



CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

2013 END OF YEAR REPORT

ENFORCEMENT DIVISION



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Executive Summary

Division Overview

The Political Reform Act of 1974 (the “Act”) created the Fair Political Practices Commission and charged it with, among other things, the duty to enforce the provisions of the Act. In adopting the Act, the voters declared that “previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities” and that the Act be “vigorously enforced.”

The FPPC is focused on investigating and prosecuting the most serious violations of the Act, including campaign money laundering, and conflicts of interest. Additionally, the Enforcement Division diligently ensures that campaign disclosures are taking place before elections, when they matter most.

The FPPC Enforcement Division is committed to providing for the timely and impartial investigation and prosecution of alleged violations of the Act.

The FPPC Enforcement Division’s jurisdiction is statewide, covering all levels of government. In fulfilling its mission, the Division handles over a thousand complaints a year, and prosecutes hundreds of cases per year.

An enforcement matter will be fully investigated when there is sufficient information to believe that a violation of the Act has occurred. Information regarding potential violations of the Act come from citizen complaints, referrals from other governmental agencies, media reports, audit findings or may be identified internally.



Enforcement Division 2013

When sufficient evidence exists to prove a violation of the Act, the Enforcement Division will bring a prosecution action to the Commission, or may issue a Warning Letter, depending upon the facts of the case and the public harm caused. If the evidence is insufficient to warrant prosecution, a case may be closed with an Advisory Letter or without violation.

The Enforcement Division also operates a campaign audit program of both mandatory and discretion-ary audits, with continued emphasis on pre-election compliance.

Pre-Election and Ethics Pro-Active Cases

- Continued to focus on aggressively compelling compliance with the Act prior to elections.
- Established a proactive program with city and county clerks to highlight and compel candidates who fail to timely file campaign statements to file *before* elections.
- Commenced a proactive investigation of gifts given to public officials from three major companies and found 205 violations of the Act, resulting in 86 successful prosecutions to date.

Prosecuting Serious Cases

- Prosecutions of serious campaign cases were at their highest level ever in 2013.
- Prosecutions of lobbying violations were at their highest level ever in 2013.
- Conflict of interest prosecutions continued at record high levels.
- Compliance with timely filings of Statements of Economic Interest (SEIs) at all time high.

Prosecutions

- **In 2013, 854 cases closed with proven violations.**
- 257 of these cases resulted in prosecutions approved by the Commission.
- 597 resulted in warning letters.

Proactive Pre-election Cases

In 2013, in addition to continuing to prosecute the most serious violations of the Act, such as money laundering and conflicts of interest, the Enforcement Division sharpened its focus on proactively pursuing compliance with the Act before elections, when compliance matters most. The Division has set up programs to proactively pursue money laundering in state and local campaigns, disclosure of donors on state ballot measures, pre-election campaign non-filers, and conflicts of interest. These cases have required the adaptation of new investigative techniques, such as increased collaboration with city and county clerks, law enforcement agencies, and more complex analytical audits.

Some examples of the Division's proactive pre-election efforts include:

HANY FANGARY

Compelled Filing Prior to Election

Hany Fangary, a candidate for Hermosa Beach City Council in the November 5, 2013 election, failed to file either of the pre-election campaign statements for the upcoming election despite repeated demands from the Hermosa Beach City Clerk and the filing of a sworn complaint with the Commission. On October 28, 2013, the Enforcement Division sent Mr. Fangary a letter demanding that he file the overdue statements by Wednesday, October 30, 2013, or face immediate legal action by the Commission to compel him to comply with the Act. In response to that demand, Mr. Fangary filed the past-due pre-election campaign statements with the Hermosa Beach City Clerk on October 30, 2013.

MAYOR OF SAN JOSE CHUCK REED

Illegal Donation to Independent Expenditure Committee

Chuck Reed, the current Mayor of San Jose and city council member since 2000, controls "San Jose Fiscal Reforms, Mayor Reed, Chamber PAC," a campaign committee which lists its mission as "[to] Support fiscal reform initiatives and fiscally responsible candidates in San Jose." Around September 24, 2012, under the direction of Mayor Reed, the committee made a donation of \$100,000 to an independent expenditure committee, "San Jose Reform Committee Supporting Rose Herrea for City Council 2012," in violation of the Act's important prohibition against candidates raising funds, and then circumventing contribution limits by illegally moving those funds to independent expenditure committees. On October 15, 2012, the Enforcement Division sent a letter to the Herrea IE committee demanding that the improper donation be returned. At the time the Herrea IE committee did not have enough money in its bank account to return the donation; however, it immediately ceased spending any of the funds remaining in its account. The Commission, at its September hearing, found Mayor Reed had violated the Act by making this illegal donation.

YES ON 37 – ELECTRONIC ADVERTISING *Compelled Disclosure Prior to Election*

“Yes on 37 for Your Right to Know if Your Food Has Been Genetically Engineered. Supported by Consumer Advocates, Makers of Organic Products and California Farmers” was a committee established to support Proposition 37. After beginning a proactive audit of political advertising in the 2012 election, the Enforcement Division found the committee had failed to comply with provisions of the Act concerning advertisement disclosure. When the Division notified the committee about the violation, the advertisement in question was swiftly altered in order to make disclosure of the committee’s largest donors more conspicuous, providing valuable information to voters prior to the 2012 election.

SAN BERNARDINO COUNTY PILOT PROGRAM *Pre-Election Audits*

In response to a request from the San Bernardino County Board of Supervisors, the Legislature passed AB 2146, giving the FPPC authority to advise and enforce the San Bernardino County local elections. The FPPC in partnership with San Bernardino has agreed to, for the first time in a State or local election, proactively perform pre-election audits of all competitive campaign committees to ensure disclosure to the public and compliance with the rules.

FORMER SENATOR TOM BERRYHILL *Sent to Administrative Hearing*

Following a proactive audit commenced by Enforcement Division auditors, the Division accused former California State Senator Tom Berryhill of laundering money to his brother, Bill Berryhill’s Assembly campaign, through the Stanislaus County Republican Central Committee. The Administrative hearing was conducted in November on these allegations against both Tom and Bill Berryhill and the San Joaquin County Republican Central Committee.

MAYOR OF STOCKTON ANTHONY SILVA *Compelled Filing Prior to Election*

Just prior to the November 2012 election, the Enforcement Division conducted a proactive inquiry of city and county clerks to verify candidate compliance in connection with the election in order to ensure that campaign disclosures were made prior to the election, when they are most important. Based on that inquiry, the Division found that Mayor Silva and his committee failed to file the pre-election campaign statement due October 25, 2012. Additionally, the Division learned that Mayor Silva failed to file his second pre-election statement due May 24, 2012 in connection with the June 5, 2012 election. Following prompt direction from Enforcement to file the delinquent statements, Mayor Silva immediately submitted his campaign statements to the city clerk before the June 5, 2012 election.

RICHARD BRUGGER FOR DALY CITY COUNCIL 2012
Compelled Filing Prior to Election

As a result of the same proactive inquiry which highlighted Mayor Anthony Silva’s failure to file pre-election campaign statements, the Enforcement Division discovered that Richard Brugger, a candidate for Daly City Council in 2012, and his campaign committee failed to file a pre-election campaign statement for the period of July 1, 2012 through September 30, 2012 by the October 5, 2012 deadline. Upon notification by the Division, Mr. Brugger immediately submitted his campaign statement to the city clerk prior to the November election.

AMERICANS FOR RESPONSIBLE LEADERSHIP
Failure to Disclose True Source of Contribution

In the weeks before the 2012 election, the Arizona-based non-profit Americans for Responsible Leadership (ARL) made an unprecedented \$11,000,000 contribution to the California Small Business Action Committee (SBAC) PAC in an effort to support Proposition 32 and defeat Proposition 30. Due to the nature of the contribution, including its proximity to the election and ARL’s lack of prior contributions in California, the FPPC commenced a proactive audit of ARL’s records. After the FPPC prevailed over ARL in the California State Supreme Court, ARL admitted to acting as an intermediary for the true source of the contribution.

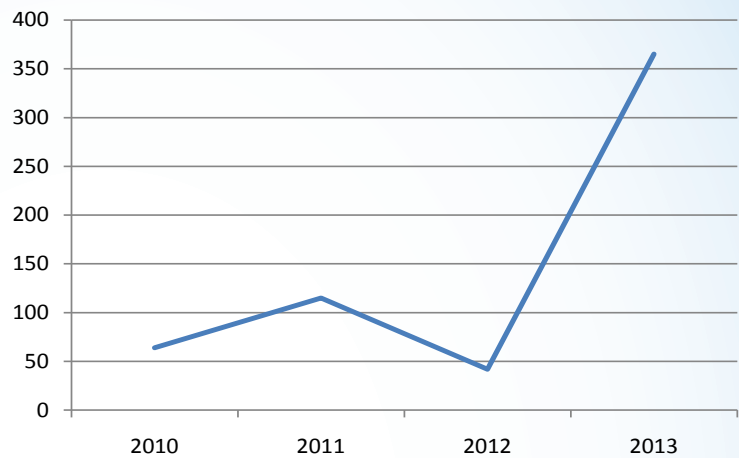
After further investigation by the FPPC and California Department of Justice, it was determined that the Center to Protect Patient Rights (CPPR), the key nonprofit in the Koch Brothers’ dark money network of nonprofit corporations, was actually the source of two major contributions that were not properly reported. The first was a \$4.08 million contribution to the California Future Fund (CFF), made through the American Future Fund (AFF) as an intermediary on September 11, 2012. The second was the \$11 million contribution made to SBAC through ARL as an intermediary on October 15, 2012. This “dark money” saga was concluded in September when ARL and the CPPR reached a record civil settlement with the FPPC for \$1,000,000.



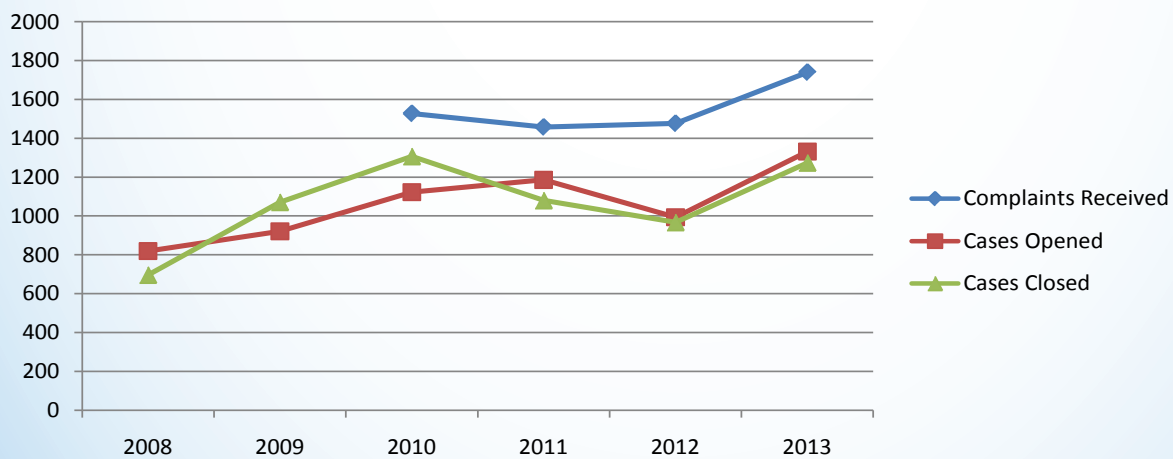
Photo taken from FPPC press conference 10/24/2013

Enforcement Division Workload

Proactive Cases Opened, By Year



Enforcement Workload, By Year*



* Complaint data was not collected before 2010

Major Cases

Trends in Prosecution

In addition to proactive, pre-election cases the Enforcement Division continues to focus on prosecuting serious violations of the Act. These types of cases require advanced investigative techniques and are more legally complex to prosecute.

A few examples of cases which involve major violations that were prosecuted this year include:

CALIFORNIA STRATEGIES

Shadow Lobbying

California Strategies is a public policy consulting firm which shares a corporate structure with affiliated company California Strategies and Advocacy (Cal Advocacy), a registered lobbying firm in Sacramento. Members of California Strategies are frequently retained to advise Cal Advocacy on matters of strategic policy and communication. Three Cal Strategies partners, Jason Kinney, Rusty Areias, and Winston Hickox, operating in such capacity, received payments from clients of Cal Advocacy in order to influence legislative and executive outcomes. The Act requires individuals and firms actively seeking to influence the legislature or administrative results to register as a lobbyist/lobbying firm, maintain detailed records of their activities, and file quarterly reports with the Secretary of State. For failure to register as lobbyists, disclose lobbying activities, and file mandated reports, California Strategies and its three principals were fined a combined \$40,500.

FORMER SENATE MAJORITY LEADER

DEAN FLOREZ

Misuse of Campaign Funds

Following a Franchise Tax Board audit and subsequent investigation by the FPPC, the Enforcement Division discovered former Senate Majority Leader Dean Florez improperly made 168 purchases using funds from campaign committees he had initiated for a 2010 campaign for Lieutenant Governor and a 2014 race for State Controller. After failing to refund \$247,000 in donations from his abandoned Lieutenant Governor campaign, Florez utilized campaign funds to purchase personal items including gasoline, furniture, utility bills, dog food, and airline tickets, totaling \$6,434.42. For failure to refund donations from a campaign and for the improper use of committee funds, Dean Florez was fined \$60,000, the largest fine ever levied for improperly using campaign money.

CHRIS HANSEN
Failure to Disclose Donors

“Citizens for a Voice in Government, Major Funding by Investment Manager”, a ballot measure committee created to support an initiative requiring voter approval of the city of Sacramento’s new arena financing plan, used funds contributed by Chris Hansen, a Seattle-based hedge fund manager, to fund a signature gathering campaign. Both the ballot measure committee and Mr. Hansen failed to file campaign statements to disclose the origins of the \$100,000 donation. Because the committee failed to timely file campaign statements, Sacramentans who were being asked to sign the arena petition did not have information regarding who was funding the petition effort. An investigation led by the Enforcement Division exposed Hansen as the primary backer of the ballot committee, information that was highly relevant to Sacramento residents because, earlier in the year, Mr. Hansen had unsuccessfully attempted to buy the Sacramento Kings basketball team and move the team to Seattle.

**SANTA CLARA COUNTY SUPERVISOR
GEORGE SHIRAKAWA**
Personal Use of Campaign Funds

George Shirakawa was a member of the Santa Clara County Board of Supervisors. In this capacity, Mr. Shirakawa controlled two campaign committees, “George Shirakawa for School Board” and “Shirakawa for Supervisor.” Following a complaint being submitted to the Enforcement Division, a joint investigation between the FPPC and the Santa Clara County District Attorney’s office revealed that Mr. Shirakawa improperly used committee funds for personal expenditures, including cash withdrawals made at or near casinos. His personal spending totaled \$131,670 over a 5-year period. For misusing campaign contributions on personal purchases the Commission fined Mr. Shirakawa \$50,000. Additionally, Mr. Shirakawa pled guilty to 5 felony charges and 7 misdemeanors prosecuted by the Santa Clara County District Attorney, and was sentenced to a year in jail, and resigned his office.



Photo taken from FPPC press conference, 8/16/2013

HAI FU “JOEY” LO
Money Laundering

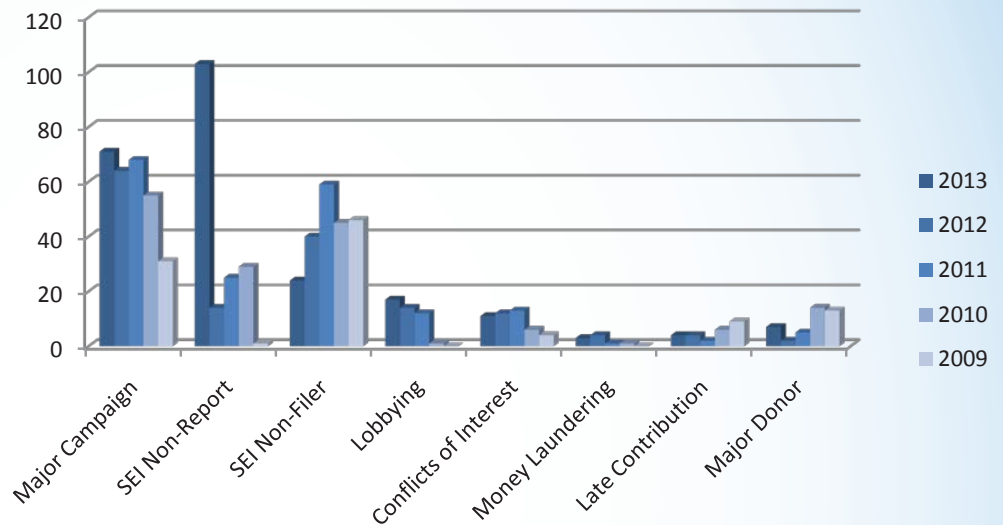
Hai Fu “Joey” Lo is a businessman and land developer who owned commercial and residential property in Fremont. In February 2008, Mr. Lo provided money to his friend and business associate Daniel Chun to be used to make political contributions to two candidates for Mayor of the City of Fremont on behalf of Mr. Lo. Mr. Chun not only made one contribution to each campaign, he proceeded to ask two of his own employees to send personal checks to the campaigns which he would later reimburse from the funds provided by Mr. Lo. Both employees obliged the request, effectively laundering Mr. Lo’s contribution to the mayoral campaigns through three individuals. For money laundering, the commission fined Mr. Lo \$17,000.

MANUEL LOPEZ
Conflict of Interest

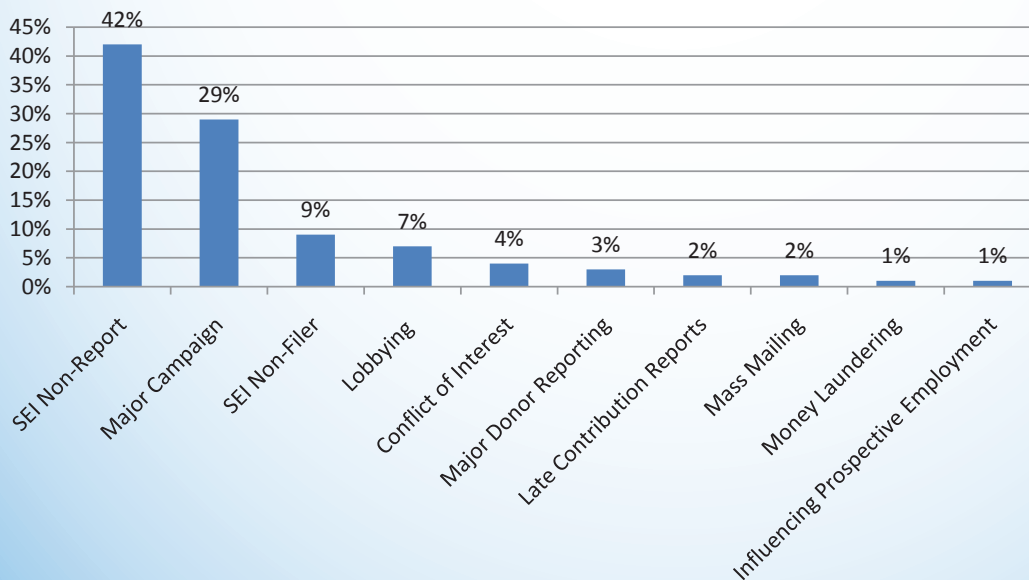
Manuel Lopez was Deputy Director of the Administrative Services Division of the California Department of Parks and Recreation when he initiated a leave buyback program for members of his Division. Subsequently, Mr. Lopez cashed in 524 hours for a total of \$28,647.08 to be paid from his Division’s budget. Not only was the buyback program not permissible according to Department of Personnel regulations, but due to Mr. Lopez’s position in the department and eligibility to participate in the buyback, he was fined \$7,000 by the Commission for violating the State’s conflict of interest laws.

Prosecuting Serious Cases

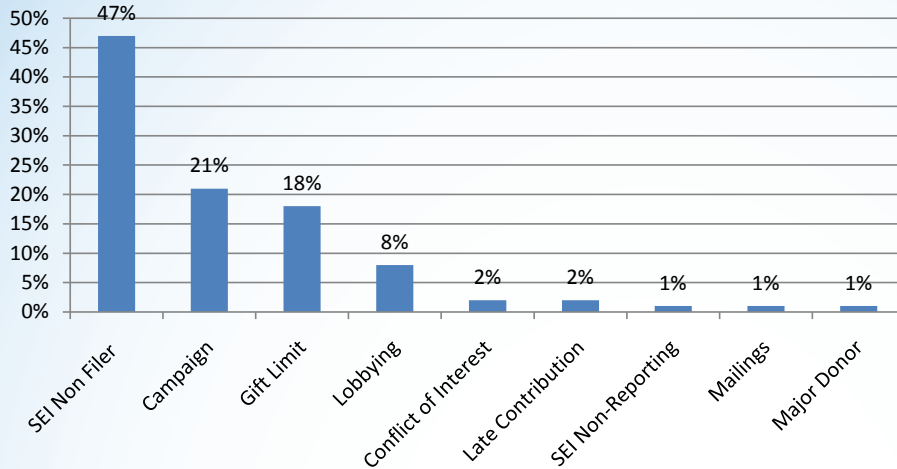
Historical Prosecution Trend, By Type



Types of Cases Prosecuted in 2013



2013 Warning Letters Issued, By Type



Warning Letters

As a policy, the Enforcement Division does not turn away any complaints or referrals. The Division handles a variety of cases ranging from failure to timely file Statements of Economic Interest, to conflicts of interest, money laundering, and illegal lobbying activity. In order to focus on investigating and prosecuting serious violations of the Act, the Division issues warning letters for cases involving minor violations that should not require a hearing before the Commission. Warning letters count as “priors” for any future violation of the Act and can result in an enhanced penalty.

SEI Non Filers

Since the FPPC began pursuing every SEI Non-Filer referral in a timely manner in 2010, there has been a steady decline over the past two years in the amount of referrals and enforcement actions on this violation. This may be a result of greater compliance due to enforcement actions.

Collections and Audits

Collections Program Activity

The Enforcement Division actively and aggressively pursues all cases that go into collections. Currently, there are over 77 cases being actively pursued through state tax intercepts, civil judgments, demand letters, and property tax liens. Additionally, the Governor signed AB 552, which gives the Division enhanced ability to move quickly to obtain civil judgments.

Audits

In 2013, the Governor signed AB 2146, giving the FPPC the ability to proactively audit elections in San Bernardino County. The Enforcement Division also opened a number of discretionary audits as prescribed by the Act. Additionally, the Division also reviewed 44 Franchise Tax Board (FTB) audit referrals of which 14 received warning letters and 14 were prosecuted, resulting in fines approved by the Commission.

Enforcement Division Background

Background

The Enforcement Division of the Fair Political Practices Commission (“FPPC”) enforces the provisions of the Political Reform Act (“Act”). The Act governs disclosure of political campaign contributions and spending by candidates and ballot measure committees. It also sets ethics rules for state and local government officials that impose strict limits on decisions or votes that affect the official’s financial interests. The Act also regulates lobbying financial disclosure and practices related to the legislature and state agencies.

The Enforcement Division is charged with the enforcement of the provisions of the Act through administrative or civil prosecution of violations of its provisions. The Division has 27 staff members. The staff consists of 8 attorneys, 7 investigators, 1 chief investigator, 4 auditors, 3 political reform consultants and 1 full-time and 2 part-time support staff, along with a Division Chief.

Mission

The mission of the Enforcement Division is to resolve all complaints **fairly, effectively, and efficiently**. In its implementation of this mission, the Division established 3 key goals: prosecute more serious cases, resolve complaints more timely, and ensure all cases are resolved appropriately and fairly.

Complaint Sources

The Division receives complaints from the public and referrals from other governmental agencies. Complaints can be sworn, which means the complainant makes the complaint under penalty of perjury. They can also be pro-active, which means the complaint is initiated by the Enforcement Division. Pro-active cases can be based upon information

received from media reports, audit findings, FPPC streamlined enforcement programs, or when violations are otherwise identified by staff. The Enforcement Division then initiates investigations when there is sufficient information to believe a violation of the Act has occurred based on the complaints received.

Violations

The following are examples of common types of violations under the Act:

- Conflict of interests
- Campaign money laundering
- Mass mailings (failure to properly identify or report)
- Nonfilers and disclosure violations on Statements of Economic Interests forms
- Nonfilers and disclosure violations on campaign statements and reports
- Improper receipt of campaign funds and violations of contribution limits
- Improper expenditures of campaign funds, including using campaign funds for personal use
- Gift limit violations
- Lobbying violations

Case Processing

The processing of a case begins in intake where a complaint is initially analyzed by a political reform consultant (PRC). If there is sufficient information to believe a violation of the Act occurred, it will be further processed at intake by a PRC or it will be referred to an attorney to develop an investigative plan based upon the legal elements of the

alleged violation. If needed, an investigation of the allegations will occur. This is followed by a legal review by the assigned staff attorney, who recommends proper case resolution.

Campaign audits are performed either by the Franchise Tax Board, or by the FPPC audit staff. Audit reports are analyzed by the FPPC audit staff and referred to an attorney if an administrative prosecution action is warranted.

Case Resolution

There are several different types of resolutions for cases, as follows:

- Closure without further action – This is for cases where either no violation of the Act was found, there was insufficient evidence to establish a violation of the Act, procedural deficiencies in the case existed, or other circumstances exist that preclude further prosecution of the case. These closures result in a letter sent to the respondent informing them of the case closure.
- Advisory Letters – These are sent when there is insufficient evidence to establish a violation of the Act, the violations are de minimus, or where the respondent(s)'s conduct leads to the conclusion that they require further information to ensure future compliance.
- Warning Letters – These are sent in cases where the evidence establishes that the respondent(s) conduct violated the Act, but the circumstances surrounding the violation do not warrant the imposition of a fine.
- Imposition of Fine – This is for cases when the respondent(s) violated the Act. Imposition of the fine can be accomplished through a stipulated agreement, default judgment, or decision and order from an Administrative Law Judge. All fines must be approved by the Commission.
- Civil Judgment – In some cases, the circumstances may warrant the filing of a civil action to seek the appropriate penalty for the violation.