

Item 7 - Enforcement Report



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TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
Alex Van Buskirk, Ethics Analyst
DATE: November 26, 2024
RE: Enforcement Program Report for the December 11, 2024, PEC Meeting

Since the last Enforcement Unit Program Update submitted to the Commission on September 27, 2024, Commission staff received two formal (sworn) complaints, nine informal (unsworn) complaints, and initiated one pro-active (sworn) complaint. In the same period of time, Commission staff dismissed three formal complaints and three informal complaints without opening an investigation. Six informal complaints are awaiting a determination as to whether to reject or escalate them.¹

The following complaints or cases have been resolved or submitted to the Commission:

1. **In the Matter of Joselyn Jones (PEC # 24-23).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC. The complainant has alleged misconduct by Alameda County personnel who are not subject to the PEC's jurisdiction.
2. **In the Brad Seligman (PEC # 24-24).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC. The complainant has alleged misconduct by Alameda County personnel who are not subject to the PEC's jurisdiction.
3. **In the Matter of Russell Atkinson and David Velez (PEC # 24-29).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC. The complainant brought a performance-based complaint against City personnel but no allegation of an ethics violation. The PEC does not regulate employee performance.

¹ Reasons for a delay in making this determination can include the need to contact the complainant and/or do further research in order to clarify the allegation(s) being made, and/or a decision to prioritize other matters that appear to be more time-sensitive or of greater public interest.

This brings the total Enforcement caseload to one-hundred and forty-one (141) open complaints or cases.

Enforcement's current budgeted staffing is: one (1) Enforcement Chief and one (1) Investigator. As of October 9, 2024, the Enforcement Chief position is vacant. Whitney Barazoto, the PEC's former Executive Director, was brought on as a consultant to assist the PEC in the interim on enforcement matters, with additional support from Ethics Analyst Alex Van Buskirk, who is also managing the PEC's compliance and disclosure program responsibilities. In addition, the PEC has requested additional support from the City Attorney's Office with the PEC's pending administrative hearing and in assisting with the preliminary review of some complaints.

Overview of the Enforcement Process



The PEC's Enforcement Unit investigates and, where appropriate, administratively prosecutes alleged violations of the City's ethics, campaign finance, lobbying, and related laws. Violations can result in the issuance of a monetary fine, a warning letter, or some other remedy to ensure compliance with the law (e.g. a diversion agreement or injunction). Some violations can also be referred to the District Attorney for criminal prosecution.

Enforcement matters begin with a complaint. "Formal" complaints are submitted on the PEC's official complaint form and are signed under penalty of perjury. "Informal" complaints are received in any other manner (e.g. via e-mail, a phone call, etc.) and are not signed under penalty of perjury. By law, the Enforcement Unit must review all formal complaints and report to the Commission at one of its public meetings whether or not it has decided to open an investigation into a formal complaint. By contrast, Enforcement has the discretion not to review an informal complaint and does not have to report rejected informal complaints to the Commission. Commission staff may also initiate its own "pro-active" complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called "Preliminary Review," in which Enforcement determines whether there are sufficient legal and evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. Enforcement will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If Enforcement chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. Generally, all proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.²

If Enforcement is unable to settle a case within a reasonable time (typically sixty days) or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that Enforcement wishes to prosecute, as well as supporting evidence. A majority of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in Enforcement’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings

² Under the Commission’s Complaint Procedures, some lower-level violations eligible for streamlined resolution process may be settled by the Executive Director.

whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

The Enforcement Unit's full Complaint Procedures and Penalty Guidelines can be found on our website.

Appendix: Current Caseload by Violation Type

The table below breaks down the precise types of violations currently involved in Enforcement’s open complaints or cases. Note that the total number below is higher than the PEC’s total number of complaints or cases, since one complaint/case can involve multiple types of violations.

Sum of Count	On Hold	Intake	Preliminary Review	Investigation	Legal Analysis	Seeking Settlement	Administrative Hearing	Grand Total
Campaign Finance	17	1	6	21	4	31	1	81
Campaign Using Multiple Bank Accounts	1			1				2
City Contractor Making Campaign Contribution	4			2		2	1	9
Coordination Between Candidate And "Independent" Campaign			2	1		2		5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")	1		1	2		2		6
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	3		2	5	2	8		20
Late Filing Of Campaign Finance Report	3	1		7		5		16
Making/Receiving Campaign Contribution Over The Legal Limit	1			1	1	4		7
Misuse Of Campaign Funds For Personal Purposes	1					1		2
Inaccurate or Missing Disclaimer On Campaign Ad	2		1	1	1	7		12
Government Ethics	30	12	27	47	2	6	1	125
Bribery	2		2	2			1	7
Financial Conflict Of Interest		3	4					7
Holding Incompatible Public Offices			1		1			2
Inaccurate Reporting On Financial Disclosure Form 700	2		4					6
Late or Non-Filing Of Financial Disclosure Form 700	1	1		38		6		46
Misusing Official Powers For Private Gain (Coercion/Inducement)	16	4	6	5				31
Misuse Of City Resources For Personal Or Campaign Purposes	7	1	2	2				12
Receiving An Improper Gift Based On Amount	1		3					4
Receiving An Improper Gift Based On Source	1		1					2
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")			1		1			2
Awarding City Contract To Oneself ("Self-Dealing")		1	1					2
Leak Of Confidential Info			1					1
Council Member Interfering In City Administration		1						1
Awarding City Job Or Contract To Family Member		1	1					2
Lobbyists				1			1	2
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
Late Filing Of A Lobbyist Activity Report				1				1
Miscellaneous	3		4	2	1	3	1	14
Failure To Produce Records To Police Commission Investigators	1				1			1
Lying Or Providing False Information To PEC Investigators	1				1	3	1	6
Misuse Of City Event Tickets	1							1
Retaliation Against Ethics Whistleblower			4	2				6
Commissioner Misconduct				1				1
Open Meetings & Public Records	6		2	1				9
Failure To Produce Public Records Or Information	2		1	1				4
Failure To Properly Agendize Or Follow Meeting Agenda	4		1					5