

# THE SUTTON LAW FIRM

February 14, 2018

VIA EMAIL ONLY

Commissioner Jodi Remke, Chair  
Commissioner Maria Audero  
Commissioner Frank Cardenas  
Commissioner Brian Hatch  
Commissioner Allison Hayward  
Fair Political Practices Commission  
1102 Q St., Ste. 3000  
Sacramento, CA 95811

RE: Review of Enforcement Policies and Procedures

Dear Chair Remke and Commissioners:

We write to support Commissioner Audero's request that the Commission undertake a review of its policies and procedures for handling investigations and enforcement matters.

As you may know, the Commission has undertaken this type of review on numerous occasions in the past, and the California Political Attorneys Association recently requested that the Commission review certain aspects of the enforcement process. In addition, several local ethics commissions throughout the state review their investigation and enforcement practices on a regular basis – sometimes conducting a comprehensive analysis of all aspects of their enforcement regulations, while other times focusing on particular issues. In fact, the San Francisco Ethics Commission completed a comprehensive overhaul of its enforcement regulations last year, and the Los Angeles City Ethics Commission recently updated several specific provisions of its enforcement regulations. These local efforts included the Commissioners identifying potential discussion points, interested persons meetings open to the public, and staff reports analyzing various options and best practices from other jurisdictions; both Commissions were able to update their enforcement regulations within six to nine months.

We believe that Commissioner Audero's proposal would benefit the Commissioners, enforcement staff and the regulated community. Enforcement staff could be given clear guidance on the Commission's policy views regarding different types of Political Reform Act violations, as well as the type of information which the Commissioners prefer to see when approving stipulations. Commissioners could learn more about the amount of work which goes into reaching an agreement between enforcement staff and respondents in each factually-

specific case, and the limitations on staff's investigatory powers and resources. This entire process could also provide much needed information to the entire regulated community.

Attorneys representing respondents in FPPC enforcement matters, including the Sutton Law Firm and other members of the California Political Attorneys Association, would appreciate the opportunity to provide suggestions to strengthen and streamline the process while respecting the due process rights of respondents. By way of example, and based on our experience representing numerous clients in enforcement matters before the FPPC and local ethics commissions, we believe the following issues could potentially be clarified and improved:

- Given the requirements of the California Political Reform Act and how sensitive even the existence of an investigation can be in the political context, how much information should the FPPC provide to complainants, respondents and witnesses regarding the status and scope of an investigation?
- How quickly should staff be required to issue closure or warning letters to respondents once an investigation is completed?
- What role should prior stipulations play in settling a subsequent case?
- How should confidential and sensitive information relevant to an investigation be disposed of/protected once the investigation concludes?

We appreciate the hard work of enforcement staff to begin this review process, and look forward to discussing this proposal with you at the meeting on Thursday.

Sincerely,



James R. Sutton

cc: Galena West, Esq.  
Joseph Guardarrama, Esq.  
Enclosures  
JRS/lc  
#1000.01