



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **June 16, 2022** at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **June 14, 2022**.

BACKGROUND/OVERVIEW:

Members of the Commission, including the Chair, are subject to the Act like all other state and local officers, and persons participating in regulated political activity. As a result, Commission members can be accused of violating the Act. Such allegations should be investigated and can result in legal action if there is reason to believe a violation occurred.

A stated purpose of the Act is that “(a)adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.”² Consequently, the Act provides multiple avenues for enforcement of its provisions. Nearly all violations of the Act can be pursued through administrative or civil action.³ Further, if a person knowingly or willfully violates the Act, they can also be subject to criminal prosecution.⁴

The Commission’s Enforcement Division investigates and prosecutes most cases involving alleged violations of the Act via administrative proceedings. The Commission has sole authority to bring administrative proceedings for alleged violations of the Act.⁵ For civil court actions involving violations of the Act, the Commission shares jurisdiction with local district attorneys, city attorneys, and the Office of the Attorney General (the AG’s Office), depending on who is alleged to have violated the Act. Specifically, the Commission is the “civil prosecutor” for cases involving any state agency, except itself. The AG’s Office is the civil prosecutor for alleged violations of the Act involving the Commission, including its members.⁶ The AG’s Office also has jurisdiction over criminal violations of the Act for state agencies, including the Commission.⁷

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Section 81002(f).

³ Sections 89520, 89521, 91004, 91005, and 91005.5.

⁴ Section 91000.

⁵ Sections 83116 and 83116.5.

⁶ Sections 91001(b).

⁷ Section 91001(a).

While the Act does not explicitly provide for referral of complaints to other agencies, such authority exists as the result of the concurrent jurisdiction provided under the Act. The Enforcement Division occasionally refers complaints to other agencies in instances when doing so would be preferable for obtaining adequate resolution of the complaint, or where the other agency expresses an interest in pursuing a particular complaint.

In instances where a current Commission member is accused of violating the Act, the AG's Office is the appropriate agency to investigate the allegations and pursue any appropriate legal action. While the Commission's Enforcement Division has authority to pursue administrative action in such an instance, practical and ethical concerns dictate that the best course of action is for the Enforcement Division to refer the matter to the AG's Office.

REGULATORY ACTION:

Adopt 2 Cal. Code Regs. Section 18315 directing the Commission's Chief of Enforcement to refer complaints alleging a current Commission member violated the Act to the AG's Office, provide notice of the referral to the complainant and Commissioner named in the complaint, and provide notice of the complaint to the Commission's Chair or Vice Chair.

SCOPE: The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issue identified above or any related issue.

FISCAL IMPACT STATEMENT:

<u>Fiscal Impact on Local Government.</u>	None
<u>Fiscal Impact on State Government.</u>	None
<u>Fiscal Impact on Federal Funding of State Programs.</u>	None

AUTHORITY: Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE: 83115, 91001, 91004, 91005, and 91005.5

CONTACT: Any inquiries should be made to Dave Bainbridge, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660; dbainbridge@fppc.ca.gov. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.