



Investigative Program Overview

San Diego Ethics Commission

March 14, 2024

Sharon Spivak
Executive Director

Kristina Gagne'
Investigative Program Manager



Ethics Commission

The Commission's Duties and Enforcement Powers

Monitor, administer, and enforce the City's governmental ethics laws

- Laws include: "campaign contribution limits, campaign contribution disclosure, campaign expenditure disclosure, statements of economic interests, receipt and disclosure of gifts, conflicts of interest, lobbying registration and disclosure" and other matters in the City's ethics, lobbying, and campaign laws.

(SDMC §§ 26.0401 and 26.0402)

Conduct investigations

Refer certain violations beyond jurisdiction or authority

- (*i.e.*, criminal violations referred to appropriate enforcement agencies)

The Commission's Jurisdiction for Enforcement Matters

Regulated community - Extends beyond City Hall

- Elected officials
- Unclassified City employees (approximately 1,500+)
- City consultants required to file economic disclosures
- Board and commission members who file a Form 700
- Agencies (*i.e.*, SDCERS, Convention Center, etc.)
- Campaigns, including staff, consultants, treasurers, contributors
- Lobbyists

3

Civil Matters - Limited Jurisdiction

The Commission handles civil administrative complaints only.

- Claims that fall within the City's ethics, campaign, and lobbying laws and Political Reform Act, and that are not preempted by state or federal law
- Fines from \$0 to \$5,000 per violation
 - Not empowered to enforce "morality claims," or matters outside of narrow jurisdiction
 - Not empowered to provide remedies other than civil fines and education/training

4



Purpose of Investigation & Enforcement Procedures

To “ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations,” by:

1. Setting and maintaining objective standards for the investigation and enforcement of matters;
2. Eliminating any political or improper influence in the investigation of persons accused of ethics violations;
3. Protecting the privacy rights of those accused of ethics violations by maintaining confidentiality during the pendency of each proceeding;
4. Setting and enforcing reasonable time limits for completion of investigations; and
5. Coordinating and sharing with other governmental agencies the responsibility for investigating complaints, “whenever consistent with the interests of justice.”

(SDMC § 26.0420)



Statute of Limitations

Three years - from date of knowledge and suspicion

No administrative action alleging a violation shall be commenced more than three years after the date of the violation. (SDMC § 26.0413(d).)

- “Date of violation” = Earliest date when the Filing Officer (City Clerk) or the Commission has, or reasonably should have:
 - (1) knowledge of the violation and its cause, and
 - (2) a suspicion of wrongdoing.
- “Suspicion” = “shall be determined from an objective standpoint of what is reasonable for the Filing Officer or the Commission to know or suspect under the facts of the situation.” (SDMC § 26.0413(f).)

Types of Complaints - Formal Complaints

- Must be in writing
- Include certain information listed in Municipal Code
- Dated, verified, and signed under penalty of perjury
- Executive Director “shall” process and review - mandatory

- If received within 90 days of an election and alleging violations by a candidate seeking City office, preliminary review is completed within 15 calendar days (otherwise, 30).
- If Respondent is the subject of a pending audit, deadline may be suspended until 30 calendar days following submission of Audit Report to Commission.

(SDMC § 26.0421(a))

7

Requirements – Formal Complaints

- Any person may file a formal complaint. If an entity files, it must be signed by authorized officer or agent under penalty of perjury.

- Formal complaints must include:
 - identifying information for Complainant and Respondent;
 - alleged law(s) violated;
 - facts for each violation;
 - witnesses and documents, if known, to support each claim.

8



Types of Complaints - Informal Complaints

- Discretionary review by Executive Director - no obligation to process and review.
 - Informal complaints include:
 - Written complaints not verified or signed under penalty of perjury;
 - Written complaints that do not include all required information;
 - Unwritten complaints;
 - Anonymous complaints;
 - Referrals from other agencies.
- (SDMC § 26.0421(b))
- The Commission's Chair and Vice Chair later review the complaints that the Executive Director has dismissed or sent to other agencies.



Initial Review – All Complaints

Preliminary review by Commission staff, to determine:

- If Commission has jurisdiction over the subject of complaint;
- If Complaint has allegations already acted upon by Commission;
- If Commission is presently investigating the same allegations from a different complaint; and
- If the complaint consists of speculation, opinion, or frivolous or absurd contentions.

Note regarding Informal Complaints:
Review is discretionary, cases are not required to go to the Commission.

Preliminary Review – Legal Standard

“The purpose of the Preliminary Review is not to determine the truth or falsity of the allegations, but to determine whether the subject of the complaint is appropriate for consideration by the Commission.”

(SDMC § 26.0422 (b)(2).)

Commission staff does not begin a formal investigation until authorized by a vote of the Ethics Commissioners to do so.

Director’s Determination After Preliminary Review

After preliminary review, the Executive Director shall recommend one of the following to the Commissioners:

1. Initiation of a formal investigation of the allegations made in the complaint; or
2. If it is a formal complaint, that no further action should be taken on the complaint; or
3. The Commission should open an investigation and then refer the complaint to another government or law enforcement agency, due to the nature of the claims or resource considerations (SDMC §26.0423(a)).

Considerations and Limits of Closed Session

- The Commission will vote on how to proceed in a closed session. Action at this stage requires the concurring vote of at least four Commissioners.
- Important considerations:
 - This is not a fact-finding stage or the time to discuss whether a violation has occurred. A vote to authorize an investigation is just that. It does not mean that a finding has been made regarding the outcome. The vote simply allows staff to investigate.
 - Votes on whether to dismiss or assess penalties are taken when staff reports back on the status of the investigation.

Considerations in Closed Session: Due Process Rights

- When staff goes into Closed Session, staff is mindful in presentations that the Commission could end up being the hearing officer if a case advances to a hearing.
- Balancing act:
 - The Commission needs sufficient information from staff to decide whether to open an investigation regarding a potential allegation within its jurisdiction; staff is not “trying the case” before the Commission when it presents it.
- Commission’s outside counsel advises the Commission throughout.



Expanding Scope and Shared Jurisdiction

- If, during an investigation, staff needs to expand the scope into new claims that are related, staff returns for authorization.
- Sometimes staff will open a new complaint if it discovers a violation unrelated to the original authorized investigation. Staff then returns for authorization.
- Sometimes staff will discover a criminal agency is reviewing the same allegations. Staff may place the case on hold, pending the outcome elsewhere; sometimes staff would review civil allegations if others are not, or will wait until a criminal investigation is over.
- Some cases are coordinated with the FPPC, or the FPPC refers cases to the Commission.



Probable Cause and Hearings

Beyond today's training:

- If a case advances to a probable cause hearing or beyond, the Commission's outside counsel will ensure that the Commission is trained on the procedures.
- The Commission has separate hearing procedures.
- Cases do not often advance to this stage.



Stipulated Settlements

- All settlements must be negotiated by the Executive Director.
 - After the stipulation is signed and the check is in hand, the agreement goes to the Commission for consideration in Closed Session.
- Once approved by at least 5 Commissioners, Stipulations are posted publicly on the Commission’s website.
- Settlements explain the basis of the violation, the fine, any mitigating circumstances or circumstances that added to the fine.
- Posting publicly provides transparency.
 - Public posting assists others in viewing how misconduct is handled, although cases vary depending on specific facts.



Confidentiality

Critical to our operations – taken extremely seriously

- Laws require Commissioners to keep confidential all matters discussed in Closed Session.
- The Municipal Code prohibits Commissioners and staff from commenting on a pending investigation. Commission policy is to refrain from confirming or denying a complaint exists. This means that Commissioners and staff cannot admit or deny the existence of a complaint or an investigation.
- The Commission never releases the identity of a complainant.
- The Commission does not divulge when another agency has referred a matter for enforcement, or when the Commission has self-initiated a complaint.
- The Commission does not release the name of a Respondent until the matter is closed by settlement, or a Probable Cause hearing is set.



Confidentiality

Complaints:

- Remain confidential until all statutes of limitation have run for any agency that has jurisdiction to investigate the matter.

Closed Session:

- Discussing information from Closed Session is a misdemeanor;
- Confidentiality applies to all materials issued for Closed Session as well, including memoranda and other documents;
- Some documents become public after approval by the Commission, such as stipulated settlements, but the related discussion remains confidential, even after cases end and Commissioners have left the board.



Other Considerations

- Complaints are never discussed in open session.
- The Commission “shall not receive complaints at public meetings.”
If this occurs, “urge the public in the strongest terms possible not to make complaints at public meetings.”

(SDMC § 26.0421(d).)

Records Retention by Commissioners

Commissioners are required to keep their emails related to the Ethics Commission for potential production, as well as all documents.

E-mails may be required for production under the California Public Records Act.

- The Executive Director handles all PRA requests, working with outside counsel, and will ask Commissioners for documents responsive to requests received.
- Communications with Commission counsel are privileged and confidential.

Questions?

