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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Silver, Commissioners Brandt, Ortiz, and Wilson

From: Dave Bainbridge, General Counsel, Legal Division
Karen Harrison, Senior Counsel, Legal Division

Subject: **Prenotice Discussion, Proposed Amendments to Regulation 18404.1,
Termination and Reopening of Committees Organized for Elective Office**

Date: May 2, 2025

Executive Summary

Regulation 18404.1 currently provides the mandatory termination timelines applicable to certain committees organized for elective office. It also provides the procedure for the terminated committee to request to reopen for good cause. Staff proposes substantive amendments to Regulation 18404.1's reopening process to address recent legislation and to reflect current Commission practices and procedures. Staff also proposes clarifying and consolidating amendments that are nonsubstantive. The proposed amendments are presented for prenotice discussion and will be presented to the Commission for adoption at a later hearing.

Reason for Proposed Regulatory Action

The proposed amendments to Regulation 18404.1's termination and reopening procedures address four issues. First, the amendments address recently enacted legislation¹ requiring the return or reimbursement for security expenses from committee funds on timelines that may occur after the candidate's or officeholder's requirement to terminate their controlled committees for elective office. Second, proposed amendments delete a procedure for accepting refunds without reopening that is inconsistent with the Secretary of State's policies and the anticipated the online filing and disclosure system, "CARS," procedures for campaign filings. Third, proposed amendments clarify the Commission's delegation to the Executive Director to consider requests for reopening, as well as consolidate the procedures, and update the list of recurring types of appropriate requests, including those involving returns or reimbursements for security expenses. Lastly, proposed amendments provide a reconsideration procedure for denied reopening requests that is consistent with current Commission reconsideration practices, which allow the Chair the discretion to bring the matter before the full Commission.

¹ Assembly Bill 2041, c. 372 of 2024, repealed and added Section 89517.5, Use of Campaign Funds for Security Expenses.

Background & Law

Requirements for Terminating Committees

Section 84214 provides that all committees and candidates shall terminate their filing obligations pursuant to regulations adopted by the Commission. These regulations must ensure that a committee or candidate terminating its filing obligations will have no activity that must be disclosed under the Act. To implement these provisions, the Commission adopted Regulations 18404 (termination procedures for major donor, independent expenditure, and recipient committees), 18404.1 (termination and reopening procedures for committees organized for elective office), and 18404.2 (administrative termination).

As background, under Regulation 18404, recipient committees do not have a mandatory termination date and may terminate once the committee no longer has activity, in that it has ceased receiving contributions and making expenditures; eliminated or has no ability to discharge its debts; has no surplus funds; and filed all its required campaign statements. (Regulation 18404 (b).) To terminate, the committee files a Statement of Organization declaring its termination in accordance with Section 84101(a).² However, as discussed below, more specific, mandatory timelines apply to committees formed for elective office.

Regulation 18404.1 – Termination Provisions for Committees for Elective Office

Regulation 18404.1 sets forth the termination timelines and procedures specific to committees formed for elective office. Initially, this regulation applied only to committees formed for a state elective office. As of 2021, it also applies to committees organized for a city or county elective office in a jurisdiction that has not passed its own contribution limits and is therefore subject to the state contribution limits in Section 85301(d).³

Termination of these committees must occur within 24 months of the committee having no “net debts outstanding”⁴ and the candidate is defeated, leaves office, the term of office for which the committee was formed ends, or, for a withdrawn candidate, the election occurs.

² Section 84101(a) requires the Statement of Organization to be filed with the Secretary of State and to file a copy with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.

³ See Section 85301 (a), (d) and Section 85702.5.

⁴ Under Section 85316(a), the above candidate committees formed for elective office may only solicit and accept contributions after an election to pay their “net debts outstanding,” subject to the applicable contribution limit for that election. “Net debts outstanding” is defined in substantially similar language in four regulations, Regulations 18531.6 and 18531.61, for state elective office committees before and after 2004, respectively, and Regulations 18531.63 and 18531.64, for local elective office committees in jurisdictions that have not passed their own contribution limits before and after 2021, respectively. “Net debts outstanding” means the total of a committee’s outstanding debts minus its assets. Committee “assets” include amounts owed to the committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectability of those credits, refunds, returns, or receivables. Outstanding assets as of 90 days after the election/leaving office date are treated as “surplus funds” that may only be used for specific purposes or donated to a nonprofit organization. (Section 89519.)

(Regulation 18404.1(a).)⁵ A committee may request an extension of time to terminate for good cause from the Executive Director. (Regulation 18404.1(e).)

With these mandatory termination requirements, the Commission put in place procedures for the Executive Director to reopen a committee for good cause. Reopening allows the committee to properly process and report transactions related to the campaign that were not anticipated at the time of termination, such as where a committee has an unanticipated refund or must pay for debts/expenses unknown at the time of termination. (Regulation 18404.1(g).) To assist the committees, this subdivision provides a list of circumstances where reopening is appropriate, and includes a catch-all, “for any other good cause” provision. (Regulation 18404.1(g)(2)-(5).) The Executive Director has identified additional recurring circumstances where there is good cause for reopening the committee to allow particular activity and reporting that would be helpful to add to the regulation.

The Executive Director has also identified a process that is not consistent with the Secretary of State’s policies or the anticipated online filing and disclosure, “CARS,” procedures, and needs to be removed from the reopening process provisions. Regulation 18404.1(g)(1)(A)-(C) currently states that a terminated committee may accept and transfer certain refunds (from a government entity or an unanticipated refund of less than \$10,000) without reopening. However, the Executive Director is aware that CARS will not accept campaign statements from terminated committees, and these procedures will not be usable. Accordingly, staff is recommending that these provisions and any references to them be removed from the regulation.

Regulation 18404.1(i) provides the timing and procedures for the request and reopening process. It also sets forth an appeal process if the request is denied. The appeal is to the “Chairman” for a final decision. (Regulation 18404.1(i)(1).) This language was adopted in 2004 to be consistent with an expedited appeal procedure in Regulation 18404.1 at that time, for requests for an extension of time to terminate.⁶ The extension request appeal process was originally adopted in 2001, when the Commission expected numerous requests for extensions while the committees adjusted to the mandatory termination process.⁷ However, there is no longer any appeal process for extension requests, nor is there an indication that this expedited process is needed for reopening reconsiderations. Additionally, the appeal process is not consistent with other reconsideration procedures adopted by the Commission, such as the process set forth in Regulations 18751, which allow for greater transparency and provide, if the Chair deems it warranted, consideration by the full Commission.⁸ Staff recommends that the reconsideration process be updated to be consistent with those provisions.

⁵ Regulation 18404.1 also requires the termination of any committees formed for local elections, where the candidate is elected concurrently to a state office or to a city and county office subject to the state contribution limits. (Regulation 18404.1(c).)

⁶ Adoption of Amendments to Termination of Committees Regulation 18404.1, Memorandum dated May 28, 2004, p. 6

⁷ Commission Meeting Minutes, October 11, 2001, p. 9.

⁸ For example, Regulation 18751 states:

Termination and Reopening Issues: New Section 89517.5

Recent legislation repealed and enacted a new Section 89517.5 in 2024 to expand the circumstances in which a committee may use campaign funds for personal security expenses. These expenses include the installation of a security system or purchase of security items to protect a candidate, officeholder, their immediate family member, or staff from threats arising from their candidacy or related to their elective office. Under this new law, a committee must receive the return or reimbursement for the security system or item by the recipient generally within one year of: the elected official leaving office, or the candidate no longer being a candidate for the office for which the security system or item was purchased. The return or reimbursement must be made sooner if the property for which the security system was purchased is sold. (Section 89517.5(c)(2)(A).) Under this timeline, the committee has an expectation that the funds will be reimbursed or items returned within a one-year time period that is well within the committee's 24-month termination requirements. However, Section 89517.5(c)(2)(B) provides a longer timeline where the threat continues and the secured property is still held. In this circumstance, the return or reimbursement to the committee may be extended to one year from the date the threat ceases – an indefinite date which may fall outside the committee's 24-month termination requirement.

Regulation 18404.1's provisions seek to ensure that the committee terminating its filing obligations will have no activity that must be disclosed under the Act, in keeping with Section 84214. The reopening procedures recognize that there are instances where a committee must receive or make a payment it did not anticipate at the time of termination. Section 89517.5(c)(2)(B), however, presents a situation where, due to a continuing threat, it may be more practical for the committee to terminate knowing it will have activity in the future, and then reopen when it is time to receive the return or reimbursement. Staff recommends that Regulation 18404.1 be amended to clarify the termination and reopening process for these committees.

Proposed Amendments to Regulation 18404.1

In order to address the issues discussed above, staff proposes the following amendments:

(f) Reconsideration. All exemption, extension, and denial letters issued will be posted on the Commission's website. Within 30 days of the date the letter is posted, any interested party may submit a request for reconsideration by the Commission. The Chair will consider the request and will schedule the matter for hearing before the Commission if, in the Chair's discretion, good cause exists for reconsideration.

As another example, Regulation 18740 states:

(b)(2): If the General Counsel determines that nondisclosure is justified under California or Federal law, the General Counsel will notify the Chair of the Commission. The Chair may:

- (A) approve the determination and direct the General Counsel to issue a final order of nondisclosure; or
- (B) request review of the General Counsel's determination by the full Commission and place the matter on the agenda for the next available Commission meeting.

1. A new subdivision (g) to address the committee termination and reopening requirements related to a security return or reimbursement issue. The amendments clarify that a committee subject to the 24-month mandatory termination in subdivision (a) or subdivision (c),⁹ that will receive the return or reimbursement within one year under Section 89517.5(c)(2)(A), must complete the activity prior to termination. Where the security threat will postpone the return or reimbursement until one year after the threat ceases under Section 89517.5(c)(2)(B), proposed language will clarify that the committee may terminate prior to the return or reimbursement and then request to be reopened at the time the return or reimbursement is due.

2. A revised and re-designated subdivision (h) to remove the refund procedure in conflict with the Secretary of State's policies and the anticipated CARS procedures that will not accept campaign filings from a terminated committee. The proposed amendments will also establish the Commission's delegation of authority to the Executive Director to approve a request and consolidate this procedure, which is currently in subdivisions (g) and (i). The proposed amendments provide a reconsideration procedure consistent with the Commission's procedure in other regulations. This language allows the Chair to bring a decision to the full Commission, at the Chair's discretion. Lastly, staff proposes amendments to the listed circumstances that are acceptable for reopening to include recurring circumstances for which past requests have been approved, as well as to include receiving the return or reimbursement for security systems or items under Section 89517.5.

Conclusion

Staff presents the proposed amendments to Regulation 18404.1 for the Commission's consideration. The proposed amendments to the termination and reopening procedures update and organize the language to address the recent security expense legislation; delete a procedure for accepting refunds that is inconsistent with the Secretary of State's policies and CARS requirements for campaign filings; clarify the Commission's delegation to the Executive Director to consider requests for reopening; and update the list of recurring types of appropriate requests as well as to include security returns or reimbursements. Lastly, proposed amendments for the reconsideration procedure are consistent with current Commission reconsideration practices in other circumstances to bring the matter to the full Commission at the Chair's discretion. The proposed amendments will provide clarity for committees subject to the mandatory termination provisions.

Attachment: Proposed Amendments to Regulation 18404.1

⁹ As noted in footnote 5, Regulation 18404.1 also requires the termination of any committees formed for local elections, where the candidate is elected concurrently to a state office or to a city and county office subject to the state contribution limits. (Regulation 18404.1(c).)