

**To: Galena West-FPPC Executive Director**

**From: FPPC Special Investigators-ENF**

**Date: 11/30/2022**

**RE: Response to November 17, 2022 FPPC Agenda Item #13 Enforcement Policy Goals for consideration and adoption**

 **Proposed Regulation Projects for 2023**

**13. Enforcement Policy Goals.** Staff: Richard Miadich, FPPC Chair. Over the last several years, the Political Reform Act has been amended in ways that increase the complexity of its requirements for committees and candidates. This has contributed to an increase in the amount of time it takes to investigate and prosecute violations of the Act. To improve the timely resolution of enforcement matters, policy guidelines are being proposed for consideration and adoption by the Commission.

**Enforcement Policy Goals**

**Proposed Enforcement Policy Goals (FPPC Agenda Item #13 Enforcement Policy Goals for consideration and adoption):**

It is the goal of the Enforcement Division to complete investigations and prosecutions of alleged violations of the Act quickly and efficiently. In general, the Enforcement Division should endeavor to complete an investigation and, when warranted, prosecution of a violation within two years of the case being opened, except where circumstances clearly indicate a reason for a longer period of time.

**Analysis of Proposed Policy/Regulation Guidelines-by the FPPC Special Investigators:**

The 2-year completion date with exceptions for cases which require longer periods is assuming implementation at a zero caseload. The proposed FPPC Enforcement Policy Goals do not contain language which takes into account how existing cases would be factored into the 2-year timeline. In addition, the proposed policies goals do not contain language for what happens if the new standards are not met. There is no clear expectation for staff should we fail to meet these standards, nor whether discipline will follow if our cases have to be re-assigned. The FPPC Special Investigators are not opposed to target deadlines but implementation of such without addressing the existing caseloads of the Special Investigators and factoring that into the deadlines, is remiss.

In addition, the language allows staff members success to be dependent upon other staff, as cases are worked by both investigators and attorneys who complete two different functions and have different duty statements. There is no language that specifies what happens if another staff member causes a case to fall outside of a 2-year completion date, and how performance would be separated, which would be very difficult to do considering we are all working on different cases at any given time.

Another variable is that case volume is not fixed and can fluctuate during the year, election cycles, and during proactive assignments. There is no language that reflects accommodations for assigned special projects that take time away from case investigation such as AdWatch, pre-election case priorities,

laundering cases requiring travel, skip traces, SSN Project for non-filers, Collection Skip Traces, etc. Cases worked jointly with local ethics agency and/or law enforcement are not addressed and they take a considerable amount of time to successfully investigate and prosecute. These cases that usually involve public officials, are vital in fostering the public's trust in our political system.

There is also no language to account for staff turnover, which directly affects investigator case load as existing cases have to be reassigned when a staff member leaves. In addition, there is no language to account for the learning curve for new staff or take into consideration for the senior staff who are mentoring newer staff. This also affects workload productivity.

The Commission could be voting in policy that not only sets every investigator up for potential failure, but also allows leadership to add disciplinary action as a result.

#### **Issues that Impede Quick Case Resolutions:**

- It was noted that the Enforcement Division has increased staffing within the last several years and is at its highest staffing level. However, the Enforcement Division has lost ALL Program Specialists who handled complex bank record reconciliations and financial analysis. This task is now handled by the Special Investigators that perform general bank and financial analysis in lieu of the multifaceted approach taken by an Auditor who possesses formal training, education in accounting, and/or a background in auditing. Despite the noted increased staffing, and Special Investigators resolving a record number of cases last year, the case load of a Special Investigator has more than doubled in the last five years.
- Increased levels of review at various stages prior to case resolution and evolving priorities directed from the Commission. Many times these cases are then kicked back to attorneys and investigators for more work.
- An exponential increase in caseload negatively affects case resolution when you hit the point of saturation. This appears to have happened in 2019 or so.
- It has been pointed out that Mainline case resolutions had severely dropped in 2022 however then stated the Streamline program was supposed to allow for an increase in case resolution and closure. Streamline is not necessarily efficient and most, if not all, streamline cases still undergo a full investigation by the Special Investigator. The Streamline Program also pulls cases that otherwise would have been a Mainline case which reduces the number of Mainline cases reviewed by the Commission.
- The length of time it takes for the Special Investigators to receive records they have requested from the respondents. Issuance of a subpoena is then required which can be a lengthy process, from issuance to the obtaining of records.
- Accepting of 1090 cases, which requires extensive review, investigation, and coordination with District Attorney Offices.

**Proposed by the FPPC Special Investigators:**

Going forward, the timely resolution of enforcement matters is not just solved by creating deadlines. The potential solution is a comprehensive approach to addressing policies, workflow, autonomy, inventory, and staffing to create an environment where the deadlines are appropriate and achievable. Then performance issues can be justly applied.

The current caseload of the Special Investigators, and how the FPPC Enforcement Policy Goals will be applicable, needs to be addressed prior to adoption. Most investigators have 40-50 active cases. The existing backlog of Intake cases currently being held, needs to be looked at because once these complaints become cases, the SI caseloads will grow exponentially.

Add to the Enforcement staff a full-time auditor to handle complex financial cases and complete bank reconciliations for the Special Investigators which would greatly free up their time, allowing them to focus on their caseloads.

Apply less constraints on subpoena issuance (since Voluntary Compliance productions is taken less seriously and may cause delays and marginal production).

Remove 1090 case responsibility – It took 6 years to complete a case with a violation of 1090. The considerable number of resources and lack of return were never evaluated. Also, this is the only type of case we handle outside of “administrative” handling. We probably need one attorney and a support team member, just for those specialized cases.

Enact an amnesty program to close old cases that have low public harm, or minor violations of the Act.

Failure to meet the set deadlines needs to be addressed and spelled out, as to the ramifications of failing to meet said deadlines, **prior to adoption** of the proposed FPPC Enforcement Policy Goals.

Our Union, the California State Law Enforcement Association (<https://cslea.com/>) needs to be included in the discussions relating to the proposed FPPC Enforcement Policy Goals.

The Special Investigators of the FPPC are open to discussions with the Commissioners prior to the consideration and proposed adoption of the Enforcement Policy Goals. We are not adverse to accountability and deadlines, however a comprehensive review with input from front line employees would be the most appropriate approach to improve efficiency. Implementing blanket deadlines to 30 to 40 cases at a time is not realistic or manageable. Management setting deadlines, and timelines, for 5-6 cases for each Special Investigator, is feasible, but applying the new policy goals to an existing caseload of 50 or more, is inequitable, and not practical.

**Signed:**

**The FPPC Special Investigators:**

George Aradi, Ann Flaherty, Jay Gehres, Kaitlin Osborn, Katelin Angeloni, Kristin Hamilton, Lance Hachigian, Paul Rasey, Roone Petersen, and Alethea Perez