. Ravel's administration, they did an emergency thing, and then they backed away from that and said, okay, go back to your old ways. So, there's a hiatus period there in the Ravel administration where they were back to the way it was back when Commissioner Brown was in charge. So, that's not a bad thing. It's just that it resumed back to the center of gravity I guess you'd say.

Mr. Feser: Commissioner, I agree, and I think that if we're operating without a formal policy, then we're doing it wrong.

Commissioner Hatch: Right.

Mr. Feser: Exactly what I'm saying.

Commissioner Hatch: But it's not just a formal policy. I'm being denied just compensation that I have a right to rely upon in the handbook that I was given and told to read to make sure that I understood my obligations. It held out a set of instructions as to what I needed to do to be reimbursed for my preparation time, that simple, and instead, I -- eventually, when I kind of go through all the hoops and there's no place else to hoop, I find that there's some unwritten policy that has never been shared with me that says that that's all bullshit and that I've been wasting my time for six months filling out all these timesheets that, in fact, somebody gave to the press to try and use against me when I was a little too tough on some issue. Okay, so, that's all I got out of a timesheet, was, you know, harassment from the press.

Mr. Feser: Okay, I -- Commissioner, this doesn't address those -- those issues. That is a frustrating situation. I understand. This is my -- the point of this memo is --

Commissioner Hatch: Again, I'm coming back to --

Mr. Feser: Right, the point of this memo --

Commissioner Hatch: -- what the AG said and what we have been told in this memo. They don't jive on important -- facts.

Mr. Feser: All right, well, if you want to read these conclusory things up front without reading them in context, then, you know, you can come up with different conclusions.

Chair Remke: I feel we're starting to circulate the argument or do you have additional points you'd like to make, Commissioner Hatch?

Commissioner Hatch: Yes, I do, Madam Chair.

Chair Remke: Okay, please make those.

Commissioner Hatch: Let's see. I lost my place. Thank you. Oh, this is about -- okay. On page two, footnote three, it's asserted that the practice has been to -- and not reimburse on a prorated amount, when in fact it's very clear that from 1975 until 2014, the actual practice was just the opposite, and that was to protect the public purse. We did the hourly reimbursement on -- that was the practice, maybe not a formal policy, but that was the practice. In order to protect the public purse against it making it easy to embellish your timesheet. On page three, in the first paragraph, it's implied that budgetary constraints was a common reason for limiting preparation work, when in fact it was briefly occasion, only once in the 43 years of the lifespan of this organization. Also, on page three, in the first paragraph of the Ravel email is mischaracterized in a manner that would lead one to believe that during the Remke period is just exactly the same as the Ravel practice. And it's just -- if someone on staff had bothered to independently verify that claim, it would not have been included in the staff memo. In other words, if you'd called her up and asked her because you can't find any of this paperwork, you would have shed a little more light on it, and you'll probably find that, guess what, it didn't continue in that vein as has been represented in this memo. On page three in the third paragraph, it's asserted that, quote, "Current practice of limiting compensation" -- and I omitted some of the long sentence -- "is the most prudent and legally supported approach when that very practice of limiting arbitrarily the amount of reimbursement" -- or excuse me -- "payment for preparation work when" -- "is in direct conflict with the written advice given in conclusion for A of the AG opinion." They just don't match. On page four, line three -- excuse me -- on -- excuse me -- the third paragraph on page four down at the end, after citing the AG opinion that explains why the Commission may protect the public purse by paying by the hour for preparation work, a concerted effort has been made to influence the Commission to do just exactly the opposite. And to suggest that it would somehow have to point out that this analysis is not unbiased and should not be relied on in our decision-

1:40:00

making process. And finally, on page four, in the conclusions and recommendations, it is reasserted that the current practice is, quote, "consistent with the AG opinion and statutory law." And that's this two -- two-day limit that they informally refer to. It's directly in opposition. Again, I point out to the recommendation that it's directed conflict with the conclusions number 4A of the AG opinion. This is trash. It's -- it's -- it's either sloppy or it's not well thought out. Certainly, plain facts just don't match up, and I would have expected more, and that's all I got.

Chair Remke: Well, I just need to say that I disagree with --

Commissioner Hatch: Sure you do, Madam Chair.

Chair Remke: I understand, and again, if I could just go ahead and speak without the running commentary, I would appreciate it, as I did try to let you speak.

Commissioner Hatch: I tolerated yours.

Chair Remke: So, I believe, as stated in the memo, the AG's opinion is maximum two days, one for travel, one for meeting. It talks about other permissible activity that would not be deemed arbitrary if adopted pursuant to a formal policy, including preparation time. It's clearly spelled out, time for subcommittees and other work the Commission decides is worthy of additional work and compensation. So, that is my clear interpretation of the AG's opinion. I guess we can sit up here and debate an AG's opinion, but I believe that the memo accurately reflects that legal analysis.

Commissioner Hatch: Just to say so doesn't mean so.

Chair Remke: But let me -- no, can I please finish, sir?

Commissioner Hatch: I'm insulted.

Chair Remke: Well, you have been making insulting comments to staff for the last half-hour that are really uncalled for and unnecessary.

Commissioner Hatch: No, they are called for.

Chair Remke: Excuse me, to move this discussion forward, because again, you just spent a half-hour talking about the problems of the past, which I agree there have been problems. And since August of 2017, when this was first brought to my attention, we went through the process, which is what I was trying to describe before. I, again, had never had any notion, input, or understanding of how the process was being paid out, because I do not claim per diem. So, it went -- it went smoothly for the first three-and-a-half years that I was here. It wasn't until

August 2017 that I understood there was an issue. We immediately looked into it, and because of the chaos between emails, a policy stated in a handbook, which was never formally adopted and was inconsistent with even the current practice, all seemed to be very confusing, as I said to you during our correspondence and emails. I did have legal look into the issue, and we discovered the AG's opinion, which seemed pretty straightforward, although, clearly it's not, because we're going to debate it.

Commissioner Hatch: Despite my multiple requests --

Chair Remke: Let -- I am still talking.

Commissioner Hatch: You never furnished the document that shows that it disagrees with the handbook, and I have -- as a -- as a human being working for an organization, I have a right to rely on that handbook as something that if I follow, I get the -- the results, and that's not the case, and it's been very much --

Chair Remke: I don't believe that's the law, Commissioner Hatch, but I am still speaking. So, again, I'm going to just try to keep speaking and hope for fewer interruptions. So, anyhow, when this became an issue in August 2017 and we looked into it and it was clear that there was problematic and misleading information, which I apologize was not conveyed to Commissioner Hayward, despite her submitting timesheets, I guess. We laid out what we believed the law to be based on the AG opinion and the fact that there should be a formal policy. And I know that that was suggested to you, Commissioner Hatch. If you would like a former policy to get work beyond the travel and meeting day, you should propose a formal policy that we could bring to the Committee.

Commissioner Hatch: You don't have a formal policy, but yet you enforce something that you didn't share with me.

Chair Remke: I enforce something which I believe is the minimum -- I mean, are the maximum of what the law allows. And again, the maximum, which was more than satisfactory to --

Commissioner Hatch: The maximum the law allows? Where do you get that? Your law?

Chair Remke: The AG opinion, which is what I'm complying with.

Commissioner Hatch: The AG opinion clearly states in 4A --

Chair Remke: Okay, I'm not debating the AG opinion with you. Any other -- that's -- I'm

just trying to get you up to speed. So, clearly, there is an issue. I agree that it is confusing as to where we're at and what we have. I thought that the best and most prudent approach was to go with what I thought was what we could give under the AG opinion, which is only -- the only legal guidance outside this Commission we have. That seemed to be the most prudent. Again, I thought since we are an ethics agency, we should follow the most prudent approach. I do agree that we should adopt a formal policy that is presented for discussion and that we can all be on the same page, and I think we should move forward in that direction. Commissioner Audero.

Commissioner Audero: Thank you. I'm going to approach this in a totally different way. So -- only because I kind of dabble in employment law. So -- but -- but my first question is to you, Mr. Feser. Who is the we in we laid out what we believe to be the law in this memo? Who is the we? Did you work on this alone or did you work on this with Chair Remke?

Mr. Feser: No, it's just a term of art you use. I'm -- I'm speaking for the Office of Legal Division of the FPPC.

Commissioner Audero: It wasn't your word. It was what Chair Remke just said. I wasn't quoting you.

Mr. Feser: No, it's not -- I'm not referring to some group that we huddled and drew up a play or something. It was literally just the Legal Division of the FPPC, the people, I suppose, that are on the --

Commissioner Audero: Okay, okay, just wanted to be clear. So, you mentioned earlier as you were discussing -- you -- you were making a distinction between a policy, and I think you said something like a piece of paper floating around. And I'm wondering if that is a reference to our manual, the Commissioners manual. What were you referring to?

Mr. Feser: Anything subsequent to 1983, not because --

Commissioner Audero: So, our Commissioners manual is a piece of paper floating around.

Mr. Feser: The Commissioners manual, except for the governance principles, because that was voted on by the Commission 2001.

Commissioner Audero: So -- so, I guess that's my question, is what exactly is this manual that we were given? Does it have any validity or is it just a piece of paper floating around that we should just -- might as well discard, because it has no meaning or value?

Mr. Feser: My understanding is it's for guidance. Other than the governance principles that

were adopted --

Commissioner Audero: So, who wrote this? Who wrote this?

Mr. Feser: -- that were adopted -- I don't think it was -- well --

Commissioner Audero: Somebody wrote it.

Mr. Feser: Somebody knows.

Chair Remke: I can give you my understanding of the history of the Commission manual if you'd like.

Commissioner Audero: No, that's okay. I want to talk to Mr. Feser.

Chair Remke: Okay.

Mr. Feser: I think she'd be the -- Chair Remke would probably be the person most knowledgeable on this matter --

Commissioner Audero: Fair enough.

Mr. Feser: Because I -- my understanding, and I could tell you just through hearsay, is that there -- there is nothing formal in that manual. It's a manual to aid the Commissioners, except for the governance principles. Those are formal.

Commissioner Audero: So, is it your understanding that we are supposed to follow what is stated in the manual? Forget the governance principles. Let's set that aside right now.

Mr. Feser: It's not some sort of mandate. They're not -- it's not formally adopted.

Commissioner Audero: But are we supposed to follow it? Like, are we supposed to submit our -- our -- our -- our timesheets according to those instructions?

Mr. Feser: Well, if that's what the directions are to get reimbursement, then -- then yes. I can understand your frustration. I mean, that -- that's --

Commissioner Audero: I'm just trying to get -- I'm -- I'm just trying to get an understanding of what is that document? What is it?

Mr. Feser: It's not a formal policy.

Commissioner Audero: But what is it? If it's not formal policy --

Mr. Feser: It's an informal policy, I suppose, by process of elimination. There is nothing that's gone before the Commission and voted on other than the governance principles. That's it. It's a -- it's a guide to provide assistance for the Commissioners. That's my understanding, and I'm not the authority on that, by the way.

1:50:00

Commissioner Audero: No, I understand. I understand. Okay, so, I'm just going to ask you questions about your memo. I'm going to go back to page two in that middle of the paragraph where you reference that for at least the past six years, the Commission's practice has been to reimburse for up to a maximum of two days, okay, and I -- I don't want to revisit the discussion that you had. But I want to ask you, how did you pick six years?

Mr. Feser: I think I may have been using 2017, and from 2011 of the Anne Ravel email, and so that's what I was using. It was -- that's why I said it's just a mathematical thing. I think I was still in 2017 when I --

Commissioner Audero: Yeah, fair enough.

Mr. Feser: -- together.

Commissioner Audero: Yeah, fair enough, because I'm -- I'm just wondering if anybody looked at what happened before the Anne Ravel memo and what people were paid.

Mr. Feser: Yes, we did, and unfortunately, found nothing, except for the regulation.

Commissioner Audero: Well, okay, hold on. You found something. I think you found -- you found nothing that strays from this statement, but I think what you -- what you're suggesting that you found is that going back I don't know how long -- and maybe you can shed light on how -- how far back you looked -- nobody was ever paid more than two days. Is that --

Mr. Feser: No, I can't make that statement.

Commissioner Audero: So, what --

Mr. Feser: I didn't find anything one way or the other. Obviously, before this -- this email in 2001 by Anne Ravel, there were -- there were more days --

Commissioner Audero: Right.

Mr. Feser: -- because there's a modification. So, again, circumstantially, there's something there, but again, we don't have a formal policy that we found --

Commissioner Audero: No, I'm not talking about --

Mr. Feser: -- or informal --

Commissioner Audero: Yeah, yeah, fair enough. Fair enough.

Mr. Feser: -- for anything.

Commissioner Audero: Fair enough. I'm not talking about did you find a policy.

Mr. Feser: Got it, nothing.

Commissioner Audero: I'm asking if you looked at what people were paid.

Mr. Feser: No, I haven't found anything, and I will look back at the minutes.

Commissioner Audero: Timeout. Let's be precise, please, because I think -- I think it makes a difference. So, let me just ask the question. It's not whether you found nothing. My question is, did you look?

Mr. Feser: Yes.

Commissioner Audero: And you found what?

Mr. Feser: Is it okay if I say nothing?

Commissioner Audero: And how far back did you look?

Mr. Feser: Nothing.

Commissioner Audero: What?

Mr. Feser: Perpetuity, as far as 1974, couldn't find anything, certainly nothing since 1983.

Commissioner Audero: No, I don't mean policy. I mean what people were being paid.

Mr. Feser: Right, okay. Did I look into just personnel issues?

Commissioner Audero: People's pays. I think -- I think --

Mr. Feser: No.

Commissioner Audero: -- Chair Remke, and I -- I may have misunderstood, but I think Chair Remke made the point that we looked at what people were paid --

Mr. Feser: No, I didn't --

Commissioner Audero: -- as processed. Did I misunderstand?

Mr. Feser: I didn't ask administration for prior payments. That's something I could do.

Commissioner Audero: I think that might be --

Mr. Feser: Sure.

Commissioner Audero: -- worth looking into. I want to look at footnote three again. I have something different to say about it. I know it's been discussed already, but since the practice has been to reimburse Commissioners for a full day and not reimburse at a prorated amount, that sentence seemed -- or appeared superfluous, right, and it's -- and it's talking -- it's explaining why the final sentence regarding the compensation of 12.50 an hour for less than an eight-hour day was deleted from the manual in December 2017, right?

Mr. Feser: Yeah.

Commissioner Audero: And the explanation is since the practice is different, it's superfluous.

Mr. Feser: No, no. What I got is --

Commissioner Audero: What this says.

Mr. Feser: This is after conferring with Chief Administration Larissa Hon and Chair Remke about the status of this situation. That's what that's based on.

Commissioner Audero: Well, right. So -- so, how I read this footnote is you're saying we had a sentence that said when you work less than eight hours, you're going to be paid 12.50 an hour, and we took that sentence out because it was superfluous, because the practice was different.

Mr. Feser: Correct.

Commissioner Audero: So --

Mr. Feser: Now, Chief Administration informed me that it's not possible to get 12.50 an hour.

Commissioner Audero: Yeah, that's aside. That's aside.

Mr. Feser: It's not -- not -- I know, but I mean, it's not -- so, therefore, it's superfluous as, you know, as a matter of fact. It's not possible to do it. Like, I have a form here that says that the only way to -- to reimburse is a hundred-dollar per diem -- per diem amount, not the 12.50 per hour.

Commissioner Audero: Okay.

Commissioner Hatch: Where is it?

Mr. Feser: Just a -- a form. It's a blank form that shows --

Chair Remke: Lorissa, you want to tell --

Mr. Feser: It's our internal form, a personnel --

Commissioner Hatch: It's internal.

Chair Remke: No, no.

Ms. Peth: No, it's -- sorry, just to clarify, I think this is an issue we can look into further, but my understanding is it has to do with the Controller's Office, which is the entity that actually literally cuts the paychecks. And so we've been told that they can't literally key in an hourly rate. So, I just learned that yesterday, and we -- we can look into it further, but that's what I was just

told.

Chair Remke: So -- okay, so --

Commissioner Hatch: Public purse that --

Ms. Peth: I'm sorry, I couldn't hear you.

Commissioner Hatch: So much for protecting the public purse. The Attorney General made much to do in his opinion, protecting the public purse, and that's why it was a good idea to break it down smaller than a day.

Mr. Feser: Right.

Commissioner Hatch: So, we're kind of, like, just giving it out, but yet artificially holding to two days even though the Attorney General clearly said they can't (inaudible) on the number of days. We can only regulate good faith and some other issues around or different classes of (inaudible) but you can't artificially limit it, and that's exactly what we do.

Ms. Peth: Yes, we understand the point that's being made, and I -- I would just add I think from a staff's perspective, we -- we encourage the Commission to -- to give us direction. You know, we want clarity, and we want it, obviously, in accordance with whatever rules and regulations would be applicable, but, you know, we're -- we -- we follow the direction that's given to us by the Commission.

Commissioner Hatch: Here's the thing. The trail on the Commission manual goes back to about 2014, where it tells us something completely different, and a lot of people that's filling out these forms and doing all this work, for what, nothing, because why?

Ms. Peth: I don't understand your question.

Commissioner Hatch: (Inaudible)

Mr. Feser: I don't think we're -- something we -- we know the answer to, and I -- and I will say that the

-- I think the Attorney General's opinion is debatable on this question, because our statute states a hundred dollars per diem and nothing else. It refers to another statute that was adopted by the legislature subsequent, about three years later in 1979 that called for the 12.50. So, I don't --

Commissioner Audero: Okay.

Mr. Feser: We can't even do it anyway.

Commissioner Hatch: (Inaudible) apologize.

Commissioner Audero: First of all, 83106 doesn't even contain the words per diem.

Mr. Feser: No.

Commissioner Audero: So, our statute does not state anything about per diem. So, let's -- let's be clear.

Mr. Feser: No, a hundred dollars per day I think it says.

Commissioner Audero: For each day at a rate of a hundred dollars for each day.

Mr. Feser: Right.

Commissioner Audero: There's no mention of per diem.

Mr. Feser: No, there's no latin, no --

Commissioner Audero: Right.

Mr. Feser: -- whatsoever.

Commissioner Audero: So, I -- I think we need to be fair and -- and -- you know, and talk about the statutes the way they are, because I think that if you characterize something as what it's not, then it's going to kind of lead us in a -- in the wrong way, so --

Mr. Feser: Understood, but I also just wanted to make clear there's no 12.50 called for in the statute. That's all.

Commissioner Audero: So -- okay, so, here -- now, here's my -- I'm putting on my employment law hat. When you -- when you wrote this memo, did anybody instruct you to just look at the AG's memo?

Mr. Feser: No.

Commissioner Audero: So, you could look at anything you wanted that you thought would be appropriate.

Mr. Feser: Sure.

Commissioner Audero: Is there a reason that your memo doesn't mention the California Minimum Wage Law?

Mr. Feser: I'm not aware of its relevance, and if there is relevance, then I'll be happy to look at it.

Commissioner Audero: So, the law --

Mr. Feser: We have a situation --

Commissioner Audero: So, the law states every employer -- every employer shall pay to

each employee on the established pay day for the period involved no less than the applicable minimum wage for all hours worked in the payroll period whether the remuneration is measured by time, piece, commission, or otherwise. How is that not relevant to this discussion?

Mr. Feser: I don't know. We have a statute on point. I don't know how the statutes interplay. We have an Attorney General opinion directly on point to this agency on this topic. So, I don't really know how -- how that would -- that -- that -- that plays with what -- we have an actual mandate by the -- that legislature on -- on compensation for Commissioners.

Commissioner Audero: So, we also have a mandate from the Labor Commissioner, right?

Mr. Feser: Right, and how that interplays, I don't know.

Commissioner Audero: Well, I'll tell you how it interplays --

Mr. Feser: Sure.

Commissioner Audero: -- because I looked at it, and see, this is kind of the -- the thing about the limitations on the research that we get that is a little bit troubling. I will be honest with you. I -- I -- I don't understand how you didn't go there, at the very least, to put in your memo, I looked at this. I know it's out there. Here's why I think it doesn't apply, and then you would tell us, and then we would go, oh, okay, fair enough, or not. We might agree. We might disagree. But if you had gone down that road, you would have probably found, because I believe you to be a good researcher, plenty of case law that says that the wage orders, which are the -- are you familiar with Wage Order 4-2001?

Mr. Feser: No.

Commissioner Audero: Okay. So, do you know what wage orders are?

Mr. Feser: I know what those two words mean.

Commissioner Audero: Fair enough. So, the wage orders are the regulations of the Labor Commissioner with respect to certain pay issues, and they are divided up by industry, and then they have -- where you don't fit within industry, there's like a wage order that's kind of a professional wage order, which is kind of where we fall. And I don't think we're going to be -- be disagreeing on that one. So -- so, trust me for the moment -- or at least for the moment --

Mr. Feser: Sure.

Commissioner Audero: -- that what applies here is Wage Order 4-2001, and that's what I just read to you. So, if you had gone there, you also would have found that there's plenty of law

2:00:00

that says wage orders are given the same weight as statutes in California, okay? So -- so, now it becomes a little bit more relevant, right?

Mr. Feser: Potentially. I don't know.

Commissioner Audero: Potentially, yeah, sure, potentially, but we're missing all of this analysis, and so I guess -- I guess having read to you the wage order, I guess I'm wondering what your thought is on that.

Mr. Feser: I can't tell you. I would need to take a look at the statutes and their effect on -- on our statute within our act that forms this Commission.

Commissioner Audero: And you're --

Mr. Feser: And I -- I don't know -- I just really don't know how you can get better -- more direct authority than an explicit amount per day that's provided to --

Commissioner Audero: It's not per day. It's not per day. Let's be super clear on this.

Mr. Feser: For each day that --

Commissioner Audero: It's a rate for each day, okay, that the Attorney General himself said translates into 12.50 an hour, right? I mean, I think we all agree on that.

Mr. Feser: Sure. I'm not -- Commissioner Audero, I'm happy to -- if you provide me whatever head start you -- you looked into, and I'll -- I'll go down that road.

Commissioner Audero: Yeah, I think -- I really think that you should, because I think you might -- I think we need clarification, but I think you're going to need to do this, because I'm going to ask you to do something else. And I'm happy to give you all the research, because I -- part of it is kind of -- I'll just have to do a brain dump, because I -- I know it, but -- but I think that we need to -- I think we need to recognize that the universe of what we're looking at is not the AG's opinion, and --

Mr. Feser: Well, I mean, even the AG's opinion wasn't -- it's -- I mean, there's reference to other case law and statutes, so --

Commissioner Audero: Well, and I would -- I would -- I seriously take issue with some of that, but who am I to take issue with the AG, right? But I do disagree with the analysis, and I'll tell you that -- that to -- for the AG to have said that we were per diem employees back in 1977, relying on case law that in my judgment or in my read, I should say, is not on point I think is troubling. But that's another issue altogether, right? I mean, I think we all agree we have this

AG thing, and -- and it's reasonable to have relied on it --

Mr. Feser: Very good.

Commissioner Audero: -- in 1977. Here we are 40 years later, and the world has changed, right? And in the interim, Wage Order 4-2001, requiring that all -- all employees, and expressly including state employees, be paid minimum wage for all hours worked. That happened in 2001, right? So, let's say back in 1977 and all the way up to 2001, the AG's opinion was right on the money. Let's not argue whether we agree with it or not. As of 2001, that world changed, right? So, I agree with you that the question is about the interplay between the two, and I think that in -- in -- in my judgment from my read, an argument can be made that they're not inconsistent. They can be harmonized, and we can have 83106 live happily and be married next to Wage Order 4-2001, because in my read of the two, the only thing that 83106 says is you got to pay at a rate at a hundred dollars a day. Assuming a day is eight hours, that's 12.50. That, today -- let's -- let's talk about hours actually paid, right? Let's -- let's assume you're paid for all hours. That doesn't violate or is not incongruent with Wage Order 4-2001, which today has a minimum wage of -- I think it's 10.50. I'll have to look. It changes at the beginning of the year. So, so far, we're okay, right? So, where we get, I think, into a question is what happens to all this Committee work that somebody is deciding, I'm not going to pay, right? And that's where minimum wage comes in. And so -- because that is a big zero. I am paying you zero, which is ten-dollars-and-50-cents below the minimum wage, right? And so that would violate Wage Order 4-2001 and given personal liability for the violation of the Labor Code, most sections I would say, I'm not sure Governor Brown would be happy to know that this is the state of affairs. So, I think we have to resolve this, and I -- I applaud Commissioner Hayward for bringing this up. I will say my understanding is that this is not the first time that this has been brought to this Administration's attention. I know you don't -- it has nothing to do with you and your research. My understanding was that Commissioners who were on the Commission who have now left but were under this Administration -- I know of at least one who made the same comment and has raised the same issue. So, I'm a little concerned about this statement, but that's beside the point. I do think that we're at a point where we have to resolve this. I am -- I am troubled by the fact that we are given a manual; we're told to follow it, and then in the middle of discussions that apparently started in August that were never really resolved with the people who raised them,

then the manual suddenly had different language. And that, to me, is troubling, because at the very least, just out of courtesy, I think the Commissioners should have been told of the deletion of language that was at issue since August. So, I'm troubled by that. I don't think it's appropriate, and I'm also kind of troubled -- I mean, I -- I chuckled because I didn't know what all -- you either -- you either laugh or you cry, I guess, but I don't know how it is possible for all of you who are sitting in this room to have the expectation that we're going to come here and do a good job without preparing or that we are going to be taking on additional tasks as Committee Members, right, as -- in these Subcommittees where we know we are sending these people out to do extensive reconnaissance, if you will, of the state of affairs and the history, and we are more than willing to send them out, knowing that the language in the manual, when we sent them out and before it was unilaterally changed, said that they would be paid at the rate of 12-dollars-and-50-cents an hour for that work. I think the work is valued at much more than 12-dollars-and-50-cents, but that's -- that's aside. That's -- that's a different issue. That's an issue for the legislature in -- you know, in the revision of 83106, right, which by the way, if you index that to today -- and I was kind of curious. What is the value of the hundred dollars back in 1977? I was surprised to find it was, like, four-hundred-and-some dollars, but anyway. I -- I'm troubled by the fact that -- getting back to the point that I was trying to make, that we sent these people out, these Commissioners who have other things to do in their lives, almost knowing, apparently, that they were going to go out there and do a lot of work, and we were going to change the policy to not pay them. That's very troubling to me, so --

Commissioner Hatch: Quick question, Commissioner Audero, if I may.

Commissioner Audero: Yeah, of course.

Chair Remke: Commissioner Hatch?

Commissioner Hatch: Thank you. I know when we mention the minimum wage laws in almost any context, people's eyes glaze over, and they think, well, I make more than the minimum wage. How does this apply to me? Isn't it true that -- that the wage order requires that all work has to be paid, that you can't allow the employees to work uncompensated for any of their hours regardless of the rate of pay that they earned?

Commissioner Audero: Yeah. No, absolutely. I mean, that's -- that's the point that I was trying to make when we pay zero for work that -- that is -- that is not paid for. Not paying

someone for hours that they worked or were -- that -- that they were permitted or suffered to work -- suffered or permitted, I think, to work is a violation of minimum wage, because it means we're paying them zero, which is below minimum wage.

Commissioner Hatch: Thank you.

Commissioner Audero: So -- so, you know, I -- I know that -- I know that Commissioner Hayward has some -- she's had an action that I think she's mentioned, that once we go through the discussion, you had something that you wanted to do.

Commissioner Hayward: Yeah, I just want to make sure everyone has a chance to say their peace.

Commissioner Audero: No, I appreciate it, and then after we vote on your action, then I have one as well.

Chair Remke: Commissioner Cardenas, anything from you?

Commissioner Cardenas: Let's have a policy, shall we? It's not evident to me that the 1977 AG opinion requires that this Commission establish a policy. I do believe that it's a good idea for the reasons stated in -- in -- I guess it's footnote two about the -- you know, it's advisable to have a policy, particularly given the -- the charge of -- of this particular Commission. The -- the way I -- I understand the construction of the -- of the '77 AG's opinion, it lays out that when it comes to compensation for public officials, that strict -- strict scrutiny is the -- is the applicable lens and for all the appropriate reasons, public fisc, what can happen when -- when one doesn't apply strict scrutiny to people with power who have access to money. And then it goes on to suggest that -- to describe what is the inherent core of -- of the scope of the Commission's charge and -- and duties and that the inherent core is essentially -- or specifically attendance at Commission meetings, I guess, travel to and from Commission meetings, special meetings of the Commission, and that appears to be it. That is the inherent core. It also goes on to suggest that it would not be arbitrary, and therefore, I presume, it would not be outside of the inherent core if the Commission were to establish a Committee, as long as that Committee was -- was operating within the -- the -- the scope of -- of the faux Commission's charge to review something that is within the scope of the full Commission's charge and then report -- report back. And it seems to me that -- that the reason why a policy of this Commission may not, in fact, be required, however advisable I -- I agree it to be, is because the AG's Commission also suggests between those --

between those -- those two -- those two sections, the strict scrutiny section and then the -- the Committee establishment as not being arbitrarily outside of the inherent core is that the -- the nexus is that there needs to be a mechanism external to an individual that is essentially -- it doesn't use this language, but a check, a check on individual hubris to -- to go out there and -- and just grab all that one can from -- from the public purse. And I -- I take it that -- that by inference, necessarily, I think, what the AG was trying to say 41 years ago is that the -- the Commission, in establishing the Committee, that -- that that action -- that that vehicle is that check, that -- because it doesn't otherwise suggest why the establishing of the Committee would not be arbitrary, and I think that's what it's saying. I think it is prudent for the Commission to -- to reinforce the check that I think is -- is a -- a -- a Commission establishing a -- a Committee, to -- to have a policy, and so I suggest that we go ahead and -- and suggest one and adopt it and -- and adhere to it. The only thing -- only other thing I think I want to add is it's -- it's -- is it 81306? That's -- that's the -- that's the Government Code section, right? And then the 18360 -- or 306, that's the -- that's the -- the regulation that was repealed in '83? Has -- have you given any thought to -- to the -- the efficacy of the repeal in '83 of that regulation, because there's a footnote to the extent -- I mean, to the extent that the footnote was or remains law. There's a footnote that suggests that compensation of public officials is not something which is an internal matter, that -- that this is -- I'm using my words. This -- this is a matter of some gravitas --

Mr. Feser: Right.

Commissioner Cardenas: -- and -- and is -- is not to be relegated to a -- a mere internal matter, but yet it was -- it was repealed. The -- the enabling regulation of the Commission at the time was repealed in '83, ostensibly only for the reason that it was a merely internal matter.

Commissioner Audero: Commissioner -- Chair, can I --

Chair Remke: Commissioner Audero?

Commissioner Audero: Thank you. I -- I -- I want to make the distinction between whether something is required or it's a good idea, and I do -- I -- I am of the school that -- also that it's not required here, that we've done what we need, but I think that the distinction is important, because if we wait for the -- the -- the -- if -- if we have to go through the process and -- and create a new policy, that, to me, implies that the compensation mechanism is going to

change going forward, and that is of no recognition for the months of work that have been -- that has been done by these Commissioners, these two Commissioners on their committee work. Let's not even talk about the amount of work that everybody does to prepare for these -- for these meetings, which I think -- you know, I'd be really surprised if anybody said that was not required, to do a good job anyway. So, I hesitate to create something going forward when, at least I believe, that it's already in place, so -- because I would not want to deprive the people who have done work in good faith based on a Commission manual that apparently now has no value, and that's another issue altogether. And we can -- we can agendize that, but I think, in my judgment, what we need to pay people for work outside of travel and attendance at the meeting is already in place.

Commissioner Hayward: Madam Chair?

Chair Remke: Commissioner Hayward?

Commissioner Hayward: So, not being an employment law expert, I'm going to make a suggestion that I hope prompts some constructive talk and mainly to, at least for now, a resolution of this. I think -- I think continuing with the situation we have is -- is not acceptable. We do need some Commission articulation of what Commissioners get compensated, because the very -- the -- the -- how do I want to put this? The lack of specificity can go both ways. I mean, we might look here today like we're complaining because, you know, we're not getting money, but what's to prevent, under this kind of system, a sneaky internal policy that pays us more if we all got together? Oh, we can't do that under Bagley-Keene. You know, I mean, there's just -- everyone has to be bound by the same thing. It seems to me that the last time we had a formal policy that anyone can find, it's the policy that's articulated in the reg that came after the 1977 opinion. What I would like to propose is that we adopt that reg today as our policy, so we have one, and then if there are things we don't like about, we can fix it. I'm not super impressed at the research that's been done thus far I have to say. So, that's the best I can do, not having access to the archives of this Commission. I considered momentarily moving to Sacramento temporarily and just parking myself over there, but that wasn't going to work. And so -- so, that's -- that's my -- that's my proposal. I think it would be pages two and three of -- actually, page two of the Dan Lowenstein signed -- hi, Dan -- March 1st, 1977, order adopting regulations of the Fair Political Practices Commission. We don't need to make it a reg.

2:20:00

Chair Remke: I think it starts on the bottom, yeah.

Commissioner Hayward: Yeah, okay. So, where it starts 18306 on that first page. I'm not saying we need to make it as a reg, because I think Mr. Feser is right. It doesn't need to be a reg, but I do think that this is a good first cut as a policy and gets us out of this ambiguous position we're in right now, which I think is really unacceptable. So, that's my motion.

Commissioner Hatch: Question, clarification on the motion. So, it's your intent to adopt the content, but not as a regulation. If that's -- my understanding is correct, I would second that motion.

Commissioner Hayward: Yes.

Commissioner Cardenas: Question. Does the administrative procedure factor into this? If so, how?

Mr. Feser: No, there is an exception that applies by statute, applies to this situation. You want me to cite it to you? It is Government Code 11340.9(i). A regulation -- okay, this chapter regarding the APA requirements does not apply to any of the following, a regulation that is directly -- directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

Commissioner Cardenas: Thank you very much.

Mr. Feser: You're welcome.

Commissioner Audero: I have a question about that.

Chair Remke: Commissioner Audero?

Commissioner Audero: So, what about 83112, which I believe says that we need to follow the APA for any rule regarding our governance or how we govern ourselves. I don't remember the exact language. Does somebody have the PRA? Thank you. Oh, okay, here. We should just have one floating around.

Commissioner Hayward: We used to.

Commissioner Audero: Okay. So -- oh, dear. Okay, this is set up in a different way than -- okay, can somebody pull up 83112?

Commissioner Hayward: Yeah, I've got it.

Commissioner Audero: What -- can you --

Commissioner Hayward: Sure. Rules and regulations, the 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. These rules and regulations shall be adopted in accordance with the APA, blah, blah, blah, and shall be consistent with this title and other applicable law. And then there's the footnote about how we are governed by the APA as it stood in 1974 when we were created, because otherwise, we would be getting amended in a way that's illegal.

Commissioner Audero: So, if I can take it back, the -- what version of the APA, Mr. Feser, were you reading that regulation from?

Mr. Feser: That subsequent -- the statute was -- this particular part of the statute was enacted in 2000, so subsequent to '74 APA.

Commissioner Audero: So -- okay, so, it sounds like that isn't -- doesn't apply.

Mr. Feser: Well, I think -- Brian Lau here to explain this part of it.

Mr. Lau: I can try to address that to some degree. I -- I think the interpretation would be that 1974 does apply, but the 1974 APA also sets out that rules and regulations are required in actions that apply generally, and this is -- the -- the modern APA further defines that those types of situations in which rules are defined towards -- directed to specific persons versus rules that apply generally. So, I think relying on the modern APA for a rule, it kind of further defines the 1974 APA and what -- what's of a broad enough application that requires a regulation as opposed to an internal matter or anything else is appropriate analysis.

Commissioner Audero: I -- see, I would have to beg to differ with you, respectfully. If our code and our regulations say we are governed by the 1974 regulations, I don't think we can make the leap to then go -- go to a later APA and say, well, we'll take this one because we like it.

Mr. Lau: But the 1974 APA does establish exceptions that -- that --

Commissioner Audero: What does it say?

Mr. Lau: A regulation is required if it applies generally to the public -- generally to the public, so --

Commissioner Audero: But there's a -- the -- do you have the 1974?

Mr. Lau: I actually --

Commissioner Audero: Okay. So, let's make sure that we have that, and then -- but then the question is still going to become even if that -- if the APA doesn't apply, what about a

83112?

Mr. Lau: 83112 just says that we have the authority to adopt regulations in accordance with the APA, but the 1974 APA, the (inaudible) which is that the regulation means any rule, regulation, or order of general application. So, this is just our definition of when is something -- general application versus when is something applied to a limited group that doesn't require regulation. There is also an exception within the 1974 APA for matters of internal management.

Commissioner Audero: Okay, so -- but I don't think that's what 83112 says. Commissioner Hayward, do -- do you mind if I just --

Commissioner Hayward: Yeah.

Commissioner Audero: Thank you. So, 83112, I don't think it says we have the authority. I mean, it says we may adopt, but once we decide to adopt, we have to -- we have to adopt it, whatever it is, whether it's a regulation or a rule in accordance with the APA, which is footnoted to mean 1974 APA. So -- so, I think this is much more specific than the -- the general APA, and I -- I agree this says we can't pass these rules, any rule related to how we -- the -- to govern the procedures of -- the -- the procedures that govern us.

Mr. Lau: I think a rule that -- of general application or that -- a matter of internal management adopted without a regulation is in accordance with the 1974 APA under the exceptions provided in the 1974 APA.

Commissioner Audero: But this is the specific rule, right? So, the -- the APA is a general body of law that applies everywhere in California. This is a specific statute that applies to us, and where the specific butts heads with the general, the -- you would agree the specific wins, right? That's just a --

Mr. Lau: That's matter of construction, but that's not how I read 83112. It simply states that rules and regulations have to be adopted in accordance with the APA. So, a rule or regulation is -- that -- that -- that fits within exception of APA is still adopted within the -- in accordance with the APA. That's the -- that's my interpretation of 83112.

Commissioner Audero: Okay, well, I still disagree, and I think we have an issue, then, right, because do we have the authority to pass this rule without following the APA?

Chair Remke: Can I make -- well, I'm just -- I don't mean to interrupt, but I just wanted

to try to get to maybe a possible solution.

Commissioner Audero: No, let me finish.

Chair Remke: Okay.

Commissioner Audero: So -- so, I guess that's the concern that I have, is how do -- how do -- I guess the concern that I have is that we are not agreeing on -- hold on.

Mr. Lau: Okay.

2:30:00 **Commissioner Audero:** We're not agreeing on how to -- on whether these two can be reconciled or not, and so what do we do today, because we don't have an answer. That you may say it, doesn't mean it's the answer. That I may say it, doesn't mean it's the answer, right? I mean, I think we have to resolve this.

Mr. Feser: Commissioner, if I may.

Commissioner Audero: Sure.

Mr. Feser: And I think you're right. I think put on its face, there could be a question on -- this is regarding the governance of procedures of the Commission. I mean, I think it could be argued just on its face that what we're talking about is a policy regarding -- it's not necessarily a procedure of the Commission, and so it's -- we're -- it's an interpretation of a statute and a clarification what official duties are. So, that's just -- that's just something to consider. Maybe we should look into this further.

Commissioner Audero: Yeah, fair enough. I mean, I -- I don't think any of us in this room have done the research to answer this question. I mean, do you feel like you can answer this question definitively?

Mr. Feser: Not definitively.

Commissioner Audero: Okay. So, I guess that's -- I guess that's my concern about passing a rule. That's the only issue I have, and I -- and I don't know how we get around this impasse, although Chair Remke seems to have an idea.

Chair Remke: So, in addition to the concerns expressed by Commissioner Audero, I think it's going to be no surprise I have noticed concerns that we're talking about adopting a formal policy where it wasn't -- I would argue sufficiently noticed that this policy in this packet was subject to possible adoption, and I say that because I didn't even review the reg with that in mind. So, I do have that concern, and I would also just argue that based on the discussion -- the

lengthy discussion today about losing practices and policies and when something was adopted or wasn't adopted, again, I believe it would be best practices for us to follow the formal process of adopting a regulation. I see no harm in it, and then it is established, and there is a record why, when, and how. Now, there's two issues I would just bring up. I mean, number one in the one that we are proposing, there is a concern regarding the 12.50 per hour, because again, as it was explained to me, that is not permissible. I understand that's an argument that needs to -- you know, can still be made. I wonder if we shouldn't flush that out before we adopt a policy so we know one way or the other. Number two, and more importantly, I understand for the people here, it's timing, and I'm not trying to propose anything that would delay timing. And I also just wonder -- and I don't know if there's an answer to this, if there could be a certain retroactive effect to this reg or whatever we ultimately adopt. If we could make it retroactive to -- I guess I would argue the start of the newest Commissioners, which was the first -- well, first I heard of it was August 2017, but I'm prepared to go back to when they were sworn in, in -- if we can do that. I have no objection to that, again, if we can all agree on the policy and the policy is consistent with the goals and principles and -- and the public fisc, obviously, and we meet all the requirements we need to meet. So, does anyone have an answer if this -- something we adopt can be retroactive, and then that may eliminate some of the immediate concerns of needing to do it today without following a formal reg.

Mr. Feser: Madam Chair --

Chair Remke: Whoever seen us put a retroactive application in a regulation before. I feel like the legislature does it.

Commissioner Hayward: It happens in the tax for it all the time.

Mr. Feser: Yeah.

Chair Remke: Again, noting -- and I think there's good cause to do it -- noting the confusion, noting certain people's understandings, which was inconsistent with, I think, what the practice was, but understanding that they relied and what they are given. I mean, I think we can make a good argument to make it retroactive. To me, pausing, putting this out there pursuant to the APA, adopting a regulation that's retroactive kind of meets a lot of the issues, and again, hopefully, could avoid some problems for the future.

Commissioner Audero: Madam Chair, I have a question.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, yeah, that was -- so -- so, this -- this is the concern that I tried to raise, which is why are we saying we have to adopt something? I think it's already in place, and I do not believe that there is a question mark about the 12.50. I think the AG has made it super abundantly clear that any hours worked less than -- any hours that are worked less than a full day are to be paid at a rate of a hundred dollars per day, which means 12.50, and in fact, the AG himself makes that interpretation and that suggestion that with the exception of the days where there is travel and where there is -- where there -- and where there is attendance, like right now -- and maybe we will get to eight hours today. I don't know, but with the exception of those days, those other activities are to be paid at 12.50 an hour. I don't know who doesn't read that in the AG's -- I guess Chair Remke doesn't read it, but I read it. I think it's very clear. So, I think we have in place what we need to go forward without having to adopt anything, because it's already in place.

Chair Remke: Where -- where is it in place? Just -- I'm getting lost, and what are you referencing? What's in place?

Commissioner Audero: The practice. I think the practice is in place. I think it was done before, and I think it existed in a regulation. It was, as I understand, and, you know, granted, we don't have the benefit of what happened to rescind that regulation, but that regulation was rescinded because some -- as I understand it, somebody said, oh, hey, this isn't our internal practice as we shouldn't have a regulation about it. Whether that's right or wrong, that's why they rescinded it. But there is nothing that says that the practice ended. I don't -- I don't think anybody has -- I can be persuaded, but I haven't been yet, that the practice ended. The only thing that happened is we -- we -- a Commission removed it from the regulations because it decided that it was improperly placed there. There is no statement that says, and going forward, we're not going to pay this way. There's nothing. So, I think that that practice has been in place. Now, whether a Chair has decided to apply it or not is a whole other issue, but that one Chair or two or three decide on their own to not apply that practice doesn't mean that the practice doesn't exist.

Chair Remke: I'm still not sure what practice you're referring to. So, we had a reg. It's repealed, and we don't know what happened between the repeal, and then the next record we

have, John, correct me if I'm wrong, is the email --

Mr. Feser: Correct.

Chair Remke: -- in 2011. So, we don't have any -- unless you can go back and go into archives and look through every agenda --

Mr. Feser: And -- and look -- and maybe, I don't know, personnel, admin, as we discussed earlier. I -- I agree. This -- it's very shocking that there's nothing. We have this one email.

Commissioner Audero: It's absolutely shocking, but -- and scary.

Mr. Feser: I mean, I -- it's a real head-scratcher that we couldn't find anything.

Commissioner Audero: Yeah, yeah, fair enough, or we pick up the phone and call the people who were running the show. I mean, why hasn't that been done? That, I don't understand, but that's -- that's beside the point, but I -- you know, I do believe that we have in place what we need to do, that we don't even need to take any action. We just need to start following that practice.

Chair Remke: And again, I ask which practice is that?

Commissioner Audero: The practice of paying somebody 12.50 an hour for any hours that were -- that are less than a day beyond the payment of the full day for travel and -- travel and attendance, because here's the problem. How are we protecting the public fisc if we don't have this in place, because that means that a -- a Commissioner could put six hours of work into something, but do it one hour a day for six days. And that means that Commissioner would get paid six hundred dollars versus six times 12.50. I'm sorry, I can't do it in my head, but whatever that is, right?

Chair Remke: Well, I think that's the -- why the AG talks about the substantial -- what's the term -- about any given day we're assuming there's substantial work performed and that if someone were to do that -- that's why you have to have some mechanism. So, that's why I keep -

Commissioner Audero: Yeah.

Chair Remke: And I don't mean to be beating a dead horse, although I think I am at this point. So, when you say we already have it in place, what do we have in place, because I'm not aware of any mechanism in place right now that defines official duties as this original regulation did, that puts an approval process on the claim above 40 hours. Those are the type of

2:40:00

mechanisms which assure that nobody is playing games or playing with the system, and I do believe that that is required under the AG's opinion. We have to have some mechanism. First of all, we have to define official duties. Second of all, we have to have an approval mechanism of some type. This policy talks about bringing it back to the Commission for anything over 40 hours.

Commissioner Audero: And I would -- I would -- hold on. Hold on. Let me state -- let me --

Commissioner Hatch: (crosstalk) probation. What -- what it says, the original regulation, is that if you claim more than 40 hours in a month, then in order to get that approved, you got to go to the Commission at a public hearing and have it approved that way, which puts that beacon of light down to make people think twice to make sure that they're not padding their -- their request. That's what it serves, and it does not limit. You could have a thousand hours that you righteously did, and it will still be approved or not approved by the full Commission. It's -- there's no --

Commissioner Audero: Cap.

Commissioner Hatch: -- no -- no cap. The cap --

Chair Remke: That's what I was saying. I'm sorry if I misstated it.

Commissioner Hatch: Perhaps you did state it unintentionally.

Commissioner Audero: Can I say something?

Chair Remke: Commissioner Audero.

Commissioner Audero: So, I think we do have the mechanism that the AG was contemplating, our timesheets. That's why we turn in timesheets detailing what we did, and -- and the mechanism is that somebody is going to look at them critically to make sure that we're not abusing our -- or we're not seeking to receive more pay than what is allowed for whatever the official duties are. And as to the question of who defines a -- how are the official duties defined and they're not defined anywhere, well, I would say they're absolutely defined in the statement of governance. I have a list of things that I'm supposed to do as a Commissioner, and I'd be really surprised if preparation for a meeting, which is listed as one of my obligations, suddenly is considered not an official duty, because then, like I said earlier, how the heck do we make decisions in a vacuum. And so -- so I think that we have the duties specified in the statement of

governance principles as well as this -- this -- what did we call it -- a piece of paper that's floating around, which by the way, is our manual and applies to us and tells us what we need to do. So, I think we have the mechanism, and I think that we have the definitions.

Chair Remke: What -- so I can get clarification, what do you think the mechanism is? You said someone will review it and approve it. I'm wondering who you think that is and what authority they have to deny a claim.

Commissioner Audero: I don't know who it is, because all sorts of stuff goes on that we are not entitled to see.

Chair Remke: Well, admin --

Commissioner Audero: Let -- let -- let me finish, please. So -- so, I imagine that when I turn in my timesheet, one of you two reviews it or somebody reviews it and says, oh, not an official duty, or yeah, official duty; otherwise, why are we putting in timesheets and descriptions of what we do? Why does anybody care? Why? Somebody answer that question.

Chair Remke: I believe the timesheets, again, are from a time past, and that's, again, why I think we need clarification. And what people perceive the mechanism to be or the policy to be is not what it is, and again, things have changed over time. It would be a smart idea to put whatever we agree on, whatever you want in writing, agree to it, and move forward. The timesheets were clearly from a time when you could ask for 12.50 up to five days a month. Now, again, even that's questionable, because as Commissioner Hatch has pointed out, there wasn't supposed to be a cap. So, again, we just kind of changed and adopted informal practices and policies along the way, which none of them have been consistent. Some of them have been carried over, and the point being there is not a mechanism in. So, despite whatever is going on over here which you're unfamiliar with, we -- neither Aaron, the Executive Director, nor I review your timesheets. It goes directly to the administration, admin, who gives you at the max of two days a month. Again, the only time I even was brought into this issue was in August of 2017 when there was an objection as to that two days a month.

Commissioner Audero: Okay, so, may I say something? May I?

Chair Remke: Commissioner Audero?

Commissioner Audero: The fact that somebody is not following and doing what they're supposed to be doing doesn't mean that that practice and that rule doesn't exist. It merely means

that somebody is not doing their job. That's all it means, and so there is a purpose for the timesheets. That somebody may choose to not review them and delegate that duty to an administrative person, okay, that's fine, but that doesn't mean that we don't have a rule and a practice of what should be done. And what I'm saying is that check and balance is in place. If we need to address the fact that it hasn't been followed by the people who should be following it, that's another issue altogether, and I'm happy to agendize that as well, but I think we have it in place.

Commissioner Hatch: Point clarification on the motion, question of this -- of maker of the motion. As I believe I asked before, your intent was to take the content of what was in the regulation and make it a policy statement.

Commissioner Audero: That seems to me that that's the best thing we can do today.

Commissioner Hatch: Right. Right.

Commissioner Audero: Not that -- not that that can't be either brought back on a motion to reconsider from somebody who supports it or just amended.

Commissioner Hatch: Right. And -- and that policy could -- could not only take those rules, but also clarify that this should apply to all these cases that are pending while the Commissioners are here, correct?

Commissioner Audero: I think -- I think that's a simple matter of fairness, so yes.

Commissioner Hatch: Okay. And the only thing that we're struggling with here now is -- because we're just considering adopting a policy. So, how is it we get swept up now in ADA -- APA, excuse me -- ADA -- that would prevent us from just getting -- as my longtime friend used to say, just get shut of it.

Commissioner Hayward: Well, I mean, our -- our legal advice is that we can adopt it as a policy. Now, the -- the Chair is concerned that the notice isn't sufficient. I think that given that this involves public money, and that's kind of a touchstone that people care about a lot, I would be willing to -- to specify that it's -- no, be willing to specify that this is an urgency matter and that the -- you know, the -- the notice was good enough. I also am unaware that anyone not sitting on this dais gives a fig. So, I'm not sure where there's somebody out there who says, you know, if I only had notice that they wanted 12.50 an hour, I would have shown up, and I would have said, no, no, just the two hundred dollars. Maybe -- maybe -- maybe there's somebody out

there, and I apologize if I don't know who you are. But I think -- I think this is something we can do today.

Commissioner Audero: And can I add something to that?

Chair Remke: Commissioner Audero.

Commissioner Audero: So, you know, we -- I -- I imagine this is going to come up in Item 22, but I'm going to bring it up here as well. What the public doesn't know, but what we Commissioners know was the subject of an email of how the agenda items were put on the agenda when Commissioner Hayward and I requested -- hers being 21, mine being 22. And the language that was used that was not crafted by us, and perhaps, you know, we take ownership of the fact that we didn't do that, and I personally will never do that again, but having entrusted someone with the ability to -- or with the -- with the -- the creation of the agenda. I think concurrent with that, with the trust that it would be characterized in a way that we could take action. And to have been the author of the agenda item and to now take the position, I wrote it, but you can't take action on it because of the language that I wrote I think is, at best, disingenuous, and I won't go to at worst. But I think it's -- I will say that I think it's improper, but let's say that we own this little problem, Commissioner Hayward and I, for not having specified the language. When the agenda came out in time for it to be changed, we both sent an email saying we intend this to be an action item. Please change the language so that it is and so that there is no question that it is an action item. There was time in which to do it, before 5:00 o'clock on the ten days, and it wasn't changed. So, I would argue that I think it's inappropriate. I think it's gamesmanship, and I think that it is not something that was intended, not to mention the fact that the agenda says -- and I'm -- we argued about this last time, but the Commission may take action on any item listed on the agenda. So, I think that this is properly noticed, and I think that Commissioner Hayward's action item should be voted, and I will make the same argument for number 22, but we'll cross that bridge when we get to it.

Chair Remke: Okay, so, just to clarify for the record and the implications that were just stated regarding perhaps any motivation or intent I had regarding the description, as the Chair, I do set the agenda, prioritizing and scheduling items as appropriate. The description that I'm provided or the general nature of items I put on the agenda. Again, if I cannot tell from that general description or discussion or suggestion what the real purpose is or where we're headed or

there is not even an actual proposed action item within that request, I do believe following what I think are best practices is to put it on first as an information or discussion item, so we can flush it out like we are right here. I do think it's important that we have sufficient notice to provide the public what any proposed action might be in an opportunity for the Commission to have an informed decision reach after being fully briefed. There's several issues even on this item we are unclear about, the 12.50. Do we have to have a mechanism in place? Who's going to approve the mechanism? I think there are a lot of things still up in the air, but we're ready to vote. That's fine. My job, number one, is to try to set the agenda to avoid concerns and follow best practices. I am by no means attempting to shut down any discussion, and I guess I am troubled by the notion that we can have one meeting where we discuss something fully, bring out the issues, and bring it back the very next month to vote on it in a more informed and fully briefed manner is so troubling to some. But with that said, in the future, yes, I would suggest if you're requesting an item be placed on the agenda and you know that you're going to ask for a vote on a proposed action, you have that proposed action stated.

Commissioner Audero: Madam Chair?

Chair Remke: Commissioner Audero.

Commissioner Audero: So, I am reading our statement of governance principles, the one that I got, but I don't think that this particular item changed. But as I read it, the Chair sets the agenda with input from Commissioners and staff, not alone, not unilaterally, not disregarding what has been requested. So, I -- I would say that. With respect to notice, I -- I -- I think that -- what I am concerned about, and I -- I -- I will say it this way, because I really feel this, is the weaponization of Bagley-Keene being used to prevent items by manipulating the language in the agenda. I wholeheartedly support Bagley-Keene, what it intends to do, its policies, its -- its -- its what -- its goals, and I think that it has a very good place in government. But I don't believe that it should be used in this manner.

Chair Remke: So, I believe we have a motion. Was there a second?

Commissioner Hatch: I had seconded it.

Chair Remke: Oh, sorry, Commissioner.

Commissioner Cardenas: Just because I fell asleep doesn't mean that -- first, for the record, in my last contribution, if -- if I interposed the term strict scrutiny for strict construction, that was

a mistake on my part. I meant to -- to refer to strict construction, because that is the term that is used in the 1977 AG -- AG opinion. Having said that, generally, strict construction is applied because it has been determined that that strict scrutiny, as a matter of judicial review, is in fact appropriate. I don't know that the AG's perspective was predicated on -- on -- on a finding or an implication that strict scrutiny was appropriate, but -- but for what it's worth, in -- in my own determination of -- of how I'm supposed to behave up here, I believe that this is a matter that -- that warrants strict scrutiny, and so that -- that is the lens that -- that I'm applying. I -- I can't speak, and I won't, to how things are agendized. The fact of the matter is that it was agendized in the way that it was, whether it was -- whether it was -- that was the imagination of -- of those who -- who advocated for it or not, apparently not. And I'm not going -- I'm not going to today read into how things happened or -- or why they happened in a particular way. What -- what is apparent to me is -- is -- is what on its face is -- is and -- and would be apparent to -- to a member of the public, and that is the way that the agenda -- the agenda reads. I -- I think -- I -- I think that -- that an action, specifically, the approval of -- of the motion as I think I understand that that's before us now, could be taken right now without violating law, but I don't think it should. I don't think it should because it's a bit of a strain, I think, to suggest that the way it has been agendized, faithfully worded or not with the originators' intents, is -- is not clear, that in fact this -- this body was preparing to vote on a matter that would -- that would involve money to members of this Commission. And this is why I think it's a -- it's a good idea to not allow people to vote on their own compensation. In effect, with all due respect to the Chair's attempt to -- to try and -- and -- and figure a way to daylight here, particularly with concern to the suggestion of retroactivity -- and -- and -- and this is another reason why it's -- it's difficult to -- to allow people to -- to vote on their own compensation, because there's a moral hazard involved, not the least of which is that a person has to make a determination, do I want to piss off my colleagues by -- by suggesting that -- that they should -- that money should not go into -- into their personhood. I -- I personally do give a fig. I -- I would be surprised if I were the only one. I think more people would if -- if the notice here had been more -- more emphatic, perhaps in -- in keeping with -- as was originally intended. But -- but the notice is what the notice is, and I don't think that it's sufficiently clear that -- that I can -- can vote to take a particular action today, particularly, not if it's going to involve retroactivity. There -- there's a reason, I -- I think, why -- why strict

3:00:00

construction is -- was called for in -- in the first place and -- and -- and why it's -- it's an -- it's an important principle in the law, and I think relatedly, a strict scrutiny. And the AG's opinion when -- when it -- when it first invokes the -- the strict construction admonition, I think what it's -- I think what it's really getting at is that there are some things about which we need to -- to be particularly careful about, and essentially, what that paragraph basically says is where there's a lack of clarity, then the tie goes to the runner, and the runner is the government. The government is the -- is the holder of -- of the people's money. And I would -- I would, for myself, need a more clearly agendized notice that this body was going to be voting on money for -- for itself, as -- as well-learned as -- as -- as I'm convinced it is before I were to -- to go out there and vote in favor of the motion as I understand it. I -- I think -- I think the motion, as I understand it, should be -- should be made policy, but not today.

Commissioner Hatch: Madam Chair?

Chair Remke: Commissioner Hatch?

Commissioner Hatch: I've been cogitating on the maker of the motion's acquiescence to applying this to these cases that have occurred and not been resolved in the past, and I would offer a friendly amendment to the maker that we add a clause that says, and this policy be applied as if it had been adopted on September 1st, 2015. That takes it to the 1st of the month, before Commissioner Audero became a Commissioner, and the rest of us are a junior to her in terms of her time. The -- the main proposal that is before us is -- is a policy that was adopted with great care back when it was adopted as a -- as a -- as a regulation, and it doesn't guarantee anybody getting paid anything. It establishes one policy that applies to all equally, and it just simply allows that these -- that these claims that could have been or were -- were made be strained through that same policy with no benefit; otherwise, I would just say a motion to -- if it was as represented, it would be a motion to just simply pay everything that's been applied for. I'm not -- that's not what we're doing here. We're saying we're adopting a careful standard that was put together based on the Attorney General's opinion and that we just reprocess those claims that were never processed, because they took the position that there was a strict cap that was never properly adopted anyway.

Commissioner Audero: I would just leave that.

Ms. Peth: No, I just wanted to add two logistical issues. I'm not opining on any of the

merits of the discussion. I am told that we are unable to pay the 12.50 an hour. That's something that I would be happy to look into and get to the bottom of, but I wanted to point that out. If the Commission decides to vote on the motion, it does say in paragraph two a member of the Commission shall receive 12.50 per hour not to exceed a hundred dollars a day. So, again, I don't have that information right now whether that can be changed. My understanding is it is at the Controller's Office, but I could -- we can look into that. And the second issue -- sorry, Commissioner -- is, again, something I would just need to look into is on the retroactivity. If we did it back to your proposal of September 2015, it would go -- be going back into at least two different past fiscal years, and again, that's not something that's impossible, but I need to just verify with my administrative division that that's something that they can do to reopen the books on those years, because they do get closed out. But I -- again, I'm just adding that for the -- the logistical issues.

Commissioner Hatch: The eureka moment for me was when, I think, Loressa brought to light the Controller -- or no, actually, it was you that brought to -- to light the Controller problem. I get it that a lot of these computers that are -- work in some of these agencies are antiques, and they don't reprogram as -- as good as your desktop computer here. But having said that, if it's just -- if it's that kind of a bureaucratic problem, there's workaround.

Ms. Peth: I -- I agree. I can't get -- I'm just saying I need to look at it.

Commissioner Hatch: You could compensate to the even money and bank what's left over towards the following month. It's -- it's not paid, denied. It's paid delayed, which is significant difference. So, that's -- I should not think should be a roadblock to this. I think that it -- to me, it makes sense. We -- if you look at this agenda item and the great detail that was done in the analysis, whether I agree with how they arrived at it or not, it anticipated, I think, quite adequately this motion that is before us. And so, what I -- to clarify, I am asking the maker of the motion to accept this friendly amendment and as a person who --

Chair Remke: Can you repeat the amendment just so I have it for the record?

Commissioner Hatch: The amendment, I will read it to you verbatim. At the tail end of her motion, "and this policy be applied as if it had been adopted on September 1st, 2015."

Commissioner Audero: And can I make a friendly amendment to that?

Commissioner Hatch: 2015, sure. Excuse me.

Commissioner Audero: Madam Chair?

Commissioner Hatch: First, if you would --

Commissioner Audero: Oh, sorry, go ahead.

Commissioner Hatch: I need to know whether she's accepted that or is willing to accept that.

Commissioner Hayward: Yes.

Commissioner Hatch: Okay. Thank you.

Commissioner Audero: And Madam Chair, can I make a friendly amendment as well?

Chair Remke: Yes.

Commissioner Audero: So, to the extent that going back to 2015 makes it problematic, what some people know, some people don't know, so I'm just going to put it out there, is I stopped submitting -- the -- the -- the 2015 was from me. I stopped submitting timesheets a long time ago, so -- as you know, and so there is no need to go back to 2015 on my account. I would be perfectly happy to have it go -- I have no -- I don't need it to go back to 2015. I don't need it to go back to any place on my account. So, if -- you know, if there is a way to amend this so that it doesn't -- so that it doesn't create a problem, I -- I am happy to -- to not be part of -- not have my interest be part of this discussion, because I have no interest.

Commissioner Hatch: That date would be March 1st of 2017.

Chair Remke: Okay, so, that's the friendly amendment, March 1st, 2017? Yes?

Commissioner Hatch: Yes, ma'am, sorry.

Chair Remke: Okay, so, that's the motion. You accepted the friendly amendment.

Commissioner Hayward: Yes.

Chair Remke: I can't recall if there was a second.

Commissioner Hatch: I was the original seconder.

Commissioner Audero: Can we have the motion -- the whole motion now read?

Commissioner Hayward: Yes.

Commissioner Audero: Thank you.

Commissioner Hayward: Correct me if I'm wrong, but my motion currently reflects the text of the regulation of the Fair Political Practice Commission. We have it in our binder. It was filed at the Secretary of State's March 31st, 1977 with the text, but not including the heading of

the 18306 in the title that goes through the bottom of page two of that same document that adds as a friendly amendment, "and this policy be applied as if adopted retroactive to" -- "as if adopted on March 1st, 2017.

Commissioner Hatch: Correct.

Commissioner Audero: Anything else?

Chair Remke: You're only going to the bottom of page two for your proposal?

Commissioner Hatch: No.

Commissioner Hayward: Yeah, we're not doing reimbursement.

Commissioner Hatch: And we should head this as a policy.

Chair Remke: Claims?

Commissioner Hayward: Oh -- oh, the claims one on C. Thank you. Here's another friendly amendment.

Chair Remke: Well, it's your amendment. You can amend it.

Commissioner Hayward: But you were being friendly, you know? Okay, so, we're taking out B, and then we're going to -- we're going to include C, claims, because you're -- because the -- the Chair is absolutely right. I neglected to put in my motion how we would actually go about claiming our time. So, with that --

Chair Remke: And there was a second?

Commissioner Hatch: Yes, I was the seconder.

Chair Remke: Okay, so, you're seconding even with all the amendments.

Commissioner Hatch: I accept the amendments --

Chair Remke: Okay.

Commissioner Hatch: -- for my second.

Commissioner Cardenas: Question?

Chair Remke: Yes?

Commissioner Cardenas: So, the -- the intent of the motion is that this become policy now and that its effective date be some date prior to today; is that correct?

Chair Remke: It sounds like effective March 1st, 2017.

Commissioner Cardenas: All right, I -- I -- I say this at -- at the risk of further endearing myself to my new colleagues. Maybe it's easy for me to say because I'm -- I'm the new guy, and

3:10:00

I have -- I have no retroactive earnings. Please be careful. Democracy in this country is under attack from within and without as we have never seen in this country. We spent two hours today talking about money that would come to members of this Commission. With all due respect, please be careful.

Chair Remke: Before a vote, is there any public comment on Item 21? Seeing or hearing none, let's take roll.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: No.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: No.

Sasha: Motion passes.

Chair Remke: Okay, let's move to --

Commissioner Audero: (Inaudible)

Chair Remke: Okay, I'm just getting to it, Item 22?

Commissioner Audero: No -- (inaudible)

Chair Remke: Oh, on 21?

Commissioner Audero: I had said that.

Commissioner Hatch: Yeah, she did say that.

Chair Remke: Okay, Item 21 still.

Commissioner Audero: I move that we request that the Attorney General's Office review its 1977 advice letter and let us know if all of the advice that was provided in '77 is still applicable in light of the language and Wage Order 4-2001, which provides that the California minimum wage law applies to state employees as of January 1, 2001.

Chair Remke: I -- I missed the first part. Is that asking the Attorney General for an

official opinion or what was the process you were asking for?

Commissioner Audero: Good point. What I said was that we ask the Attorney General to review the 1977 advice order, and maybe I should have said to provide an official opinion that analyzes whether the 1977 advice letter is still applicable in light of blah, blah, blah, blah. And I'm happy to repeat the whole thing if it will help.

Chair Remke: So, that's the -- that's the motion.

Commissioner Audero: That is the motion. Maybe -- maybe I shouldn't leave it at blah, blah, blah. That's bad form, and I apologize. So --

Commissioner Cardenas: That's the part I understood.

Commissioner Audero: I move that we request that the Attorney General provide an official advice letter -- no, sorry, an official opinion with respect to whether its 1977 opinion is still applicable in light of the language in Wage Order 4-2001, which provides that the California minimum wage law applies to state employees as of January 1, 2001.

Commissioner Hatch: I would second it.

Sasha: Commissioner Audero?

Commissioner Audero: We need public comment?

Chair Remke: We need comment. So, I guess I'm just, again, on procedure. So, even if this motion were to pass, John, I'm assuming we'd have to go through the same exercise where we bring it back with your analysis before we can send it over to the AG's Office. Is that your understanding?

Mr. Feser: As far as I know, there could be something about reviewing a prior opinion. I'm not sure, but as far as I know, that appears to be the process, correct.

Chair Remke: So, that's -- okay. Okay, so, that's the motion which would include the built-in -- bringing back the question with Legal Division's analysis on the question before it was sent over to the AG, which I guess at that point, we could decide whether or not to send it over on the -- to the AG based on the analysis. Motion, second. Any public comment on this latest motion? Any further, sorry, questions from the Commissioners? Okay, take roll.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Yes.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes.

Sasha: The motion passes.

Chair Remke: Okay.

Commissioner Audero: (inaudible) a long time.

22. Overview of Enforcement Procedures.

Staff: Chief of Enforcement Galena West and Assistant Chief of Enforcement David Bainbridge. A presentation in response to Commissioner Audero's inquiry regarding Enforcement Division processes.

Chair Remke: So, now we're going to go into the presentation by enforcement. While they get set up, I would --

Commissioner Hayward: Thank you.

Chair Remke: -- wonder if anyone's prepared for a, literally, four-minute break to --

Commissioner Hatch: Oh, thank you.

Chair Remke: -- use the restroom. So, we'll just take a -- we'll be back at 1:20 to start the presentation.

(Off the Record)

Chair Remke: Okay, so, let's go back, get on the record and get started. We're at Item 22, the overview and the enforcement procedures. Galena West.

Ms. West: Hello. Galena West, Chief of Enforcement.

Commissioner Audero: Okay, timeout. Hold on. This is my agenda item. I would like to introduce it.

Ms. West: Sure.

Commissioner Audero: Everybody who has put an agenda item on the agenda has been extended.

Ms. West: Oh, I'm sorry. I didn't know you wanted to introduce it. I thought you -- go ahead, please.

Commissioner Audero: I said that to you right before we --

Ms. West: Yeah, I didn't understand. Thank you. Please go ahead.

Commissioner Audero: Sure, sure. Take as many as you want. So, I asked for this item to be placed on the agenda because -- for -- for really two primary reasons, one that has been kind of longstanding and one that is a little bit more recent. So, for the past however long I've been sitting here, for two years, two -- and some months, I have felt this tension that I'm sure I'm not the first Commissioner to feel between -- on the one hand, my obligation to provide oversight to the activities of the Commission, which means all of the activities of the Commission, not just some, and the need for the ethical wall that exists and that has been put in place in order to preserve and protect the due process rights of the people who are being -- are the subject of enforcement. And I -- I -- I value both of those, but there's just this tension, because -- because of the ethical wall, there's all sorts of stuff that we can't see, and yet I have an obligation to provide oversight over it. I don't recall Governor Brown saying, go, I'm appointing you, go, but don't look behind the curtain. I just don't recall that or anything like that. The second thing -- so -- so, that's kind of been going on in my mind for a bit. The second thing is the discussion that we had last month in the Lucan matter, which really kind of brought it to a head for me, but also the discussions that I've had with the regulated community regarding their concerns for many, many years. This is not something that is new or that is just under this administration, but for many, many years about the methods that are employed by enforcement as they do the job that they do. And I -- I struggle when I speak with someone from the regulated community who says, you have no idea how we were just treated. I will say, Ms. West, don't take this personally. This is not just you or this administration, and I will also say that I hear good things about enforcement, okay? But I struggle, because when I hear these concerns, there's nothing I can say, because there's nothing I can do, or so I have felt. And so it occurred to me that this lack of visibility is also -- it's kind of creating this -- this higher level of tension or anxiety for me personally as a Commissioner on how do we handle this situation. I do believe that the very existence of the ethical wall is what creates this, right? Like I said, though, I understand the ethical wall being in place, but it has been said and in -- in past meetings that perhaps we're not

here to second guess enforcement. And I will say that for me personally as a Commissioner, that is not how I view my role. I view my role as questioning everything that happens here. That's how you provide oversight, and so -- so -- because otherwise, why are we even here, right, if all we're going to do is have enforcement do its thing. And -- and by the way, I'm not talking about when something comes to us as a stipulation, right, or -- or we have to vote on whether it goes to an ALJ, because -- because that's when it comes out from behind the curtain. So, I'm talking about the things that happen behind the curtain, the processes, the timelines, how we -- how we deal with situations behind the curtain. And -- and -- and I wonder -- I mean, we can't possibly be here to rubber stamp that. That just can't be our role. I -- I -- nor can it be our role, I would say, to delegate our obligation of oversight, and the reason I say that is that the obligation of oversight was entrusted to five people. Out of all the people in this Commission, only five of us have that obligation, and it was entrusted to us because we underwent a very strict vetting process that convinced the -- the leaders of the state of California who appointed us that we were the right people to make these decisions and to provide oversight. And so, I think -- I -- I struggle with the idea of you can delegate that and not look behind the curtain. As much as I may trust you as an individual, the reality is we go through this vetting process, and we're the only ones that go through the vetting process, and that's what gives Governor Brown, in my case and in Chair Remke's case and the various other leaders the peace of mind to know that they've put the right person in this job to provide oversight. So, therein lies the conundrum, right, for me and for you, Ms. West. And so -- so, the reason -- so, I -- I started to think, how do we resolve this? Is there a resolution? And, you know, one -- one resolution could be we strike the ethical wall altogether and we change the model so that it doesn't come to us ultimately and we're not the tryers of fact. And so, we can provide oversight to what's happening in enforcement, and then ultimately, the tryer of fact becomes somebody else. Maybe it's the District Attorney. Maybe it's the AG. So, that's -- that's a very extreme -- I see your face, and I get it. That's a very extreme solution to this problem. It would include -- it would involve the legislature, and that's just very extreme. So, I thought, okay, well, maybe we don't want to go there. So, maybe -- maybe another possibility is that we assign a Commissioner to each case to oversee the handling of that case that typically is behind the curtain. The ethical wall stays in place, and then when -- when anybody has to -- when -- when the Commission has to vote on a stipulation or -- or

3:20:00

sending it to the ALJ, as -- as we have done, that particular Commissioner, of course, recuses. That creates another problem, right, because that leaves us with a four-member body that can absolutely deadlock. So, that, to me, is not a favorable approach. So, that, to me, has led me to - - okay, what else can we do so that we can all feel comfortable that what's happening behind the curtain is something that we have some level of trust in and that allows us to go to the regulated - - or to respond to the regulated community when they raise an issue to us, that we feel comfortable with what's -- with the processes that we believe are behind the curtain. And -- and -- and because of that, we can -- we can, in essence, delegate some of our authority to -- to -- to run through the enforcement process to a certain point. And that, to me, comes in the form of a procedures manual that everybody agrees on that takes it from cradle -- takes every case from cradle to grave, and I don't know if one exists, and I -- I -- I -- I will ask the question -- or hopefully, you'll just answer, Ms. West, when -- when -- when you speak. But -- but if we have a manual in place that I know in my mind is being followed that has timelines and tasks and exceptions to timelines, because we know not everything is the same, not every case is the same, and procedures for asking for extensions on timelines from the Commission, policies, priorities, I would feel much better about answering to the regulated community. And that, to me, is a way that I would be willing to trust that process, is if we all work together to come up with something that everybody feels comfortable with, within reason, right? I will say that even then, I'm of the school of trust, but verify, and I don't know what the verify looks like. And I -- I'm not sure that that verify is -- is -- should be part of this process review or not. I leave that to another meeting, but I think that that is a solution that I personally feel comfortable with, and obviously, this is something that we're all going to discuss, and we're going to take input from the regulated community and from enforcement. But -- but that's -- that's the motivating force behind requesting to put this on the agenda. I just don't know what happens back there by design. I understand that. So, my vision of where we go from -- from here is that today, we become educated, not as to any specific case, but as to what happens behind that curtain generally. We become educated as to the concerns of the regulated community generally. I think we've already gotten some comment letters, and I think they're very helpful, but that today, our action item is that we vote on whether -- and -- and I'll make the proposal at the appropriate time, because I have specific language for it, but whether we go forward with a process review of enforcement

or not. If the vote is no, we're done. We go home early, late, but we're done, and we leave that issue to a future Commission or this Commission at a later time. If we vote that we do want to go forward with a process review, then I would like to put on the agenda for next month an action item to address two things, to move this forward. One is how do we do this? What is our process for doing this? And I think that that merits input from everybody, including enforcement, and yeah, yeah, everybody here and everybody who will be here, I guess, in March. And also, we have a discussion and vote on in March, if possible, how we go about doing it. And also, we have a discussion and vote on in March of the scope of what this review is going to be. What is it going to look like? Is it going to be a review of every single process for every single type of case that you handle or are we going to limit it to certain -- certain cases or are we going to prioritize and kind of do a triage of what we're going to do first? And -- and then I think once we put in place that mechanism and we, as a Commission, provide it with the marching orders of what it's supposed to do and a timeline that hopefully can be met, then I think we're off to the races, and then I think it becomes -- it -- it -- it puts us closer to the end goal, which I think is, as I mentioned, this procedures manual that will be made public and that can be reviewed and revised as needed. And I think that that will start to rebuild a relationship that is not that good right now, and I will say it because of things that have been said to me, and it will start to build trust in our Commission by the body of people that we regulate. And I -- I think that -- I personally believe that that's the way to go, but then again, I am -- I am but one vote, and I am sure that others sitting here have excellent ideas that we should be discussing. But that -- that is by way of background what I would like to do, because in keeping with Chair Remke's overarching goal of transparency, I think that a public manual will address that, and I think that it will help to build relationships. So, that's -- that's why I put this on the agenda, and so now I would -- I'm going to step back from the microphone, turn it off, and would love to hear from enforcement and also Commissioners and the public. Thank you.

Chair Remke: So, before Ms. West gets started, did any Commissioners have any initial statements or should we hear the presentation first and then go from there? Okay, Ms. West.

Ms. West: Okay. I think I'll start it a little differently than I had planned. Galena West, Chief of Enforcement.

Mr. Bainbridge: I'm Dave Bainbridge. I'm the Assistant Chief of Enforcement.

3:30:00 **Ms. West:** My mic is on. I'm just really tall when I sit down. But -- so, I -- I -- I get the purpose of -- of what -- why we're here, and I kind of had an inkling that that was probably where we were going. So, this presentation has been made specifically to shine as much light as we can on what you can see about enforcement, and as you know, this is -- this is going to be public, so this is going to be on our website. So, these slides -- so, these are all things that we're trying to get everyone on the same page, an even playing field in starting this discussion so that everybody knows what the processes are and everybody knows what's in place right now, and then we can talk about areas that trouble or concern people or areas that are working. I think that's something that will really come out of this process, is you will see the very, very opposite viewpoints of people that are complainants versus people that are respondents. I made the joke one time probably before Commissioner Cardenas' term that the respondents are never happy because it's too harsh, and the complainants are never happy because it's -- it's too easy. And so, I do think that this will be a nice process so that you get a little more exposure to the complainant side and the press and media side as well. The -- the need for information seems insatiable. Okay, and then I would just point out that I'm interested to talk to whoever is -- is dissatisfied. Over the years, they've had quite -- quite a good contact in the Executive Director, because she used to work for Wilson Hagel (phonetic) and is very open to taking any complaints or concerns that people have. And so, I would give her due credit for -- if there's an enforcement concern, bringing it to my attention. And then I would say since I took over as Chief three years ago, the -- one of my main focuses has been on streamlining, simplifying, and make everything a little more fair. And as you'll see through these slides, you'll see that the vast quantity of the work that we do calls for that and the need for that. So, it started in May of 2015 where the first time we consolidated all of the streamline programs to have them in one place for the Commission and have them all approved at the same time. And then we did four regulations in 2015 and 2016, all about enforcement. So, we modified the enforcement regulation, the audits in enforcement regulation, the public records regulation as it applies to enforcement, and the administrative termination reg. So, since I've taken over, this has been one of my priorities, so I'm happy to talk about it, and I'm happy to have enforcement the focus of -- of conversations. And we've also had an electronic complaint system that we just put into place in October of 2016, which it corresponds with an internal process system. And then all of 2017, we worked on standardizing

all of the templates using Conga templates that are populated by the -- the database itself and trying to reach out to filing officers and DAs and Attorney General and everybody via email instead of mail. So, we've made a lot of strides in 2017 to get a little more current and to -- to use what's at our disposal. And then in 2018 -- this is a welcome discussion, but I would remind you it's an election year when we set up our timing, because our pre-election efforts start in March, and in April, the first pre-elections are due. And we, in enforcement, go for a hundred percent compliance for a pre-election. So, any city clerk we reach out to, all the city clerks in -- in jurisdictions above a hundred thousand and all counties having elections and we get a hundred percent compliance for the candidates filing in those jurisdictions so that everyone has pre-election filings. So, I would just -- that would be my only caveat. All right, so, let's start the show. So, the mission you're all familiar with. It's what we live and breathe, the -- promote the integrity of state and local government in California through fair, impartial interpretation and enforcement of the rules, political campaign, lobbying, and conflict of interests. And then there's the two big chunks of -- of the FPPC. One is to advise, train, and educate, which is legal and education divisions, and then the audit, investigate, and prosecute portion that we're talking about today. The Enforcement Division itself has its mantra that's on the website, which is to fairly, effectively, and efficiently enforce the provisions of the political format. So, Enforcement Division is a grand total of 30 people for the state, and that goes from the lowest -- smallest office for vector control to the Governor. And we have attorneys and nine investigators and eight specialists. So, we have three that perform our intake function, and then we have program specialists, which are otherwise known in the -- the real world as auditors. And then we have four support staff that keep us all going and moving.

Mr. Bainbridge: So, the Political Reform Act resulted from a ballot measure initiative. It contained a number --

Chair Remke: -- knows who you are, right? Did you say your name to begin with? I'm so sorry.

Mr. Bainbridge: I did.

Chair Remke: I missed it.

Mr. Bainbridge: I'm Dave Bainbridge, the Assistant Chief of Enforcement.

Chair Remke: I forget your last name.

Ms. West: With the flow, go.

Mr. Bainbridge: So, yeah, you really screwed me up there. I was all ready to go, and you jumped right in. So, the -- the PRA contains a number of findings and declarations that was in the original legislation, one of which states in enacting the Political Reform Act, the people find and declare that previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities. It also contains a number of stated purposes, one of which is adequate enforcement mechanisms should be provided to public officials and private citizens in order that the Political Reform Act will be vigorously enforced. So, that acts as the backdrop for the enforcement actions. In addition to that, there are certain obligations on the Commission by statute. Government Code Section 83115 requires that the Commission investigate possible violations of the Political Reform Act, whether based on a sworn complaint or on the Commission's own volition. It also enables the Commission to make audits and investigations of any reports or statements that are required under the act.

Ms. West: So, most of our -- we do investigations administratively, but we're also ruled by the Government Code in general, which rules over everyone in the -- the government sector. And Government Code 11180 is the most applicable that authorizes investigations and prosecutions concerning all matters relating to the business activities or subject to the jurisdiction of the agency, including any violations of law. And then 11181 talks about subpoenas and the investigations where the department head may issue a subpoena for the production of all the things you see listed. And I would point out also the FPPC has its own administrative subpoena section as well that is more specific.

Mr. Bainbridge: And the courts have interpreted these -- these two statutes broadly. Specifically -- next slide -- is the Brovelli case, which was a California Supreme Court case, which essentially said administrative investigations should be more like a grand jury investigation, not a court proceeding. The quote that I think is important here is that it's -- it does not depend on a case or controversy in order to get evidence, but can be investigated merely on suspicion that the law is being violated or even just because it wants assurances that it's not, and that comes from a US Supreme Court case, the US v. Morton Salt.

Ms. West: And this is interesting, because this is kind of where the pre-election efforts come from, because although you know they filed a 501 and a 410 to run for that office, you found no

filings. So, upon this suspicion that they did not file and they have activity, we reach out to them and get them to file preemptively before the election. And then as you know, these are the sections that they act. The only reason we always have it as a slide is just to remind you that the act is vast and that -- and that covering the whole state and all of these areas is quite a challenge.

Mr. Bainbridge: So, in terms of enforcing the Political Reform Act, there's three ways it can be done. One is administratively, which is done by the Fair Political Practices Commission.

There's civilly, which is done by a multitude of government organizations, the FPPC, local law enforcement, the Attorney General's Office, and then also there's the ability for private citizens to bring a civil action under the Political Reform Act. And then criminally, it's prosecuted by both District Attorneys and the Attorney General's Office. So, we'll go through each of these three categories briefly, and the administrative prosecution is -- most prosecutions of the PRA are done this way and done by the Fair Political Practices Commission. It -- there's a five-thousand-dollar per violation limit, except in some instances involving advertising, which has changed recently with the new legislation, the Disclose Act. So, don't ask me the specifics on that. I do not know it yet. The statute of limitations is five years to bring an administrative action. And you can bring an administrative action for any violation of the act. That's not true as to the civil and criminal provisions, and the reason I think that the administrative procedure gets used the most is because it's the fastest and the most efficient. As anyone who's practiced in civil court knows, superior court is not exactly efficient, and you can get a courtroom a lot quicker with an ALJ than you can get a hearing on motion. It also -- doing it administratively allows for the Commission to make a final determination on any decision. If it goes through the civil process, it's -- once the superior court issues a final order, that's it. The case is done. So, you're above ALJs and below superior court judges in that way. Civil prosecution can be initiated by a number of -- of different government agencies. It depends on the jurisdiction of the respondent, and so that's what we call the civil prosecutor. The FPPC is the civil prosecutor for the state or any state agency or with the permission of the DA at the local level. The District Attorney is the overseer of the Fair Political Practices Commission, and then District Attorneys are for any other agency, so the local agencies, typically. And then the private citizen, the ability for private citizens to bring a civil action, which I discussed earlier, is -- the requirement is that they request that the government agency -- the appropriate -- the civil prosecutor bring that action first. They

3:40:00

have 120 days in which to do that. If they state, we're not going to bring an action or the 120 days runs, any citizen is -- is allowed to bring their own action under the PRA.

Ms. West: And then I would just note there's a regulation that precludes a staff from acting civilly without your consent. So, it would be a memo to the Commission asking for permission to proceed civilly that would be -- you would vet it in closed session.

Mr. Bainbridge: And then lastly is -- is criminal prosecution, which the FPPC does not do. This would be the local DAs or the Attorney General's Office that would bring criminal charges. The standard of proof is higher, because it's someone's liberty and not their property that's at stake. It's a standard is must knowingly and willfully violate the act. For administrative and civil, it's a preponderance of the evidence. The statute of limitations is one year shorter. All violations of the act, except a set group that have been excluded from criminal prosecution, are misdemeanors if a violation is found.

Ms. West: Generally, if it applies to the legislature, it's not criminally prosecutable.

Mr. Bainbridge: And -- and if a person is convicted of a crime under the PRA, they may not be a candidate or lobbyist for four years.

Chair Remke: What did you say, Galena? Was that a joke? What did you say?

Ms. West: No. It's written out into the -- the PRA that -- for conflict of interests. I know there are things -- ethics violations by the legislature is -- it can't be criminally prosecuted.

Chair Remke: Okay.

Ms. West: So, our sources of cases, quite a variety. We get complaints that are both sworn and non-sworn, which means filed under penalty of perjury, and we're anonymous. Those are all available under the new complaint form system. And then we receive referrals from the SCI Unit within the FPPC, because they're our filing officer, and then other filing officer referrals for non-filers. And then we have audits and audit referrals. You see the franchise tax board cases as well as the internal audits, media reports, staff-initiated investigations, tips, and referrals from law -- law enforcement agencies. As I said earlier, the Susan Kennedy case came from a law enforcement agency. So, this gives you kind of the -- the amount of complaints, cases, and referrals. So, you see in 2016, the amount of complaints was a lot higher than in 2017, and the amount of referrals flip-flops. And generally, you see that as a pattern, because the complaints go up in an election year, and the referrals go up in a non-election year as people are cleaning out

their books and finding out they're non-filers, especially the ones that didn't win and stopped filing. So, last year alone, we received 2,180 items that had to be acted upon. One second. Oh, and then I also wanted to note that we closed 1,477 items last year. Three-hundred-and-40 of those went through the Commission's approval process for over 1.1 million dollars in fines, and it -- it was a record year for enforcement, which was -- we were trying to be more efficient and more effective, and I think that that shows in how we're handling the cases. And just to give you a little bit of perspective, you see our numbers of 2,180, the next largest I would say was probably LA ethics, and they received under four hundred complaints and referrals last year. So, intake is the process with which we review all of those complaints and referrals that come in. They go through the intake process to determine whether we should open a case. In determining whether to open a case, the intake staff reviews it at -- and any additional information provided by the complainant, anything that's publicly available that's easy to obtain, and any material submitted by the -- the subject of the complaint. So, we try to do this in the most -- the most difficult time constraints you can imagine, and the intake staff is three people and then me. And so, it's -- if you can imagine the -- the amount of work that those three people do, it's -- it's pretty amazing. And if the intake staff determines sufficient evidence is present to suggest a violation may have occurred, then the case is open. But to go more specific, 18360 is one of the regulations that we have amended in the last couple years, and that is the -- the regulation that -- that kind of goes into more detail as to how we handle these complaints, the sworn, the non-sworn, and it's based on the statute. So, the statute starts us off, and the statute says if there's a sworn complaint, you have to notify the complainant within 14 days what you're going to do, and -- and that's not -- it's -- it's in the statute. So -- so, we do have need-more-time letters that we try not to use, because we -- we try to comply with the statute as much as possible. But within 14 days, we send the investigator won't-investigate letter in the majority of cases. And then the Commission-initiated cases, which includes everything else, although there's no legally mandated deadlines in the statute, we send letters of inquiry when appropriate, and they generally have ten days to respond. So, enforcement sends respondents notices of allegations against them five days to prior of the disclosure of the documents to the public or the press. That was one of the things that was very important to us to get put into the regulation, is what the media policy was so that everybody was treated the same and all of the information got put out to

the press at the same time so that there is a delay between when we notify a respondent or when we send them a copy of the complaint and when the press gets the -- the copy of the complaint or any member of the public that requests it. So, we can confirm an investigation is -- or a complaint has been received, but we won't actually give the documents until the respondent has an opportunity to receive them.

Commissioner Audero: Can I ask a question about that, what -- what you tell the press? Do you tell the press we confirm a complaint has been submitted to us, we are investigating this person, or is it just we confirm a complaint?

Ms. West: When we first receive the complaint, we only say we have received a complaint, and we will confirm that we have received it. So, if the complainant calls and says, did you receive my complaint? Yes. If the press calls and said, did you receive a complaint from Joe Smith? Yes. But you won't receive any information about that complaint until the five days has passed.

Commissioner Audero: Maybe it's later, and tell me if it isn't, but is there a point at which you tell the press, we're investigating this person?

Ms. West: Sure. So, when we send out the we-will-investigate letter, it's -- it's actually all in 18360.

Commissioner Audero: Okay.

Ms. West: Okay.

Mr. Bainbridge: So, after the -- after a complaint has gone through the intake process and there's been a determination that there's something worth looking into, we initiate an investigation, typically. The investigations are performed by investigators and attorneys and sometimes auditors or other support staff. The goal is to gather evidence to prove or disprove that the alleged violations occurred or did not occur. Most of our -- our investigations are fairly heavy on documents. So, we do have a subpoena power, but we must seek voluntary compliance when possible. There are some instances where we do not seek voluntary compliance in advance of issuing a subpoena, commonly bank records or business records where the bank or the business requires a subpoena or in situations where there's concern about destruction of evidence if a subpoena is not issued. The --

Commissioner Audero: I have a question about that.

Mr. Bainbridge: Yeah.

Commissioner Audero: Real quick. So, does that mean -- so, you don't ask a person who's accused for their bank records? You just automatically issue a subpoena? What if -- what if I have my bank records?

Ms. West: No, that -- that's not -- what he's saying is we -- we can ask for a voluntary compliance from the person for bank records, and if they don't provide them, we can get them -- or they provide incomplete -- what he's saying is that he doesn't ask the bank for voluntary compliance.

Mr. Bainbridge: So, the Executive Director is the one who authorizes all administrative subpoenas. That hasn't always been the case, but for at least the last handful of years, that has -- requires the signature of the Executive Director to issue, yeah.

Commissioner Hatch: Are there procedural requirements in place beyond the regulation in the statute -- (inaudible)

Ms. West: We -- we have just general guidelines, but -- which would --

Commissioner Hatch: Internal guidelines?

Ms. West: Internal guidelines.

Mr. Bainbridge: So, the Executive Director, in reviewing whether to sign off on an administrative subpoena, looks at whether the records are going to be material to the case and then also whether it's reasonable to believe that the person who's being subpoenaed actually has -- is -- is likely to have control of those records.

Ms. West: So, that is a check imbalance that was put in place when I took over, and it was -- it was also in response to our conversations and the CPAA's concerns that they expressed to Chair Remke when I was -- when I was considering whether to take this on. And -- and -- which was great for me, because I was already looking at the procedures that we wanted to -- to look at. So, we were in agreement with CPAA. They brought it up, and we said that was -- that's something that we're already looking at, and we are definitely changing that procedure. Okay, audits, so the audits -- the PRA requires the FPPC to perform certain audits, candidates and committees for State Controller, PERS, and the State Board of Equalization. The franchise tax board performs all the other statutorily required audits, and they have an enormous workload and a very small staff. So, I don't -- I don't even know how they stay above water. And then the

FPPC has the authority to perform discretionary audits. We also have a contract with the county of San Bernardino, and we audit their candidates when they meet certain thresholds. And we get paid for that, which is surprisingly nice, and I enjoy -- I enjoy having contract work. And auditors also routinely assist with the complicated campaign investigations. They're -- they're priceless when it comes to that.

Mr. Bainbridge: And again, by we, she means the Commission, not herself.

Ms. West: No. I also don't get to keep the money. But -- so, this slide is lengthy, but it -- we wanted to show the types of resolutions, since that seems to be some -- one of the topics of discussion. So, this information is on the website. This is on the enforcement page, and no action, closure letters. If there is sufficient evidence to -- not -- if there is insufficient evidence to prosecute a case and no further information would be helpful or informative -- I think this is time here. Okay, so, the advisory letter, if there's insufficient evidence to prosecute the case, but the person complained about, appears to need information, or about the act in order to ensure future compliance. And then warning letters where a violation is found, but the seriousness of the offense is low, the public harm is minimal or other mitigation is found so that a monetary fine is not warranted. Stipulation you know are the negotiated settlements, default judgments, not participating, and the ALJ decisions are issued after the hearings. Civil action we already spoke about. So, if you notice, there's numbers after each of these, and in 2017, that is the number of -- of those that were issued. So, 318 no closure letters, 17 advisory, 505 warning, stipulations, 66 mainline and 262 streamlined, 12 defaults, and one Administrative Law Judge decision.

Mr. Bainbridge: So, now we'll talk a little bit about settlements. If an investigation shows that violations occurred are practices to seek settlement before initiating an administrative proceeding. Over three-quarters of our cases that settled last year were through the streamline program. Streamlined is governed by the -- a Commission memo that was approved in May of 2015. It sets a formula -- it sets formulas for determining what penalties should be in campaign cases involving relatively small amounts of money, in SCI, non-filer and non-reporting cases where there's no evidence of a conflict, and then also in minor lobbying cases.

Chair Remke: I would just add that that was another issue that we brought back in May of 2015 in response to the Defense Bar's concerns about equal treatment for equal cases.

Ms. West: That's true, and -- and the Defense Bar had the same concern that I had, that the

memos from the different streamline programs dated back to 1988, and so they were scattered. And so some were -- there was one adopted here and one adopted here, and they weren't consolidated anywhere, and the current Commission hadn't made any kind of judgments on it in quite a while. And so that was -- when we consolidated everything in May of 2015, presented it as a package and got input from the public, and then, of course, I would say in the third slide, Commissioner Hatch has expressed an interest, and -- and I -- I share the interest in starting the discussions regarding them modifying the program and possibly adding additional violations, like advertising and record keeping. So, we'll have the -- have it in our timeline.

Chair Remke: But it seems -- I -- I think it's a fascinating statistic that the streamline program as currently designed covers 77 percent of our cases. That's -- I mean, sure, if we can get it up to 80, great, but we seems like we've hit the -- the big ticket items there.

Ms. West: Well, and the goal is always to be able to treat minor committees with more of a -- the traffic ticket streamlined sort of thing and then to concentrate our efforts and our resources on the more complicated cases. Like, you look at the Susan Kennedy case (inaudible) that's a big deal, and we're going to spend resources on that. You look at the -- the Huntley Hotel laundering case from last year, these are the big deals that we want to be able to put multiple staff members on and -- and really get their resources spent on those types of cases. So, the -- the more that we can streamline, especially the first-time candidates that haven't raised or spent a lot of money and maybe add some additional violations to this that we deem as -- we, you, deem as a Commission are less offensive in the -- the public harm department, then I think the -- the better off anybody non-represented would be.

Mr. Bainbridge: So, if the investigation finds violations that do not qualify for a streamline settlement, it goes to what we've called mainline settlements, although based just on the numbers, it probably isn't the mainline. It's the minority settlements, but we can also work on a new name for that. In preparing a mainline settlement, the staff, specifically, the attorneys with the Enforcement Division, negotiate it with the respondent, and more times than not, with their counsel. I -- and it's negotiated to a mutually agreeable result, which means we obtain admissions of the violations. It also means there's an agreement on the relevant facts of the case, languages often negotiated. And then there's also going to be public disclosure of any previous undisclosed information. So, if a candidate failed to report a number of contributions they

received, in addition -- enable to -- in order to be able to settle the case, they're going to need to file an amended campaign statement disclosing those contributions so that information then gets out into the public. And then we have a quote here which is sort of our -- our mantra in preparing and negotiating our -- our settlements, and I think it -- it -- it summarizes both the imperfect nature of trying to negotiate a settlement with an opposing party and it also includes the word snazzier, so we like it, and it is that settlement is the offspring of compromise. The question we address is not whether the final product could be prettier, smarter, or snazzier, but whether it is fair and adequate and free from collusion. This comes from a ninth -- ninth circuit case. It was a class action settlement that the judge was approving. I -- I think it was the superior court judge was challenged, and it made its way up to the appellate court.

Ms. West: And -- and this is what Commissioner Audero was eluding to earlier, that the Commissioners are the adjudicators of the enforcement action, and so in order to avoid prejudicing the respondent in the matter, the Commissioners aren't made aware of the specifics of the case until the information is made public either through probable cause findings or a settlement or a default. So, penalties, it's -- the recommended penalties are determined by prior similar cases. We try to keep those to the current year, and that way, we can -- I think that you call them comparators. Yeah, okay, and so we -- we try to keep them current so that way it's more reflective of what the -- the -- the Commission has been approving and then Commission direction. So, if you say something at a Commission meeting and three -- two of your -- your fellow Commissioners agree with you and -- and you say, I'm going to approve this settlement, but I think that these are very egregious violations, and in the future, these should be higher. And Commissioner Hatch and Chair Remke go, yeah, we totally agree. Those are -- those are the worst. And so as enforcement, we absorb that, and as the regulated community, they absorb that. And so we all realize that we have to react as quickly as possible to those kinds of direction. And then the factors, the seriousness, the presence or lack of intent to deceive, whether the violation was deliberate, negligent, or inadvertent and whether the respondent demonstrated good faith in consulting the Commission staff and if there's a pattern and then public harm. And those factors, in response to Commissioner Hatch, we now try to list certain facts from -- in each mainline stip to show where those factors apply in that particular case. But I would highlight public harm, because public harm is what we're here for. It's what the mission

4:00:00

says. It's -- it's what we're doing, and so we always try to keep in mind that we're here for the people of California and the voters. And whether or not Dave and I don't care if the vector control guy actually will file his SCI, someone cares. Someone needs to know. Someone has -- we have to make sure everybody plays by the same rules, and -- and I give this speech to enforcement all the time. Yeah, there's going to be 50 percent of the cases that you fine the non-disclosure or the campaign money, and it turns out to be innocuous. They were just lazy, but then you're also going to have the cases where you find out, oh, no, they actually kept all that money, and they didn't file because they were covering it up, and the statements are under penalty of perjury. So, I just try to keep that in mind that once we -- we get a hundred percent disclosure from everybody and everybody is on the same page, we're keeping the public harm at the minimum.

Mr. Bainbridge: And on public harm, just to add, I -- we're not just talking about the people walking on the street. It's voters. It's taxpayers. It's the complainants. It's the people that are running against the person who may be cheating on their campaign statements. So, it's really a very broad concept, and there's different people to -- and I mean, the government in general. So, it includes lots of different facets.

Ms. West: The general government.

Mr. Bainbridge: Government in general.

Ms. West: I didn't write who this was.

Mr. Bainbridge: That's you.

Ms. West: Okay, that's me. So --

Commissioner Hatch: What are these penalties?

Ms. West: Sure.

Commissioner Hatch: (inaudible) where Commissioner (inaudible) was applying (inaudible) suspended sentences, so to speak (inaudible) an example, let's say a 30,000-dollar fine with 20,000 of it suspended pending the following probationary additions -- (inaudible)

Sasha: Commissioner Hatch, can I please ask that you use the microphone?

Commissioner Hatch: Oh, thank you.

Sasha: Thank you.

Commissioner Hatch: You apply -- oh, I'm sorry. I didn't even have it on. If you comply

with the conditions, then the -- the -- the final part is waived, and I thought that was kind of interesting and I thought fairly effective, its use in -- in, obviously, in the criminal world as well, but I don't see any of the cases coming through like that. Is -- is -- what happened? Did that fall out of favor because of good reason or just because of a changeover of the Commission?

Ms. West: That's funny you bring that up, because I'm kind of a Commission history buff, and -- and I looked into that a long time ago, trying to figure out when that changed. And -- and as far as I -- I've been here 16 years, and it was definitely before that.

Commissioner Hatch: Oh, yeah.

Ms. West: And -- and so the only thing I can figure out is that the policy of the Commission changed to make complete compliance prior to the Commission adopting the -- the stipulations. So, now when we present something to you, they have filed all their amendments or their statements that were due, and we have the money in hand, whereas before, they didn't. And so the Commission felt uncomfortable when you were approving something that then had to be enforced as a judgment in addition to your judgment. And so it caused another layer of enforcement beyond the Commission's final word on the -- on the matter.

Mr. Bainbridge: And it may also -- as someone who's spent a lot of times cleaning up our collections process over the last few years, it may have been a collections issue where it -- it's just too difficult.

Commissioner Hatch: Hardly imagine a -- a lobbyist for hire failing to pay the FPPC of all people.

Ms. West: Oh, you'd be surprised. You'd be really surprised, but yeah, so, as far as I can tell, that's what occurred. Okay. So, the approval of -- oh, sure.

Commissioner Hatch: By the way, when I talk about conditions on -- like a probation condition, it's for future behavior, not for past. There's -- you had to bring them all up to -- you know, everything that hadn't been done correctly gets done correctly before it's approved, but then those conditions for future behavior, you have to have done all these other things over the next X number of years or the whole thing falls down on you.

Ms. West: The probation portion was what I couldn't find any research on when I -- I had looked, and -- and I had all of the old subject matter files scanned in so we could look at them and all this -- you know, I'm a little obsessive, but I read the act for fun, so (crosstalk) so, I would

say that the only other thing that happened before my time was the pushback about us being -- considering ourselves any kind of law enforcement and that being a term that law enforcement agencies would use for settlements. We were getting pushback on our -- our functions, our -- our public records, our -- everything, and so I think about that time there was a reaction to be more conservative and less like law enforcement. So, I know that that occurred. Okay. So, as you know, the penalties are all approved by the Commission. It takes three votes to approve or reject, and you can accept or reject the stipulated agreement. You can't modify the stipulation, because the respondents agreed to forgo their administrative process rights based on what is in that agreement, and that's the reason you can modify a default, but not a stipulation. And then the enforcement cannot discuss the facts not included in the stipulations except otherwise public information. So, like, if you tell me did they file before or did they -- whatever, if that's public information and I happen to know it, then I -- I can discuss that. And then for defaults, you can discuss all of it, because they've given up their rights, and you can unilaterally do basically anything to a default. So, you're all-powerful when it comes to defaults.

Commissioner Hatch: But in the case of these stipulated agreements, we do have the power to just reject it.

Ms. West: Right, approve or reject. So, we're going to leave this slide up for a minute, and Dave is going to talk about the next two slides, because they are in more detail about what this is. So, he's just going to kind of go through this process with you, because this is where the process starts at probable cause.

Mr. Bainbridge: So, this would be the formal administrative process if a settlement is not reached, and you can all try to absorb this chart. I'm telling you, it's great once you finally figure it out.

Chair Remke: Wait, where am I starting?

Commissioner Hatch: Yeah, what's --

Mr. Bainbridge: At the top.

Commissioner Hayward: It's snazzy.

Commissioner Audero: The -- the -- the Brown snazzy button.

Chair Remke: Oh, okay. So much fun, okay.

Mr. Bainbridge: And I'm not going to go through it step-by-step. I'll leave it to another time,

because we tried that, and it took a very long time. Everyone is hungry, so I'll go quickly. If enforcement finds evidence of significant violations, then we're on to the administrative process, and that's what this chart shows. It starts with a probable cause proceeding, which is initiated by the Enforcement Division drafting and serving the respondent with a copy of a probable cause report. The respondent has the right to submit written argument, request discovery of evidence, and request a hearing, at which the respondent may submit evidence and include witness testimony in response to the probable cause report. The probable cause report must contain a summary of the alleged violations and a summary of the evidence that's being relied upon in reaching the conclusion that these violations occurred. Probably because conferences are conducted by neutral hearing officers. Typically, it's an attorney in the Commission's Legal Division, but the respondent has the option to request that an Administrative Law Judge hear the probable cause conference instead if there's some concern about bias or anything else. And the standard for finding probable cause is -- is less than a preponderance of the evidence, which is what would be found at a hearing. The specific language is whether there is sufficient evidence to lead a reasonable person to believe or entertain a strong suspicion that the respondent violated the Political Reform Act. If probable cause is found, then the case proceeds to an administrative hearing in front of an Administrative Law Judge, typically. Again, as I think you all know, the Commission may hear matters directly, but the typical pattern is to have the Administrative Law Judge hear all the evidence, make a proposed decision, and then that is presented to the Commission for them to either accept or reject. And then if a respondent decides not to participate in the administrative process, that case would go to default. We go to great lengths in enforcement to avoid defaults. Last year, one percent of our cases that were resolved were resolved through defaults, and that's for a couple reasons. Selfishly, they're a lot of work, but more importantly, no disclosure comes out of getting a default decision. Our main goal is getting disclosure. If a case goes all the way to default, they're not required to disclose. We just have a judgment against the person or entity, and then it becomes a collection case. So, there's very little value in that. So, that's why we put the effort forth to try to settle those, and that's why we contact them 20 to 30 times before presenting something as a default. But in some instances, if people are not responding, there's nothing else you can do. Yes, Commissioner?

4:10:00

Commissioner Hatch: Do you use a skip-tracing services or have built that capability in-

house where you don't just depend on the last known numbers?

Mr. Bainbridge: Yes, we have skip-trace.

Commissioner Hatch: You do.

Mr. Bainbridge: Yes.

Commissioner Hatch: Is that an in-house resource or is that --

Mr. Bainbridge: Yeah.

Ms. West: It's through -- I believe it's through servers, Lexus, Nexus, or something, but yeah, our investigators use skip-trace on a regular basis.

Mr. Bainbridge: And then the -- the one other thing I would mention on defaults is CPAA had -- had mentioned default settlements in their letter, which I don't know that any of you are even familiar with that term, because we don't do default settlements anymore. This was a practice that went on in the past that had been discontinued probably four years ago I would guess where the respondents would have input in what was contained in the default documents and agreed to what the default would say.

Commissioner Hatch: No law change. It's just a -- a practice that was not that --

Ms. West: Well, I'm not sure it was permitted to begin with, but there was no law about it one way or the other within the act or the regulations.

Commissioner Hatch: Well, that's sort of what we do now with these stipulated judgments. It's not like we have a statute (inaudible) stipulated judgments. It's a creation.

Ms. West: Right. Well, the Administrative Procedure Act says you can have stipulated judgment. That's where the authority comes from, but -- but yeah, there's no specifics.

Commissioner Hatch: Not within the PRA.

Ms. West: Right. So, to address Commissioner Audero's question from earlier, if you do look at the regulation and you want to read for fun, Regulation 18360, if you go to subdivision G, it tells you all about the media and public inquiries and talks about how we can't give the complaint out for five days. And then -- unless we've decided to take no action, then we can confirm that at the same time. And then after notice to the complainant, the intended action is when we can confirm that the case has been opened for sworn complaints. For non-sworn and anonymous, it's a little bit different, because we put in more of a protected time for the respondent, because they may have not received a complaint from the complainant where sworns

are -- are generally more out there. So, they get a five-day built-in notification before it goes to the press of when we're going to open the case. So, that's the end of our presentation and hope it answered some questions and gets us started and all talking about the same base knowledge.

Chair Remke: What percent of this would you say is currently on the website? I know you said you're going to put this actual presentation on the website, which I think is a great idea, but I mean, I know that the cases, the settling, a lot of this, is there --

Ms. West: I would say it's not consolidated like this.

Chair Remke: Okay, true.

Ms. West: So, most of the regulations are what we base our procedures on. So, the regulations are obviously on the website, and then the -- how enforcement closes the case and how -- what criteria that -- that we use is on the website, and the penalties are in the regulation. I would say maybe -- I mean, audits are statutory. I'd say maybe six slides are not specifically written on the website.

Chair Remke: But we're going to put this right on the first page of the enforcement --

Ms. West: Sure.

Chair Remke: -- page?

Ms. West: I will ask them to do that. I do not know how that works, but yes.

Commissioner Audero: I have a question.

Chair Remke: Commissioner Audero?

Commissioner Audero: You -- you mentioned the guidelines for your process. Is the public -- where is it? Can we see it? What shape is it in?

Ms. West: So, you mean the question Commissioner Hatch had? Right, that was our internal guidelines of subpoena and process and -- and when you ask for a subpoena. It's very short. It's -- it's nothing -- it's nothing --

Commissioner Audero: To write home about.

Ms. West: Yeah, it's -- there is -- yeah, it's more like, well, are they refusing to give you records? Then yes, you should probably issue a subpoena. How much have you tried? Did you give them a deadline? It's more systematic like that. It's -- it's not really -- I would say the only part that has probably some portion that enforcement wouldn't disclose would be what we look at, the -- the actual criteria for money laundering on when to do a subpoena versus a voluntary

compliance -- I'm sorry, campaign contributions laundered.

Commissioner Audero: Do you have, like, a procedures manual of any kind? Do you have any compilation -- how do you train your people?

Ms. West: So, we have an old operations manual that we used to give out, and I found it to not be up to date. So, it's in the process of being updated, and I stopped, because once we start this process, then yeah, we might as well just rewrite it all at the same time. But we do call it an operations manual, and it kind of goes over the functions of the different employees in -- in enforcement. So, when you get trained, you know what -- what he does versus what I do and -- and that kind of stuff.

Mr. Bainbridge: And the investigators have their own manual that basically tells them day to day how to conduct their job and gives them references and those sort of things.

Commissioner Audero: So, there's some kind of a starting point.

Ms. West: Yeah, I -- I'm not opposed to a manual. I -- I think it would be a very long process that we could approach and -- and work at. I think that San Francisco, it just took them a good, what, nine months to do theirs, and they're much smaller than we are. But -- because they asked for our input and review and -- and all that kind of stuff, and they reached out to other agencies to -- to figure out what their processes were and could be, because they were kind of starting from scratch on not having a manual, which we kind of are, kind of aren't. And -- but -- and I think that LA just did a review, and I think that it's very effective to review your processes and to make sure that everybody is doing the same thing. I think consistency is what fairness is all about, that we have to treat everybody the same, whether they are the Governor or the vector control member. It's -- it's very important, and it's what gives us credibility.

Commissioner Audero: So, how do you ensure the consistency if you don't have a manual?

Ms. West: I look at everything personally, which is --

Commissioner Audero: No wonder your taxed. Maybe there's a better way to do that.

Ms. West: Right, which is why for the past three years, all I've been focused on is trying to put in procedures and having everybody have a desk manual, because we didn't even have desk manuals. So, we were starting from a spot of nothing, and we've gotten to here. So, I think that we've made great strides, and I -- I welcome making more strides. I just beg you to keep in consideration the elections.

Chair Remke: I think you're selling yourself short, because you also, I know for internal consistency, you guys hold regular training sessions for enforcement attorneys, which go over -- so everyone in the unit is going by the same thing on specific topics, and I see those schedules, and that's a regular occurrence.

Ms. West: That's true. We do make sure that everybody is trained up on the substantive law. We make sure that there's roundtables for the attorneys and the investigators, make sure that everybody is able to handle their cases and their assigned teams and mentors and can learn from other people's experiences, and then we have team meetings within the three teams to make sure that if there's any questions or any issues that are coming up in cases, that we all deal with them and give advice to each other.

Commissioner Audero: Is that training substantive? You said -- you mentioned substantive, so good, check. Is there procedural training?

Ms. West: Sure, and that's mostly done by Dave. He -- I'm sorry, Mr. Bainbridge. It sounds weird, but -- so, he -- generally, how we divvy up the work is he's assigned the more junior attorneys, or the newer attorneys, and so he provides them procedural training, procedural guidance, how you do things, how does it work, and then we have a supervising special investigator that does the same thing for the investigators.

Commissioner Audero: And is the training material reduced to a writing? Are there PowerPoints? I -- I'm looking for starting points.

Ms. West: Sure. There are some, and they could be modified to be more public, because they're, you know, sometimes a little -- we can be a little cynical in enforcement maybe, perhaps, from years of experience.

Chair Remke: I mean, as prosecutors, you have certain things you do and know and --

Ms. West: Right. Well, I mean, one of the things you have to learn when you first come to enforcement is that nobody did it on purpose. Everybody is a volunteer. No one wants anything out of this job, and everyone is sick or ill or has a family member who is sick or ill, which is fine, and those are all considerations, and you don't lose your humanity, but you just learn to set deadlines and enforce deadlines, because you have to keep your cases moving.

Commissioner Audero: Right.

Mr. Bainbridge: And much of this training came -- or this presentation came from a training

4:20:00

that we do to introduce new attorneys and law clerks and new investigators to the basic processes of the Enforcement Division.

Commissioner Hatch: I assume you've been -- over the times you've been working on some sort of curriculum for the various classes of --

Mr. Bainbridge: Yeah, we have a training -- that slide that had all the different topics. We have a training for every single one of those and just different staff. Whoever has expertise in those different areas presents the training.

Ms. West: We try to assign staff to areas. Like, for instance, Dave did the Susan Kennedy case because he is our -- our lobbying expert. I like to say guru, but people don't like it, and -- and so he has become more educated on the nuances of that area. And so when you have a lobbying case that's not assigned to Dave, you have a resource to go to, to talk about your case and not reinvent the wheel. One of the things I didn't mention is that we streamlined the -- the stipulation itself. As you saw, the ones that have been here longer, you know that it used to be a separate -- two separate documents. We've cut down on a lot of -- trying to get the writings be more concise and to have it be only facts that are relevant to whatever it is we're talking about and to really get to the point and not just put in boilerplate law section, just the parts of the law that -- that apply. And I think that that's helping with everybody's understanding of the cases, and they move faster, and -- and it also helps respondents, because they can read it and understand it as opposed to it being this big document that has extra information. So, I think that that's been a positive change.

Commissioner Hatch: You put all the -- the boilerplate in the back.

Ms. West: Right, one giant footnote.

Chair Remke: So, Commissioner Audero, would you like to --

Commissioner Audero: Sure, thank you. I just have one question for you, and then I -- I think we can take comments from Commissioners and the public and whatever, but -- so, other than the limitations that you anticipate because it's an election year, do you -- do you have a problem with undertaking a process review and coming out with a procedures manual that would be public?

Ms. West: No. I -- I think my only issue would be on the things that I would be able to say to you that is an internal process that we don't feel comfortable sharing. I can give you a general

idea of what that little piece is, but I really don't want to give the trade secret on that. But I don't think that those are -- so, there's so many, that that would be problematic.

Commissioner Hatch: You could have an internal and an external.

Ms. West: That's true, and in fact, when I was defending a motion to question one of our subpoenas, we had to do the sealed declaration and the unsealed declaration for the judge. So, I'm familiar.

Chair Remke: Commissioners, questions for Ms. West?

Commissioner Hatch: I got my -- oh, wait, you know --

Chair Remke: Commissioner Cardenas, anything from you?

Commissioner Cardenas: Not at this time.

Commissioner Audero: While Commissioner Hatch is looking for his piece of paper, I just want to say --

Commissioner Hatch: Oh, go ahead.

Commissioner Audero: -- I think this is a great idea.

Commissioner Hatch: As do I. I wanted to ask a -- a dumb question about Section 18361.1. Subject matter is administrative subpoenas, and down towards the bottom of the paragraph -- it's not a big paragraph. It says the staff shall periodically report to the members of the Commission on the status of all investigations, including the reasons for the issuance of any administrative subpoena without first making reasonable efforts to obtain the information voluntarily. What's that mean to you, and how does it fit in, what you do?

Ms. West: So, every month, we produce a subpoena report that's sent to you that --

Commissioner Hatch: It doesn't really say much.

Ms. West: It tells you that the case and that we had to get -- issue a subpoena without voluntary compliance, and it puts the reason as to why. It's generally bank and vendor is -- is why it's not very interesting, but we could add a slight amount more detail to that, but really, the reason --

Commissioner Hatch: By giving away the trade secrets, yeah.

Ms. West: Sure, but the reason for the -- the subpoena is generally because it's a bank or a vendor, and when it's a laundered campaign contribution case, it generally says something a little more exciting.

Chair Remke: And I would just add, Commissioner Hatch, you could bring that monthly report to any meeting or either call Ms. West directly if you have a question or bring it if you think it's worthy of a discussion for the group.

Ms. West: Certainly. Roone Peterson does that report every month, and he'll be happy to know you read it.

Commissioner Hatch: He did, but I just -- like, not enough there to even understand what -- what's the point. Why am I getting this? And then I read the statutes, says, oh, yeah, we require you --

Ms. West: Yeah, and the -- yeah, we're required to do it, but I -- and I think that it's not very interesting because it's not that often. We don't do, like, 20 of those between meetings to where you -- you're getting this report that's just pages, yeah.

Commissioner Hatch: It's a small list, yeah.

Chair Remke: Any other questions? Mr. -- Commissioner Hatch?

Commissioner Hatch: That was it. Thank you.

Chair Remke: Did you have one? Commissioner Hayward, I thought you had some -- okay. All right, Commissioner Audero, did you want to propose something?

Commissioner Audero: I think we have to take public comment.

Chair Remke: Oh, right. I forgot. It's been so long. Any public comment on Item 22 -- three -- 22?

Gardorama: Good afternoon, Chair Remke and Commissioners. My name is Joe Gardorama (phonetic). I am the President of the California Political Attorneys Association, which is also referred to as CPAA. As attorneys representing the community regulated by the FPPC, CPAA welcomes the Commission's interests in examining its enforcement procedures and priorities. We believe that there is much to be gained by the Commission seeking the involvement of the regulated community as well as the public at large in this process. CPAA stands ready to work with the Commission and staff by providing input and suggestions based on our members' wealth of expertise with the PRA. CPAA has done this process with the staff and the Commission in the past on several subject matter areas, not only enforcement, but also conflict of interests, the gift regulations, and campaign disclosure. Our goal is to reach for more fair, transparent, and consistent enforcement system. Thank you.

Chair Remke: Thank you. Any other public comment?

Mr. Sanders: Thank you, Madam Chair, Commissioners. My name is Nick Sanders with the (inaudible) thank you for the opportunity to reiterate my firm's support for Commissioner Audero's proposal. This sort of periodic review of procedures is common through ethics agencies throughout the state, and we think that it's going to be useful for all parties involved. The Commissioners, certainly there's room to learn the procedures and what happens on each case for the enforcement staff to understand the policies and procedural goals of the Commission and for the public to kind of see how the Commission works. Our firm and other political law attorneys, I think we have a very good working relationship with the FPPC in general, and, you know, we -- we welcome the opportunity to discuss kind of larger policies rather than the numerous facts in every case, kind of going over those. So, thank you.

Chair Remke: Thank you. Any additional public comment? Okay.

Commissioner Audero: So, I have a lengthy written motion that I will send via email. I would give you this one, except that I've kind of interlineated. So, bear with me. There are many commas along the way. I move that the Commission conduct or cause to be conducted through whatever means it deems appropriate and to comply as needed with the open meeting laws a review of its enforcement priorities and the cradle-to-grave procedures and practices of the Enforcement Division with respect to every type of case it handles. By cradle-to-grave, I mean from the moment that enforcement receives information from any source whatsoever, which information ultimately results in the opening of a new enforcement case until the final resolution of that case. This review shall be undertaken to inform and achieve the following three goals. Number one, the achievement by the Commission of a -- I'm sorry, the establishment by the Commission of a step-by-step procedures manual that enforcement will follow going forward, which shall include, but will not be limited to task lists, timelines, exceptions to timelines, procedures for obtaining exemptions on timelines from the Commission, investigations, and contact with the press about existing matters to name a few. The reduction -- number two, the reduction of these procedures to a writing subject to Commission approval in the form of a procedures manual that can be revised -- reviewed and revised with public comment from time to time as the Commission deems fit. And three, the making of -- the making public of said procedures manual as it is created and/or

4:30:00

revised by placing and maintaining it on the Commission's website.

Commissioner Hatch: Second.

Chair Remke: Just to get clarification so that there is as little confusion next month as possible, I believe -- so, if that motion passes, did you also say you wanted to bring back the issue of how to achieve that next month so we could vote on the actual process; is that correct?

Commissioner Audero: Yes, but I'm saving that for 24, because it's not within the description of Item 22. Twenty-four is action items for the future.

Chair Remke: I just wanted to know that that -- to make sure that that was -- so, that's the scope of what you want to see done, and then we'll talk next month how are we going to get there. So, right now, it's do we all agree this should get done.

Commissioner Audero: Exactly.

Chair Remke: Okay, so, there's a motion and a second. Any other questions or comments? Okay, let's take roll.

Commissioner Cardenas: I have a question.

Chair Remke: Oh, sorry, sorry, sorry, Commissioner.

Commissioner Cardenas: Did I -- did I understand that part of this motion, I believe it was in the -- in the second point, was that there be -- was that a policy that would be considered by the Commission next month would include timelines for staff investigations with extensions to set timelines to be approved by the Commission?

Commissioner Audero: Yes, except that that was in number one.

Commissioner Cardenas: Okay.

Commissioner Audero: And also, I should say it was -- so -- so, what I -- what I said was timelines -- exceptions to timelines, in other words, what I envision is there's -- there's a general timeline. There -- there are some explicit exceptions, circumstances that will allow an exception to the timeline and then procedures for otherwise obtaining extensions on those timelines from the Commission.

Commissioner Cardenas: Let me suggest that there is a danger in putting this Commission -- any Commission in the position of suggesting to staff when they're done with an investigation. I -- I think that's a dangerous area. I'm -- I'm going to go along with the motion, because it's not -- it's not a policy before us, but that is an awful lot of -- I'm very concerned about that,

Commissioner, that -- that you would have this Commission be in a position to tell staff, no, you've had enough time. You need to stop. The facts of the case may warrant that -- that it shouldn't stop. In fact, sometimes the longest investigations are those which bear the most fruit, if they're allowed to conclude to culmination. It's not -- I don't think it's consistent with the Political Reform Act for this Commission to step in the way of an investigation. There -- there may be other precedent for that right now in this country, but we shouldn't follow it.

Chair Remke: Well, and I would just add, again, I think it would be a violation of the Administrative Procedures Act, which we do follow in our enforcement actions, which does say, again, that investigations and quasi-adjudication of the matters must be separated. But as far as the motion goes, I understand that this is -- my understanding is these are things you would like to be looked at. So, if a policy were proposed or if a discussion were started and you wanted to recover at least these things, the conclusion very might well be can't do it, shouldn't do it, or when it comes back to us, we could say, don't like it. Don't want to do it. So, again, these are your requests to -- at a minimum, to look into these issues, correct?

Commissioner Audero: Yeah. No, absolutely. The -- what -- what I am contemplating is a process where -- and I don't know how it's going to happen. We'll save that for next month, but that a -- a work group of some kind is going to work through these issues with the -- with all the stakeholders and then bring back to the Commission a recommendation that then the Commission will vote on and either adopt or not or tweak. But right now, it's just let's look at these things. That's all that -- so, yes, I agree, Madam Chair. You have correctly interpreted my motion.

Chair Remke: Okay, so, there's a motion and a second. Any other questions on the motion or second? Let's take roll.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Aye.

Sasha: Chair Remke?

Chair Remke: Yes.

Sasha: The motion passes.

23. Executive Staff Reports.

Enforcement Division. Galena West, Enforcement Chief
Legal Division. Jack Woodside, General Counsel
External Affairs and Education. Courtney Miller, Manager
Legislative and External Affairs. Phillip Ung, Director

Chair Remke: Okay, so, then the next Item, 23 --

Commissioner Hayward: Staff reports.

Chair Remke: -- staff reports. Any questions or comments from the Commissioners regarding the staff reports? Any questions or comments or they will be submitted as is? Okay, those are submitted

24. Proposed Future Agenda Items.

Note: The Commission may not discuss or take action on any matter raised during public comment that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).)

Chair Remke: and now we'll move on to the final item, which is future agenda items, and I know, Commissioner Audero, you're going to tell me how this is going to be worded for the next month.

Commissioner Audero: Right. So -- sorry. So, I actually have four for next month, and -- and -- and I recognize that maybe it just becomes too much all in one month, especially since I'm going to ask you to do some stuff, Mr. Feser.

Chair Remke: So, I would -- yeah. Okay, go on.

Commissioner Audero: So, I would like this one to be put on the agenda for next month. Do you mind if I take a second to -- because I want to add something.

Commissioner Hayward: If Commissioner Audero would yield, I've got a couple.

Commissioner Audero: Absolutely.

Commissioner Hayward: All right.

Chair Remke: And, you know, I just need to make the caveat, and you guys can debate it

as much as you want, but again, as it stands now, I do have the authority to set the agenda and prioritize in scheduling, and I -- I just hear a lot of things coming out right now, and we do have to prioritize. So, I just -- it will get on an agenda. There is just an issue of it's -- everything that's about to be disclosed gets on next month or not.

Commissioner Hayward: Okay.

Chair Remke: Yes.

Commissioner Hatch: Oh, thank you. Actually, if any one of us asks for something to go on the agenda, that rule that you cited comes into play. But if somebody offers a concise motion for what they want on specific agenda, whether it's this month, the next month, and it's carried by the majority of this Commission, it is on the agenda and in that exact format.

Chair Remke: It will be on the agenda. I'm solely concerned with staff resources and being able to get everything done and done properly. That's my concern.

Commissioner Hatch: I sympathize, but I'm just -- want to clarify --

Chair Remke: But we had -- go ahead, Commissioner Hayward.

Commissioner Hayward: Yes. Next month, the ad hoc committee reviewing the governance principles of the FPPC will have a draft revision for consideration by the Commission, and I will -- I would love to work with whomever collects agenda documents so that there is a document and not just a description. So, you all need to remind me, because as -- as odd as this may sound, sometimes the agenda shows up and I'm surprised that it's ten days away. You would think my calendar was a little more precise than that, but please work with me so I can get you something --

Chair Remke: Okay, Sasha will give you a heads-up five days in advance.

Commissioner Hayward: Good, good.

Chair Remke: And you can provide description to her in any documents you would like attached.

Commissioner Hayward: Perfect, and then the other thing, and I don't know if this is an agenda item or just something to plant in people's minds, I know that in previous iterations of the Commission, we met in parts of the state other than Sacramento. I know from what people have told me that they like that. You know, people on, you know, the ethics staff of various local jurisdictions like it. Sometimes local officials like it. The people who represent the

regulated community like it. I just submit that as a possibility, if we could do that at some point. You know, it could be San Jose, LA. I know we've done both in the past.

Chair Remke: Anything else?

Commissioner Hayward: No, that's it.

Chair Remke: Are you ready, Commissioner Audero?

4:40:00

Commissioner Audero: I am, thank you. Okay, this is one item. The Commission, having voted to proceed with a review of its enforcement priorities and the creation and revision of a procedures manual that will -- that will contain the procedures and practices of the Enforcement Division for the resolution of its cases. We'll review, at the March meeting, alternatives for the method of conducting or causing to be conducted this review, including, but not limited to that it be conducted by the Commission directly or by a committee of the Commission to present recommendations to the Commission or by an independent task force or other work group, also to present recommendations to the Commission or by any other means that the Legal Division can suggest to us that would work within our structure as well as a discussion and a vote on the nature and extent of the process review, in other words, its scope. The discussion at the March meeting will be informed by the Commissioner's thoughts, the thoughts of staff, enforcement, public comment, and what I'm going to request be prepared, an impartial formal memorandum and presentation by the Legal Division regarding the pros and cons, advantages and risks of each alternative method of going about this process. So, in other words, by the Commission, by a committee, by a task force, et cetera, including, but not limited to any limitations imposed on each method by the open meeting laws. The actions, because I do want this to be an action item for formal action, under this agenda item will be the selection and adoption by the Commission of the -- of the preferred method for conducting the review and the scope of that review and the issuance of instructions to staff regarding the preparation of whatever may be necessary for the next step of the review process, including, but not limited to the launch of the review process, all to be discussed and issued a formal vote perhaps at a -- at -- at the April or subsequent meeting. And I do want to reiterate that this is an action item for formal action.

Chair Remke: Was that all of them?

Commissioner Audero: No, that's just one.

Chair Remke: Okay.

Commissioner Audero: Okay. So, that's -- that's one thing that I want on the -- on the agenda. The second thing I would like on the agenda, though recognizing that we have to prioritize -- it doesn't have to be -- I -- I have no -- no vested -- I -- I'm not wedded to having it be on the March agenda. Under the FPPC's current statement of governance principles, section entitled The Executive Director, subsection B2, the Executive Director is required to report regularly to the Chairman and Commission on the status of FPPC finances, administration goal -- no, administrative goals -- sorry, administrative actions, goals, and achievements. I will say that in the years 2016 and 2017, and I've been here since mid -- mid-2015, but just speaking about 2016 and 2017, the Commission has received no such report. So, the issues to discuss and act on, take formal action on under this agenda item is an understanding of the absence of this reporting, public comment regarding the interest and the need for such reporting, and a vote by the Commission regarding a monthly -- or other periodic reporting from the Executive Director to the Commission going forward, and if so, the nature and extent of such report beyond what is already identified topics -- the already identified topics of finance, administrative actions, goals, and achievements, and of course, all within a consideration of privilege issues. So, I want to reiterate this is an agenda item for formal action.

Chair Remke: What -- what is the formal action. You're asking for other than a report as to the current status?

Commissioner Audero: No, I'm asking -- we -- we will vote regarding a monthly or other periodic reporting to be received from the Executive Director to the Commission, and if so, the nature and extent of such report.

Chair Remke: Okay. Next?

Commissioner Audero: So, my next item is referencing the January 2018 Commission meetings, specifically, the discussion of the Lukon matter. The question arose whether Commissioners have the authority to set aside or otherwise revise a closure letter. Specifically, the question was whether Commissioners could instruct enforcement -- the Enforcement Division to rewrite all or part of a closure letter with language that the Commissioners would approve or otherwise rescind and issue the closure letter with that language. We didn't have the benefit of our legal division weighing in on it. Somehow, as I was rereading the -- the transcript, I think the question was posed, but then we got off track. So, we didn't have the

benefit of the Legal Division weighing in on this, and so I would like the Legal Division to present an impartial legal memorandum to the Commission with an answer to the question of whether the Commission has the -- can instruct enforcement to rewrite all or part of a closure letter, including -- and this memoranda will include legal authorities to support any position taken, if any, if you take a position, an analysis of how to interpret the absence of legal authorities, if that's the case, and we know that that's possible, and a recommendation on how to proceed in future similar circumstances with an explanation of whether that recommendation was reached based on the law or on best practices. In addition, the Commission will take public comment on the issue, and based on this, the Commission will vote on whether to adopt the recommendation of the Legal Division as a go-forward procedure or send the question to the Attorney General's Office requesting an opinion. And again, because I am asking for information as well as a vote, I want to reiterate that this is an agenda item for formal action.

Commissioner Hatch: Excuse me, question on that one. So, you're not asking that we revisit that particular case. You're just using that as an example of something we should investigate what our limitations are or options in those -- in the context; is that correct?

Commissioner Audero: This particular agenda item is not asking for that. Depending on the outcome, we may -- I may ask for that, but right now, the particular agenda item is only this, that we vote on a recommendation by the Legal Division on whether we can or can't instruct.

Commissioner Hatch: Generally.

Commissioner Audero: Yes, yes, yes.

Commissioner Hatch: Okay.

Chair Remke: And you don't want that item to go to your enforcement review process as part of enforcement? I'm just trying to streamline this so we can get to the issues.

Commissioner Audero: Oh, I think it can eventually, but I envision that given Ms. West's requests that we go easy on her because of the election year, I don't know how long that's going to take, and I would like an answer to that sooner rather than later. I will say this item is not one that I'm wedded to -- to have on the March agenda.

Chair Remke: Okay, thank you. Is there another one?

Commissioner Audero: Yes, and final one. Okay, under the FPPC's current statement of governance principles, section two entitled The Chairman, which I think should be revised to

say The Chair, the Chair currently is empowered to set the Commission agenda with input from Commissioners and staff, prioritizing and scheduling agenda items as appropriate. Although the FPPC's governance principles currently are under review by an especially created committee that will present recommendations to the Commission about its revisions, an immediate need has arisen to address the agenda powers of the Chair that can't wait until the issuance of a revised statement of governance principles. Specifically, a concern has arisen that the agendas are being created unilaterally and posted without being first circulated to the Commissioners for review or without sufficient time to revise the agenda after it is posted while still satisfying the open meeting laws, all of which could constitute a violation of the requirement that the agenda item must be set with input from the Commissioners. Because recent attempts have been made to use the characterization or language of an agenda item to dictate whether Commissioners may take an action on that item or not, it has become imperative that we revise the agenda powers such that they afford Commissioners ample opportunity to review the agenda before it is posted and with sufficient time to revise it while still satisfying the open meeting laws. Toward that goal, under this agenda item, we will discuss and vote on a procedure to be used going forward for the preparation, issuance, and posting of the agenda, including, but not limited a timeline of tasks related thereto, which procedure will remain in place until the statement of governance principles replaces or otherwise adopts said procedure. And again, I want to reiterate this is an agenda for a formal action item. And this one I would like in the March agenda if we can squeeze it in, and if we can't, I'd like to discuss why we can't.

4:50:00

Chair Remke: When would you like that discussion to happen?

Commissioner Audero: In time so that we can, as Commissioners, talk about reprioritizing agenda items.

Chair Remke: So, that would be out of a public meeting you'd like to have that discussion?

Commissioner Audero: Yeah, I think that, actually, we can.

Chair Remke: No, I would say we can't, and I would not participate in that discussion for fear of violating Bagley-Keene, which is part of the issues of that statement you just made. I, again, understand that there is a strong belief that I -- I think some of words used were had a heavy hand in this agenda. I'm trying to prevent discussion. Again, I'm trying to merely make

sure that requests are fully stated, and we know what we're voting on before we vote. And looking back at both the items at issue this month, I still feel confident that I made the right call that neither were properly noticed for formal action. I understand now that the best approach would be for anyone who's asking for an item to be on the agenda to write exactly their own agenda item, as you have done here, and if I still -- I'm not sure of where the proposed action is. I would reach out to that individual, so we could avoid the Bagley-Keene violations.

Commissioner Audero: Well, I'm not sure that it's a Bagley-Keene violation. We've heard lots of things in the past few months with respect to Madam Chair's belief that things are Bagley-Keene violations when, in fact, I'm not sure that they really are. But then I would ask Mr. Feser to give us an opinion, and maybe you need to research it, and that's perfectly fine, as to whether this agenda item and -- or maybe it's a -- it's -- whenever we put this on the agenda for a discussion, it's -- the legal department can do a presentation on whether the -- the structure that I have proposed is a violation of Bagley-Keene.

Mr. Feser: The proposed structure of the agenda or discussing the item beforehand? Little confused. I think there's the question of whether or not Bagley -- right.

Commissioner Audero: No, no, I understand where you're going, and you're right. You're making a distinction about whether I'm asking for legal department's opinion on whether -- what I read can be done as distinguished from my request that if this not be put on the March agenda, that we have a discussion about it. So, I will, in the -- for the sake of moving this along, given that it's five after 3:00, I will withdraw my request, and I will only ask that Madam Chair use reasonable good faith to try to put this particular agenda item on the March agenda, and then we can discuss all the other issues at that time.

Chair Remke: Okay, any other requests for future agenda items?

Commissioner Audero: I -- I just have one that's not a future agenda item, but I have a request. Is there a way that -- so, my understanding from having talked to people with respect to this enforcement review is that there have been lots of communications from CPAA to the -- to the Commission over the years, not recently. I know the last one was in 2015, and it resulted in the streamline, and -- and I -- I understand that people were happy about that. I also understand that there was more than just the streamline request in that letter. And I don't recall ever seeing that letter. So, I think that we need to, as part of this process, start getting our arms

around all the communications that have been sent to and from the Commission. And I'm going to leave it at that for now. At some point, I might want to see internal communications. I'm going to table that for now, but I'd like to see us get our hands -- our -- our -- our arms around the -- the universe of documents that exist from the regulated community to us and our response to them, if any, over the years. And that's -- that's maybe going to the archives and trying to find what there was, because I understand that there was discussion even going back to 1989 when the CPAA was created. So, I -- I would like all of that gathered and circulated and made public.

Ms. West: Okay.

Commissioner Audero: Thank you.

Chair Remke: Perhaps it would be helpful if you shared the information you gathered from CPAA so we know what they've stated has occurred, so we can kind of be focused in on where we're supposed to be looking or what items there are.

Commissioner Audero: Sure.

Ms. West: I have the 2015 letter and our response to them, but the previous stuff I haven't dug up yet.

Commissioner Audero: Right, and I think -- so, Mr. Gardorama has left. So, I don't know -- I can tell you that I know that there's a 2015 letter. I understand that there were letters -- one or more letters in 2000, early 2000. I understand also -- and -- and this isn't a communication, but -- but I'll throw it in. I understand that recommendations were made in the '90s under something that was called the McPherson Report.

Ms. West: Sure. That's public.

Commissioner Audero: So, that would be really good to -- for us to get our hands on.

Ms. West: The McPherson Report as well as the Danshures (phonetic) Task Force, those are all public.

Commissioner Audero: Yes, yes.

Ms. West: And I was actually on that task force. So, yeah, we have all of those documents on the website.

Commissioner Audero: Is it -- is it -- can you gather whatever we have and kind of put it in a place where we know all of that is and call it something that, you know, we can all know

where to find it and just kind of compile everything and put it in there rather than having us have to go search for it? That would -- I think that would be helpful, too, certainly to me, and I would be very appreciative if you could do that. I -- I expect that anybody who is going to be involved in this process would probably --

Ms. West: Sure, and we can also compile stuff from the Treasurer's Association and the other associations that are -- that comment over the years, and we work with them. We go speak at the Treasurer's Association. We try to stay in communication with all of the different interested stakeholders. In fact, that's why I was -- probably had a shocked face when you said earlier that you received so many complaints about enforcement, because we have such an open relationship with a lot of the -- the regulated public, that I'm very perplexed, let's say.

Commissioner Audero: It's kind of amazing when some people say -- when --

Ms. West: Well, you -- I mean, they're also paid advocates, and -- and so it's hard to --

Commissioner Audero: Sure, fair enough, absolutely, fair enough.

Ms. West: -- to then get upset when they don't necessarily get the result that they wanted, and -- and I totally understand that.

Commissioner Audero: No, well -- but see, I understand that, too, but I have to tell you that that's not the nature --

Ms. West: That's good.

Commissioner Audero: -- of commentary that I got. I think -- I think the nature of the commentary that I got was more along the lines of we -- we need to review this. We need to look at the process, not I didn't like this result, because --

Ms. West: Yeah, because we only got one comment when we did our regs and -- for the enforcement regs, and I think that's why I'm more shocked that it's like -- we went through the entire public process and didn't get a lot of participation. So, it's like, really, because we did a complaint reg, and we did -- we actually put things into regulation that have never been out before. So, I -- I think that's where my astonishment lies.

Commissioner Hatch: How far back was that?

Ms. West: This is all during -- from the time that I started in May of 2015 as Chief.

Commissioner Hatch: Oh, in that neighborhood.

Ms. West: And all of -- I -- we've done four regs since I've been Chief and trying to make

things consistent and transparent and really just trying to put the information out there so everybody is on the same -- same playing field.

Commissioner Hatch: Okay.

Chair Remke: If no other items, I'll move to adjourn.

Commissioner Hatch: Second.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes.

Sasha: Motion passes.

The meeting adjourned at 3:08 pm.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved March 12, 2018

Joann Remke, Chair
Fair Political Practices Commission