



ANNUAL REPORT
2013

MISSION STATEMENT

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

DUTIES AND RESPONSIBILITIES

The City of San Diego Ethics Commission is responsible for monitoring, administering, and enforcing the City's governmental ethics laws; conducting audits and investigations; providing formal and informal advice to persons who fall within the jurisdiction of the Commission; conducting training sessions for the regulated community; and proposing governmental ethics law reforms.

Governmental ethics laws include the Ethics Ordinance, the Election Campaign Control Ordinance, and the Municipal Lobbying Ordinance. The Ethics Commission accepts complaints regarding alleged violations of laws within its jurisdiction, and protects individuals from retaliation for reporting violations. The Ethics Commission may impose fines up to \$5,000 for each violation of local governmental ethics laws.

Persons who fell within the jurisdiction of the Ethics Commission in 2013 include the following:

- Mayor, Councilmembers, City Attorney, and their respective staffs
- Unclassified managerial employees, including employees of City agencies who file Statements of Economic Interests
- City candidates, political committees, and campaign treasurers
- Members of boards & commissions who file Statements of Economic Interests
- Consultants who file Statements of Economic Interests
- Lobbyists, Lobbying Firms, and Organization Lobbyists

The Ethics Commission is an independent City department that does not report to the Mayor or City Council. Instead, Commission staff reports directly to the Ethics Commissioners, who are appointed by the Mayor and City Council to serve four-year terms.

2013 COMMISSIONERS AND STAFF

Chair

William Howatt, Jr.

Vice Chair

John O'Neill

Commissioners

W. Lee Biddle

Deborah Cochran

Faye Detsky-Weil

Clyde Fuller

Graydon "Bud" Wetzler

Staff

Stacey Fulhorst, Executive Director

Stephen Ross, Education Program Manager

Lauri Davis, Senior Investigator

Rosalba Gomez, Auditor

Jennifer Duarte, Administrative Aide

General Counsel

Christina Cameron, Esq.

Stutz Artiano Shinoff & Holtz

EDUCATION AND OUTREACH

The Commission continued to make education and outreach top priorities during 2013. Specifically, the Commission made the following efforts to educate City Officials regarding the various provisions of the City's Ethics Ordinance:

- The Commission staff conducted “refresher” training sessions on the Ethics Ordinance for the offices of Council Districts 1, 2, 3, and 9.
- The staff also conducted a live training session on the Ethics Ordinance for the office of the newly-elected Council District 4.
- In January, the Commission staff conducted a live training for Civic San Diego with special emphasis on issues related to the jurisdiction of this agency.
- Approximately 380 City Officials (primarily volunteer members of City boards and commissions) obtained training on the City's Ethics Ordinance via the Commission's on-line application.
- The Commission staff responded to approximately 280 requests for informal advice from City Officials regarding compliance with the City's Ethics Ordinance.
- The staff monitored changes to state ethics laws that impacted corresponding local laws, and notified City Officials about these changes.
- The Commission staff updated ten previously-issued Fact Sheets concerning various provisions of the City's ethics laws.

In addition, the Commission undertook the following efforts to educate City candidates and their staffs, as well as political committees, on the City's campaign laws:

- The Commission staff conducted three training sessions for City candidates and their staffs on the City's campaign laws in January, July, and September. These training sessions were designed to provide all candidates (including grass roots candidates without professional campaign consultants) with basic information on the City's campaign laws in clear and simple terminology.

- The staff responded to approximately 210 requests for informal assistance from City candidates and their staffs, as well as various political committees participating in City elections.
- The Commission staff issued updated Candidate and Committee Manuals for the Council District 4 Special Election, the Mayoral Special Election, and the 2014 Council District Elections.
- The Commission staff issued one new Fact Sheet concerning the disclosure of major donors on campaign advertisements, and updated eleven previously-issued Fact Sheets concerning various provisions of the City's campaign laws.

During 2013, the Commission made the following efforts to educate lobbying firms and organizations on the City's lobbying laws:

- The Commission staff responded to approximately 110 requests for informal advice and assistance concerning the City's lobbying laws.

Finally, the Commission's education and outreach efforts during 2013 included the following:

- The Commission continued to disseminate information to the public, the regulated community, City Officials, and the media, via three "interested persons" e-mail lists: one for campaign finance issues, one for ethics issues, and one for lobbying issues.
- The Commission frequently updated its website (www.sandiego.gov/ethics) to provide the public with timely information regarding Commission meetings, legislative proposals, educational efforts, and enforcement activities.
- The Executive Director made presentations to groups inside and outside the City concerning the role of the Ethics Commission and the laws within its jurisdiction.

LEGISLATIVE PROPOSALS

As a result of rulings by the United States District Court in the *Thalheimer v. City of San Diego* litigation, the City was required to amend its campaign laws to permit contributions from political parties to City candidates. Although the City initially adopted a limit of \$1,000 for contributions from political parties, the District Court struck down this limit. In its ruling, the Court stated that a new limit may be adopted only if the City demonstrates that it has seriously considered the balance between the following: “(1) the need to allow individuals to participate in the political process by contributing to political parties that help elect candidates with (2) the need to prevent the use of political parties to circumvent contribution limits that apply to individuals.”

In April of 2013, the City Attorney’s Office retained University of California Irvine Professor Richard Hasen to conduct a legal analysis of the relevant issues, and also retained University of California San Diego Professor Thad Kousser to update the policy recommendations and benchmarks he previously submitted to the Ethics Commission (in light of new data from the 2012 election cycle). The consultants prepared reports that included the following recommendations:

- Establish new limits of \$10,000 per election for district candidates and \$20,000 per election for citywide candidates for contributions from political parties to City candidates.
- Adopt an aggregation rule for contributions from all levels of the same political party for purposes of these contribution limits.

Both consultants opined that these contribution limits and the aggregation rule were necessary to balance the associational rights of political parties with the City’s interest in preventing circumvention of individual contribution limits (\$500 for district candidates and \$1,000 for citywide candidates).

On May 16, 2013, the Commission considered the reports prepared by Professors Hasen and Kousser and agreed to support their recommendations concerning contribution limits.

Professors Hasen and Kousser provided testimony at the Rules and Economic Development Committee meeting on May 15, 2013, and at the City Council meeting on June 4, 2103. Both the Committee members and the full City Council

voted to adopt the consultants' recommendations. The new laws went into effect on August 1, 2013.

In addition, during 2013, the City Council approved amendments to the Ethics Ordinance proposed by the Commission. These amendments were intended to ensure that local laws concerning economic interest disclosures, gifts, and conflicts of interests are harmonious with corresponding state laws. The amendments were adopted on September 17, 2013, and went into effect on November 14, 2013.

On September 17, 2013, the City Council also approved proposed amendments to the portions of Council Policy 000-04 that address ethics training requirements. The amendments were ministerial in nature, and were recommended by the Commission to more accurately reflect the Commission's current training procedures.

AUDIT PROGRAM

During 2013, the Ethics Commission's Auditor completed the audits of the remaining committees from the 2010 election cycle (selected at the September 2011 audit drawing):

Faulconer for Council 2010

Brian "Barry" Pollard for City Council

Lorie Zapf for City Council 2010

Coalition for Fair Employment in Construction (did not qualify for ballot)

San Diegans for Accountability at City Hall, Yes on D (June 2010 election)

San Diegans for Fair and Open City Contracting supported by the construction industry (did not qualify for ballot)

On September 12, 2013, the Ethics Commission conducted a random drawing of committees from the 2012 election cycle and selected the following candidate committees for audit:

FINANCIAL ACTIVITY BETWEEN \$10,000 AND \$49,000:

Environmental Health and Justice Campaign Fund (working to elect Bob Filner)

Christine Kehoe for Mayor 2012

Bryan Pease for City Council 2012

FINANCIAL ACTIVITY BETWEEN \$50,000 AND \$99,999:

City Attorney Jan Goldsmith for 2012

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Carl DeMaio for Mayor 2012

Ellis for Council 2012

Marti Emerald for City Council 2012

Bob Filner for Mayor 2012

Fletcher for Mayor 2012

Todd Gloria for City Council 2012

Kersey for Council 2012

Mat Kostrinsky for City Council 2012

San Diegans in Support of Bob Filner for Mayor 2012

San Diegans for Reform in Opposition to Bob Filner – Mayor 2012 with major funding by the Lincoln Club of San Diego County and the Infrastructure PAC for the Associated General Contractors

San Diegans for Bob Filner

Sherman for City Council 2012

Taxpayers for Carl DeMaio – Mayor 2012

Too Extreme for San Diego-a committee to oppose Carl DeMaio for Mayor 2012

In addition, the following ballot measure committees were chosen at the random drawing:

FINANCIAL ACTIVITY BETWEEN \$10,000 AND \$49,999:

San Diego Regional Chamber of Commerce Political Action Committee
(SD Chamber PAC)

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Citizens for Patient Rights, sponsored by the Patient Care Association, an association of medicinal cannabis patients and patient organizations

Comprehensive Pension Reform for San Diego (CPR for San Diego) with major funding by San Diegans for Pension Reform and The Lincoln Club of San Diego County, advocates for responsible city finances

Just Say No, San Diego – a sponsored committee of the San Diego and Imperial Counties Labor Council, AFL-CIO

San Diego Consumer for Choice, sponsored by Wal-Mart Stores, Inc.

San Diegans for Great Schools with major funding provided by CAC advisory Services LLC & Dr. Irwin Jacobs

San Diegans for Pension Reform

In 2013, the Commission's Auditor completed the following additional audits of candidate committees:

Marti Emerald for City Council 2012

Todd Gloria for City Council 2012

Kersey for Council 2012

Sherman for City Council 2012

In addition, the Auditor completed the audits of the following ballot measure committees:

San Diegans for Pension Reform

San Diego Regional Chamber of Commerce Political Action Committee
(SD Chamber PAC)

ENFORCEMENT – STATISTICS

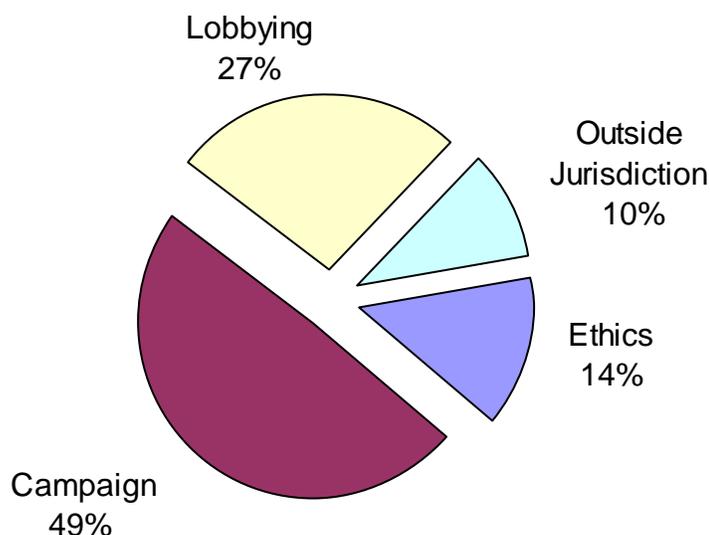
Number of Complaints

During 2013, the Ethics Commission processed a total of 49 complaints. These complaints were submitted by way of written complaint forms, letters, memos, and e-mails. They were presented by third parties and other governmental agencies, as well as Ethics Commissioners and Commission staff. One of the complainants was anonymous.

Types of Complaints

Complaints processed by the Ethics Commission in 2013 concern alleged violations of law as follows:

- 24 complaints alleged a violation of the Election Campaign Control Ordinance;
- 13 complaints alleged a violation of the Lobbying Ordinance;
- 7 complaints alleged a violation of the Ethics Ordinance; and
- 5 complaints alleged a violation outside of the Commission’s jurisdiction.

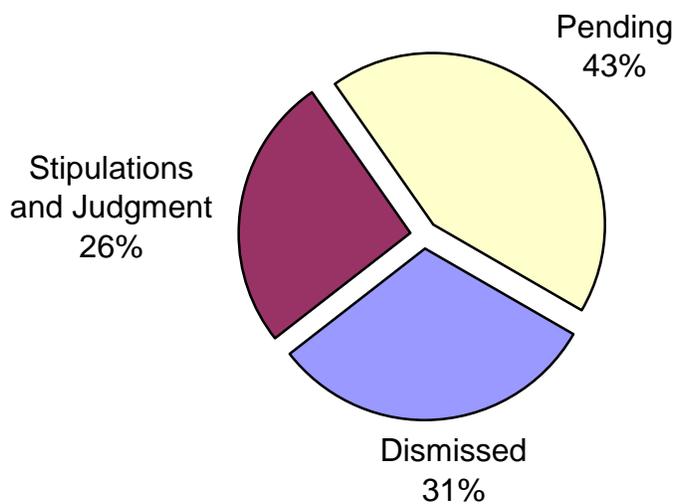


Investigations

Out of the 49 complaints processed by the Commission during 2013, 31 were approved for formal investigations.

These 31 cases, together with 11 cases approved for investigation but not resolved in previous years, resulted in the following disposition during 2013:

- 13 matters were ultimately dismissed by the Commission after considering the results of staff investigations;
- 10 matters resulted in stipulated settlement agreements;
- 1 matter resulted in a Judgment Denying Petition for Writ of Mandamus; and
- 18 matters are currently pending.



ENFORCEMENT – STIPULATIONS

During 2013, the Commission entered into 10 stipulated settlements in connection with violations of the City's campaign laws, lobbying laws, and ethics laws. Seven of these stipulations concerned violations of the City's campaign laws:

- The Community Coalition for Myrtle Cole for City Council 2013 and the American Federation of State, County and Municipal Employees District 36 [AFSCME] agreed to pay a \$5,000 fine for failing to identify AFSCME as the committee sponsor and failing to timely disclose independent expenditures made to support a City candidate.
- Conservatives for Gay Rights Supporting Carl DeMaio for Mayor 2012 with major funding provided by the Charles McHaffie Trust, Juan Boyce, Jesus Cardenus, and Cynara Velazquez agreed to pay a \$7,500 fine for failing to correctly identify the committee's principal officers, failing to provide a street address for the committee, and failing to maintain records associated with the committee's independent expenditures.
- Dwayne Crenshaw and Myrtle Cole, candidates for City Council District 4, paid fines of \$250 and \$500 respectively for including City employees on campaign-related emails that included solicitations for campaign contributions.
- California for Small Business Sponsored by the Neighborhood Market Association, and the Neighborhood Market Association [NMA] agreed to pay a fine of \$6,000 in connection with the failure to timely disclose independent expenditures made to oppose a City candidate and the failure to identify NMA as the committee sponsor on a campaign advertisement.
- The San Diego Police Officers Association Political Action Committee paid a fine of \$2,000 for failing to timely disclose independent expenditures made to support a City candidate.
- Brian Pollard, a candidate for City Council District 4, agreed to pay a fine of \$3,500 for failing to disclose contributions, failing to maintain records, accepting contributions from business entities, and making an expenditure of more than \$99 with cash.

Three of the stipulations approved by the Commission during the past year involved the City's lobbying laws. The following lobbying firms and organization lobbyists paid fines ranging from \$200 to \$500 as a result of their failure to disclose all of the requisite information on their quarterly disclosure reports:

- Higgs, Fletcher & Mach
- Public Policy Strategies
- Rick Engineering Company

During 2013, the Commission levied a total of \$25,650 in administrative fines by way of the stipulations discussed above. In addition, as discussed below, an Administrative Enforcement Order requiring the Respondent to pay a fine of \$9,500 was upheld by the Superior Court in the form of a Judgment Denying Petition for Writ of Mandamus. All fines are paid to the City of San Diego's General Fund and are not credited to the Ethics Commission's operating budget.

ENFORCEMENT - HEARINGS

During 2012, the Ethics Commission conducted an administrative hearing involving B.D. Howard, a candidate for City Council District 8 in the primary election on June 8, 2010. A State of California Administrative Law Judge presided over the hearing and issued a proposed decision recommending a fine of \$9,500 in connection with Mr. Howard's failure to timely file campaign statements, failure to accurately disclose expenditures, failure to maintain campaign records, and acceptance of unlawful contributions from organizations. After reviewing the evidence and the proposed decision, the Commission concurred with the recommendations and issued an Administrative Enforcement Order that required Mr. Howard to pay a fine in the amount of \$9,500.

Mr. Howard subsequently filed a Petition for Writ of Administrative Mandamus with the San Diego Superior Court. Following a hearing on November 1, 2013, the Superior Court issued a Judgment denying the Petition, finding that there were no due process violations and that the Commission did not abuse its discretion.