



ANNUAL REPORT
2003

PURPOSE

To monitor, administer, and enforce the City's governmental ethics laws, propose new governmental ethics law reforms, conduct investigations, refer violations to appropriate enforcement agencies, audit disclosure statements, and advise and educate City officials and the public about governmental ethics laws.

MISSION STATEMENT

To preserve public confidence in our City government through education, advice, and the prompt and fair enforcement of local governmental ethics laws.

Top row (from left to right): Commissioner Greg Vega, Deputy City Attorney Mike Rivo, Deputy City Attorney Rick Duvernay, Commissioner Dorothy Leonard, Commissioner Karen Thomas-Stefano, and Commissioner Charles Dick.

Bottom Row (from left to right): Commission Chair Dorothy Smith, Executive Director Charles Walker, and Commission Vice-Chair April Riel

2003 COMMISSIONERS AND STAFF

Chair

Dorothy L.W. Smith (elected July 24, 2003)

Vice Chair

April R. Riel (elected July 24, 2003)

Commissioners

Dorothy Leonard

Gregory Vega

Lisa Foster (resigned January 10, 2003)

Al Gaynor (resigned June 30, 2003)

Charles LaBella (resigned June 30, 2003)

Edward Kolker (appointed Sept. 9, 2003; resigned Oct. 14, 2003)

Charles H. Dick, Jr. (appointed July 21, 2003)

Karen Thomas-Stefano (appointed July 21, 2003)

Larry S. Westfall (appointed December 1, 2003)

Staff

Charles Walker, Executive Director (resigned October 2, 2003)

Stacey Fulhorst, Investigator; Executive Director as of December 8, 2003

Janet MacFarlane, Executive Secretary

Advisors

Rick Duvernay, Deputy City Attorney

Dave James, Deputy City Attorney

Michael Rivo, Deputy City Attorney

Stephen Ross, Legal Assistant

LETTER FROM THE CHAIRPERSON

January 2004

Dear Mayor Murphy and Members of the City Council:

I am pleased to present to you the second Annual Report of the City of San Diego Ethics Commission. Although we encountered unexpected challenges, including replacement of several of our Commissioners and the replacement of our Executive Director, we are happy to report that our Ethics Commission office has remained fully operational and that our transition has been smooth. Despite the challenges, we have met almost all of the goals we set for 2003 and are proud to say that we have in 2003 become fully functional as a Commission.

Our goals for 2003 included the following: (1) review and make recommendations for revisions to the City's Election Campaign Control Ordinance (ECCO) and Municipal Lobbying Ordinance; (2) expand our education and training program to include volunteer boards and commissions; (3) begin random audits of financial disclosure forms; and (4) hire a financial investigator and a clerical assistant to provide additional staff needed to become fully operational..

We completed our review of ECCO, recommended amendments to ECCO, and presented the recommended revisions to the Rules Committee on December 3, 2003. Continued discussions of the recommended revisions will resume at the January 21, 2004 meeting of the Rules Committee. In addition, we made excellent progress on fulfilling the goal of revising the Municipal Lobbying Ordinance. Our ad hoc subcommittee has worked to improve the Ordinance in several productive sessions, including a half-day meeting with Lee Ann Pelham, Executive Director of the Los Angeles Ethics Commission. We expanded our education program to volunteer boards and commissions and posted educational information and advice on our website, providing alternative methods of certification for the convenience of employees, officials, and volunteers. Due to various delays beyond our control, we have not yet hired a financial investigator and clerical assistant; however, the financial investigator position was recently posted, and we have an eligibility list of potential applicants. Last Spring, we completed the Audit Manual and in the Spring and Fall we selected the campaign committees to be audited. However, those audits cannot take place until the financial investigator is hired and housed in early 2004.

We sincerely appreciate your confirmation of Stacey Fulhorst as our new Executive Director at your December 8, 2003 meeting of the City Council. Ms. Fulhorst is to be highly commended for assuming the leadership of the Commission office immediately following the unanticipated resignation of Charlie Walker to pursue personal interests. It is primarily due to her outstanding interim leadership and the support of our executive secretary Janet MacFarlane that the Commission office remained fully operational after the leaving of former Executive Director Walker.

In addition, we appreciate your appointment of our new commissioners, Karen Thomas-Stefano and Charles Dick. They have eagerly and competently assumed their responsibilities and are providing invaluable service to the Commission and to the City of San Diego. Our continuing commissioners—Dorothy Leonard, Greg Vega, and April Riel are public servants of the highest order, and none of these goals could have been accomplished without their caring, dedication, skill, and diligence. We look forward to having our newest Commissioner Larry Westfall begin his service at our January 22, 2004 meeting.

Our goals for 2004 include (1) hiring the financial investigator and proceeding with the audits of selected 2000 election campaign committees; (2) establishing an on-line filing program; (3) finalizing an on-line educational re-certification program; (4) continuing to refine the delivery of our educational program so as to reduce the errors on Statements of Economic Interest and to prevent mistakes made by candidates, officials, employees, and volunteers; and (5) provide for adequate space to house staff members.

I am honored and privileged to have served as the chairperson of the Ethics Commission since July of 2003. Dorothy Leonard, the immediate past chairperson, has continued to work hand in hand with me and the Ethics Commission staff to assure a seamless transition. We appreciate your support in helping us to fulfill Mayor Murphy's number one goal. We believe that we are well on our way to fulfilling our mission "to preserve public confidence in our City government through education, advice, and the prompt and fair enforcement of local governmental ethics laws."

Sincerely,

Dorothy L.W. Smith
Chairperson

LETTER FROM THE EXECUTIVE DIRECTOR

January 2004

After serving as the Commission's Investigator, it is an honor and a privilege to be selected as the Commission's second Executive Director. I am proud to be a part of the Commission's continued educational and enforcement efforts, which I believe serve to reinforce the public's trust in local government.

The Commission accomplished a great deal during the past year under the leadership of my predecessor, Charles Walker. The Commission finalized its Audit Manual, selected committees for audit, and created the position of Financial Investigator. In addition, the Commission worked with the Personnel Department to upgrade the Investigator position to recognize that the duties and responsibilities of that position were substantially greater than originally anticipated. During 2003, the Commission continued its education program by completing Ethics Training for all City Officials, issuing eleven advisory opinions, and commencing work on a biennial recertification program. With respect to the enforcement of governmental ethics laws, the Commission processed sixty-eight complaints, conducted forty-seven formal investigations, and entered into four stipulations.

The Commission's legislative efforts in 2003 consisted primarily of a substantial review of the City's Election Campaign Control Ordinance [ECCO]. After receiving input from a variety of individuals throughout the year, the Commission discussed and debated various provisions and ultimately proposed a set of amendments to the City Council's Rules Committee in December of 2003. The Commission hopes to finalize the amendments to ECCO in early 2004. The Commission also hopes to continue to assist the City Clerk with the development of a financially feasible system for the electronic filing of campaign statements.

With respect to the Audit Program, the Commission plans to hire a Financial Investigator in early 2004. In order to accommodate this new position, the Commission will need to expand its existing office space. As soon as this is accomplished, audits of selected candidate-controlled and ballot measure committees will commence.

In 2004, education will remain a top priority of the Commission. Commission staff will continue to work on an on-line recertification program, which will serve as an important periodic refresher course for City Officials. In addition, Commission staff will continue to provide live training sessions for new City Officials as well as offer verbal and written advice to the community. The Commission hopes that these educational efforts will result in fewer enforcement actions arising from unknowing violations of local governmental ethics laws.

In closing, I would like to acknowledge the invaluable assistance provided to the Commission during this past year from the Office of the City Attorney and the Office of the City Clerk. In addition, I would like to underscore the support we have continued to receive from the Mayor, City Council, and City Manager, which has enabled the Commission to continue to function effectively and independently. Finally, I would like to recognize the extensive dedication of our volunteer Commissioners, each of whom is consistently diligent, conscientious, insightful and reasonable when approaching both enforcement and policy matters.

Sincerely,

Stacey Fulhorst
Executive Director

HISTORY AND START-UP MILESTONES

Under the leadership of Mayor Dick Murphy, the City Council approved the establishment of an Ethics Commission with the adoption of Ordinance O-18945 on June 5, 2001. The Mayor subsequently nominated seven members to the Commission from a pool of nominees submitted by City Councilmembers and the City Attorney. The appointments were confirmed by the City Council on August 7 and the Commissioners were sworn in at the first meeting of the Commission on August 22, 2001.

On November 5, 2001, the City Council approved a Commission recommendation for a City Charter amendment granting the Commission subpoena power. Voters approved this City Charter amendment in the March 2002 election.

The City Council approved investigative and enforcement procedures for the Commission on February 11, 2002, and the Commission began accepting complaints on March 14, 2002, concerning violations of the City's Election Campaign Control Ordinance [ECCO] and the City's Lobbying Ordinance.

On April 29, 2002, the City Council adopted the Ethics Ordinance. The Commission began accepting complaints alleging violations of this ordinance on May 29, 2002.

On September 24, 2002, the City Council approved a revision of Council Policy 000-04, making an ethics orientation program mandatory for individuals who fall within the Commission's jurisdiction, and requiring the completion of a biennial refresher and continuing education program.

The Commission's Audit Manual was approved by the City Council on February 10, 2003.

ACTIVITIES AND ACCOMPLISHMENTS

Administrative

In January of 2003, Governor Davis appointed Commissioner Lisa Foster to the Superior Court bench. In June of 2003, the terms of Commissioners Al Gaynor and Chuck LaBella expired. On July 21, 2003, the City Council confirmed the appointment of two new Commissioners:

Charles H. Dick, Jr.: Manager Partner of the San Diego office of Baker & McKenzie

Karen Thomas-Stefano: Senior Associate with Milberg Weiss Bershad Hynes & Lerach LLP

On September 9, 2003, the City Council confirmed a third new Commissioner, Edward Kolker. However, Mr. Kolker submitted his resignation on October 14, 2003, after making a contribution to a City candidate and learning that the Commission's enabling ordinance prohibits such contributions. The City Council subsequently confirmed a replacement for Mr. Kolker on December 1, 2003, as follows:

Larry Westfall: National Director of Deferred Compensation for Metropolitan Life Insurance Company

The Commission's original Executive Director, Charles Walker, resigned in October of 2003, to pursue personal goals and travel interests. Stacey Fulhorst, the Commission's original investigator, was hired to replace Mr. Walker, and was confirmed by the City Council on December 8, 2003.

On December 15, 2003, the Commission hired a new Investigator. In addition, the Commission staff worked with the Personnel Department to create and classify the position of Financial Investigator. Applications have been submitted, and the Commission hopes to have a Financial Investigator on board in early 2004.

During 2003, the Commission's original Executive Secretary secured a promotion in another City department, and the Commission hired Janet MacFarlane as her replacement.

Legislative

In September of 2002, the Ethics Commission formed an ad-hoc subcommittee to review the Election Campaign Control Ordinance [ECCO] and to consider proposed revisions and updates. During 2003, the subcommittee conducted many meetings to discuss changes required to reconcile ECCO with state law, as well as to propose policy changes and general clean-up. In addition, the subcommittee, the full Commission, and Commission staff undertook extensive efforts with respect to proposed ECCO revisions, including:

- researching recent changes to campaign finance laws in other jurisdictions;
- engaging in lengthy discussions and presentations at numerous Commission meetings;
- meeting with LeAnn Pelham, the Executive Director of the Los Angeles Ethics Commission, regarding recent changes proposed by the Los Angeles Ethics Commission and adopted by the Los Angeles City Council;
- hosting a televised presentation by Robert Stern, President of the Center for Governmental Studies and a nationally recognized expert on campaign finance reform;
- hosting well-publicized public forums on Saturday, January 11, 2003, and Thursday, March 13, 2003.

The Commission received input from a variety of individuals including former candidates, professional accountants, and representatives of organizations concerned with campaign financing issues. After considering all of the suggestions, the Commission ultimately approved a draft of proposed changes and made its first presentation concerning these proposed amendments to the City Council's Rules Committee on December 3, 2003. The Ethics Commission plans to return to the Rules Committee to continue the discussion regarding ECCO in January of 2004, and hopes to have amendments approved by the full City Council within the first half of 2004.

In addition, on July 24, 2003, the Commission formed an ad hoc subcommittee to review the City's Lobbying Ordinance and, if appropriate, propose amendments. This committee will continue with these efforts in 2004.

Education

The Commission continued the implementation of its education program during 2003. The Commission's consultant, Dr. Craig Dunn, a San Diego State University Business Ethics faculty member, conducted training sessions for the City's unclassified managerial employees. In addition, Dr. Dunn worked with the City's Cable Television/Video Services Program to produce an Ethics Training videotape for City boards and commissions. In the Fall of 2003, the video was distributed to approximately 350 board and commission members.

During 2004, the Commission staff plans to take over the responsibility for providing training sessions on a periodic basis to newly elected City Officials and their staffs, as well as new unclassified managerial employees.

During 2003, the Commission staff began working with the San Diego Data Processing Corporation to develop an on-line training program to facilitate the biennial recertification requirement for individuals who fall within the jurisdiction of the Commission. The Commission staff will continue to work on this program during 2004, and hopes to have it fully operational by the end of the year. In addition, Commission staff will be maintaining a database to monitor the status of Ethics Training for all City Officials.

Outreach

In recognizing the importance of keeping the public aware of its functions and actions, the Commission has devoted considerable time and effort to outreach activities. The Commission has continuously updated its website (www.sandiego.gov/ethics) to provide the public with information regarding Commission meetings, agendas, minutes, laws, complaint procedures, press releases, stipulations, and frequently asked questions. Members of the Commission's staff have responded to verbal and written requests for advice, and have posted eleven responsive advisory letters on the Commission website during 2003.

In addition, in December of 2003, the Commission staff created the first Ethics Commission Fact Sheet. This Fact Sheet addresses restrictions applicable to fundraisers for City candidates. It was distributed to all candidates and treasurers involved in the upcoming 2004 election, and was posted on the Commission website. The staff plans to create and distribute additional Fact Sheets during the upcoming year.

Finally, throughout 2003, Executive Director Charles Walker made presentations to numerous groups inside and outside the City concerning the laws within the jurisdiction of the Ethics Commission.

Auditing

The City Council approved the Commission's Audit Manual on February 10, 2003. Subsequently, on May 22, 2003, a random drawing was conducted and the following candidate controlled committees were selected for audit:

Re-Elect Donna Frye
Ralph Inzunza for City Council.

On October 9, 2003, a second random drawing was conducted for the purpose of selecting ballot measure committees for audit. At that time, the following committees were chosen:

San Diegans for the Protection of Responsible Beach Rights
Save Mission Bay, Save Our Parks

During 2003, the Ethics Commission staff worked with the Personnel Department to create and classify the position of Financial Investigator. Applications have been submitted, and the Commission is currently engaged in the hiring process. In order to accommodate this new position, the Commission plans to expand its existing office space. The Commission hopes to have the Financial Investigator on board in early 2004, and hopes to commence the audits of the selected committees shortly thereafter.

Electronic Filing

In partnership with the Office of the City Clerk, the staff of the Ethics Commission is working diligently to explore affordable ways in which the City can incorporate an electronic filing system for campaign reports. Input received by the Commission indicates that an electronic filing system is critical to ensure prompt disclosure and ease of accessibility to information regarding contributions and expenditures. During this past year, the Mayor's Office provided funding to explore how best to implement a financially feasible electronic filing system. The City Clerk hopes to begin operating such a system within the next twelve to eighteen months.

ENFORCEMENT – STATISTICS

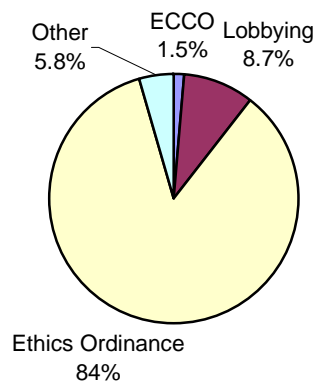
Number of Complaints

During 2003, the Ethics Commission received a total of sixty-nine complaints. Most of the complaints received were in the form of formal, written complaints signed under penalty of perjury. At the discretion of the Executive Director, some informal complaints and referrals from the City Clerk were processed as formal complaints and are included in the statistics below.

Types of Complaints

Complaints received by the Ethics Commission concern alleged violations of law as follows:

- one complaint alleged a violation of the Election Campaign Control Ordinance;
- six complaints alleged a violation of the Lobbying Ordinance;
- fifty-eight complaints alleged a violation of the Ethics Ordinance; and
- four complaints alleged a violation of other laws (outside the jurisdiction of the Ethics Commission).



The fifty-eight complaints alleging violations of the Ethics Ordinance can be broken down as follows:

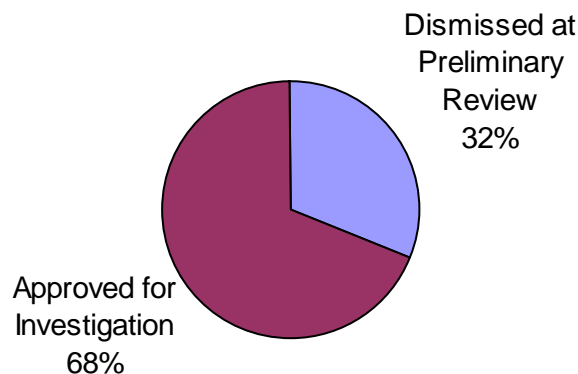
- seven complaints concerned the filing of Statements of Economic Interest;
- fourteen complaints alleged conflicts of interest and incompatible activities; and
- seven complaints concerned the unlawful acceptance of gifts.

Preliminary Review

Commission procedures require that the Executive Director evaluate each incoming complaint in order to determine if the subject of the complaint falls within the jurisdiction of the Ethics Commission, if the matter is already being investigated by the Commission, if the complaint involves a matter previously disposed of by the Commission, or if the complaint is based on frivolous or absurd accusations.

In 2003, the Commission processed the complaints it received as follows:

- twenty-two complaints were dismissed by the Executive Director during the preliminary review period; and,
- forty-seven complaints were submitted to the Commission for approval to commence a formal investigation.



Investigations

The forty-seven complaints approved for formal investigation have resulted in the following disposition:

- twenty-seven complaints were ultimately dismissed by the Commission following staff reports concerning the results of formal investigations; and
- twenty formal investigations are currently pending.

ENFORCEMENT - STIPULATIONS

During 2003, the Commission entered into four stipulations in lieu of proceeding with administrative enforcement actions. Each of these stipulations arose out of investigations that commenced during 2002.

The first stipulation, executed on January 9, 2003, was entered into with former mayoral candidate Ron Roberts. This stipulation concerns his committee's failure to pay campaign debts within the ninety-day time period required by ECCO. The terms of the stipulation, in conjunction with a subsequent amendment, provide that the committee will pay its debts in full on or before December 31, 2003.

The second stipulation, entered into with Planned Parenthood Affiliates of California Action Fund, was also executed on January 9, 2003. This stipulation concerns the committee's failure to timely file Late Independent Expenditure Reports in connection with the March 2002, primary election. This committee agreed to pay a \$1,000 fine in connection with the stipulation.

The third stipulation was with Clear Channel Outdoor, and involves its failure to timely report its independent expenditures. According to the terms of the stipulation, Clear Channel Outdoor agreed to file the requisite reports and to pay a fine in the amount of \$5,000.

The fourth stipulation, entered into with former City Official Michael Madigan, addresses a failure to report economic interests on Statements of Economic Interests. By way of this stipulation, Mr. Madigan agreed to file all necessary amendments and pay a \$1,000 fine.