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Catharine Baker, Vice Chair  
E. Dotson Wilson, Commissioner  
Abby Wood, Commissioner  
Dr. José A. Gómez, Ph.D., Commissioner  
Galena West, Executive Director  
Angela Brereton, Chief of Enforcement  
Christopher Burton, Assistant Chief of Enforcement

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**Enforcement Attorney Input re: the Chair's Recent Enforcement Policy Goals Proposal**

From time to time, the Commission receives public comments at its meetings. These comments almost never come from members of FPPC staff. Yet on the date of the November 2022 election, at a meeting of the FPPC Law and Policy Committee, the Chair presented a proposal, on short notice, entitled “Enforcement Policy Goals” (the EPG proposal)—and seven staff members spoke out in opposition. (See agenda item 3 [here](#), which includes a link to a [comment letter from Special Investigator George Aradi](#)—and a link to [digital comments from five other staff members](#). Also, see the spoken comments from a seventh member of Enforcement Division staff [here](#).)

Two days after that meeting, ten FPPC Special Investigators submitted a joint letter to the Chief of Enforcement, further criticizing the proposal in question.

Less than two weeks later, the LA Times published an article entitled “[California political ethics watchdog is losing its bite](#).” The article included links to the EPG proposal and to the above-noted staff comments. One staffer was quoted as saying: “Our case loads are unrealistic, and complaints vary anywhere from incorrect advertisement font size to full financial review/audit.”

During the Enforcement Division’s meeting on December 1, 2022, Chief Brereton invited staff to meet with Executive Director West about this matter and/or submit written comment. This letter is submitted directly to Executive Director West, Chief Brereton, and Assistant Chief Burton. **Request is made that the Executive Director please forward an electronic copy of this letter to the FPPC Chair, Vice Chair, and Commissioners.** (Recently, the Chair indicated that he intends to re-visit his proposal at the January 2023 Commission meeting. It is unclear if this will be considered as pre-notice or adopted as a policy at that time. As such, it is imperative that this letter is shared with the Commission prior to a decision.)

### **Enforcement Attorneys' Observations and Concerns**

Under the current system of rules, without aggressive and decisive roll back of red tape, no amount of working hours—nor any policy requiring attorneys to touch a case every so many days—will resolve the backlog. However, the Enforcement attorneys are very motivated to resolve the backlog. Respectfully, the following concerns and observations are submitted for your consideration:

1. Currently, about one-half of Enforcement's attorneys have been with the agency for less than two years, and one-half of those individuals less than one year. This leaves the more experienced attorneys to share most of the more time-consuming and difficult cases to resolve, including cases involving Section 1090, conflicts of interest, campaign money laundering, personal use of campaign funds, false reporting of coordinated activity as "independent expenditures," etc.
2. In the last few years, multiple attorneys left Enforcement with cases in various stages/conditions. Such cases are then transferred to current staff. In many cases, newly-assigned staff must drop their current priorities to handle the reassigned cases, either due to issues with the statute of limitations (SOL)—or direction from management to treat certain cases as high priority. This is a recurring theme in Enforcement, where the attorneys are required to halt one focus and focus on more pressing priorities. (It should be noted that many SOL issues are not connected to the date when a case is received/opened. It is not uncommon for a brand new case to refer to alleged violations that occurred years ago. Thus, it is a better practice to prioritize cases based on the age of the potential violations—not based on the case number.)
3. It is more difficult for Enforcement attorneys to close cases when higher priority items are added to the attorney workload—such as pro-active pre-election efforts, AdWatch duties, ADA remediation of documents, attorney duties under the California Public Records Act, legal analysis to help intake staff, trainings, etc. This was particularly relevant this year. Pre-election efforts and AdWatch are good things, but they are a luxury we cannot afford right now, given the size of the case backlog.
4. Old cases are more difficult to close. Often, the involved parties are mad at the age of such cases, evidence goes stale, and/or there are legal issues/problems with such cases (hence the reason such cases remain open in the first place).
5. While the EPG proposal places the burden of resolving Enforcement's case backlog on staff, this will not be successful with the current system of red tape and large caseloads.

### **Suggestions and Proposed Solutions**

6. To help catch up, for all cases involving violations that occurred three or more years ago—where no probable cause report has been issued—recommend issuing closure letters as to these old violations due to "insufficient resources and the age of the alleged violations."
7. Before sending out settlement offers, probable cause papers, and similar documents, Enforcement attorneys first must submit their documents for review and approval. Under

current rules, each document first must be submitted to the case investigator for formal review and approval in Salesforce, our paperless, electronic case management system. Next, the document must be submitted to an assigned colleague in Salesforce for peer review (which can be time-consuming for the peer reviewer, and which delays moving the document to the next level of review). After this, most attorneys must submit their document for review to the Assistant Chief of Enforcement in Salesforce. Then, the document must be submitted to the Chief of Enforcement in Salesforce. The Assistant Chief and the Chief may require the document to be resubmitted with changes before granting approval for the document to go to the next stage/level of review. Most attorney documents may not be issued or sent out without going through each of these layers of review, which can take a very long time. Often, it takes weeks or months, to get final approval, especially since the layers of review are serial—not concurrent. Less layers of review and shorter turnaround times would help the attorneys move cases much more quickly. (That said, an attorney should always have the option of requesting peer review from a colleague on an optional, as-needed basis.)

8. In 2016, the FPPC replaced all of its paper case files with Salesforce. Later, this turned out to be pretty nice for remote working (since all files became accessible electronically), but there are a lot of user complaints about Salesforce. For example, if your case has 30 files in it that you want to review, you must click through multiple screens/links for each file that you want to download. If you want to upload multiple files to Salesforce, they must be uploaded separately. There should be a way to download all of the files with a single click, but there is not. There should be drag-and-drop functionality to easily upload several files to Salesforce at once, but there is not. Additionally, complaints in Salesforce are confusing and difficult to decipher. For instance, if a complaint refers to attachments, there are times when the attachment will not be visible to a user. Attorneys who review complaints spend time searching for these attachments, but recently, we realized that if a user does not have certain permissions, the attachments cannot be seen, even though they exist. This leads the reviewer to believe there is no attachment when there is an attachment. These are just some of the examples of problems with Salesforce. It is not an easy program to use. It is slow, cumbersome, and sometimes, downright tedious—especially when trying to close a case (where attorneys are required to use a poorly designed user interface to enter data for all of the violations and purge certain files, which sometimes, the attorneys do not have user permissions to delete). Recommend either fixing the issues with Salesforce or getting a program that will function in a way that is helpful in moving cases.
9. For all documents that may be posted online, Enforcement attorneys are required to go through a process known as ADA remediation to make our documents accessible. Recommend shifting the burden of ADA remediation from attorneys to support staff.
10. Opening new cases that already have old violations—which require immediate prioritization—is disruptive to other priorities. Recommend a policy in favor of not opening new investigations into old allegations, when there is not enough time to complete an investigation and probable cause report before the SOL runs.
11. For cases that cannot be reduced sufficiently for settlement, even when an opposing party wants to settle, we need to have a mechanism to charge some counts and not others under streamline to avoid administrative hearings for cases where the only hold up is about a

portion of the penalty. Along these lines, more discretion should be given to the Chief of Enforcement to resolve cases as streamline stipulations and/or with case closure letters, such as warning letters, advisory letters, and no action closure letters. The current streamline rules are too rigid, unless the Chief of Enforcement is allowed to exercise more discretion.

### **Additional Concerns and Questions**

12. The EPG proposal would set deadlines for almost every single activity that is carried out by Enforcement staff. Upon what data are these deadlines based, in order to avoid being arbitrary creations? Will this policy contemplate the size of caseloads for each attorney or have a cap on the amount of cases that can be assigned to one person? How will the deadlines assist Enforcement? How will these deadlines be tracked? Who will track these deadlines? How is it possible for Enforcement staff to comply with such deadlines, given the size of Enforcement's backlog? How do you know such deadlines will not make the problem worse?
13. If the deadlines say that a case needs to be closed—what happens if the case is not ready to be closed? What happens if the case attorney feels more investigation is needed? This presents issues involving due diligence and attorney ethics. If an attorney is directed to close a case with a letter instead of an Enforcement penalty—will the attorney be allowed to prepare the letter for management's signature if the attorney disagrees with one or more statements in the letter? What if the attorney feels a diligent, proper investigation was not conducted/finished, but the letter suggests otherwise?
14. What happens if the deadlines are not met? This would seem to be inextricable from employee performance and annual reviews regarding productivity. Will the FPPC be negotiating with the Enforcement attorneys' union?
15. Since Salesforce was adopted by Enforcement in 2016, has any report or study ever been done to determine the average turnaround time for attorney documents that are submitted for peer review and supervisor review?
16. Chief discretion/authority and nature of cases – We need to be able to close small violations, old cases, or cases without sufficient evidence with Chief discretion. More egregious and intentional violations should be prioritized, and small violations should be closed (without attorney involvement, if possible). Unprecedented cases from the 2022 election *will compound the backlog*. There were an unprecedented number of complaints last month during the November 2022 election, which will result in a large number of cases opened. On the heels of the backlog, this will only overwhelm an already overwhelmed Enforcement staff. If there is not a fast-paced plan to provide wide Chief discretion to move appropriate cases to closure, this will compound the problem. There are no amount of hours in the day to resolve the current number of cases open.

### **Concurring Comments of Senior Enforcement Attorneys Castillo and Bucknell**

We concur with the above comments and would like to add some of our own. We are the last two rank-and-file Enforcement attorneys who were hired before Gary Winuk served as Chief of Enforcement. Some of our comments are observations about the history of Enforcement's case

backlog, including what worked in the past to control the backlog—and how the current backlog came to be.

The EPG proposal aims to “improve the timely resolution of enforcement matters,” noting that: “Over the last several years, the Political Reform Act has been amended in ways that increase the complexity of its requirements. . . . This has contributed to an increase in the amount of time it takes to investigate and prosecute violations. . . .” (Quotes are from the first paragraph of the full proposal [here](#), as presented on the agenda for the November 8, 2022 meeting of the Law and Policy Committee.)

This language suggests that Enforcement's current backlog of cases was caused, in substantial part, by the California State Legislature—which amended the Political Reform Act, thereby increasing our workload without providing a corresponding increase to our funding and staffing. We do not dispute that more funding and staffing would be very helpful—especially since the jurisdiction of the FPPC covers the entire State of California—but the above-quoted language ignores many important reasons why Enforcement's case backlog is so enormous.

The backlog has been an issue for at least 20 years. Previous attempts at solving the problem included case closures *en masse* due to “insufficient resources,” but this only treated the symptom—not the cause—so the backlog returned. (Years ago, there was evidence of these mass closures in old case files and records.)

One Enforcement Chief, Gary Winuk, did have success at maintaining a low backlog. His success can be attributed to rolling back red tape, keeping attorneys focused on more egregious violations of the Act, as a high priority—and using other staff (including law clerks), under the Chief's supervision, to handle many of the lesser violations (often involving filing/reporting) that otherwise would bog down the attorneys.

Winuk resigned as Chief of Enforcement in February 2015. (Source: Courthouse News Service, article of 2/4/15 entitled, “[FPPC Head of Enforcement Steps Down](#).”)

Galena West became the new Chief, inheriting “469 cases in various stages of resolution.” (Source: [Enforcement Division's Monthly Report of 3/4/15](#), p. 1.)

During the first five years of West's tenure as Chief of Enforcement, Enforcement's case backlog nearly *quadrupled*. (See [FPPC Executive Staff Report of 2/20/20](#), p. 2, reflecting that as of February 2020, right *before* COVID, the backlog had grown from 469 cases to “1,791 cases in various stages of resolution.”)

Enforcement never recovered from this, and COVID did not help. Without a system to close a massive amount of cases in a short period of time, and policies to move a similar amount of cases that are opened annually, this backlog will persist. We are concerned that the stated goals of the EPG proposal are not achievable under current conditions.

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The last paragraph of the above-noted [LA Times article](#) closes with a very important point:

It shouldn't be so hard for the commission and its staff to figure this out. The panel has existed since the 1970s, with effectiveness waxing and waning over time. Look back at what worked in the past [when the backlog was only 469 cases under Chief Winuk] and make it work again. California needs a strong political ethics regulator to hold officials and candidates accountable. The watchdog may not bite every time, but voters should at least hear it bark.

Has any study ever been done to determine what policies were employed by former Chief Winuk to handle the case backlog—that could be implemented today?

Respectfully, the following observations, suggestions, and proposed solutions are submitted for your consideration, in addition to those outlined above:

17. Enforcement attorneys use various types of documents to move cases forward, including requests for settlement authority, settlement offers, probable cause papers, accusations, memos re: case closure without action, streamline evaluations, case closure letters, etc. However, each of these documents must go through a lengthy review process that includes investigator review, peer review by an assigned colleague, and in most cases, two layers of supervisor review (first with the Assistant Chief of Enforcement, then with the Chief). This is discussed in more detail above. Often, it takes weeks or months, to get final approval.
18. Under Chief Winuk, the first layer of review by the case investigator was informal and could be done on an as-needed basis via email. (It was not required to be done through Salesforce, which was not in use back then.) More importantly: there was no peer review; Chief Winuk made himself the *only* layer of supervisor review; and he followed a stated policy of clearing out his inbox by the *end of each day*. This resulted in attorneys getting their documents back with approval, direction, and feedback *very* quickly—usually within 24 hours. Recommend going back to what worked before, which will help the attorneys build momentum on their cases—and resolve them much more quickly.
19. Currently, each staff member must spend a portion of the workday drafting and submitting a report (known as a daily work log), to that employee's supervisor. The report tracks and itemizes all cases and activities upon which the employee worked that day, down to the nearest quarter-hour. At the beginning or end of each workday, the report must be submitted to that employee's supervisor via email. It is unclear if management is entering the data that gets collected into a database. (If not, the usefulness of the daily reports seems questionable.)
20. Before Chief Winuk, Enforcement attorneys were required to enter information into a database about how they spent their time, on a weekly basis. Chief Winuk eliminated this requirement, almost immediately after starting. As he put it, the time required for each employee to track that information was better spent on moving cases. Recommend returning to this policy, where the focus was on moving cases—rather than tracking time about how cases are moved.

21. Subpoenas help move cases. They are a means to help discover the truth, finish investigations, and achieve settlement. According to the attorney manual, when an investigator wants to issue a subpoena, the investigator must put a "need by" date that is at least six working days in the future, in order to allow time for review by the case attorney, Chief of Enforcement, and the Executive Director (who signs Enforcement's subpoenas). However, investigators have recounted that the turnaround time to get subpoenas signed is closer to two or three weeks. The public would be better served by a shorter turnaround time. Recommend a policy change in favor of something closer to a 24-hour turnaround for personal appearance subpoenas that do not include requests for documents—or two business days for subpoenas that do include requests for documents.

Thank you for the opportunity to present all of our comments. We hope they are helpful, and as noted above, we are very motivated to resolve Enforcement's backlog.