



(Approved March 24, 2022)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, February 17, 2022
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Cardenas,
Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Angela Brereton, Chief of Enforcement
Dave Bainbridge, General Counsel
Loessa Hon, Chief of Administration
Shrdha Shah, Chief of Audits and Assistance
Chloe Hackert, Manager, Education, Diversion and Special Projects
Katelyn Greene, Commission Counsel
Lindsey Nakano, Senior Legislative Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:02 AM.

Chair Miadich discussed the FPPC partnership with Laney College and recognized Professor Steve Shlisky and student Susan Bradley for their work on creating new public service announcements for the agency.

1. Public Comment for Items not on Agenda

Mike Hoch, a property owner from Laguna Beach, addressed the Commission with his concerns over a private corporation known as Three Archway Association. Chair Miadich inquired about the appropriate steps for Mr. Hoch to file a complaint with the agency. Galena West, Executive Director, responded that there is a link in the FPPC website in which anyone can submit a complaint and attach supporting documents to support the complaint.

2. Approval of Commission Minutes

MOTION: To approve December 2021 Commission Meeting Minutes. Moved by Commissioner Baker; seconded by Commissioner Wilson. The motion passed 5-0.

CONSENT CALENDAR

3. Adoption of Amended Form 803, Behested Payment Report

MOTION: To adopt Form 803. Moved by Commissioner Wilson; seconded by Commissioner Baker. The motion passed 5-0.

4. In the Matter of Committee for a Strong Siskiyou Economy, No on Measure H Sponsored by Crystal Geyser Water Company, Kelly Lawler, Jill Harris, and Crystal Geyser Water Company; FPCC No. 17/12

Angela Brereton, Chief of Enforcement, gave an overview of the presented stipulation.

Chair Miadich applauded the Enforcement Division for taking on this investigation, which is an example of the more difficult to prove cases with higher public harm. Chair Miadich asked about the cooperation of the committee and discussed the timeline where, in this case, the cooperation and complaint happened after the election, after the harm had already occurred. Ms. Brereton agreed.

Chair Miadich asked about the total fine, which is twice the amount paid for the advertisements, but that count one could reach seventy-eight thousand dollars alone. Chair Miadich explained that intentional violations of the Act are a serious concern and that the fines should be higher in these instances. It appears that there is circumstantial evidence of intentionally concealing activity. Not a lot of weight should be given to the fact that everyone knew that Crystal Geyser was involved. If evidence of intent, then the fine is expected to be higher than less than half of the maximum penalty.

Commissioner Wilson asked whether the campaign treasurer hired by Crystal Geyser had prior experience. Ms. Brereton responded by saying that the treasurer hired is a professional treasurer with experience.

Commissioner Baker shares the Chair's concerns. Commissioner Baker discussed her surprise that Enforcement considered it relevant that it was allegedly common knowledge in the community that Crystal Geyser opposed the measure and wanted to why Enforcement thought that was important. Ms. Brereton stated this isn't a factor in FPPC regulations, but it is a circumstance that is noted in this settlement. Ms. Brereton further explained it is relevant in this stipulation to weigh on the intent. Ms. Brereton discussed the factors from the regulations and showed how the facts of each case are used to evaluate the factors. Commissioner Baker makes the point that just because something is "known" in a community does not mean that they know who funded the message. Commissioner Baker stated that she is not in a place to support the stipulation as is.

Commissioner Wood agreed with Commissioner Baker that the public does not know who is behind advertisements just because there is an assertion that the community knew of Crystal Geyser's interest. Also, the language in the stipulation seems to indicate intentionality and not negligence.

Jim Sutton, a representative of Crystal Geyser, gave public comment that there was never an intent to not disclose the campaign funds and discussed interactions between Crystal Geyser and the treasurer. Mr. Sutton repeated statements on the notion that intent to conceal was not there and the fine is higher than in comparable cases.

Andy Fuso, Complainant, reiterated the public harms that were done by Crystal Geyser in this case.

Angelina Cook, public commenter, restated the points made by Mr. Fuso and reiterated the actions and the misinformation that was spread during the election period.

Chair Miadich stated the role of the FPPC is to enforce rules that require timely and accurate information about who is speaking. In the case of misinformation, they can be held accountable in real time because of the disclosure and reporting rules. Chair Miadich expresses concern that this case has intentional behavior with a lower fine than the maximum available and will be used as a comparable case in the future.

Chair Miadich also inquired about the comments regarding Ms. Lawler, who has over the past five years had nine warning letters and other Enforcement issues and asked at what point do we ask if the hiring party has done due diligence. Commissioner Baker cautions using choice of treasurer in a stipulation without knowing a lot more information.

Ms. Brereton asked for clarification on what the Commission would like to see happen if the stipulation were to be rejected. Chair Miadich stated he would hope for a higher fine amount since the current amount is inadequate for a stipulation with information indicating intentional actions.

MOTION: To reject the stipulation. Moved by Chair Miadich; seconded by Commissioner Baker. The motion passed 5-0.

5. In the matter of Hanford Now and Dan Chin, FPPC No. 16/711

Commissioner Baker discussed the presented stipulation and pointed out that the cash contribution rules are some of the clearest and most intuitive rules in the Act and one of the most serious with significant public harm. In addition, Commissioner Baker wanted further clarification on the conclusion of negligence instead of intentional behavior since the facts show over \$9,000 in cash. Ms. Brereton responded that where there is evidence that is unclear or conflicting then it points toward negligence rather than intent. In addition, cases like this are ones

that would most likely be taken to a hearing and must determine if the public harm is big enough to expend resources on a hearing. There are also no records, and nothing can be done to cure the issues in this case. Commissioner Baker said that she did not find the \$100 bills to be unclear or support negligence and asked if it the missing records that makes it unclear. Chief Brereton stated that statements from the respondent dispute the violation but are in conflict with the other evidence but that is why the fined proposed is higher. Commissioner Baker would like this comparable to be much higher to reflect the public harm for use in the future.

Commissioner Wilson asked about the statement on page five that discussed Mr. Chin's extensive experience as a public official then he should know accepting large amounts of cash is beyond normal practice for an elected official. Common sense and experience do not support accepting large amounts of cash and it being just negligent. Ms. Brereton stated she agrees the respondent is an experienced official and that is a factor on determining if conduct was negligent. Chair Miadich recommended language changes to include each side making contentions instead of including conclusions and reorganization of the stipulation to help the Commission fully comprehend the settlement nature of stipulations while still maintaining the admission portion. Chair Miadich also believes this cannot be negligence because of his experience and the amount of cash (almost 40% of what was raised) but he thinks the penalty amount is close to right.

Commissioner Baker asked how this case was initiated as a Commission initiated investigation. Ms. Brereton did not have the specifics but discussed how the Commission would initiate an investigation.

Commissioner Wilson asked what the maximum penalty for the case could be. Ms. Brereton responded \$5,000.

Francisco Ramirez, a Hanford City Councilman, discussed the initial investigation regarding Mr. Chin and stated his belief that Mr. Chin did this on purpose. Chair Miadich reminded the public and Commissioners about the four corners of a stipulation and to not take extra information.

An unidentified public commenter discussed using the FPPC as immediate damage on a campaign by filing complaints and making sure that information is public.

MOTION: To reject the stipulation. Moved by Commissioner Baker; seconded by Commissioner Wood. The motion passed 5-0.

Chair Miadich assures Chief Brereton that these are not criticisms of how hard the Enforcement Division is working but rather a show of how seriously the Commission takes any indication of intentional behavior and the cases associated with that behavior.

6. In the Matter of Joe Aguirre for Delano City Council 2014 and Joe Aguirre; FPPC No. 17/193

Pulled from the agenda.

7. Pre-Notice Defaults – In the Matter of Taxpayers for Good Government PAC (Sponsored by Taxpayers for Good Government 501c4) and Robert Johnson; FPPC No. 16/473

Ms. Brereton responded that no action or response was received from the party, and this will be brought back next month.

8. Pre-Notice Defaults – Californians in Support of Mike Antonovich State Senate 2016 and Shelley Levine; FPPC Nos. 17/1397 and 18/821

Ms. Brereton responded that no action or response was received from the party, and this will be brought back next month.

9. Assignment of Hearing to Administrative Law Judge (ALJ): In the Matter of Stop the Strong Mayor Power Grab and Craig Power; FPPC No. 20/823

Ms. Brereton is recommended this case is heard by an ALJ after an accusation and notice of defense have been submitted. Chair Miadich asked if these violations would qualify under the

streamline program. Ms. Brereton acknowledged that the violations would qualify in the streamline program for first-time offenders.

Chair Miadich recognized the opportunity for the Commission to hear the case and gain experience of hearing administrative matters themselves.

MOTION: To have the Commission hear the case. Moved by Chair Miadich. seconded by Commissioner Wilson. The motion passed 5-0.

10. Update Regarding Voiding of Contracts that Violate Government Code Section 1090.

Ms. Brereton reported that the conclusion of the Enforcement Division is that the statutes do not grant the Commission the authority to pursue the desired avenues. This was supported by a decision in the Supreme Court, and the Commission would need to seek a legislative change.

Commissioner Baker inquired what was the original rationale behind requiring the Commission to have a referral from the DA before anything proceeded. Ms. West responded that a former Chief of Enforcement pursued this, and in the negotiations with the California District Attorneys Association, the decision was made that the DA did not want to give up full control for 1090 cases because they wanted to be able to take them themselves, thus the mechanism was in place. Hank Krzciuk, San Simeon Resident, discussed his desire for the Commission to pursue legislative action to receive the 1090 authority discussed.

11. Summary of the Law Concerning Aggregation of Campaign Contributions from Related Entities (Government Code section 82015.5)

Dave Bainbridge, General Counsel, present a summary of law concerning aggregation of campaign contributions from related entities in an informational presentation.

Chair Miadich asked if the statutory language has been recently changed or if they have been in place as a part of a recent amendment. Mr. Bainbridge responded that a couple of years ago it

was moved into a definition section and has been a statute for a longer duration. Prior to being put in the statute, it was a FPPC regulation, that was codified a couple of years later.

Commissioner Cardenas left the meeting at 11:58 a.m.

12. In re Leiderman Opinion.

Katelyn Greene, Commission Counsel, gave a presentation on the sale of non-fungible tokens.

Staff recommends that the Commission's opinion on the issue conclude that the full amount of the payment received for NFT's is a reportable contribution. This will prevent a committee from being able to avoid treating these payments as contributions that are subject to limits and tailored reporting.

MOTION: To approve Staff's Recommendation. Moved by Chair Miadich. seconded by Commissioner Wilson. The motion passed 4-0.

The Commission adjourned for a break at 12:24 p.m. and reconvened at 12:46 p.m.

13. Regulation Projects and Schedule for 2022.

Mr. Bainbridge presented the tentative regulation calendar for 2022.

Commissioner Wood inquired about several regulations and how the interest arises for the project.

Mr. Bainbridge responded with the multiple ways a regulation project gets added to the calendar.

14. FY 2021/2022 Second Quarter Expenditure Report.

Loressa Hon, Chief of Administration, presented the Second Quarter Expenditure Report.

15. 2022/2023 Budget.

Ms. Hon presented the Governor's budget allocation for the 2022/2023 fiscal year.

Commissioner Baker inquired if Staff has input in the earlier stages of the budget before the Governor releases in January. Ms. Hon responded that the Governor releases the budget around January 10th and Commission Staff usually works with the Department of Finance six months

prior to the release of the budget. Staff works with the Department of Finance to make the Commission sufficient for the next Fiscal Year.

Commissioner Baker inquired about the five percent budget cut and how that is represented in the numbers. Ms. Hon responded that there was a five percent reduction across all state agencies and only is for operations. It is not seen on the report as it has already been removed from the base dollar amount.

Commissioner Baker asked if there were opportunities within the budget to increase positions in the Enforcement Division, pointing to the workload presented in the Enforcement Division Report. Ms. Hon responded that if the Commission wants to increase the staff for the Enforcement Division, staff would need to submit a Budget Change Proposal to the Department of Finance for approval.

17. Update on Legal Division's Diversion Program.

Chloe Hackert, Manager, Education, Diversion, and Special Projects provided a presentation on updates to the Diversion Program. The Diversion Program is to allow for the education of respondents who have little or no experience with the Political Reform Act and commit minor violations, in lieu of monetary penalties. The authority to establish and run the Diversion Program is based on Regulation 18360.1.

Commissioner Baker inquired about the number of respondents that would qualify now for the SEI Course. Ms. Hackert responded that the vendor Blackboard can enroll up to 100 concurrent users. Commissioner Baker further asked the volume of cases or complaints that may apply. Ms. Hackert responded that based on the data, the Commission is averaging around 200 streamline closures and there would be a survey at the end of the course while it is free to gain feedback regarding the process and curriculum

Commissioner Baker asked if there was a reason not to keep the survey even after a fee is authorized to just maintain continuous feedback. Ms. Hackert responded that it is a good option and will be considered for the Diversion Program.

Commissioner Wilson inquired about the background of the diversion program name. Chair Miadich responded that it was referred to as a diversion program since the intent is literally diverting people out of a more labor-intensive aspect of Enforcement into a more streamlined system to gain compliance. Commissioner Wilson expressed dissatisfaction with the name “Diversion” and asked if that could be changed.

A public commenter discussed the complaint process and how the Diversion Program might change the way the case is closed, or the complainant is notified about case closures.

16. Legislative Development.

Lindsey Nakano, Senior Legislative Counsel, gave updates on the 2022 legislative development. Ms. Nakano also discussed two new legislative proposals. The first relates to the Diversion Program funding and the second would authorize the use of electronic signatures.

Commissioner Baker inquired about the fee required by the Diversion Program, who would pay and what the maximum fee could be. Ms. Nakano responded that only the respondent would be responsible for the Diversion Program fees, and there is still a determination of the fee schedule.

It is intended to be less than what the penalty would have been.

Commissioner Wilson inquired if the fee would be paid by the participant or could it be paid by the campaign committee. Ms. Nakano responded that as of now there are no restrictions on if the committee would be able to pay for the diversion program fee but would defer to the diversion program staff for further clarification.

Chair Miadich asked if a committee signed for a violation of the Political Reform Act, can the committee pay for the violation. Mr. Bainbridge responded that campaign funds can be used to pay for most violations of the act that is a campaign violation. There are no exceptions that campaign funds could be used to pay the penalty.

Commissioner Baker asked about the language about being deposited in the general fund, since it doesn't mean that will come back to the Commission. Commissioner Baker asked if there was any way to change the language that will reduce discretion to make it as tight as possible so that it is not discretionary.

Chair Miadich stated that there are two aspects to the program, where there will be an annual budget to support the program and the fees paid for the Diversion Program will be going to the general fund. Chair Miadich pointed out that there was anti-supplantation language in the current version of the bill that is intended to prevent reductions in the Commission's budget in other areas to offset new funding for the diversion program.

Commissioner Wilson asked if the new Chair of the Elections Committee has been asked to co-author AB 775. Commissioner Baker inquired about AB 775, asking if there are currently any bipartisan authors and if there is any assistance needed to find bipartisan authors. Ms. Nakano responded that currently there are no bipartisan authors nor support. Ms. Nakano reiterated that the staff is actively working on securing bipartisan authorship and support for all the Commission-sponsored bills.

MOTION: To add the two legislative proposals, the diversion program and electronic signatures, to the legislative package this year. Moved by Chair Miadich. seconded by Commissioner Baker. The motion passed 4-0.

In response to AB 1690, Chair Miadich asked if this change to subject officials who are subject to a state recall election to contribution limits is a statutory change. Ms. Nakano responded with

confirmation. Chair Miadich followed up if there was any discussion about a constitutional issue with that type of statutory change since there are concerns that a public official subject to state recall is not a candidate and attempting to apply contribution limits would violate the state constitution and open questions to whether other types of ballot measure committees have implications on the constitution. Ms. Nakano responded she has touched base with the Committee Consultant and they've flagged some issues but have not done the analysis yet. Commissioner Wilson recommended the Commission defer taking a position on this specific bill because of the impact on state elected officials as well as local elected officials, and constitutional issues that need to be addressed. Chair Miadich reiterated that this is an update on the measure and not placing the Commission in a position to take a stance on this measure. Chair Miadich inquired if other Commissioners object if the Commission wants to send a formal letter to both the Assembly, Senate, and to Assemblymember Berman urging them to move quickly on AB 775 and expressing the interest and view of the FPPC. Chair Miadich asked Ms. Nakano if it is appropriate to do so. Ms. Nakano responded that the Commission could submit support letters through the typical support letter process, which hasn't been done by the Commission frequently.

A public commenter discussed their desire for the Commission to pursue legislation to have 1090 jurisdiction.

18. Executive Staff Reports.

Ms. Brereton updated to the Commission that on page 4 in the report, the 2021 numbers were added to the chart. On page five, another chart was added to detail the prior year's workload in response to December's Commission meeting.

Mr. Bainbridge reported that there was a new section added to the Legal Division Report that focuses on educational resources. This is to address any new resources or resources update to the website and how they will list these resources. Mr. Bainbridge also reported that anyone who has filed an 803 and must report some additional information based on the regulations passed in October can still use the existing form. There are instructions on how to make the old form work for the new disclosures on the website. There is a fact sheet on behested payment reporting and the new requirements from the regulations.

Commissioner Baker inquired about the outreach specifically to League of Cities and people who must comply with behested payment rules to offer trainings and encourage video trainings, and if there was update on this. Mr. Bainbridge stated that the first step was the fact sheet, and the Diversion Program will have a Behested Payment Training Course.

Commissioner Wood inquired about the audit selection process and if it will stick with the public draw and how it will work. Shrdha Shah, Chief of Audits and Assistance, stated the division will continue to use the program that randomly selects, a process done every two years, and results of the draw are published to the website. Chair Miadich asked Ms. Shah for a presentation at a future commission meeting on how the randomized selection of auditing works.

Ms. Hon reminded that the deadline of the form 700 is on March 1st.

Sasha Linker, Commission Assistant, updated the Commission that the 2021 Heat Map was updated on the website.

Ms. West discussed the supplemental legislative reported that is usually due January 10th.

Ms. Nakano also updated that the annual report is available on the website and highlights all the accomplishments from all divisions.

19. Commissioner Comments and Proposed Future Agenda Items.

MOTION: To Adjourn Meeting. Moved by Commissioner Wilson. seconded by Commissioner Baker. The motion passed 5-0.

Meeting Adjourned 2:34 PM

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved March 14, 2022

Richard C. Miadich, Chair
Fair Political Practices Commission