



(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, December 16, 2021
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Cardenas,
Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Angela Brereton, Chief of Enforcement
Christopher Burton, Assistant Chief of Enforcement
Dave Bainbridge, General Counsel
Loressa Hon, Chief of Administration
Erika Boyd, Senior Commission Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:01 AM.

1. Public Comment for Items not on Agenda

Hank Krzciuk, a resident of San Simeon, thanked the FPPC for the work that was done for the community. Mr. Krzciuk wanted clarification on whether a letter he submitted was distributed to the Commissioners. Mr. Krzciuk also pointed out to other violations that Mr. Grace may have had when discussed back in October Commission meeting, which included complaints from residents on Mr. Grace.

Steve Petzold, Santa Clarita, wanted to follow up on his idea of incentives for citizens and residents who assist the FPPC in the form of testimony or complaints on cases dealt by the FPPC. Chair Miadich stated that the Act doesn't provide the ability to take a percentage of the fine for citizens who violate FPPC regulation, and that Mr. Petzold should bring this topic up with his local legislator.

2. Approval of Commission Minutes

MOTION: To approve November 2021 Commission Meeting Minutes. Moved by Commissioner Wilson; seconded by Commissioner Baker. The motion passed 5-0.

3. Adoption of Proposed Form 409, Limited Liability Company (LLC) Statement of Members

Erika Boyd, Senior Commission Counsel, gave an overview of the proposed Form 409.

Commissioner Baker asked about educational material that will be updated, and if it will include video trainings as well as FAQ's. Ms. Boyd responded that since this is brand-new material, there will be an FAQ for the Form. Ms. Boyd also acknowledging that since this is a brand-new form, that Staff will continue to take in feedback about the form. Commissioner Baker asked about outreach to associations, such as State Bar committees. Chair Miadich stated that staff presented the extensive outreach efforts at the Public Outreach and Technology Committee.

MOTION: To adopt Form 409. Moved by Commissioner Wood; seconded by Commissioner Cardenas. The motion passed 5-0.

4. Mass Mailing Sent at Public Expense. In the Matter of County of Stanislaus; FPPC No. 17/325

Angela Brereton, Chief of Enforcement, presented the stipulation and stated that although this is a mass mailing case, it is not based on campaign material. It is for job recruitment advertisements and featured an official who was not running for re-election, which violates the Act.

Steve Petzold, Santa Clarita, stated it was surprising that it was a violation and saw it as an innocent mistake. Mr. Petzold continued that there was not one individual or government official who was found to be the culprit, since it was their job to remove the advertisements themselves. Mr. Petzold also believed the fine amount should be reduced since it would be on the taxpayers to pay the fines.

MOTION: To approve the stipulation and fines. Moved by Chair Miadich; seconded by Commissioner Wilson. The motion passed 5-0.

5. Enforcement Division Update

Ms. Brereton and Christopher Burton, Assistant Chief of Enforcement, gave a detailed report on the Enforcement Division including: an overview of the Division and its procedures, streamline program

update, preelection outreach programs, 2021 workload recap, and 2022 election year projections.

Chair Miadich discussed how the presentation was structured and instructed the Commissioners to ask questions in between sections.

Chair Miadich asked about the internal policy not to double count fines and Mr. Burton's specific comment that this is reserved for late filings and unintentional conduct. Mr. Burton responded in agreement that it is the cases that carry a lower degree of public harm.

Chair Miadich continued with this point and ask if there was clear evidence that a party was intentionally avoiding disclosure by not filing documents, would the Enforcement Division exercise discretion to not weigh in whether the party paid a fine at the local level since it is a more egregious act. Mr. Burton responded that it would be taken in a case-by-case basis.

Chair Miadich asked Ms. Brereton if a resident or someone from the public asks a Commissioner about a specific case that is being looked at by the Enforcement Division, are the appropriate steps to send them over to speak with the Enforcement Division to be consistent with Commissioner ethical obligations. Ms. Brereton responded that it would be the appropriate way to handle this situation to protect the Commissioners from any potential exposure to the substance of the issues.

Commissioner Wilson asked when it comes to a person being personally liable compared to a government entity being fined, if there are any factors that are considered when making that decision.

Ms. Brereton responded that whoever is paying the fine is not a criteria that is in the specified regulations, so it is not in consideration when determining the penalty. Ms. Brereton went on to say the size of the Committee is considered when determining the penalty. Commissioner Wilson asked if there are scenarios where someone is personally liable. Ms. Brereton stated yes, there are situations where the public official is the only respondent, like in Statement of Economic Interest violations.

Commissioner Wood inquired in the situation that Chair Miadich described, does putting the inquiry on the record cure the ethical obligations the Commissioners have. Dave Bainbridge, General Counsel, stated it is correct to put the inquiry on the record so that there is record that an attempt to

contact the Commissioner about a certain case handled by the Enforcement Division as stated in the Commissioner Code of Conduct.

Commissioner Baker asked about the figure that 28% of the Enforcement Team was lost in 2021, and how was it compared to the figures in 2020. Ms. Brereton stated that although she did not calculate the numbers for 2020, some of the numbers did span in 2020 & 2021. There is no one in the Enforcement Division that is currently out doing contract tracing.

Commissioner Baker further asked about other agencies and their fines, specifically with a criminal agency dealing with a case that has criminal penalties if it is handled differently by the Enforcement Division. Ms. Brereton responded that if there is a case where the case is being looked at for criminal penalties, there is a statute in which the Enforcement Division must defer to the criminal agency to pursue the criminal penalties, and the Enforcement Division will not pursue additional administrative penalties on those criminal activities. Ms. Brereton further clarified that the Enforcement Division must have an agreement since there isn't an automatic tolling of the administrative penalties.

Chair Miadich asked Ms. Brereton when the FPPC defers to the Attorney General's office for criminal prosecutions that are found in cases investigated by the FPPC, through the criminal proceedings there would be recognition of the violations of the act and future potential penalties. Ms. Brereton agreed that in plea deals not only would it recognize the criminal acts, but also penalties for the administrative acts that violated the Act. Ms. Brereton added the statute specifically precludes civil actions, not administrative actions, but the Division makes it practice to not pursue administrative actions at the same time.

Commissioner Baker discussed the Canciamilla case earlier in the year, where the respondent did pay fines to the FPPC but was also criminally prosecuted. Galena West, Executive Director, stated the case was an FPPC case first and was then taken up by the District Attorney for criminal procedures.

Commissioner Baker asked if there are impacts assessed with the team using the streamline program. Ms. Brereton stated she sees more streamline cases coming before her and they are much faster for her to process so she can guess they're much faster for staff which frees up more staff time.

Commissioner Baker asked if the 185 submissions to AdWatch this year was compared to the previous years and whether it signifies an upward trajectory or is flat. Mr. Burton responded that more details about these submissions are going to be discussed later in conjunction with the recall. However, Mr. Burton did mention in 2019 did not have AdWatch live, since it was taken down between elections.

Commissioner Baker also inquired about pre-election communications, and if the Enforcement Division try not to release what could be information on a case leading up to an election, so that the case does not impact the election. Ms. Brereton responded that the Division tries to work out the timing as much as possible before the election. Settlements, however, do take time and sometimes information cannot be released before the election. However, if there is a circumstance where the parties agree on the stipulations then the Division will release that information even if it is before the election.

Commissioner Baker wanted further clarification that a party who is on an election ballot within a certain timeframe is not a factor in when the Enforcement Division releases the information on a case to the public. Ms. Brereton responded that if it is an action concerning the election, if the case can be brought to a resolution before the election the Enforcement Division will do so. Ms. Brereton stated that the pre-election statements are due 16 days before the election so there are timing requirements that make the scenario where information about a case on a candidate released before the election very unlikely. Chair Miadich reiterates that the potential political ramifications of a finding by the Enforcement Division for violations have no factors on when the Division will release that information and that to consider political consequences would be inappropriate for the Enforcement Division.

Chair Miadich asked about the AdWatch numbers from 2021 since 40% were related to the state gubernatorial election and wanted to know what comprised the 60%. Mr. Burton responded those consist of special elections as well as submissions from elections that have transpired, specifically from 2020.

Chair Miadich also inquired the number of complaints and referrals, and what was unique about the year 2019 as it peaked compared to other years, with over 1950 referrals and 744 complaints. Ms. Brereton responded that in terms of the referrals the Division received many referrals from local filings officers that are seen as “bad referrals”, which are referrals that had incomplete or incorrect information. There was one county that sent hundreds of referrals to the FPPC, and most of them had challenges. In terms of complaints, the Disclose Act was a contributor to the number of complaints rising that year.

Commissioner Wilson asked when a case is filed anonymously if it is confidential to the staff of the Enforcement Division or if it anonymous across the board. Ms. Brereton stated that it is completely anonymous, and that the Enforcement Division does not know who the complainant is. This bring challenges because if the Enforcement Division has questions, and the complainant is anonymous, then no clarification can be done, which can lead to reject the complaint since no information can be gathered.

Commissioner Wilson inquired about the number of anonymous complaints. Ms. Brereton responded that she does not know the actual numbers from how much the anonymous complaints make up the overall number of complaints. There are more sworn and non-sworn complaints than there are anonymous complaints.

Commissioner Baker asked why the AdWatch program gets turned off using the example of a school district using public money for an advertisement. Chair Miadich stated the AdWatch historically was turned off but that has been changed and AdWatch will stay on going forward.

Commissioner Baker inquired about how many cases fit into the category of not violating the act at all and what cases are not even in the jurisdiction of the FPPC. Ms. Brereton responded that is one of the very common reasons why a complaint is rejected, although there aren't exact numbers to show this. The intake staff reviews every complaint, and their review occurs immediately, so whenever cases do not violate the act, it is quicker to reject it.

Commissioner Baker inquired if it is possible to do so either quarterly or monthly updates to provide how many cases are at a certain age. Chair Miadich responded since there are new procedures in the Enforcement Division to track workload and other topics, a mid-year report and then an updated annual report makes the most sense in terms of efficiency. Ms. Brereton agrees with the timing but will need to investigate whether it is information that can be gathered efficiently. Although the database is great, there are some limitations, and some calculations are done manually, and she needs to review if there are sufficient resources to accomplish the calculations that is being discussed by the Commissioners.

Commissioner Baker inquired if there are mechanisms in place to track when a statute of limitation is about to expire. Ms. Brereton replied that the Enforcement Division keeps track of the statute of limitations as best as possible with the information available. Once the reasonable statute of limitations is identified, it is tracked by the Enforcement Division. Ms. Brereton also stated that the case load is very high right now, with an attorney having around 95 cases. So, there may be a chance where the statute of limitations expires, but it is very rare. Commissioner Baker asked if there are any additional tools for the Enforcement Division to have to assist with the workload. Ms. Brereton responded that she would not want to answer that question without going through the streamline program with an election year coming up.

Commissioner Baker asked about what the Diversion Program is and for whom it is appropriate for. Ms. Brereton responded that people, candidates, and committees who qualify for a streamlined

penalty and it's their first-time offense will qualify to participate in the Diversion Program, which is essentially a training program.

6. Executive Staff Reports

Dave Bainbridge, General Counsel, gave an update on the pending litigation.

Galena West, Executive Director, reported that early next year the Commission will get a briefing on the Diversion Program and its progress.

7. Commissioner Comments and Proposed Future Agenda Items

Commissioner Baker requested an update on age tracking of cases at either the January or February Commission meeting, if reasonable.

MOTION: To Adjourn Meeting. Moved by Commissioner Wilson, seconded by Commissioner Baker. The motion passed 5-0.

Meeting Adjourned 11:57 AM

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved February 7, 2022

Richard C. Miadich, Chair
Fair Political Practices Commission