

Item 10 - Enforcement Report



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TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: October 26, 2023
RE: Enforcement Unit Program Update for the October 11, 2023, PEC Meeting

This report summarizes the PEC Enforcement Unit’s major activities since the most recent report, to the extent permissible under our confidentiality requirements.

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 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).

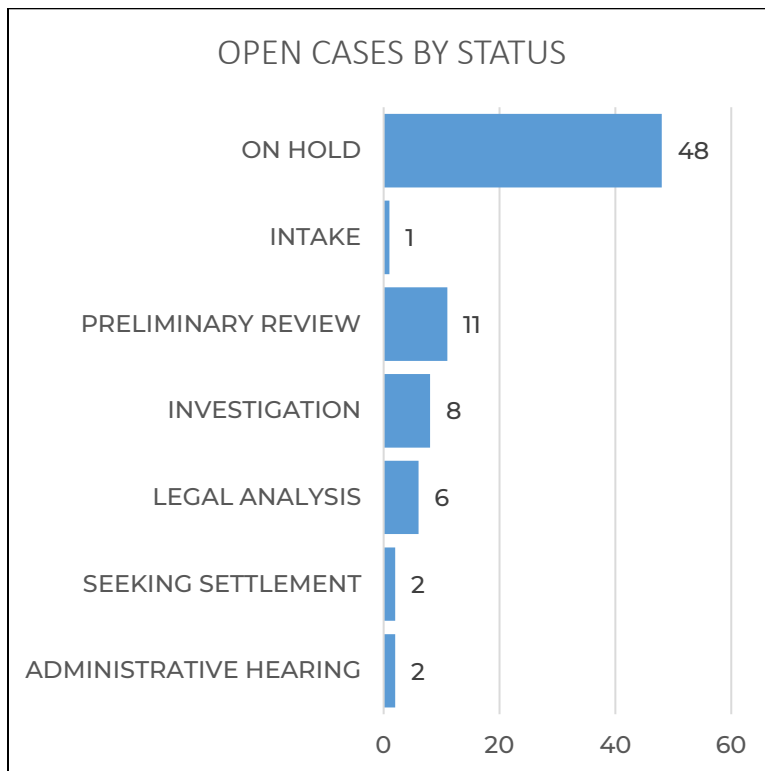
The Enforcement Unit’s full Complaint Procedures and Penalty Guidelines can be found on our website.

Current Enforcement Caseload

Since the Enforcement Unit Program Update submitted to the Commission on September 27, 2023, Commission staff received 1 formal complaint which has been opened for an investigation. Commission staff also received 3 informal complaints, of which 1 was opened for investigation and 2 were rejected. Commission staff also filed 2 proactive complaints, of which 1 is under investigation (consolidated with a formal complaint that we received containing similar allegations) and 1 is under preliminary review.

This brings Enforcement’s caseload to 78 matters at all stages, from preliminary review through to investigation, settlement negotiations or administrative hearing. That includes 48 matters that are now “On Hold.” It does not include informal complaints that are still in intake.

See Appendix 1 for a breakdown of open matters by violation type.



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.

| | On Hold | Intake | Preliminary Review | Investigation | Legal Analysis | Seeking Settlement | Administrative Hearing | Grand Total |
|--|-----------|----------|--------------------|---------------|----------------|--------------------|------------------------|-------------|
| Campaign Finance | 19 | | 7 | 16 | 9 | 7 | 1 | 59 |
| Campaign Using Multiple Bank Accounts | | | | 2 | | | | 2 |
| City Contractor Making Campaign Contribution | 5 | | | 2 | 2 | | 1 | 11 |
| Coordination Between Candidate And "Independent" Campaign | | | 2 | 2 | | 1 | | 5 |
| Disguising Source Of Campaign Funding ("Campaign Money Laundering") | | | 2 | 1 | 1 | | | 4 |
| Failure To Register A Political Campaign | 1 | | | 1 | | | | 2 |
| Inaccurate Reporting Of Campaign Finances | 5 | | 2 | 2 | 3 | | 1 | 13 |
| Late Filing Of Campaign Finance Report | 4 | | | 3 | | | | 7 |
| Making/Receiving Campaign Contribution Over The Legal Limit | 1 | | | 2 | 2 | | 1 | 6 |
| Misuse Of Campaign Funds For Personal Purposes | 1 | | | | | | 1 | 2 |
| Inaccurate or Missing Disclaimer On Campaign Ad | 2 | | 1 | 1 | 1 | | 2 | 7 |
| Government Ethics | 44 | | 18 | 3 | 3 | | 2 | 70 |
| Bribery | 1 | | 4 | 1 | 1 | | 1 | 8 |
| Financial Conflict Of Interest | 3 | | 1 | | 1 | | | 5 |
| Holding Incompatible Public Offices | 1 | | | | | | | 1 |
| Inaccurate Reporting On Financial Disclosure Form 700 | 2 | | 2 | | | | | 4 |
| Late or Non-Filing Of Financial Disclosure Form 700 | 1 | | | 1 | | | | 2 |
| Misusing Official Powers For Private Gain (Coercion/Inducement) | 19 | | 8 | 1 | | | 1 | 29 |
| Misuse Of City Resources For Personal Or Campaign Purposes | 9 | | 1 | | 1 | | | 11 |
| Receiving An Improper Gift Based On Amount | 3 | | 1 | | | | | 4 |
| Receiving An Improper Gift Based On Source | 3 | | | | | | | 3 |
| Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door") | 1 | | | | | | | 1 |
| Awarding City Contract To Oneself ("Self-Dealing") | 1 | | 1 | | | | | 2 |
| Lobbyists | | | | | | | 1 | 1 |
| Failure To Register As A Lobbyist ("Shadow Lobbying") | | | | | | | 1 | 1 |
| Miscellaneous | 4 | 1 | 3 | 1 | 3 | 1 | | 13 |
| Failure To Produce Records To Police Commission Investigators | 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 | 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 |
| Grand Total | 75 | 1 | 28 | 21 | 15 | 8 | 4 | 152 |