

1 Amend 2 Cal. Code Regs. Section 18361.4 to read:

2 **§ 18361.4. Probable Cause Proceedings.**

3 (a) Probable Cause Report. If the Chief of the Enforcement Division decides to  
4 commence probable cause proceedings pursuant to ~~Government Code~~ Sections 83115.5 and  
5 83116, he or she shall direct the Enforcement Division staff to prepare a written report, hereafter  
6 referred to as "the probable cause report." The probable cause report shall contain a summary of  
7 the law and evidence gathered in connection with the investigation, including any exculpatory  
8 and mitigating information of which the staff has knowledge and any other relevant material and  
9 arguments. The evidence recited in the probable cause report may include hearsay, including  
10 declarations of investigators or others relating the statements of witnesses or concerning the  
11 examination of physical evidence.

12 (b) ~~At least 21 days prior to any determination of probable cause, No probable cause~~  
13 hearing will take place until at least 21 calendar days after the Enforcement Division staff shall  
14 ~~provide~~ provides the following, by service of process or registered or certified mail with return  
15 receipt requested, to all proposed respondents:

16 (1) A copy of the probable cause report;

17 (2) Notification that the proposed respondents have the right to respond in writing to the  
18 probable cause report and to request a probable cause conference at which the proposed  
19 respondent may be present in person and represented by counsel, and;

20 (3) If the Commission met in executive session on this matter pursuant to ~~2 Cal. Code of~~  
21 ~~Regulations Section~~ Regulation 18361.2, a copy of any staff memoranda submitted to the  
22 Commission at that time along with the recording of any discussion between the Commission

1 and the staff at the executive session as required in subdivision (b) of ~~2 Cal. Code of Regulations~~  
2 ~~Section~~ Regulation 18361.2.

3 (c) Response to Probable Cause Report.

4 (1) Each proposed respondent may submit a written response to the probable cause  
5 report. The response may contain a summary of evidence, legal arguments, and any mitigating or  
6 exculpatory information. A proposed respondent who submits a response must file it with the  
7 ~~Executive Director~~ Commission Assistant who will forward the response to the General Counsel  
8 or an attorney in the Legal Division (the “hearing officer”) and provide a copy, by service of  
9 process or registered or certified mail with return receipt requested, to all other proposed  
10 respondents listed in the probable cause report not later than 21 days following service of the  
11 probable cause report.

12 (2) Within 21 calendar days following the service of the probable cause report, a  
13 proposed respondent may request discovery of evidence in the possession of the Enforcement  
14 Division. This request must be sent by registered or certified mail to the Commission Assistant.  
15 Upon receipt of the request, the Enforcement Division shall provide discovery of evidence relied  
16 upon by the Enforcement Division sufficient to lead a person of ordinary caution and prudence to  
17 believe or entertain a strong suspicion that a proposed respondent committed or caused a  
18 violation, along with any exculpatory or mitigating evidence. This is not a right to full discovery  
19 of the Enforcement Division file. The Enforcement Division shall provide access to documents  
20 for copying by the Respondent, or upon agreement among the parties, the Enforcement Division  
21 will provide copies of the requested documents upon payment of a fee for direct costs of  
22 duplication. The Enforcement Division shall provide such evidence by service of process or  
23 registered or certified mail with return receipt requested to all respondents, with a copy to the

1 Commission Assistant. A respondent may submit a written response to the probable cause report  
2 described in subsection (1) no later than 21 calendar days after service of discovery.

3 (3) The Commission staff may submit any evidence or argument in rebuttal to the  
4 response. When the Commission staff submits evidence or argument in rebuttal to the response,  
5 it shall provide a copy, by service of process or registered or certified mail with return receipt  
6 requested, to all proposed respondents listed in the probable cause report not later than 10  
7 calendar days following the date the response was filed with the ~~Executive Director~~ Commission  
8 Assistant. The ~~Executive Director~~ hearing officer may extend the time limitations in this section  
9 for good cause. At any time prior to a determination of probable cause, the ~~Executive Director~~  
10 hearing officer may allow additional material to be submitted as part of the initial response or  
11 rebuttal.

12 (d) Probable Cause Conference. Any proposed respondent may request a probable cause  
13 conference. The request shall be served upon the ~~Executive Director~~ Commission Assistant and  
14 all other proposed respondents not later than 21 days after service of the probable cause report  
15 unless the ~~Executive Director~~ hearing officer extends the time for good cause. The ~~Executive~~  
16 ~~Director~~ Commission Assistant shall fix a time for the probable cause conference and the hearing  
17 officer shall conduct the conference informally. The conference shall be closed to the public  
18 unless a proposed respondent requests and all other proposed respondents agree to a public  
19 conference. If the conference is not public, only members of the Commission staff, any proposed  
20 respondent and his or her legal counsel or representative shall have the right to be present and  
21 participate. The ~~Executive Director~~ hearing officer may allow witnesses to attend and participate  
22 in part or all of the probable cause conference. In making this determination, the ~~Executive~~  
23 ~~Director~~ hearing officer shall consider the relevancy of the witness' proposed testimony, whether

1 the witness has a substantial interest in the proceedings, and whether fairness requires that the  
2 witness be allowed to participate. Representatives of any civil or criminal prosecutor with  
3 jurisdiction may attend the conference at the discretion of the ~~Executive Director~~ hearing officer  
4 if they agree to respect the confidential nature of the proceedings. If the conference is not open to  
5 the public and none of the parties and the presiding officer object, the conference may be  
6 conducted in whole or in part by telephone. The probable cause conference shall be recorded.  
7 The ~~Executive Director~~ hearing officer may determine whether there is probable cause based  
8 solely on the probable cause report, any responses or rebuttals filed and any arguments presented  
9 at the probable cause conference by the interested parties. If the ~~Executive Director~~ hearing  
10 officer requires additional information before determining whether there is probable cause, he or  
11 she may permit any party to submit additional evidence at the probable cause conference.

12 (e) Finding of Probable Cause. The ~~Executive Director~~ hearing officer may find there is  
13 probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of  
14 ordinary caution and prudence to believe or entertain a strong suspicion that a proposed  
15 respondent committed or caused a violation. A finding of probable cause by the ~~Executive~~  
16 ~~Director~~ hearing officer does not constitute a finding that a violation has actually occurred. The  
17 ~~Executive Director~~ hearing officer shall not make a finding of probable cause if he or she is  
18 presented with clear and convincing evidence that, at a time prior to the alleged violation, the  
19 violator consulted with the staff of the Commission in good faith, disclosed truthfully all the  
20 material facts, and committed the acts complained of either in reliance on the advice of the staff  
21 or because of the staff's failure to provide advice. If the ~~Executive Director~~ hearing officer makes  
22 a finding of probable cause, ~~he or she~~ the Enforcement Division shall prepare an Accusation  
23 pursuant to ~~Government Code~~ Section 11503 and have it served upon the person or persons who

1 are subjects of the probable cause finding. The ~~Executive Director~~ hearing officer shall publicly  
2 announce the finding of probable cause. The announcement shall contain a summary of the  
3 allegations and a cautionary statement that the respondent is presumed to be innocent of any  
4 violation of the Act unless a violation is proved in a subsequent proceeding. The Chief of the  
5 Enforcement Division shall be responsible for the presentation of the case in support of the  
6 Accusation at an administrative hearing held pursuant to ~~Government Code~~ Section 83116.  
7 Note: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5  
8 and 83116, Government Code.