

2019 Commissioner Manual

FAIR POLITICAL PRACTICES COMMISSION

Overview of FPPC | Ethical Duties & Restrictions | June 2019



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Chapter 1 Overview

The Commission has primary responsibility for the impartial, effective administration and implementation of the Political Reform Act (Government Code section 81000 *et seq.*).

- ❖ **The Political Reform Act (PRA, the Act) generally governs:**
 - Campaign finance,
 - Conflicts of interest, and
 - State lobbying activities.

- ❖ **The Commission:**
 - Has five members appointed for staggered four year terms.
 - The Chair and another member from a different political party are appointed by the Governor.
 - Other members are appointed by the State Controller, Secretary of State and the Attorney General.
 - No more than three Commissioners may be from the same political party.
 - Commissioners may not hold another public office or run for public office, serve as officers of partisan organizations, employ lobbyists or participate in or contribute to any election campaign.

- ❖ **The Commission Chair:**
 - Is the presiding officer of the Commission, and is the only salaried, full-time member of the Commission.
 - Provides leadership and guidance to the Commission and staff regarding all aspects of FPPC policy.

- ❖ **The Commission's Duties include:**
 - Approving settlements for violations of the Act, and potentially conducting hearings under certain circumstances;
 - Adopting, amending or rescinding rules and regulations to carry out the purposes of the Act;
 - Issuing formal opinions interpreting the Act upon the request of concerned parties; and,
 - Approving forms for required reports, statements, notices and other documents.

- ❖ **The FPPC's Structure**
 - The Commission is an independent executive branch agency that has approximately 80 staff members.
 - Under the joint leadership of the Chair and the Executive Director, the FPPC staff is organized into three major divisions: Legal, Enforcement, and Administration and Technology.

❖ Form 700 Statement of Economic Interests

- Within 30 days after assuming office as a member of the Fair Political Practices Commission, Commissioners must file a [Form 700 Statement of Economic Interests](#).
- FPPC Commissioners are required to file a statement of economic interests when they are first appointed, each year while they serve by March 1, and on leaving office.
- For questions about completing your statement of economic interest, you may contact staff members Cyndi Glaser cglaser@fppc.ca.gov or Ivy Branaman ibranaman@fppc.ca.gov.

❖ Contacts

- Your general contacts for any questions are:
 - Commission Chair Richard Miadich rmiadich@fppc.ca.gov
 - Executive Director TJ Jones tjones@fppc.ca.gov
 - General Counsel Dave Bainbridge dbainbridge@fppc.ca.gov
 - Commission Assistant Sasha Linker slinker@fppc.ca.gov

❖ Commission Meetings

- Commissioners attend the Commission's monthly meetings at FPPC offices in Sacramento and review the agenda materials prior to the meeting.
- The Commission meetings are usually scheduled for the third Thursday of the month at 10 a.m. If the meeting is to be held at a different time during the day, you will be notified as soon as possible but no later than by the agenda posting deadline (10 days prior to the meeting).

❖ Meeting Logistics

- The FPPC pays for Commissioners' expenses to travel to the Commission meetings and the Commission Assistant is available to make the travel arrangements.
 - Contact the Commission Assistant to arrange travel no later than the posting deadline.
 - Submit timesheets and reimbursements to the Commission Assistant **no later** than 30 days after the meeting.
- Commissioners are paid \$100 per diem for Commission meeting days.

❖ Meeting Agenda

- The Commission agenda contains all cases and items to be considered at the meeting, and is posted on the FPPC's website ten days before the meeting, as required by the state open meetings law (i.e., the Bagley Keene Act).
- The Agenda contains:
 - Minutes from prior meeting

- Enforcement cases
- Regulations
- Legislative Report
- FPPC Division Reports

❖ **Before the Meeting**

- **Review Agenda.** Commissioners review the agenda materials prior to the meeting. The materials can be extensive and take several hours to review. Individuals occasionally send in public comment letters on agenda items in the days leading up to the Commission meeting. The comment letters are forwarded to the Commissioners by the Commission Assistant in order to review before the meeting.
- **Check for Conflicts.** If a Commissioner believes he or she has a conflict on a particular enforcement case, for example, because their firm represents a client involved in the matter, the Commissioner may call the General Counsel to discuss the potential conflict and whether recusing from the matter is necessary.
- **Request for Additional Information.** In cases where a Commissioner reviews information on an agenda item and believes there is a need for additional information, he or she may make that request of staff in advance of the meeting. Requesting information in advance of the meeting provides staff with time to attempt to develop the requested information, and include it in their staff presentation, or be prepared to respond to questions from the Commission on that item.

❖ **At the Monthly Commission Meeting**

- The Commission meetings generally follow the procedures set forth in Robert's Rules of Order. The following are the items that generally appear on the agenda and the order in which they are discussed.

1. Roll Call

The Commission Assistant takes roll and calls on Commissioners in alphabetical order by last name, ending with the Chair.

2. Welcome

The Chair opens the meeting by giving an update on various projects.

3. Public Comment

The Chair opens the floor for public comment on items **not** on the agenda.

4. Approval of Minutes

The Commission votes to approve the minutes from the prior meeting.

5. Consent Calendar of Enforcement Cases

The Enforcement cases are placed on a consent calendar for a single vote. This includes streamlined cases, stipulated settlements and default decisions.

- Pulling Cases from Consent. Before items on the consent calendar are discussed, the Chair will ask if any Commissioner would like to pull a case from consent. A Commissioner may request to pull a case off the consent calendar if he or she: (1) has a conflict of interest or needs to be recused from the case for any other reason; (2) has questions about a case that may determine his or her vote; or (3) does not wish to vote on a particular case as part of consent for other reasons.
 - ◆ **Important Reminder:** A Commissioner may ask for clarification or make a comment about a case *without* pulling it off the consent calendar.
- Questions/Comments from the Commissioners. For those matters that remain on consent, the Chair will ask if the Commissioners have any questions or comments.
- Public Comment. After discussion by the Commissioners, the Chair asks if there is any public comment before a motion is made to approve the remaining cases on consent.
- Motion & Vote. The Commission then votes to approve the consent calendar, minus any cases that have been removed for a separate vote.
- Matters Removed from Consent Calendar. Next, the Commission considers the matters that have been removed from consent separately under the same procedure: questions/comments from Commissioners; public comment; a motion and vote.

6. *General Items*

- *Regulations (if any)* - The Commission considers any adoptions of or amendments to regulations.
- *Legislative Report (if any)* - The Director of Legislative and External Affairs provides a summary of bills that would impact the PRA, and may provide recommendations on positions to take on legislation.

7. *FPPC Executive Staff Report*

The Executive Staff Report contains updates from the Enforcement and Legal Divisions. If Commissioners have no questions, the report is accepted as submitted.

8. *Adjourn*

A motion is made and seconded to conclude the meeting.

Chapter 2 Statement of Governance Principles (Regulations 18308-18308.3)

The following regulations have been in place since adoption by the Commission on June 4, 2018.

§ 18308. Commission Governance.

To ensure that the accountability and authority for governance and management of the Fair Political Practices Commission (FPPC) is clearly stated, the Commission has set forth regulations to specify the roles of the Commission, and its delegation of powers and duties to the Chair or the Executive Director.

All authority granted by statute to the Commission is retained, except as specifically delegated herein or by other regulation. The Commission's statutory duty is to ensure that the Political Reform Act is impartially and effectively administered and implemented.

§ 18308.1. Authority of the Commission.

a) The Commission proposes, adopts, codifies, and monitors policies for the FPPC. This includes, but is not limited to:

(1) Approving or revising annual policy goals and objectives and evaluating efforts made to meet those goals and objectives.

(2) Approving or revising the annual FPPC budget.

(3) Interpreting the Act, through regulations, opinions and such other means as the Commission deems appropriate and lawful.

(4) Enforcing the Act, by initiating or hearing administrative actions, authorizing civil actions, approving stipulations and such other means as the Commission deems appropriate and lawful.

(5) Authorizing or initiating actions taken to defend the Commission's interpretations of the Act in the courts.

(6) Crafting and sponsoring legislation and adopting FPPC positions on efforts to amend the Political Reform Act.

(7) Adopting criteria to be followed by the Law & Policy Committee for recommending positions to the Commission on legislation fiscally impacting the operations of the FPPC.

(8) Adopting criteria to be followed by the Executive Director and the Budget & Personnel Committee, on the methods to be employed to keep the content of any draft budget or budget change proposal confidential:

(A) whenever the Committee conducts a review of a draft budget or budget change proposal that has been proposed by the Executive Director; or

(B) when reporting the Budget & Personnel Committee draft budget or budget change proposal recommendations to the Commission.

(9) Require a standing committee to give notice pursuant to the Bagley Keene Act to hold a public hearing on any subject within the jurisdiction of the committee, where the Commission finds that it is in the public interest to do so.

(10) Adopting or revising a schema for the codification of the various rules, policies and resolutions of the Commission.

(11) Adopting or revising a policy and procedures manual.

(12) Authorizing issuance of forms and manuals used to comply with the Act.

(b) The Commission ensures the proper management of the FPPC. This includes, but is not limited to:

(1) Providing oversight of the actions of the Executive Director to manage the Agency.

(2) Selecting, evaluating, and, if necessary, disciplining or dismissing the Executive Director.

(3) Adopting or revising personnel or office policies.

(4) Adopting or revising a policy or regulation governing the review process for advice requests to be followed by the FPPC General Counsel, including criteria for determining when an advice request presents issues requiring a policy interpretation best made through a Commission Opinion or Regulation, or is too broad or not factually specific enough to render formal assistance.

(5) Adopting or revising a policy or regulation governing the:

(A) Proposing and prioritizing the various penalty options to be employed by the Chief of the Enforcement Division.

(B) Categorizing of and weighting the seriousness of the various types of violations of the Act.

(C) Setting enforcement priorities and procedures for the effective operation of the Enforcement Division.

(6) Delegating execution of established Commission policy and strategic objectives to the Executive Director, who is authorized to re-delegate specific duties to specified employees of the Agency upon written notice to the Commission.

(7) Ensuring the integrity of the financial control and reporting system, and the Commission's compliance with all laws governing the Agency.

(c) The Commission ensures the proper conduct and governance of the Agency. The Commission strives to achieve a governing style that encourages effective operations, frank and collegial discussions among members of the Commission, the staff and the public, and fairness to persons whose compliance with the Act is called into question. To this end, each commissioner shall:

(1) Comply with the statutory qualification requirements and the Statement of Incompatible Activities adopted by the Commission.

(2) When communicating by email, use only his or her official Commission email account for official business.

(3) Thoroughly prepare for and attend Commission meetings and committee meetings of which a Commissioner is a member.

(4) Between meetings, communicate with staff through the Executive Director or a Division Chief. Any Division Chief contacted by a Commissioner shall report to the Executive Director

information or advice given that is not subject to attorney-client privilege. The Executive Director shall ensure that all Commissioners receive the benefit of information and advice provided to any individual Commissioner.

(5) Maintain the confidentiality of all confidential information acquired during the Commission's work.

(6) Consult with General Counsel about any relationship or interest that the Commissioner may be concerned creates a possible conflict of interest regarding the Commission's work.

(7) Set exemplary ethical standards that reflect positively on the Commission, while refraining from engaging in biased or partisan activities that may reflect poorly on the Commission.

(8) Appoint a Vice Chair to preside over Commission meetings in the Chair's absence.

(d) The Commission ensures enhanced oversight of Agency administration. In order to provide thorough oversight of its delegated duties and responsibilities, the Commission establishes the following two-member advisory standing committees; the Budget & Personnel Committee, and the Law & Policy Committee.

(1) The Chair nominates the committee members from among the other Commissioners, who in turn, modify or approve the makeup of each committee, provided however, that each committee makeup is in partisan balance and each Commissioner serves on only one committee. If the Chair declines or otherwise fails to nominate the committee members, the Commission may nominate the committee members.

(A) Each committee selects its own Chair.

(B) Each committee meets at the call of its Chair.

(C) Committee actions are by consensus recommendation to the Commission. If a consensus is not reached on an issue, each committee member may present an alternative recommendation to the Commission.

(D) In the event that a vacancy occurs on either advisory standing committee, the remaining member may present his or her recommendation to the Commission.

(2) Each committee will be responsible for:

(A) Reviewing and recommending to the full Commission those policies, goals, regulations and other action items that are pertinent to its subject matter jurisdiction. Any recommendation to adopt, amend or rescind policies, rules or regulations that govern procedures of the Commission must be accomplished in accordance with the Administrative Procedure Act.

(B) Annually reviewing matters that were recommended and adopted by the Commission during the prior year to evaluate whether these matters represented an effective and efficient method of achieving the Commission's goals.

(C) Reporting regularly on its discussions and deliberations of significant issues and present its recommendations with any supporting documentation to the full Commission to promote transparency and ensure that all Commission members and the public are adequately informed.

(D) Excluding the Chair and other Commissioners from appearing at a committee meeting, or communicating with any member of a committee about a subject matter within the jurisdiction of the committee. However, a committee chair may, in consultation with General Counsel, allow the Chair and other Commissioners to appear at a committee meeting, whenever the committee deems it appropriate to

do so, provided that the meeting is open to the public and conducted in accordance with the Bagley Keene Act.

(E) Whenever possible, providing the means to allow the public to monitor committee deliberations, unless the subject matter is otherwise required to remain confidential, by publishing a two-day public notice of a call-in telephone number, to allow callers to listen to committee proceedings.

(3) Each committee operates to assist the Commission in adopting key policies, goals, regulations and other action items, and is not intended to direct the daily operations of management of the Commission

(4) Unless provided otherwise, a committee does not have delegated authority to act on behalf of the Commission, and may not take any action that requires Commission approval.

(5) The Budget & Personnel Committee's responsibilities include but are not limited to:

(A) Reviewing and recommending the annual FPPC budget to the Commission.

(B) Recommending criteria for adoption by the Commission pursuant to section 18308.1(a)(8) governing the preparation and submittal by the Executive Director, of an initial budget proposal, and any budget change proposals, to the Commission.

(C) Recommending criteria for adoption by the Commission pursuant to section 18308.1(a)(8) governing the preparation and submittal by the Executive Director of recommendations to the Commission at each stage of the budgetary process, including prior to the Agency's proposal to the Department of Finance (DOF), the DOF proposal to the Governor, and the Governor's proposed annual budget to the Legislature.

(D) Recommending guidelines to the Commission, governing the authorizing of unbudgeted expenditures by the Executive Director.

(E) Reviewing and recommending to the Commission, policies and procedures that will ensure the integrity of the financial control and reporting system.

(F) Recommending criteria to the Commission, to be followed by the Law & Policy Committee, for recommending positions on legislation fiscally impacting the operations of the FPPC.

(G) Recommending criteria to the Commission, to be followed by the Executive Director and the Budget & Personnel Committee, on the methods to be employed to keep confidential, the content of any draft budget or budget change proposal:

(i) whenever the Committee conducts a review of a draft budget or budget change proposal, which has been proposed by the Executive Director; or

(ii) when reporting the Budget & Personnel Committee draft budget or budget change proposal recommendations to the Commission.

(H) Recommending to the Commission the selection, evaluation, and, if necessary, discipline or dismissal of the Executive Director.

(I) Having considered any employee input received, recommending to the Commission the adoption or revision of personnel or office policies proposed by the Executive Director.

(J) Recommending to the Commission policies and procedures for the Executive Director to recommend the selection, submit annual evaluations and, when necessary, recommend the discipline or dismissal of the Division Chiefs, Legislative Director, and Communications Director.

(K) Recommending to the Commission, policies and procedures for the Executive Director to hire, promote and, when necessary, discipline or dismiss other staff.

(6) The Law & Policy Committee's responsibilities include but are not limited to:

(A) Recommending annual policy goals and reporting on efforts made to meet those goals and objectives to the Commission.

(B) Reviewing the recommendations of the Legislative Director and making its recommendation to the Commission, for positions on any effort to amend the Political Reform Act.

(C) Recommending to the Commission policies and procedures that will assure compliance with all laws governing the Agency.

(D) Recommending to the Commission the adoption or revision of a schema for the codification of the various rules, policies and resolutions of the Commission.

(E) Recommending the adoption or revision of a policy and procedures manual.

(F) In consultation with the General Counsel, recommending to the Commission the adoption or revision of a policy or regulation governing the review process for advice requests to be followed by the Legal Division, including criteria for determining when an advice request presents issues requiring a policy interpretation best made through a Commission Opinion or Regulation, or is too broad or not factually specific enough to render formal assistance.

(G) In consultation with the Chief of the Enforcement Division, recommending to the Commission the adoption or revision of a policy or regulation, which governs the:

(i) Proposal and prioritization of the use of the various penalty options to be employed by the Chief of the Enforcement Division.

(ii) Categorization of and weighting the seriousness of the various types of violations of the Act.

(iii) Recommendations to the Commission the enforcement priorities and procedures for the effective operation of the Enforcement Division.

§ 18308.2. Authority of the Chair.

The Chair, appointed by the Governor, is a voting member of, and the presiding officer of the Commission.

(a) After seeking input from Commissioners and staff, the Chair submits a tentative Commission agenda to the other Commissioners for their review and approval as to an item description or placement, but not as to the merits of any item, prioritizing and scheduling agenda items in conformance with Commission established policy, however any item proposed for a Commission agenda by two or more Commissioners shall be placed on that agenda in the form requested.

(b) The Chair includes a final agenda item each month for commissioner comments, in order to provide an opportunity for commissioners to publicly raise concerns among themselves in a public meeting.

(c) Except as otherwise required by any provision of Article 9 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code to the contrary, the Chair conducts Commission meetings with reference to Robert's Rules of Order and other rules adopted by the Commission.

§ 18308.3. Authority of the Executive Director.

The Commission delegates to the Executive Director responsibility for the operations and management of the Agency in conformance with Commission established policy. The Executive Director is responsible for ensuring that the Commission is fully informed regarding the operations and management of the Agency.

(a) The Executive Director acts as the CEO of the Agency.

(1) The Executive Director, in consultation with the Budget & Personnel Committee, recommends the selection, submits annual evaluations and, when necessary, recommends the discipline or dismissal of the Division Chiefs, Legislative Director, and Communications Director for review and approval by the Commission.

(2) Except as otherwise required by applicable statute, the Executive Director, in consultation with the Budget & Personnel Committee and Division Chiefs, hires, promotes and, when necessary, disciplines or dismisses other staff pursuant to Commission policies and procedures.

(3) The Executive Director, in consultation with the Budget & Personnel Committee, prepares and submits to the Commission all office policies and procedures not in conflict with any statute, regulation, or applicable state employee collective bargaining contract.

(4) In consultation with the Law & Policy Committee, the Executive Director proposes the short term and long-term goals and priorities of the Agency for approval by the Commission.

(5) The Executive Director receives and coordinates requests from commissioners regarding staff work and, in consultation with the Division Chiefs, prioritizes such requests, in accordance with Commission policy recommended by the Budget & Personnel Committee.

(6) Subject to the limitations of Commission established policy, the Executive Director acts on behalf of and in the name of the Commission between meetings of the Commission, including certifying actions taken by the Commission. The Executive Director may not establish or revise policies, promulgate or amend rules or regulations, issue or revise Commission opinions, or approve or revise positions on legislation pursuant to this subdivision.

(7) The Executive Director reports in writing each month to the Commission on actions taken on behalf of the Commission for its review and approval.

(8) Pursuant to Commission established policy, the Executive Director ensures that the information provided to the Commission is comprehensive, timely, impartial and not unduly burdensome.

(9) The Executive Director oversees the implementation of the short-term and long-term goals and priorities of the Commission and reports to the Commission in writing on achievement of its goals and priorities.

(10) Pursuant to Commission established policy, the Executive Director exercises oversight over Commission staff with respect to their official duties to communicate with the public, the press, and government institutions to ensure that those communications are forthright, accurate, and do not disparage any Commissioner or staff member.

(b) The Executive Director acts as the chief budgetary and administrative officer of the Agency.

(1) In consultation with the Budget & Personnel Committee and Division Chiefs, the Executive Director prepares and submits an initial budget proposal, and any budget change proposals, to the Commission, subject to the criteria adopted pursuant to section 18308.1(a)(8).

(2) Subject to the criteria adopted pursuant to section 18308.1(a)(8), the Executive Director submits recommendations to the Budget & Personnel Committee at each stage of the budgetary process, including prior to the Agency's proposal to the Department of Finance (DOF), the DOF proposal to the Governor, and the Governor's proposed annual budget to the Legislature.

(3) The Executive Director, in consultation with the Budget & Personnel Committee, reports monthly in writing to the Commission on the status of Commission finances.

(4) The Executive Director, in consultation with the Budget & Personnel Committee, prepares, and submits budget change proposals, requests for deficit funding and other budgetary documents to the Department of Finance.

(5) The Executive Director, in consultation with the Budget & Personnel Committee, approves all fiscal analyses prepared at the request of the Legislature, Legislative Analyst or Department of Finance.

(6) The Executive Director retains final approval for all budgeted expenditures.

(7) In accordance with Commission approved guidelines, the Executive Director authorizes unbudgeted expenditures, when deemed appropriate, up to \$25,000.

(8) Reviews and approves Commissioner compensation and reimbursement requests in accordance with the policy on compensation and reimbursement of Commissioners.

(c) The Executive Director acts in the name of the Commission with respect to the following statutory duties:

(1) Reviews and approves conflict of interest codes other than the code of the Commission;

(2) Reviews, approves, and signs subpoenas;

(3) Executes oaths and affirmations.

Chapter 3 Commissioner Responsibilities, Ethical Duties and Restrictions

Because they exercise the power of a publicly-elected government and of an agency created by the citizens to uphold official ethical conduct, FPPC Commissioners are expected to adhere to the highest ethical standards, place the public interest above any personal, private or partisan interests, and use and allocate Commission time and resources to best serve the public. Toward that end, Commissioners are required to make all efforts to attend meetings of the Commission, adequately prepare for issues to be discussed at each meeting, fully participate in the discussions, and vote fairly on matters that come before them. In striving to collectively make the best decisions, the Commission has traditionally encouraged a robust public discussion of issues on which it deliberates. Therefore, Commissioners should expect to hear a variety of viewpoints from both fellow Commissioners and members of the public on these issues and are expected to treat each speaker with dignity and respect.

In addition, FPPC Commissioners are required to comply with the Political Reform Act as detailed under “Restriction on Commissioners’ Activities” (below), the Statement of Governance Principles in the previous section, the Statement of Incompatible Activities (in the next section), and any other laws applicable to the conduct of public officials.

Restrictions on Commissioners’ Activities

A. Ban on Holding Office. Participating in Elections and Lobbying

Government Code section 83105¹ provides in part:

"No member of the Commission, during his or her tenure, shall hold, any other public office, serve as an officer of any political party or partisan organization, participate in or contribute to an election campaign, or employ or be employed as a lobbyist nor, during his or her term of appointment, seek election to any other public office."

Thus, Commissioners may neither hold public office during their time on the Commission, nor run for public office during their appointed term. Also, they may not serve as officers of partisan organizations. This includes service on party central committees.

Section 83105 also prevents Commissioners from employing lobbyists and from accepting employment as lobbyists. Commissioners are permitted to lobby **without compensation** for persons or groups which do not employ lobbyists and which make no contributions or expenditures for political purposes.

Finally, section 83105 prevents Commissioners from participating in or contributing to any election campaign. Thus, Commissioners may not promote the passage or defeat of any measure that appears (or may appear) on a ballot anywhere in California. They may not make contributions to any

¹ All references are to the Government Code unless otherwise indicated. All references to regulations are to Title 2, sections 18109 – 18997, of the California Code of Regulations.

campaign involving an election held in this state. This includes campaigns for federal office if the candidate will appear on the ballot in California (e.g., a campaign for President or a California congressional seat).

"Participation" in these campaigns is also prohibited. This includes soliciting funds and endorsing candidates or ballot measures. Spouses are not prohibited from contributing to, or participating in, election campaigns. However, the Commission's Statement of Incompatible Activities arguably goes even further than the statute.

B. Duty to Disclose Economic Interests

Commissioners, like many other government officials, are required to file annual statements disclosing their economic interests. These are called statements of economic interests ("SEI" or "Form 700").

Within 30 days after assuming office, Commissioners must file assuming office statements on Form 700. On these statements, Commissioners must disclose investments, interests in real property and income received during the preceding 12 months. (Sections 87200, 87202 and 87203.)

On or before March 1, each year, Commissioners must file annual statements on Form 700. (Regulation 18723.) A statement must also be filed within 30 days after leaving office. On these statements, Commissioners also must disclose investments, interests in real property and income. (Section 87204.)

The FPPC staff is available to assist Commissioners with questions about preparing and filing these required statements. If a Commissioner would like staff to review their statement in advance of the filing deadline, please contact the Commission Assistant.

C. Ban on Gifts

Commissioners may not receive gifts, made directly or indirectly, worth \$10 or more from state candidates, elected state officers, legislative officials, agency officials, lobbyists, or any person listed in Section 87200. (Section 83117.5.) This ban applies on a monthly basis. For example, a Commissioner who accepts a lunch worth \$9 from a lobbyist in February may not accept a second similar lunch during the same month.

D. Limitations on Gifts

In addition to the gift limitations set forth above, Commissioners may not accept gifts in excess of \$470 per calendar year from any other persons whose gifts the Commissioner must report in his or her statement of economic interests. (Section 89503.) The source of the gift must be disclosed if \$50 or more in the aggregate is received from that source during the year (Section 87207(a)(1).)

This prohibition does not apply to gifts from immediate family; gifts of home hospitality when the homeowner is present; and, gifts approximately equal in value exchanged with another individual on holidays, birthdays or similar occasions.

Commissioners may refer to the FPPC fact sheet on "[Limitations and Restrictions on Gifts, Honoraria, Travel and Loans](#)" for more detail on gift limits and travel provisions that apply to them as state officials.

E. Ban on Honoraria and Similar Fees

Commissioners may not accept honoraria or fees for speeches, published articles, public appearances, interviews, or similar services unless the payment is earned income for personal services provided in connection with the practice of a bona fide business outside the Commission. (Sections 89501 and 89502.) Payments for actual necessary expenses incurred are permitted. You should always check with the Chair and Executive Director prior to accepting any payments from outside groups for Commission-related expenses, including travel.

F. Conflicts of Interest

Like all other elected or appointed officials in California, FPPC Commissioners are prohibited from making or participating in a decision that may have a reasonably foreseeable material financial effect on any individual or entity that constitutes an economic interest of or to the Commissioner.

On the Commission's website is a publication titled "[Recognizing Conflicts of Interest](#)." If you are concerned that you may have a conflict with regard to a matter pending before the Commission, please discuss it with the Chair or General Counsel.

G. Ethics Training

Within six months of assuming office, and once every subsequent two years, Commissioners (and other state officials) must complete an ethics training course. You can take an interactive Internet course located at <https://oag.ca.gov/ethics/course>. Please keep a written record of the date of your compliance.

H. Ex parte Communications

There are a few important things to remember regarding ex parte communications on matters pending before the Commission: (1) you may not receive ex parte communications in enforcement matters, except in very limited circumstances; (2) you are not prohibited from engaging in ex parte communications on rulemaking matters, but you must be aware of bias and fairness issues, and are strongly urged to share the communication with fellow Commissioners and the public at the meeting where the matter is discussed; and (3) similar to regulations, discussion of a pending opinion with persons off the record is not prohibited so long as issues of fairness and bias are considered.

1. Ex Parte Communications and Enforcement Matters

The Administrative Procedure Act (APA), commencing with Government Code section 11400, sets forth rules governing administrative adjudication by state agencies. As part of these rules, the APA

imposes limitations on certain communications between Commissioners and parties (or interested non-parties) to certain proceedings ("ex parte" rules).²

Enforcement actions subject to Commission approval, including those which result in stipulations, are "adjudicative proceedings" as contemplated by the APA and are therefore subject to the rules of the APA. The enforcement proceedings are *evidentiary hearings* for determination of facts pursuant to which the agency formulates and issues a decision. (Section 11405.20.)

The APA includes an "Administrative Adjudication Bill of Rights." Section 11425.10 requires in pertinent part that:

- The hearing shall be open to public observation. (Section 11425.20.)
- The decision shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision. (Section 11425.50.)
- Ex parte communications shall be restricted. (Section 11430.10.)

Sections 11425.20(a) and 11425.50(c) require that a hearing shall be open to public observation and that the statement of *the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding.*³ According to the Law Revision Commission, the provisions of this section specify the minimum due process and public interest requirements that must be satisfied. In cases where ex parte communications form the basis for an administrative decision, courts may invalidate the decision of the agency.

If you receive a written ex parte communication regarding an enforcement matter, do not read it. If someone tries to speak with you about an enforcement matter, end the conversation immediately. And, in any event, tell the Chair or the Executive Director immediately about the ex parte contact. Section 11430.50(a) provides that if a presiding officer receives an improper communication, the presiding officer shall make the writing and any written response of the presiding officer to the communication a part of the record in the proceeding. The Chair would announce receipt of the improper communication at the meeting (i.e.: "Concerning agenda item #, the Commissioners have received a comment letter on this item. We would like to reiterate that the Commission will not consider third party comments in connection with enforcement matters. The comments will not form the basis for a decision in the matter.")

² Generally, "ex parte" means by or for one party only or something done on the application of one party only. (See Black's Law Dict. (5th Ed. 1979) p. 517, col. 1.) Ex parte contacts are communications received from a party or interested person outside the presence of the other party or interested person. It is important to note that the term "ex parte contact" includes ex parte contacts with persons inside the agency, that is, the staff, not just with persons outside the agency.

³ For example, even comments from a disinterested third party, such as the media, may invite claims of bias. Section 11425.40 provides that a presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.

The Commission must notify all parties (including the enforcement division, which is a party) that a communication described in this section has been received and made a part of the record, but will not be considered in deciding the merits. Copies of the ex parte communication will then be provided to the parties.

There is a limited exception for communications “concerning a settlement proposal advocated by the advisor.” (Section 11430.30.) This means that a Commissioner may ask enforcement staff questions about a stipulation on an agenda even if the respondent is not present. However, the staff cannot reveal too much factual information, in case the stipulation is rejected and the Commission thereafter finds itself presiding over an administrative hearing on the matter.

Because of the ex parte communication rules, the Commission does not allow third party comments on pending enforcement cases even during the public hearing on the matter. However, members of the public may be allowed to speak in general terms on legal or policy issues related to a pending case. The Commission may decide to pull a stipulation from the agenda while it considers the more general legal or policy questions.

2. Ex Parte Communications and Rulemaking

In connection with rulemaking, there is no APA rule stating that the discussion of a pending regulation with persons off the record is prohibited, but as discussed below, issues of fairness and bias may be raised.

Under the Bagley-Keene Open Meeting Act, meetings must be open and public so that the public has an opportunity to speak. Also, agency actions must be taken openly and the deliberations must also be conducted openly. (Government Code sections 11120 and 11125.) This would suggest that any comments, suggestions or discussions that occur outside the public meeting should be disclosed during the meeting for the public to understand the conclusions reached. If any interested person proposes that these rules have not been followed, then any action taken may be nullified through a judicial determination. (Government Code section 11130.3.) These rules apply to both the regulations and emergency regulations. (Government Code sections 11422.1 and 11425.) Also, regulation 18312(b)(6) incorporates the APA rules by requiring a complete rulemaking file which includes the record of the hearing as well as all "other materials pertinent to the regulatory action."

Case law also suggests that any information received outside the meeting should be stated on the record. (*California Optometric Assn. v. Lackner* (1976) 60 Cal.App.3d 500, 131 Cal.Rptr. 744.) The courts have considered two views regarding disclosure of ex parte communications. The strict rule suggests that the APA has two objectives: (1) to ensure meaningful participation in adoption of administrative regulations by state agencies, and (2) the creation of an administrative record assuring effective judicial review. (*Ibid.*) This rule suggests that all information used in reaching a conclusion should appear on the record to permit adequate judicial review. This view also supports the idea that even if the minimum standards of the APA are satisfied, the rule-making proceeding will be deficient if it fails to satisfy the APA's goal of an effective judicial review.

Another view places emphasis on the importance of public input. As long as the record reflects the relevant information supporting or refuting the conclusions reached by the agency so that they may

be brought to the attention of the reviewing court, then ex parte communications are beneficial to increase public input. (*Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 960 P.2d 1031, 78 Cal.Rptr.2d 1.)

3. Ex Parte Communications and Commission Opinions

The standard of review for regulations is that the court will give deference to an agency's rule unless the rule itself is "arbitrary and capricious." (*Californians for Political Reform Foundation v. Fair Political Practices Commission* (1998) 61 Cal.App.4th 472, 71 Cal.Rptr.2d 606.) Because Commission opinions are precedent-setting interpretations of the law administered by the FPPC, case law indicates that they would be given the same deference in judicial review that a regulation would be given. (*Brown v. FPPC*, 84 Cal.App.4th 137, 150, 100 Cal.Rptr.2d 606, 615 (2000).) Citing *Yamaha*, the *Brown* court gave "substantial weight" to opinions and similar agency interpretations. The court considered "whether the agency has a comparative interpretive advantage over the courts, and also whether its interpretation is likely to be correct." (*Ibid.*) The factors which indicate whether the agency was correct include "indications of careful consideration by senior officials, particularly a collective decision reached after public notice and comment; evidence that the agency has consistently maintained the interpretation; and indications that the interpretation is contemporaneous with the enactment of the statute or regulation being interpreted." (*Ibid.*)

This standard of review, as well as the fact that opinions are categorized closer to quasi-legislative (regulations) than quasi-adjudicative (enforcement actions), creates a need to limit ex parte communications when considering opinions to a standard similar to that of regulations. (*Ibid.*) Also, since opinions have established procedures in the regulations, a complete record as well as a thorough consideration of the matter is ensured. (Regulations 18320 - 18327.) Even though the APA and case law are both silent as to what information is allowed off the record and what must be included, the standard of judicial review indicates that discussion of a pending opinion with persons off the record is not prohibited so long as issues of fairness and bias are considered.

All Ex Parte Communications

The general concern that permeates through the Commission's consideration of enforcement matters, opinions and regulations is preventing any appearance of impropriety, thus the hypotheticals and guidelines below are designed to afford you maximum protection.

Examples and Hypotheticals Regarding Ex Parte Communications

1. Hearing on ALJ Decision/Enforcement Stipulation/ Request for Civil Enforcement Authority

HYPO: An interested person approaches a Commissioner either before the Commission meeting or during a Commission meeting break and wants to discuss the case. The Commissioner listens patiently and responds by saying, “I’m sure that will be considered.” What are the Commissioner’s obligations?

This type of communication is a prohibited ex parte communication, and the Commissioner should have stopped the conversation immediately. If in fact the communication occurs, then Government Code section 11430.50 provides a precise procedure to follow. First, the Commissioner shall create a memorandum stating the substance of the communication, any response made by the Commission, and the identity of the speaker. (This can be done by stating these facts on the record and ensuring that the Commission Assistant incorporates them into the minutes). This shall be made part of the record of the meeting and all parties shall be notified of the communication. The parties are then allowed to comment and may request an opportunity to address the comment within 10 days after they receive notice of it. The Commission may then hear additional evidence concerning the subject of the communication or reopen a hearing at its discretion.

In addition, by listening to the speaker outside the public hearing, the Commissioner may be accused of bias and may even be disqualified. (See Government Code section 11430.60). The appearance of bias or impropriety can taint the perception that a fair and impartial consideration of the matter was held. The Commissioner also could be accused of rendering a decision based on facts obtained outside the public hearing. (Bagley-Keene Act, Government Code section 11120 et seq.) Note that the interested person is not a party to the case but the outcome would be the same if he were.

What if the communication happens at a time other than the day of the Commission meeting?

The same rules and process discussed above apply to this situation and the Commissioner would be obligated to disclose the information on the record of the next Commission meeting.

What if the communicator is an enforcement staff person?

This is not prohibited conduct under the Administrative Procedures Act (“APA”) if the enforcement staff person is not the “investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage” or if the communication is “concerning a settlement proposal advocated by the advisor.” (Government Code section 11430.30).

Thus, Commissioners may request limited information from enforcement staff concerning a proposed stipulation but not concerning a proposed ALJ decision or request for civil enforcement authority.

What if the communicator is a legal staff person?

This is not prohibited conduct under the APA if the legal staff person is not the “investigator, prosecutor, or advocate in the proceeding or its pre-adjudicative stage” or if the communication is “concerning a settlement proposal advocated by the advisor.” (Government Code section 11430.30). Because FPPC legal staff act as counsel for the Commission in situations such as ALJ hearings, this rule would not limit their communications with Commissioners.

What happens if the communication is in writing?

Government Code section 11430.50(a)(1) gives clear guidelines regarding what to do if a written communication in violation of the ex parte rules is received. The written communication and any response from the Commissioner shall be made part of the record of the next meeting. Thus, any Commissioner who receives such a writing should immediately inform the Executive Director or Chair, who will ensure that these procedures are followed. The Commissioner should not respond to communication.

2. Regulations – Written Communications

HYPOTHESIS: An interested person mails written comments to a Commissioner regarding a pending regulation. What are the Commissioner’s obligations?

The discussion above regarding written communications is not mandatory regarding rulemaking. We strongly recommend that it be followed here as well, however, so that the communication can be shared with other Commissioners and made part of the rulemaking record.

3. Regulations – Verbal Communication

HYPOTHESIS: An interested person calls before a meeting or approaches a Commissioner during the break of a Commission meeting to discuss pending regulation. What are the Commissioner’s obligations?

Although there is no APA rule stating that the discussion of a pending regulation with persons off the record is prohibited, issues of due process, fairness and bias may be raised. The most cautious course of conduct is for the Commissioners to refrain from participating in outside communications or to disclose such communications on the record of the Commission meeting to satisfy the Bagley-Keene Open Meeting Act requirements. (Government Code sections 11120 and 11125).

Chapter 4 Statement of Incompatible Activities for Commissioners

POLICY STATEMENT REGARDING ACTIVITIES THAT ARE INCONSISTENT, INCOMPATIBLE, OR IN CONFLICT WITH DUTIES AS A COMMISSIONER OF THE FAIR POLITICAL PRACTICES COMMISSION

The following principles have been in place since adoption by the Commission on March 21, 2013.

I. Purpose

This policy statement expresses the intent of the members of the Fair Political Practices Commission to refrain from engaging in any employment, activity, or enterprise which is inconsistent, incompatible, or in conflict with duties as a commissioner of the Fair Political Practices Commission or which could imply individual or Commission partisanship.

II. Definitions

- A. Commission.** "Commission" means the Fair Political Practices Commission.
- B. Commissioner.** "Commissioner" means the full-time chairman and the four part-time Commission members.
- C. Person.** "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation association, committee, or any other organization or group of persons acting in concert.
- D. Campaign Services.** "Campaign services" means services provided in connection with a campaign, including, but not limited to, preparing campaign statements, management and policy development activities, solicitation of funds (including ticket selling), endorsements (e.g., participating in newspaper or other published advertisements), and nonmanagerial activities (e.g., manual, clerical, and secretarial services, precinct walking or phoning, and displaying bumper stickers, buttons or lawn signs). It does not include rendering advice regarding compliance with the Political Reform Act.

III. Gifts

- A. General Policy.** It is the policy of the Commission to comply with Government Code Section 83117.5 regarding prohibitions on commissioners accepting gifts from specified persons.
- B. Acceptable Gifts.** Notwithstanding Section A, it is the policy of the Commission that commissioners may accept gifts such as the following:

- (1) Occasional home meals and lodging in a home on a social basis.
- (2) Transportation in a noncommercial vehicle.
- (3) Intra-state travel, necessary meals and accommodations, and other nominal benefits which are not reportable under 2 California Code of Regulations Section 18726 and which are provided directly in connection with a panel, seminar or similar event at which a commissioner makes a speech or like appearance.
- (4) Gifts of approximately equal value exchanged between a Commissioner and an individual other than a lobbyist on holidays, birthdays or similar occasions.
- (5) Gifts from a commissioner's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person.

In case of doubt as to the propriety of accepting a gift, the doubt should be resolved against acceptance.

IV. Misuse of Position

A. Improper Activities. It is the policy of the Commission that commissioners should not use state time, facilities, equipment or supplies for personal purposes or for the advantages of another person. In addition, commissioners should not use information available to them solely because of their status as commissioners for personal gain or for the advantage of another person. Examples of improper activities include:

- (1) Using the commission's postage or stamping facilities even though the Commission is reimbursed before or after such use.
- (2) Using status with the Commission to solicit, directly or indirectly, business of any kind or to purchase goods or services for private use at discounts from:
 - (a) A person who is or may reasonably be expected to be subject, directly or indirectly, to the regulation or enforcement action of the Commission.
 - (b) A person doing or soliciting business with the Commission.

(Discounts and other considerations that are offered to all state officers and employees are not prohibited.)

- (3) Providing, or allowing access to, confidential information available to them solely because of their status as commissioners to persons to whom the issuance of such information has not been authorized.

- (4) Providing services or information to some prospective bidders on contracts with the Commission for supplies or services when such services or information are not available to all such bidders.
- (5) Providing or using names of persons or records of the Commission for a mailing list that has not been authorized.

V. Political Activities

A. General Policy. It is the policy of the Commission to comply with Government Code Section 83105 regarding restrictions on the political activities of commissioners. In accordance with Government Code Section 83105, it is the policy of the Commission that commissioners should not participate in the following activities:

(1) Contributions, Fundraisers and Volunteered Services.

- (a) Contributions to and participation in any election campaign for any primary, general, special or recall election held in this state are prohibited. This includes contributions to the campaign of any candidate for President and contributions to the campaign of any other candidate for federal office when the election is held in California.
- (b) Commissioners should not attend campaign fundraisers for any state or local election. Commissioners may attend fundraisers for federal elections held in California, so long as they provide no contributions or campaign services to the election campaign.
- (c) Commissioners should not provide campaign services to any federal, state or local election campaign in California, whether those services are compensated or volunteered.

(2) Political Party Organizations. Commissioners should not serve on a state or county central committee or assembly district committee, serve as a delegate to a party convention, or serve as an officer, delegate, or in any other representative capacity in a political party club.

(3) State Lobbying. A commissioner should not influence state legislative or administrative action for non-Commission compensation. A commissioner should not voluntarily influence state legislative or administrative action unless the commissioner (a) represents only himself or herself, or (b) represents another person or group which does not employ a lobbyist or make contributions or expenditures for political purposes.

(4) Political Activities in Commission Office or While Representing the Commission. Commissioners should not engage in any political activities in Commission offices or while representing the Commission.

(5) Spouses. This policy statement does not purport to restrict political activity by the spouse of any commissioner. However, a commissioner should not in any way influence his or her spouse to perform political activities which would be inappropriate for the

commissioner to perform, nor should a commissioner participate with his or her spouse in the performance of those activities.

B. Acceptable Activities. Notwithstanding Section A, it is the policy of the Commission that commissioners may participate in the following activities.

- (1) Contributions, Fundraisers, and Volunteered Services for Out-of-State Election Campaigns.** Commissioners may make contributions of any amount to, attend fundraisers for, and participate in volunteered nonmanagerial activities for, campaigns for out-of-state candidates and out-of-state ballot measures, except the campaign of any candidate for President. “Volunteered nonmanagerial activities” includes manual, clerical, and secretarial services, precinct walking or phoning, and displaying bumper stickers, buttons or lawn signs, for which no compensation is provided. Reimbursement for expenses incurred while performing volunteered nonmanagerial activities may be accepted so long as like reimbursement is provided to others performing like activities.

Commissioners may attend fundraisers for federal elections held in California as specified in Section A(1)(b), so long as they provide no contributions or campaign services to the election campaign.

- (2) Voter Registration Activities.** Serving as a deputy registrar of voters is permitted so long as the activity is in no way identified with a candidate for public office, a ballot measure, or a political party.

C. Policy Regarding Commission Identification and Disqualification.

- (1) Commission Identification.** It is the policy of the Commission that each commissioner should take reasonable precautions to assure that the Commission is not identified with his or her political activities.
- (2) Disqualification.** Each commissioner should disqualify himself or herself from participating in any Commission matter which would directly or significantly affect a campaign to which he or she has contributed or volunteered services.

Chapter 5 Commission Meetings

The Commission usually meets once a month if there is sufficient business to call a meeting. The time and place determined by the Chair, taking into consideration the needs of the public, other governmental agencies, individual commissioners and the staff. Generally, the meetings take place the third Thursday of every month, beginning at 10:00 a.m.

Regulation 18310 authorizes the Chair to call special meetings and to cancel or change the time and date of regular meetings. Telephonic meetings may be conducted, but all meetings must be noticed at least ten days in advance in accordance with the requirements of the Bagley-Keene Open Meeting Act. In accordance with Bagley-Keene, the Commission may only act after the public has been duly notified of the intended action. (See Chapter 6 for more information.) All records and communications of the Commission are subject to the Public Records Act, which allows some investigative and personnel information to be kept confidential.

The notice and agenda for each meeting is posted and sent electronically to interested persons and Commissioners at least ten days prior to the date of the meeting. Commissioners and subscribers receive links to all materials, memoranda, stipulations, draft regulations, and other written information supporting items listed in the agenda.

The meetings generally follow Robert's Rules of Order, although certain items have their own special procedural rules. Regulations are adopted under a version of the Administrative Procedures Act providing for public notice and comment. In addition, requests for opinions entail two meetings -- the first for oral presentation and a preliminary Commission vote, and the second for adoption of the written opinion.

When necessary, the Commission meets in closed session to consider personnel and litigation matters, as permitted by Bagley-Keene. Minutes of closed session discussion are maintained separately from the minutes of public meetings.

Generally, all enforcement matters resolved by a stipulation between the parties, and on the agenda for Commission approval, are considered on a consent calendar. Otherwise, items generally receive a staff memorandum, a presentation, followed by public comment, a motion and a vote. Some items do not require a motion and a vote, but are provided to keep the Commissioners informed, including an Executive Staff Report to provide an update on divisions, a report regarding pending legislation, and any other operational report, as necessary.

Public comment is invited at each meeting, and is particularly encouraged in respect to the consideration and adoption of regulations and opinions.

Chapter 6 Bagley-Keene Open Meeting Act – A Primer for New Commissioners

Virtually all activities in which you will participate as a Commissioner are governed by the Bagley-Keene Open Meeting Act (the “Bagley-Keene Act”). In a nutshell, this generally means that your deliberations and actions must take place in a properly noticed public meeting.

The Bagley-Keene Act requires a state body to provide a copy of the act to each member of the body upon his or her appointment or assumption of office. An electronic copy of the [Bagley-Keene Act](#) is provided here. The General Counsel is available to advise the Commission on how to handle any particular open meeting questions. Below is a brief summary of the most pertinent points for you to remember.

A. General Rule

- **Unless an exception applies, Commission meetings must be conducted in public and properly noticed.**

The Bagley-Keene Act, set forth in Government Code sections 11120-111321, covers all state boards and commissions. Generally, it requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized to meet in closed session. The Bagley-Keene Act applies to new members of the Commission at the time of their election or appointment, even if they have not yet started to serve. (Section 11121.95.)

B. Definition of Meeting

- **A meeting is anytime three or more members of the Commission discuss or receive information related to the Commission’s activities including a “serial meeting,” which is a series of communications regarding the same issue made between three or more members of the Commission even if less than three members meet at any one time.**
- **A meeting does not include communications between Commissioners limited to the scheduling of a Commission meeting or purely social meetings.**

A meeting occurs when a quorum of a body convenes to hear, discuss, or deliberate upon an item within the subject matter jurisdiction of the body. (Section 11122.5(a).) A quorum of the Commission is three members. Thus, anytime three or more Commissioner meet to consider an item within the Commission’s jurisdiction, the meeting must be open to the public and properly noticed (i.e., notice must be given to the public of the time, place, and subject of the meeting, usually 10 days in advance).

While a meeting would more obviously include a gathering where members were debating issues or voting on them, a meeting also includes situations in which the body is merely receiving information. To the extent that a body receives information under circumstances where the public is deprived of the opportunity to monitor the information provided, and either agree with it or challenge it, the open-meeting process is deficient.

Serial Meeting: Meetings covered under the Bagley-Keene Act include “serial meetings.” (Section 11122.5(b).) A “serial meeting” is a series of communications, each of which involves less than a quorum of the Commission, but which taken as a whole involves a majority of the Commissioners. For example, if two Commissioners have a discussion of a particular issue, and one of them contacts a third Commissioner to discuss the same issue, the three Commissioners have engaged in a meeting just as if all three had discussed the issue at once. While it is permissible to discuss an issue with a fellow Commissioner, it is not okay for either of you to relay the discussion to a third Commissioner. Particular care must be given to an electronic communication such as an email. While it is not necessarily improper for a Commissioner to email other Commissioners, it is improper for more than one Commissioner to respond to the email, except during a properly noticed public meeting.

Scheduling Commission Meetings: The Bagley-Keene Act applies only if a majority of Commissioners convene, or use a series of communications, to hear, discuss, or deliberate an item under the Commission’s jurisdiction. The Bagley-Keene Act does not apply to communications between Commissioners pertaining to their availability for a Commission meeting or otherwise limited to the scheduling of a meeting.

Purely Social Meetings: The Bagley-Keene Act does not apply to purely social situations. (Section 11122.5(c)(5).) Thus, three or more Commissioners may have lunch or dinner so long as no Commission business is discussed.

Teleconference Meetings: The Bagley-Keene Act provides for audio or audio and visual teleconference meetings for the benefit of the public and the body. (Section 11123.) Periodically, the Commission holds meetings by teleconference. Each site at which a Commissioner participates in a meeting by teleconference must be accessible to the public, and the meeting must comply with all other provisions of the Bagley-Keene Act.

C. Notice and Agenda

- **For a regularly scheduled meeting, the Commission must provide notice and an agenda of all items to be discussed or acted upon at least 10 days prior to the meeting.**

The Bagley-Keene Act requires bodies to send notice of its meetings to persons who have requested it at least 10 days prior to the meeting. (Section 11125(a).) In addition, the notice must include an agenda of all items to be discussed or acted upon at the meeting. (Section 11125(b).) The notice must state the time and the place of the meeting and give the name, phone number and address of a contact person who can answer questions about the meeting and the agenda. The agenda must also contain a brief description of each item to be transacted or discussed at the meeting including both open and closed meeting items.

In practice, a written agenda providing notice of a regular Commission meeting is sent to the public at least 10 days in advance of the meeting and is also posted on the Commission’s website. The agenda notice contains a list of all items that will be discussed by the Commission. Customarily, the 10-day mailing/posting also includes staff memoranda and other documents pertinent to the discussion. (Generally, all documents staff prepares for the agenda items, and all documents that we receive from members of the public commenting on agenda items, are made available to the Commission and the public prior to and at the Commission meeting.)

Staff memorandum may take a great deal of time to prepare and meeting topics are carefully planned (often months in advance) to accommodate the policy goals and workload of the Commission while balancing the desires of Commissioners, staff, and the public. Accordingly, if you wish to discuss a particular topic at a meeting, please speak with the Chair well in advance to ensure adequate time for the item to be placed on the agenda.

Items cannot typically be added to an agenda after the 10-day posting. Items may be added to the agenda within the 10-day notice period only: (1) upon a determination by a majority vote of the Commission that an emergency situation exists, or (2) upon a determination by a two-thirds vote (or an unanimous vote of the present members if less than two-thirds of the members are present) that there exists a need to take immediate action and the need for action came to the attention of the body after the 10-day posting. (Section 11125.3(a)(1) and (2).) However, even in these circumstances, notice of the additional item must be provided at least 48 hours prior to the meeting. (Section 11125.3(b).)

Special and Emergency Meetings: Notwithstanding, the notice and agenda requirements above, a “special meeting” may be called where compliance with the 10-day notice provisions would impose a substantial hardship on the Commission or where immediate action is required to protect the public interest. (Section 11125.4.) A special meeting requires that notice be provided at least 48 hours before the meeting to the members of the Commission and all national wire services, along with a posting on the Commission’s website.

Nonetheless, the purposes for which a special meeting may be called are quite limited. Examples include pending litigation, legislation, licensing matters, and certain personnel actions. Additionally, in rare instances when there exists a crippling disaster or a work stoppage that would severely impair public health and safety, the Bagley-Keene Act also provides for “emergency meetings.” (Section 11125.5.) An emergency meeting requires a one-hour notice to the media and must be held in open session.

D. Public Participation

- **The Commission may not impose any conditions on attendance at a meeting, and must provide an opportunity for the public to speak or otherwise participate at a meeting.**

The Bagley-Keene Act protects and serves the interests of the general public to monitor and participate in meetings of state bodies, and state bodies are prohibited from imposing any conditions on attendance at a meeting. (Section 11124.) For example, while the Commission may ask someone speaking at a meeting to provide his or her name for the record, the Commission may not require the speaker to provide his or her name as a condition to speaking. Similarly, while the Commission may use a sign-in sheet at a meeting, notice must be clearly given that signing-in is voluntary and not a pre-requisite to either attending the meeting or speaking at the meeting.

To ensure public participation, the Bagley-Keene Act expressly requires an opportunity to the public to speak or otherwise participate at meetings, either before or during the consideration of each agenda item. (Section 11125.7.) The Commission can also elect to consider comments from the public on any matter under the Commission’s jurisdiction and to schedule issues raised by the public for consideration at future meetings. In practice, Commission agendas always contain an item for “public

discussion” of anything not on the agenda. While the Commission cannot take action regarding anything not specifically identified on the agenda, Commissioners can comment during the discussion, can ask staff or the Chair to look into the matter for consideration at a future meeting, or conduct a vote to schedule the issue for a future meeting.

E. Access to Records

- **Commissioners should assume that anything put into an e-mail, letter, memo, or other document addressed to someone at the Commission is subject to public disclosure.**

The public is specifically entitled to have access to the records of state bodies under the Bagley-Keene Act. (Section 11125.1.) Materials provided to a majority of the Commission either before or during the meeting must be made available to the public without delay, unless the confidentiality of such materials is otherwise protected. Additionally, most of the documents provided to or from the Commission are public records that must be provided to the public upon request under the California Public Records Act. In general, a record includes any form of writing including electronic communications such as e-mails.

There are only a few limited exceptions to public disclosure under the Bagley-Keene Act and the California Public Records Act. Primary exceptions include certain personal records, attorney-client communications, and enforcement case files (which are typically confidential during the pendency of the case, but may be subject to disclosure after the case is resolved). As a general rule, Commissioners should assume that anything put into an e-mail, letter, memo, or other document addressed to someone at the Commission is a public document subject to disclosure.

F. Closed Sessions

- **Certain types of personnel matters, pending litigation, and certain types of pending enforcement matters may be considered in closed session.**

While most items placed on an agenda must be addressed in open session, the Bagley-Keene Act permits closed sessions in very limited circumstances. A closed session must be:

1. Listed on the meeting agenda and properly noticed by citing the statutory authority or provision of the Act that authorizes the closed session (§11125(b)), and
2. Publicly announced by the body at the meeting, citing those issues that will be considered (§11126.3), which can be by a reference to the item as listed on the agenda.

After the closed session is completed, the body is required to reconvene in public. (Section 11126.3(f).) Where the body makes a decision to hire or fire an individual, the body is required to publicly report the decision. (Section 11125.2.) While bodies are required to keep minutes of closed sessions, these minutes are confidential and available only to members of the body or to a reviewing court. (Section 11126.1.) Commissioners may receive written materials regarding the closed session items marked “confidential.” These documents are not distributed to the public or subject to public disclosure (although some documents may be subjected to limited disclosure once the item is resolved).

Chapter 7 Enforcement Proceedings

Enforcement of the Political Reform Act has several tiers – administrative, civil, and criminal. Violations of the Act can be prosecuted criminally as misdemeanors by either a local District Attorney, local City Attorney or the State Attorney General.⁴ Violations can also be pursued through a civil action by either a member of the public, certain government agencies or the Enforcement Division.⁵ However, the vast majority of violations of the Act are enforced through administrative enforcement proceedings by the FPPC and those are the proceedings on which this overview focuses.

A. How Cases Are Initiated

The administrative enforcement process covers cases from intake through closure. Enforcement cases are initiated by:

1. Complaints
2. Filing officer referrals
3. Audits and audit referrals
4. Staff-initiated investigations
5. Referrals from other agencies (law enforcement, program audits, etc.)

B. How Enforcement Cases Are Processed

The Enforcement Division resolves cases through a four-phase process that includes:

- **Intake** - During this process, political reform consultants examine whether it is likely that a violation of the PRA occurred. The consultants will either recommend to close the case, resolve it with a streamline fine (see below), or move the case to full investigation.
- **Investigation** - During this process, investigators will conduct a full investigation of the allegations, in close coordination with assigned staff counsel through an investigative plan, gathering evidence that the staff counsel will need to effectively prosecute the matter.
- **Case Resolution** - During this process, the staff counsel reviews the evidence to determine whether to continue to pursue prosecution of the case or closure.
- **Commission Approval** - If a case is being prosecuted for a fine, the ultimate resolution, whether by stipulation, default judgment, or upon recommendation of the Administrative Law Judge after an administrative hearing, must be approved by the Commission.

The vast majority of cases the FPPC Enforcement Division pursues are resolved by stipulated settlements between the Division and the respondents, including settlements resolved as part of Enforcement's streamlined programs. The settlements save the FPPC and the respondents resources and help expeditiously resolve a high volume of cases, which helps deter future misconduct and provides timely notice to the public. Below is a brief overview of Enforcement's streamlined programs and the general settlement process for all other cases. Later in the chapter, the administrative process for cases not resolved by stipulation is discussed (e.g., probable cause hearing, administrative law proceeding).

⁴ Sections 91001 and 91001.5.

⁵ Section 91004 et. seq.

C. Enforcement’s Streamlined Programs (Regulations 18360.1-18360.2)

A large number of cases presented to the Commission for approval have been resolved through streamlined programs. In January 2019, the Commission approved regulations 18360.1 and 18360.2 which outline the Streamline Program Eligibility and Penalty Structures. Streamline stipulations will be presented to the Commission at the monthly Commission Meeting but will be executed by the Chief of Enforcement.

D. Stipulated Settlements

As stated, the majority of cases the Enforcement Division pursues are resolved by stipulated settlements between the Division and the respondents. These settlements save the FPPC and the respondents resources and help expeditiously resolve a high volume of cases.

1. Settlement Negotiations

Once it is determined that a violation of the Political Reform Act occurred, the attorney assigned to the case will typically begin settlement negotiations instead of issuing a probable cause report (see below). This procedure is normally followed in cases where the attorney believes settlement can be reached without a formal hearing. A proposed stipulation is sent to the respondent if they have indicated a willingness to enter into settlement negotiations.

2. Stipulation, Decision and Order

The settlement document is called a “Stipulation, Decision and Order,” and is referred to as the “Stipulation.” A stipulation is a negotiated agreement between the Enforcement Division and the respondent. The stipulation contains an agreed-upon statement of facts and the law. In the settlement process between the Enforcement Division and the respondent, the fine amount, the number of counts, and the language in the statement of facts and law are negotiated as part of the resolution. The stipulations set forth the violations of the Act, consider the aggravating and mitigating factors, discuss comparable cases, and state a proposed penalty.

3. Aggravating and Mitigating Factors

Under Regulation 18361.5(d), the aggravating and mitigating factors to be considered include to determine the appropriate fine for a violation of the Act include:

- the seriousness of the violation;
- the presence or absence of any intention to conceal, deceive or mislead;
- whether the violation was deliberate, negligent or inadvertent;
- whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense;
- whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations; and
- whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

4. Respondent Admits Liability; Pays Fine

In signing the stipulation, the respondent is admitting liability and that the violations occurred as stated in the stipulation and, in most cases, provides a cashier's check in the amount of the stipulated fine along with the stipulation. When the signed stipulation and cashier's check are received from the respondent, the case is placed on the agenda for the next Commission meeting.

5. Commission Approval

The stipulation must be approved by the Commission before it becomes an official order.⁶ Stipulations are presented for Commission approval in public session at regularly scheduled meetings. The Commission is restricted to receiving input only about the specific facts, conduct and information contained within the stipulation document itself. This is to preserve the Commission's ability to preside over an administrative hearing on the matter if the stipulation is ultimately rejected.

- **Public Hearing.** During the public session of the Commission meeting, the Chief of Enforcement or the Enforcement Division attorney who handled the case is available to answer questions from the Commission. Respondents are also afforded the opportunity to address the Commission.
- **Authorized Action.** Once the Commission has finished receiving input and discussing the case, a formal vote is taken if a motion has been made and seconded. Because a stipulation is a negotiated agreement between the Enforcement Division and the respondent, in voting on a stipulation, the Commission is limited to adopting the stipulation and fine amount in its entirety or rejecting it in its entirety. The Commission cannot increase or decrease the amount of the fine. Any change to the stipulation would have to be accepted by both parties and another stipulation presented to the Commission.
- **Fair and Reasonable.** The Commission's role in approving the stipulation is to determine whether it is a fair resolution of the matter and within the range of reasonable fines. A properly submitted settlement should be approved by the Commission if the settlement is fair, within the range of reasonable resolutions for that violation, and meets regulatory requirements.
- **Rejection.** In the event that a Commissioner believes a stipulation in a particular case is outside the range of a reasonable resolution, the Commissioner may reject the agreement (vote no), stating that he or she believes the fine in the matter should be increased or decreased, or has other concerns (e.g., facts do not support violation). If three or more Commissioners vote to reject the stipulation, the Commission may direct staff to attempt to renegotiate the matter and present a new stipulation at a future meeting. If the parties are unable to negotiate a subsequent settlement, the matter will need to be tried at an administrative hearing.

⁶Regulation 18361.5(e).

- **Approval for Final Order.** If the Commission votes to adopt the stipulation, the Chair signs the Stipulation, Decision and Order which becomes the official order of the Commission and resolves the case.

E. Administrative Process for Cases Not Resolved by Stipulation

In the event that a settlement cannot be reached between the Enforcement Division and the respondent, the case will be prosecuted through the administrative process, which includes: 1) probable cause report; 2) probable cause hearing; 3) probable cause finding; 4) accusation; and 5) administrative hearing. Each of these administrative phases are discussed below. And of course, at any point in the process, a case still can be resolved by a stipulated settlement between the parties.

1. Probable Cause Report⁷

In the event that a settlement is not reached, the Enforcement Division attorney must prepare a probable cause report that satisfies the following requirements:

- **Report Contents.** The report must contain a summary of the law and evidence gathered in connection with the investigation, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. The evidence recited in the probable cause report may include hearsay, including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence.
- **Service.** Once the probable cause report has been approved for issuance by the Enforcement Division Chief, a copy of the report, a notification that respondents have the right to respond in writing and request a probable cause conference, and other materials are provided to all respondents at least 21 days prior to any determination of probable cause by service of process or registered mail with return receipt requested.
- **Response.** Each proposed respondent may submit a written response to the probable cause report. The response may contain a summary of evidence, legal arguments and any mitigating or exculpatory information. Each response must be filed with the Commission Assistant who will forward it to the General Counsel or an attorney in the Legal Division (the “hearing officer”) and provide a copy by service of process or by registered mail to all other proposed respondents listed in the probable cause report not later than 21 days following service of the probable cause report.
- **Rebuttal.** The Enforcement Division attorney may submit evidence or argument in rebuttal to the response, not later than 10 calendar days following the date the response was filed with the Commission Assistant.
- **Time Limits; Additional Material.** The time limits above may be extended by the hearing officer for good cause. At any time prior to determination of probable cause, the hearing officer may allow additional material to be submitted as part of the initial response or rebuttal.⁸

⁷ Regulation 18361.4(a)-(c).

⁸ Regulation 18361.4(c)(3).

2. Probable Cause Conference⁹

After a probable cause report is served, a respondent may request that a probable cause conference be held and the following rules apply:

- **Request for Conference.** The request must be served on the Commission Assistant and all other proposed respondents no later than 21 days after service of the probable cause report, unless the hearing officer extends the time for good cause. After receiving a request for a probable cause hearing, the Commission Assistant shall set a time for the probable cause conference.
- **Hearing Officer; Attendees.** The probable cause conference is presided over by the hearing officer, generally a senior attorney from Legal Division. The conference will be closed to the public unless a proposed respondent and all other proposed respondents agree to a public conference. In a non-public conference, the case attorney and the case investigators will normally be present at the conference to represent the Enforcement Division. Each proposed respondent and their representatives may be present and participate. If the conference is not public and none of the parties and the presiding officer object, the conference may be conducted in whole or in part by telephone.
- **Witnesses.** The hearing officer may allow witnesses to attend and participate in part or all of the probable cause conference. In determining whether to allow witnesses, the hearing officer shall consider the relevancy of the witness' proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate.
- **Conduct of Probable Cause Conference.** The hearing officer will conduct the probable cause conference informally. The conference is not a trial-like proceeding so the case attorney will not be required to produce evidence or testimony. The hearing officer will give the respondents and their representatives an opportunity to make a response to the Enforcement Division's case. Then the hearing officer will allow additional argument by both sides and may request information regarding specific questions. Although the probable cause conference is informal, the hearing officer will restrict the discussion to the present proceeding and will not allow any settlement discussion to take place. The hearing officer must make a finding regarding probable cause subsequent to the conclusion of the probable cause conference.

⁹Regulation 18361.4(d).

3. Finding of Probable Cause by Hearing Officer¹⁰

Once the matter is submitted to the hearing officer, the probable cause decision will be made, usually within two weeks. The hearing officer may find there is probable cause to believe a violation occurred “if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or cause a violation.” The hearing officer may make a decision on probable cause based solely on the probable cause report, any responses or rebuttals filed, and any arguments presented at the probable cause conference by the interested parties.

A finding of probable cause by the hearing officer does not constitute a finding that a violation has actually occurred, but rather that there is probable cause for a reasonable person to believe that a violation occurred. In addition, the hearing officer shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, at a time prior to the alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice of the staff or because of the staff’s failure to provide advice.

4. Accusation¹¹

If the hearing officer makes a finding of probable cause, the Enforcement Division will prepare an Accusation pursuant to Section 11503 and serve it on the person or persons who are subjects of the probable cause finding. The finding of probable cause is publicly announced in the monthly Legal Division staff report to the Commission. The announcement contains a summary of the allegations and a statement that the respondent is presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding.

The Enforcement Division will continue to pursue settlement options with the respondent even after the Accusation is issued, which often results in a stipulation.

5. Administrative Hearing

If a case does not settle after the Accusation is issued, an administrative hearing is conducted pursuant to the Administrative Procedures Act and the following rules apply:¹²

- **Administrative Law Judge or Commission.** The Commission has the option of participating in a hearing on the merits, or of delegating the responsibility to an administrative law judge. The standard of proof requires that findings are made based on a preponderance of the evidence.¹³
- **Standard of Proof.** The standard of proof requires that findings are made based on a preponderance of the evidence.¹⁴

¹⁰ Regulation 18361.4(d) and (e).

¹¹ Regulation 18361.4(e).

¹² Government Code sections 11340 et seq.

¹³ Regulation 18361.5(c).

¹⁴ Regulation 18361.5(c).

- **Proposed Decision.** After finding a violation under the Act, the Commission and the administrative law judge must consider the aggravating and mitigating factors of Regulation 18361.5(d) discussed above. If the Commission delegates a hearing to an administrative law judge, then the judge issues a proposed decision that must be approved by the Commission. Within 14 days after receipt of a proposed decision by an administrative law judge, the Executive Director must serve a copy of the proposed decision on the Commission's Enforcement Division and on the respondents. Under Regulation 18361.9, a briefing schedule is to be followed by both parties.
- **Commission Consideration of ALJ Decision.** After all procedural responses are completed, the proposed decision is noticed for approval at a Commission meeting. The Commission may adopt the decision in its entirety, or reduce the proposed fine and adopt the balance of the proposed decision. The Commission may reject the proposed decision and enter a new decision after reviewing a complete transcript of the prior proceeding.

F. Default Decisions

Default cases generally arise when a respondent has been unresponsive to the Enforcement Division and failed to participate in the process of resolving the violation and, if necessary, filing any required statements. In most cases, the individual has been contacted by both the filing official and the Enforcement Division multiple times to get the individual to cooperate and file the required statements.

- **Authority and Process.** Default cases are governed by Section 11520 and Regulation 18361.11, both of which have extensive provisions for providing the respondent with notice and an opportunity for hearing. The Administrative Procedures Act requires a respondent who has been served with an accusation to file a response or request a hearing. If a respondent does not do so, the Enforcement Division will prepare a proposed default decision and order based on the record to be placed on the agenda for the Commission's consideration.
- **Commission Consideration of Default Decisions.** When a proposed default decision is on the agenda, the Commission has several options for action:
 1. It can approve the default decision at the suggested fine amount.
 2. It can approve the default decision and modify the fine amount, either higher or lower, if the Commission believes the matter warrants an adjustment.
 3. It can postpone consideration of the default judgment and send the matter back, instructing Enforcement Division staff and the respondent to try to reach a last minute settlement. If the default decision has not been rejected by a vote of at least three members, the default decision would remain pending, and that decision or a stipulation in the matter would be brought to the Commission at a subsequent meeting.

G. Civil Lawsuit¹⁵

Although most cases can be appropriately prosecuted through administrative proceedings, occasionally staff will recommend to the Commission that civil proceedings be initiated pursuant to Section 91000 et seq. of the Act. In such cases, the following process will be followed:

- **Memorandum on Civil Litigation.** If the Executive Director concludes that civil action is appropriate, a memorandum respecting civil litigation will be prepared by staff and provided to each member of the Commission. The memorandum summarizes the facts and the applicable law of the case, any exculpatory and mitigating information, and recommend appropriate action.
- **Commission Closed Session on Litigation.** The Commission reviews the memorandum in closed session. The General Counsel, or an attorney from Legal Division, and the Commission Assistant will attend the closed session. If the Commission wishes Enforcement staff to be present to answer questions, staff will be requested to attend for this limited purpose only. Any communications between the Commission and staff present to answer questions during the closed session must be recorded and transcribed.
- **Commission Action.** Once the Commission has fully deliberated the request for civil action, a vote will be taken to instruct the Executive Director to do any of the following:
 1. Initiate a civil action;
 2. Decide whether administrative proceedings should be commenced;
 3. Return the matter to staff for further investigation;
 4. Take no further action on the matter; or
 5. Take other appropriate action.

If the Commission concludes that civil action is appropriate, the Commission may then permit other members of staff to attend the closed session for the purpose of discussing an appropriate fine to resolve the case. At this point, all restrictions on communication between Enforcement staff and the Commission are lifted, and Commissioners are able to participate fully in litigating the case.

¹⁵ Regulation 18361.2(b).

Chapter 8 Commission Staff and Overview of Division Functions

Under the joint leadership of the Chair and the Executive Director, the FPPC staff is organized into four major divisions: Legal, Enforcement, and Administration/Information Technology.

The Executive staff is composed of the Chair, Executive Director, Division Chiefs, Communications Officer, Legislative and External Affairs Coordinator, and Commission Assistant.

The Commission Assistant serves the members of the Commission, the Chair and the Executive Director. The Commission Assistant is responsible for meeting and travel arrangements, travel reimbursements, preparation of the Commission minutes, and providing agendas and informational materials for the Commission meetings, to the Commission and the public.

A. Legal Division

The Legal Division is comprised of the General Counsel, staff attorneys, Political Reform Consultants and support staff.

In addition to serving as Chief of the Legal Division, the General Counsel serves as the legal advisor for the Chair and other Commissioners on a range of policy matters. The General Counsel advises members of the Commission and the staff on the interpretation and analysis of laws, court decisions, and rules and regulations affecting the Commission. In addition, the General Counsel and legal staff coordinate litigation strategy, provide sound advice is given to requestors, and coordinate the development of legislative proposals, regulations and Commission opinions. A summary of these main duties:

- **Representing the Commission in Court.** Unlike most state agencies, which are represented in court by the Attorney General, the Commission is specifically authorized to be represented by its own lawyers. This is only one of the many provisions of the Act designed to ensure the independence of the Commission. However, the Commission may be represented by the Attorney General's Office to obtain the advantage of their litigation expertise or due to staffing constraints and expense in complicated cases. In those cases, Commission staff attorneys work with the Attorney General's Office to provide knowledge of the Act and ensure that the representation conforms to Commission policy. The Act provides that, upon request, the Attorney General must provide legal advice and representation without charge to the Commission.
- **Advice.** The Legal Division staff receives a large number of requests for advice from state and local officials, from candidates and campaign committees, and from lobbyists. Many of these questions concern conflicts of interests under the Act or Government Code Section 1090 -- officials asking whether they must disqualify themselves from certain decisions. In response to written requests, the legal staff gives written advice (known as "advice letters"). In addition, the political reform consultants and attorneys provide informal email advice to officials, treasurers and candidates, in response to a high volume of questions on the FPPC's email advice line.

- **Regulations.** Drafting regulations implementing the campaign, lobbyist, and conflict of interest provisions of the Act is an important part of the work of the Legal Division. The Division conducts interested persons meetings and follows notice and comment requirements of the rulemaking process when preparing regulations for Commission consideration.
- **Conflict of Interest Codes.** The Commission serves as code reviewing body for state agencies and multicounty agencies. The political reform consultants assist state and local agencies in creating and amending their codes. The consultants conduct seminars and webinars for state and local agencies on conflict of interest codes.
- **Legislation.** The Legal Division is involved in drafting Commission sponsored legislation and provides analysis on other bills that may have an impact on the PRA.
- **Education.** The Legal Division Political Reform Consultants provide assistance to officeholders and candidates for all elected state and local offices in California; campaign committee treasurers; lobbyists and employers of lobbyists; elected and appointed officials at the state and local levels of government; state and local filing and enforcement officials (e.g., Secretary of State, county clerks, city clerks, district attorneys); and the general public. The primary methods of providing assistance include: providing telephone advice; preparing and updating comprehensive information manuals, instructions, forms, handbooks, fact sheets; and conducting dozens of seminars and workshops throughout the State

B. Enforcement Division

The Enforcement Division consists of attorneys, investigators, program specialists (auditors), political reform consultants, and support staff. The Chief of Enforcement provides supervision over Enforcement's team of staff attorneys, investigators and auditors. The Chief reviews and approves referrals, complaints, and audit findings for investigation and prosecution. The Chief reviews and approves requests for settlement authority, stipulations, and warning letters and presents Enforcement cases at the Commission hearings. The responsibilities of the Enforcement Division include:

- **Audits.** Conducting statutorily mandated audits of candidates for State Controller, Board of Equalization, and their controlled committees;
- **Investigations.** Investigating allegations of violations of the PRA by state and local candidates, public officials, lobbyists and others;
- **Prosecutions.** Prosecuting suspected violations of the PRA by civil lawsuit or administrative action;
- **Referrals.** Referring allegations of criminal misconduct to the appropriate criminal investigative and prosecuting agencies (i.e., Attorney General, District Attorney, FBI, IRS, U.S. Attorney);
- **Joint Cases.** Assisting District Attorneys and authorized City Attorneys in analyzing, investigating and prosecuting local violations of the Act.

The Commissioners review and vote on proposed stipulated settlements of enforcement cases during regularly scheduled public meetings of the Commission. Generally, the Enforcement Division Chief or attorney assigned to the case answers questions from the Commissioners, if any, regarding the proposed settlement. Nearly all enforcement cases are resolved between the Enforcement Division and the respondent by stipulated settlements.

C. Administration & Technology Division

The Administration & Technology Division is responsible for personnel, budgeting, accounting, business services, employee-employer relations, information technology services and handling statements of economic interests filed with the agency.

- **Personnel** functions include recruitment and hiring, position classification and reclassification, attendance and payroll, training, grievances and punitive action. Administration also handles equal employment opportunity, labor relations and reasonable accommodation and ergonomic issues.
- **Budgeting** functions include developing, presenting, managing and revising the Commission's budget. Administration is also responsible for the accounting of all funds expended by the Commission.
- **Business services** include building and space management, communications, contracts and procurement, equipment and supplies, maintenance, and travel.
- **Information technology** services include maintaining the network, network security, and the FPPC website and providing PC hardware and software for agency employees.
- **Statements of Economic Interests (SEI or Form 700)** - The SEI Unit within the Administration Division manages the electronic filing of approximately 25,000 statements of economic interests received by the Commission each year. It also acts as both the filing officer and filing official for employees of the Senate and Assembly.

Chapter 9 Fees and Expenses

Compensation and Reimbursement for Fees and Expenses

A. Compensation

With the exception of the Chair, Commissioners shall receive \$100.00 for each day during which the member attends all or part of a regular or special meeting of the Commission, a meeting of a committee of the Commission or a hearing conducted by the Commission.

A member of the Commission shall receive \$12.50 per hour, not to exceed \$100.00 per day, for performing official duties on days other than Commission meetings or hearing days. "Official duties" include: preparing for meetings or hearings of the Commission; performing activities deemed by the Chairman and Executive Director to be essential to the functioning of the Commission, such as attending meetings, other than Commission meetings, for the purpose of discharging the duties imposed upon the Commission; and engaging in necessary travel in connection with compensable official duties. "Necessary travel" means time spent away from home between 9:00 a.m. and 5:00 p.m. Monday through Friday as a result of the performance of official duties. Official duties do not include speeches, public appearances or similar activities unless the speech, public appearance or similar activity is authorized in advance by the Commission.

Claims. Prior to receiving compensation or reimbursement, a member of the Commission shall submit certified vouchers stating the date, number of hours, amount of expenses and the nature of the official duties for which payment is requested. Any claim for compensation for preparing for Commission or Committee meetings or hearings of the Commission which exceeds an amount based on forty hours of preparation during a calendar month shall be subject to approval by the Commission during a regularly scheduled Commission meeting.

B. Time Sheet

A sample of the time sheet to be used by Commissioners for reporting hours is attached. Designate on the time sheet any hours spent engaged in official FPPC business during the month, including travel time as well as time spent preparing for the meetings (e.g. reviewing materials). Provide a brief description of the nature of the duties performed during those hours. Once all of your hours have been designated on the form, sign and return it to the Commission Assistant. The completed time sheet should be submitted to the Commission Assistant on a monthly basis.

C. Travel

1. The Commission Assistant is available to make your travel arrangements, and all flight reservations must be made through the assistant. If you obtain lodging reservations on your own, be sure to advise the reservation clerks that you are traveling on official state business for the Fair Political Practices Commission and request a "state rate." Not all hotels have "state rates." Reservations must be made per the state contract in order to be reimbursed.
2. Some travel expenses are prepaid by the state and some are prepaid by employees. The state reimburses the employee for those expenses, providing they meet state travel rules.

3. The FPPC utilizes the Concur system to make airline, train, or car rental reservations. Reservations for airline or train travel made through Concur are paid directly by the state, requiring no out-of-pocket payments.
4. Ground Transportation - Commissioners may use taxicabs, Uber or Lyft for transportation on official state business. You may pay carfare out-of-pocket, but be sure to get a receipt from the driver so that reimbursement can be requested. Additionally, Commissioners may be reimbursed at the IRS-approved rate for using their personal vehicle to travel to the Commission meeting.
5. Hotels - Hotel expenses are paid by the employee and reimbursed by the state, providing those expenses meet state travel expense rules. Reservations should be made as far in advance as possible in order to get the "state rate." Commissioners are entitled up to a maximum of \$95 plus tax per day for lodging reimbursement within Sacramento County. Charges over that amount can be reimbursed under special circumstances. Check with the Commission Assistant for more information about the excess lodging rate approvals. Submit the hotel receipt (showing a zero balance due) for reimbursement.
6. Rental Cars: The State has contracted with seven agencies to provide rental car service: Alamo Rent-A-Car, Inc., Avis Rent-A-Car, Bay Area Rentals, Budget Rent-A-Car Corporation, Dollar Rent-A-Car, Enterprise Rent-A-Car, National Car Rental System, or Thrifty Rent-A-Car System, Inc. If you choose to make rental car arrangements other than those provided for in the State contract, you may be liable for the cost of the rental car. Submit rental car receipts in order to be reimbursed.

D. Expense Reimbursement

1. Reimbursement may be requested for expenses incurred while engaged in official FPPC business. Submit receipts for the expense for reimbursement *within 30 days after travel*.
2. In addition to the travel expenses discussed above, other expenses may include:
 - i) Taxi/carfare/parking: Receipts for taxis, car services, or parking must be submitted in order to be reimbursed. Parking expenses must be accompanied by a receipt for reimbursement.
 - ii) Personal car: The current automobile mileage reimbursement rate is 54 cents per mile. No receipts are required, but you must report the mileage on the "Monthly Travel Information" form.
 - iii) Meals: Employees may also be reimbursed for breakfast (\$7.00), lunch (\$11.00) and/or dinner (\$23.00), if the trip exceeds 24 hours in length. Breakfast and dinner may also be reimbursed under other circumstances. Meals can only be reimbursed for reasonable time spent traveling for official duties. Additionally, \$5.00 is reimbursed for incidental expenses for every full 24-hour period.

E. Forms

The following forms are attached (double-click icon) and are used to coordinate travel and request expense reimbursement:



i) **New Commissioner Travel Information Sheet**



ii) **Monthly Travel Information**

This form must be completed each month and is used by the Commission Assistant to prepare the “Travel Expense Claim” form. The Commission Assistant will provide it to each Commissioner at the monthly Commission meeting. The form must be completed and returned along with all receipts.



iii) **Timesheet**

This form must be completed each month, signed and given to the Commission Assistant.

iv) **Excess Lodging Rate Request/Approval**

When requesting reimbursement for lodging exceeding the rate of \$95.00 per night, the Commission Assistant will complete this form, and return it to the Commissioner for signature.

Chapter 10 Commissioner's Leaving Office Checklist

The following is a summary of legal obligations, requirements, and helpful tips that FPPC Commissioners may want to keep in mind when leaving public office. A Commissioner is considered to have “left state office” when he or she is no longer authorized to perform the duties of the office and has stopped performing duties of the office.¹

A. Be Mindful of the Revolving Door Restrictions

Commissioners are “state administrative officials”² subject to certain restrictions under the Political Reform Act when they leave their position with the state.

- 1. One-Year Ban:** Commissioners are restricted for one year after leaving state service, from being paid to communicate with the FPPC in an attempt to influence any administrative³ legislative, or other specified action (including contracts).⁴
- 2. Permanent Ban:** Commissioners are prohibited from being paid to appear in a proceeding⁵ involving specific parties (e.g., a lawsuit, administrative law judge hearing, or a contract) in which the Commissioner previously participated.⁶
- 3. Ban on Influencing Prospective Employers:** Commissioners are prohibited from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while still serving as a Commissioner.

B. No Post-Government Employment Restrictions on Political Activities

There are no restrictions on a Commissioner's political activities upon leaving the Commission, except insofar as they are restricted by the bans set forth above. The statutory restrictions (Section 83105) and the Incompatible Activities Statement for political activities during a Commissioner's tenure no longer apply on leaving state service.

¹ Section 87204. Leaving Office; Regulation 18722.

² “State administrative official” means every member, officer, employee, or consultant of a state administrative agency who, as part of his or her official responsibilities, engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial, or ministerial capacity. (Section 87400(b).)

³ Section 82002. Administrative Action. (a) “Administrative action” means either of the following: (1) The proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

⁴ Section 87406; Regulation 18746.1.

⁵ Section 87400(c) provides that a “proceeding” is “any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency.” Thus, the restrictions of Sections 87401 and 87402 apply only to matters involving a specific party or parties in their interaction with a state agency.

⁶ Sections 87401 and 87402.

C. File the Leaving Office Statement of Economic Interest (Form 700)

1. Within thirty days of leaving office, Commissioners must file a “Leaving Office” statement of economic interest, Form 700, disclosing the official’s investments, interests in real property, and income during the period since the previous statement was filed. The statement must include any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.
2. A Commissioner who leaves office between January 1st and March 1, 2017 may file a combined annual/leaving office Form 700. The period covered by the statement will be January 1, 2016 through the date of leaving office.

D. Complete Ethics Training

All state agencies are required to conduct semi-annual ethics training that certain state employees and officials, including Commissioners, must attend every two years.⁷ Commissioners who are leaving office are required to be current on their semi-annual ethics course. A Commissioner who has not attended ethics training during the required two-year period must complete this requirement prior to leaving office. Commissioners can take an interactive Internet course at <https://oag.ca.gov/ethics/course> to satisfy this requirement.

E. Exit Process Reminders

Commissioners should also be mindful of the following housekeeping items when departing.

1. **Travel Reimbursements, other expenses:** Submit any outstanding travel reimbursement or other expense requests.
2. **Password Access:** If provided, password access to Commission email, databases, or external systems will be deactivated.
3. **Return of any Commission property:** including keys, lobby door fobs, any non-public work documents or files, business cards etc.

⁷ Government Code Sections 11146-11146.3

Appendixes

Appendix A – Current Commission

FAIR POLITICAL PRACTICES COMMISSION

Commissioner Frank Cardenas	Commissioner <i>vacant</i>	Chair Richard C. Miadich	Commissioner Brian Hatch	Commissioner Allison Hayward
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Executive Director
Thomas Jones



Legal Division General Counsel David Bainbridge	Administration Division Chief Loressa Hon	Enforcement Division Chief Galena West
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History of the Political Reform Act

The Political Reform Act is the product of competing interests, which include the electorate's frustration with the political process and the court's zealous protection of fundamental constitutional rights. The third ingredient, legislative action, supplements these two divergent elements.

Proposition 9 -- "The Political Reform Act of 1974"

In 1974, during the fallout from Watergate, a coalition of political reformers presented a statewide ballot initiative that they claimed would "put an end to corruption in politics." These reform groups included Common Cause, the People's Lobby, and the Secretary of State/gubernatorial candidate Jerry Brown. These reform groups sought to end corruption by reducing the amount of money spent in elections and by eliminating secret or anonymous contributions. With the advent of the new law, the campaign activities and the personal financial affairs of state and local officials were subjected to greater public scrutiny than at any other time in California's history. And the initiative directed that the law be vigorously enforced by the newly created Fair Political Practices Commission. Proposition 9 had six main provisions.

- Proposition 9 imposed mandatory spending limits on candidates for statewide offices and statewide ballot measure committees. However, in the landmark case, *Buckley v. Valeo* (1976) 424 U.S. 1, the United States Supreme Court held that mandatory spending limits were unconstitutional.
- Proposition 9 imposed restrictions on lobbyists. It required lobbyists to register with the state and to file reports disclosing their activity expenses. It also imposed a \$10 gift limit on lobbyists and prohibited lobbyists from making contributions.
- Proposition 9 imposed strict conflict of interest laws and required state and local agencies to establish conflict of interest codes, requiring agency officials who routinely participate in decisions to publicly disclose personal financial information.
- Proposition 9 banned anonymous contributions of \$100 or more and established extensive campaign disclosure laws. The underlying theory behind campaign disclosure is that an informed electorate will vote against the candidate or proposal having financial alliances adverse to the public interest. In addition, candidates are less likely to accept a contribution from a source with whom they do not want to be identified.
- Proposition 9 enacted laws to curtail incumbent advantage, e.g., a prohibition on sending "mass mailings" at public expense. Many of these laws have been tailored significantly by regulatory or court action.

- Proposition 9 created an independent centralized authority to secure compliance with the Political Reform Act. Prior to the creation of the Fair Political Practices Commission (“FPPC”), campaign disclosure laws were rarely enforced.

In addition to creating the FPPC, Proposition 9 established strict auditing of campaign statements by the Franchise Tax Board. Prior to the Political Reform Act, no systematic method existed to determine whether a candidate or committee reported all contributions and expenditures.

Legislative Activity in the 1980's

In cooperation with the FPPC, the Legislature added various provisions to the original Political Reform Act.

In 1977, the Legislature required candidates and committees to disclose their identities on campaign literature. This law was later challenged in the California Supreme Court and upheld. (*Griset v. Fair Political Practices Comm.* (1994) 8 Cal.4th 851.) A subsequent challenge based on the United States Supreme Court case, *McIntyre v. Ohio Elections Commission* (1995) 514 U.S. 334, 336, also failed. (*Griset v. Fair Political Practices Comm.* (2001) 25 Cal.4th 688.)

In 1980, the Legislature imposed restrictions on state employees who leave state service to join the private sector. These restrictions are commonly referred to as the "permanent ban" and prohibit state employees who work on specified proceedings such as procurements and lawsuits from being paid to “switch sides” after leaving state employment.

In 1982, the Legislature passed an important contribution limitation applicable to members of boards and commissions. Under section 84308, an appointed official may not accept a contribution of \$250 or more from an applicant until three months after his or her agency’s decision on a matter is final. If the official has accepted a campaign contribution of \$250 or more from an applicant within the preceding 12 months, the official is disqualified from participating in the decision. Before this new law was added to the Act, it was longstanding practice for appointed officials to solicit contributions from applicants and then vote favorably in a decision affecting the applicant.

In 1982, the Legislature provided funding to the Enforcement Division for the purpose of enforcing the Act at the local level.

In 1985, the Legislature passed a law that required sponsored committees to include the name of their sponsor on all political mailings sent by the committees.

In 1987, after the FPPC conducted extensive hearings on the matter, the Legislature passed laws imposing stricter identification and notification requirements on slate mailer organizations. The hearings held by the FPPC had identified four problems associated with slate mailers: 1) the mailers deceptively appeared to be official party documents; 2) candidates on each mailer erroneously appeared to be endorsing one another; 3) the mailer did not disclose

which candidates or ballot measures paid to be included on the mailer; and 4) slate mailer organizations were not required to file campaign disclosure statements. The new law remedied these concerns by requiring a disclaimer to be placed on every slate mailer.

Propositions 68 and 73

Voters simultaneously passed two political reform initiatives in 1988. Proposition 68, a measure sponsored by Common Cause, provided contribution limits with public financing for legislative election campaigns. Proposition 73, an initiative sponsored by members of the Legislature, was a more comprehensive campaign finance reform measure that did not include public financing. The electorate approved both ballot measures, with Proposition 73 receiving the most votes.

The California Supreme Court subsequently ruled that when two competing comprehensive reform schemes are enacted at the same time, it will not sort through the provisions to determine which parts are compatible after the election. (*Taxpayers to Limit Campaign Spending v. Fair Political Practices Comm.* (1990) 51 Cal.3d 744.) Only the ballot measure with the most votes will prevail--in this case, Proposition 73.

The contribution limits and the inter-candidate transfer ban in Proposition 73 were later invalidated in federal court on the basis that the limits were applied on a fiscal year basis, which favored incumbents. (*Service Employees Internat. Union v. Fair Political Practices Comm.* (9th Cir. 1992) 955 F.2d 1312.) Some provisions of Proposition 73 remain in effect (although many have been repealed by Proposition 34, discussed below).

Proposition 73 also prohibits the public financing of elections. However, this prohibition does not prevent a charter city from establishing a public financing scheme. (*Johnson v. Bradley* (1992) 4 Cal.4th 389.) Finally, Proposition 73 requires candidates to have one campaign bank account for each election.

Proposition 112 - Government Ethics Laws

In the 1980's, the FBI began a three-year sting operation to uncover corruption in the California Legislature. The FBI investigation resulted in the conviction of five legislators. The FBI probe began in 1985 when federal agents formed two fictitious seafood companies. During the investigation, the FBI gave \$90,000 in campaign contributions and honoraria to various legislators and the Legislature approved two bills designed to give the sham companies business advantages, which were later vetoed by the Governor. Immediately following the investigation, a Los Angeles Times poll revealed that 53% of the voters surveyed thought that taking bribes was a common practice in Sacramento.

In June 1990, the Legislature placed Proposition 112 on the ballot. Proposition 112 was a constitutional amendment that directed the Legislature to pass new ethics laws. The new laws banned honoraria, imposed a gift limit of \$250 (which is now \$470) and restricted travel payments on state elected officers and officials who file financial disclosure statements (later extended in the mid-1990's to all state and local candidates for office, local elected officers and

local officials who file financial disclosure statements). Proposition 112 also strengthened laws prohibiting a candidate's personal use of campaign funds.

One-Year "Revolving Door"

In 1990, the legislature passed the Milton Marks Postgovernmental Employment Restrictions Act, which prohibits state elected officers and specified state agency officers and employees from being paid to represent another person before their former state agency for one year after leaving that agency. In 2005, a similar law was added applying to certain local officers.

Online Disclosure Act

In 1997, the Legislature passed the Online Disclosure Act. This and subsequent amendments to the Act required specified candidates and committees to file their campaign finance reports electronically beginning in 2000. This information is available on the Internet. The following entities that spend or receive \$25,000 or more are subject to the Online Disclosure Act: candidates for state elective office, committees supporting or opposing statewide ballot measures, general purpose committees and slate mailer organizations. Online disclosure was a significant step toward reform for two reasons. First, other types of campaign finance laws are sometimes not favored by the courts. Second, increased public access to campaign information will lead to a better informed electorate. The Online Disclosure Act also applies to state lobbyists, lobbying firms and lobbyist employers when they make certain expenditures totaling a \$2,500 or more in a calendar quarter.

Proposition 208

In 1997, the voters passed Proposition 208, which again placed limits on campaign contributions to candidates but also added voluntary spending limits and imposed other restrictions aimed at supporting the contribution limits scheme. Before the measure was fully implemented, the federal district court issued a preliminary injunction against its enforcement. (*California Pro-life Council Political Action Committee v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282). The court's preliminary injunction was upheld on appeal but the case was remanded for further proceedings by the trial court. Before the trial court could issue its ruling, the bulk of Proposition 208 was repealed by Proposition 34.

Proposition 34

In the summer of 2000, concerned with the continued uncertainty over the fate of Proposition 208, the Legislature voted to place Proposition 34 on the November 2000 ballot. It passed by 59.9% of the vote.

Proposition 34 limited the amount of contributions an individual could directly contribute to a candidate, expanded financial disclosure requirements, and prohibited contributions from lobbyists. It increased the maximum penalty for a violation of the 'Act' to increase from \$2,000 to \$5,000, and allowed for the creation of Independent Expenditure

Committees, which have been criticized as a way for individuals to circumvent contribution limits.

Ongoing Legislative Efforts

The Commission continues to pursue and support legislative efforts to better inform the public on the amounts and sources of campaign spending.