

Item 8 - Enforcement Report



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TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: March 26, 2024
RE: Enforcement Program Report for the April 10, 2024, PEC Meeting

This memo discusses the Enforcement Program's staffing, caseload, and other programmatic developments since the last Enforcement Report (submitted on February 29, 2024).

Temporary Investigator Transitions to Filing Officer Duty

Our newest, limited-term Investigator, Alex Van Buskirk, has accepted a longer-term position with the PEC as an Ethics Analyst handling filer officer duties. While this means Alex will no longer be working full-time as an Enforcement staffer, we are very pleased that he has been able to find a longer-term position within the PEC. He will also continue to interact with the Enforcement Unit as we more closely coordinate the filing officer duties (which include tracking and notifying late-filers of campaign and lobbyist reports) with Enforcement's efforts. Alex's primary responsibility will be as filing officer, but he is willing to continue assisting Enforcement with investigative tasks on ad hoc basis.

Meanwhile, Enforcement's investigative staff is now down to one full-time, permanent Investigator (who only started their position in December and is therefore still learning our laws and procedures). As shared in previous reports, we urgently need more investigative staff if we are to keep pace with incoming complaints, resolve outstanding matters, and give the more complex cases on our docket the attention they require.

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. All proposed

settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

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 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.

Current Enforcement Caseload

Since the last Enforcement Unit Program Update submitted to the Commission on February 29, 2024, Commission staff:

- received twelve informal (unsworn) complaints, of which ten were rejected and two are awaiting a determination as to whether to reject or escalate them¹; and
- filed three proactive (staff-generated) complaints, of which all three were assigned complaint numbers and escalated to the preliminary review phase.

In the same period of time, Commission staff:

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.

- opened one complaint for a full investigation following preliminary review; and
- initiated settlement negotiations in one case.

This brings the total Enforcement caseload to eighty-nine (89) open complaints or cases: fifteen (15) matters in the intake or preliminary review stage, fourteen (14) matters under active investigation, two (2) matters under post-investigation legal analysis, seven (7) matters in settlement negotiations, and two (2) matters awaiting an administrative hearing. The remaining fifty-one (49) matters are on hold pending additional staff resources and training (55% of the total).

Enforcement's current staffing is: one (1) Enforcement Chief, one (1) permanent full-time Investigator, and two (2) temporary part-time Law Clerks.

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 our number of total cases, since one 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	22		7	11	2	16	1	59
Campaign Using Multiple Bank Accounts	1			1				2
City Contractor Making Campaign Contribution	5			2		2	1	10
Coordination Between Candidate And "Independent" Campaign			2	1		2		5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")	1		1	1		1		4
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	5		2	1	1	4		13
Late Filing Of Campaign Finance Report	4		1	2				7
Making/Receiving Campaign Contribution Over The Legal Limit	1			1	1	3		6
Misuse Of Campaign Funds For Personal Purposes	1					1		2
Inaccurate or Missing Disclaimer On Campaign Ad	3		1	1		3		8
Government Ethics	41	5	21	14	2	1	2	86
Bribery	2		3	1		1	1	8
Financial Conflict Of Interest	2	1	2		1			6
Holding Incompatible Public Offices			1					1
Inaccurate Reporting On Financial Disclosure Form 700	2		3					5
Late or Non-Filing Of Financial Disclosure Form 700	1			8				9
Misuing Official Powers For Private Gain (Coercion/Inducement)	20	1	5	3			1	30
Misuse Of City Resources For Personal Or Campaign Purposes	9			2	1			12
Receiving An Improper Gift Based On Amount	1		4					5
Receiving An Improper Gift Based On Source	2		1					3
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")	1							1
Awarding City Contract To Oneself ("Self-Dealing")	1	1	1					3
Leak Of Confidential Info			1					1
Councilmember Interfering In City administration		1						1
Awarding City Job Or Contract To Family Member		1						1
Lobbyists							1	1
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
Miscellaneous	5		3		1	3		12
Failure To Produce Records To Police Commission Investigators	1							1
Lying Or Providing False Information To PEC Investigators	1				1	3		5
Misuse Of City Event Tickets	1							1
Retaliation Against Ethics Whistleblower	2		3					5
Open Meetings & Public Records	8			1				9
Failure To Produce Public Records Or Information	3			1				4
Failure To Properly Agendize Or Follow Meeting Agenda	5							5