



ANNUAL REPORT
2010

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 fall within the jurisdiction of the Ethics Commission 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
- Members of Project Area Committees
- Consultants who file Statements of Economic Interests
- 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.

2010 COMMISSIONERS AND STAFF

Chair

Larry S. Westfall
(elected June 10, 2010)

Vice Chair

W. Lee Biddle (elected June 10, 2009)

Commissioners

W. Lee Biddle
Guillermo “Gil” Cabrera (resigned March 11, 2010)
Faye Detsky-Weil (assumed office October 14, 2010)
Clyde Fuller
William J. Howatt, Jr. (assumed office October 14, 2010)
Dorothy Leonard (resigned June 30, 2010)
John C. O’Neill (assumed office July 8, 2010)
Richard Valdez (resigned May 13, 2010)
Larry S. Westfall
Graydon “Bud” Wetzler (assumed office July 8, 2010)

Staff

Stacey Fulhorst, Executive Director
Stephen Ross, Education Program Manager
Lauri Davis, Senior Investigator
Rosalba Gomez, Auditor
Katherine Hunt, Executive Secretary

EDUCATION AND OUTREACH

The Commission continued to make education and outreach top priorities during 2010. 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 live training sessions on the Ethics Ordinance for the offices of the Mayor, Council District 6, and Council District 8.
- The Commission staff conducted four live training sessions on the Ethics Ordinance for unclassified management employees of the City in January, April, July, and October.
- In February, the Commission staff conducted a live training for the members of the City's Community Parking District Advisory Boards concerning the disclosure of economic interests.
- In August, staff conducted a live training for members of the Planning Commission. This training was tailored to address development and land use issues.
- In September and October, the Commission staff conducted live trainings for the Commissioners and staff at the Housing Commission with emphasis given to the unique issues encountered by this agency.
- In October, the staff conducted a live training for the Board members and staff at the Centre City Development Corporation. As with other City agencies, this training was customized to reflect the jurisdiction of CCDC.
- In November, the Commission staff met with the office of Council District 6 to review the City's post-employment provisions.
- In January and December, the Commission staff conducted a training session for the Centre City Advisory Committee concerning disclosure of economic interests and conflicts of interest.

- Approximately 360 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 over 200 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 staff updated two previously-issued Fact Sheets concerning various provisions of the City's Ethics Ordinance.
- The staff prepared and distributed three formal advice letters concerning provisions in the Ethics Ordinance.

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 a training session for City candidates and their staffs on the City's campaign laws in January. This training session was 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 165 requests for informal assistance from City candidates and their staffs, as well as various political committees participating in City elections.
- The staff updated four previously-issued Fact Sheets concerning various provisions of the City's campaign laws.
- The Commission issued five bulletins concerning the impact of the *Thalheimer* litigation (discussed in detail below) on the application of campaign laws during the 2010 election cycle.

During 2010, the Commission made the following efforts to educate lobbying firms and organizations on the City's lobbying laws:

- In March, the Commission staff conducted a live training on the lobbying laws for various non-profit organizations at the request of the Council on Policy Initiatives.
- The Commission staff responded to more than 100 requests for informal advice and assistance concerning the City's lobbying laws.

Finally, the Commission's education and outreach efforts during 2010 included the following:

- In the months leading up to the November 2010 general election, the Commission staff reviewed campaign disclosure statements and prepared a summary of financial data related to City candidates and ballot measures. This data was posted on the Commission's website, and was updated periodically as additional campaign statements were filed.
- 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.

ADMINISTRATIVE ACTIVITIES

During the 2010 budget season, the Commission made a presentation to the City Council regarding the Commission's accomplishments within its existing budget, as well as the service impacts associated with prior budget cuts and the loss of two staff positions over the past eighteen months. The Commission advised the City Council that its remaining staffing levels are essential to the provision of core services (education, investigations, and auditing). In accordance with the Commission's request, the City Council did not impose any additional budget reductions for the fiscal year commencing on July 1, 2010.

During 2010, several events took place that caused the Commission to reconsider the structure of its funding for legal services. First, the Commission held two administrative hearings that required volunteer Commissioners to spend a tremendous amount of time handling pre-hearing issues, attending hearings, and evaluating evidence. As a result, the Commission asked staff to look into the possibility of retaining a local administrative law judge to preside over the hearings on an as-needed basis. Staff researched the issue and advised the Commission that other jurisdictions routinely use administrative law judges for such hearings, and that they contract with the State Office of Administrative Hearings for these services. The second event that took place during 2010 was the departure of the Commission's full-time General Counsel, who decided to leave City service and return to the private sector.

As a result of the foregoing, the Commission determined that it could more effectively utilize its current budget for legal services (salary plus fringe benefits for a staff position) by retaining an outside law firm to serve as the Commission's part-time General Counsel, and using the remaining budgeted funds to retain the State's Office of Administrative Hearings to preside over Commission hearings on an as-needed basis. Remaining funds could also be used to retain attorneys with specific expertise necessary for hearings and other enforcement-related issues. Although retaining a part-time General Counsel will require that other staff members absorb some of the duties previously performed by the full-time General Counsel, the Commission determined that the workload would be manageable.

In October of 2010, the Commission distributed a Request for Qualifications for General Counsel services. After reviewing the responsive submissions and conducting interviews, the Commission selected Christina Cameron with the law firm of Stutz Artiano Shinoff & Holtz to serve as its part-time General Counsel

from January 1, 2011, through June 30, 2011. If the retention of a part-time General Counsel proves to be successful, the Commission plans to continue with this structure in future fiscal years.

In order to retain the State Office of Administrative Hearings to preside over Commission hearings when needed, the Municipal Code must be updated to incorporate this option. The Commission plans to bring the relevant proposed amendments to the Rules Committee in early 2011 (see discussion below). In the meantime, the Commission has conferred with the State Office of Administrative Hearings and confirmed the availability of local administrative law judges to hear Commission matters.

LEGISLATIVE PROPOSALS

As discussed in greater detail below, during 2010 the Commission staff worked extensively with outside counsel defending the City in the *Thalheimer* litigation, a case that involves various legal challenges to the City's campaign laws. In February of 2010, the United States District Court issued an order granting, in part, plaintiffs' motion for a preliminary injunction. Specifically, the Court enjoined the City from enforcing the ban on contributions from political parties to City candidates, but gave the City time to establish appropriate limits for such contributions.

As a result of this ruling, the Ethics Commission considered the following factors in deciding to recommend a \$1,000 limit for political party contributions:

- (1) the need for individuals to participate in the political process by contributing to political parties that in turn help elect candidates;
- (2) the need to prevent circumvention of individual contribution limits through the use of political parties; and
- (3) contribution limits currently in place for individuals and political parties in the country's fifteen largest cities.

On April 27, 2010, the City Council considered and approved the Ethics Commission's recommendation to set political party contribution limits at \$1,000 per election. Following a second reading of the ordinance, this contribution limit went into effect on June 17, 2010.

In addition, in April of 2010, the San Diego County Grand Jury issued a report that included various recommendations concerning the Ethics Commission, including the following:

- ✓ Place a measure on the ballot to amend the City Charter to ensure that the Ethics Commission is established as an independent body and cannot be eliminated by ordinance.
- ✓ Enact an ordinance to allow the Ethics Commission to issue witness subpoenas during investigations, and include safeguards for witness protection.

The City Council responded to the County Grand Jury Report by stating that the first recommendation would not be implemented, citing the cost of a ballot measure as well as the fact that any changes to the Commission's structure would have to be effected by ordinance, a process that is both deliberative and open to the public. With respect to the recommendation regarding witness subpoenas, the City Council again responded that the recommendation would not be implemented, and pointed out that this issue was previously considered by the Rules Committee in September of 2009.

Finally, during 2010, the Commission recognized the need to amend the Municipal Code to provide for the optional use of administrative law judges to preside over Ethics Commission hearings. Specifically, the Commission considered the extensive amount of volunteer Commissioner time involved in the two administrative hearings that took place in the past year (discussed in greater detail below), as well as the fact that other jurisdictions in California routinely use administrative law judges employed by the California Office of Administrative Hearings for their respective hearings. In October of 2010, the Commission approved the relevant straightforward changes to the Municipal Code; however, because the 2010 legislative season concluded shortly thereafter, this proposal will not be considered by the Rules Committee until 2011.

AUDIT PROGRAM

On September 10, 2009, the Commission conducted a random drawing of committees from the 2008 election cycle, and selected the following committees for audit:

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

Gentry for City Attorney
Friends of Bob Ilko
Friends of David Tos

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

John Hartley for City Council

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Re-elect City Attorney Mike Aguirre
April Boling for City Council
Reform City Hall with Carl DeMaio
Marti Emerald for San Diego
Steve Francis for Mayor
Jan Goldsmith for City Attorney
Brian Maienschein for City Attorney
Committee to Elect Marshall Merrifield
Scott Peters for City Attorney
Re-elect Mayor Sanders
Phil Thalheimer for City Council

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

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

No on Proposition C – Neighborhoods for Honest Government (June 2008 election)

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

Save Mission Bay – Yes on C (November 2008 election)

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Yes on Propositions A, B & C Committee (June 2008 election)

Safe Beaches San Diego Yes on D (November 2008 election)

The Ethics Commission staff completed audits of the following committees during 2009:

Re-elect Mayor Sanders Committee

Marti Emerald for San Diego Committee

No on Proposition C – Neighborhoods for Honest Government Committee

During 2010, the following additional audits were completed:

Re-elect City Attorney Mike Aguirre

April Boling for City Council

Reform City Hall with Carl DeMaio

Steve Francis for Mayor

Jan Goldsmith for City Attorney

John Hartley for City Council

Committee to Elect Marshall Merrifield

Scott Peters for City Attorney

Phil Thalheimer for City Council

It is relevant to note that for the first time in six years, the Commission's audits did not reveal any material findings. This high level of compliance indicates that prior audits have served their intended educational purpose for professional treasurers, and that grassroots treasurers were able to substantially comply with the City's campaign laws with assistance from Commission staff.

The Commission anticipates completing the remaining audits from the 2008 election cycle (four candidate committees and three ballot measure committees) before September of 2011, at which time the Commission will conduct another random drawing to select committees from the 2010 election cycle for audit.

ENFORCEMENT – STATISTICS

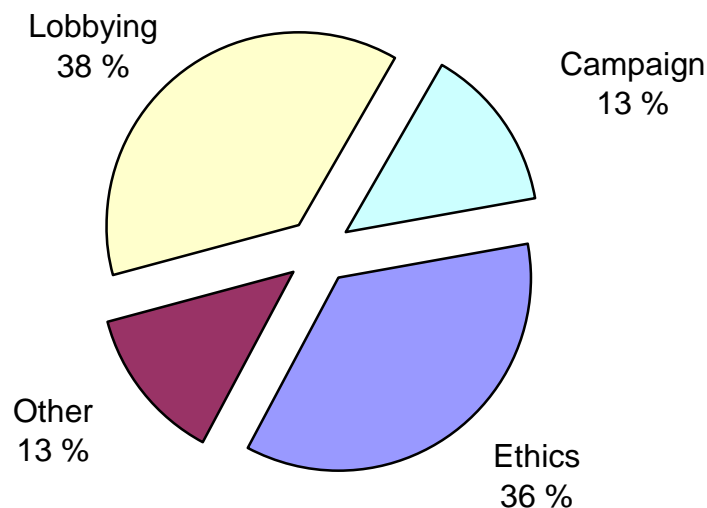
Number of Complaints

During 2010, the Ethics Commission processed a total of 106 complaints. These complaints were submitted by way of written complaint forms, letters, memos, e-mails, and telephone. They were presented by third parties and other governmental agencies, as well as Ethics Commissioners and Commission staff. One complainant was anonymous.

Types of Complaints

Complaints received by the Ethics Commission in 2010 concern alleged violations of law as follows:

- 40 complaints alleged a violation of the Lobbying Ordinance;
- 38 complaints alleged a violation of the Ethics Ordinance;
- 14 complaints alleged a violation of the Election Campaign Control Ordinance; and
- 14 complaints alleged a violation outside of the Commission's jurisdiction.

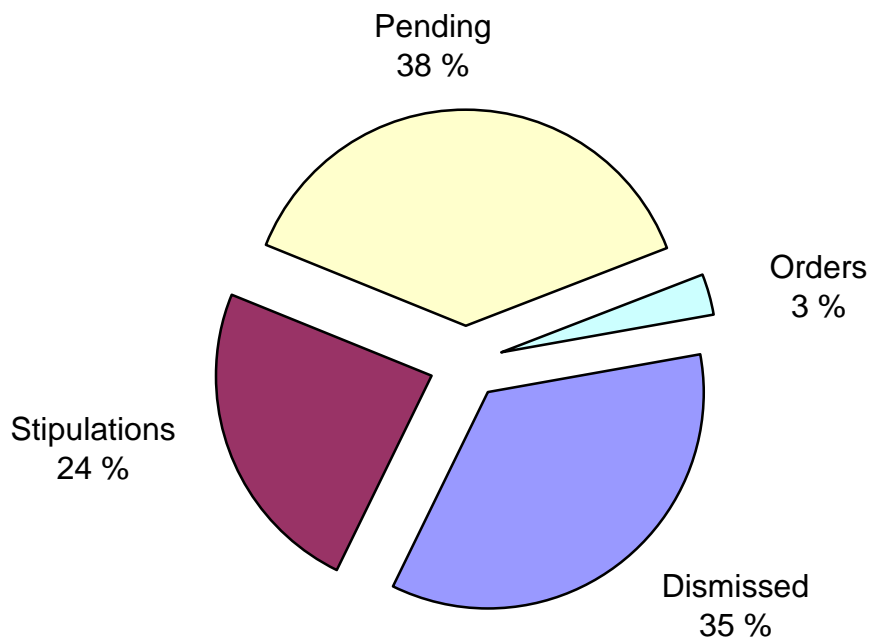


Investigations

Out of the 106 complaints processed by the Commission during 2010, 58 were approved for formal investigations. In 32 cases involving lobbyists who failed to timely amend their registration forms in order to add information regarding new clients or new municipal decisions that were identified on their respective quarterly reports (but not their initial registration forms) the Commission opted for an educational approach in lieu of proceeding with investigations.

The 58 cases approved for investigation in 2010, together with 13 cases approved for investigation but not resolved in previous calendar years, resulted in the following disposition during 2010:

- 25 matters were ultimately dismissed by the Commission after considering the results of staff investigation;
- 17 matters resulted in stipulated settlement agreements;
- 2 matters resulted in Administrative Enforcement Orders following administrative hearings; and
- 27 investigations are currently pending.



ENFORCEMENT – STIPULATIONS

During 2010, the Commission entered into seventeen stipulated settlements in connection with violations of the City’s campaign laws, lobbying laws, and ethics laws. Six of these stipulations concerned violations of the City’s campaign laws:

- The Neighborhood Market Association agreed to pay two separate fines totaling \$14,000 in connection with its failure to properly disclose its efforts to oppose the City’s temporary and permanent alcohol bans. In particular, this entity failed to disclose that it sponsored two committees known as “You Empower Our Community” and “Our City Our Responsibility,” failed to file campaign statements with the City Clerk, and failed to include a complete “paid for by” disclosure on campaign advertisements.
- The San Diego Safe Beaches Coalition agreed to pay a fine in the amount of \$1,000 for failing to include a “paid for by” disclosure on campaign literature distributed in opposition to the City’s permanent beach alcohol ban.
- The San Diegans for Accountability at City Hall, Yes on D Committee agreed to pay a fine in the amount of \$500 after self-reporting its failure to include the phrase “paid for by” in the disclosure on its campaign literature.
- Brian Pollard, a candidate for City Council District 4 in the June 2010 primary election, agreed to pay a fine in the amount of \$1,500 for failing to timely file a pre-election campaign statement and failing to include a “paid for by” disclosure on campaign literature.
- Adrian Vasquez, a candidate for City Council District 8 in the June 2010 primary election, agreed to pay a fine in the amount of \$600 for failing to timely file a pre-election campaign statement.

In addition, seven of the stipulations approved by the Commission during 2010 concerned the requirement in the City’s Ethics Ordinance that City Officials file Statements of Economic Interests. The following consultants and board members paid fines ranging from \$100 to \$200 per late filing as part of the Commission’s streamlined program for first-time offenders:

- Stephen Carter, consultant to the Storm Water Department
- Charles Davis, member of the Housing Development Partners Board of Directors
- Kathy Haynes, consultant to the Engineering and Capital Projects Department
- Robert Henderson, member of the Housing Development Partners Board of Directors
- John Lovio, consultant to the Park and Recreation Department
- Barbara Ybarra, consultant to the Southeastern Economic Development Corporation
- Richard Ybarra, consultant to the Southeastern Economic Development Corporation

Finally, four of the stipulations approved by the Commission during the past year involved the City's lobbying laws and the failure to timely file registration forms and quarterly disclosure statements. Details are as follows:

- AECOM paid a fine in the amount of \$100 for failing to timely file a quarterly disclosure report.
- Bartell & Associates paid a fine in the amount of \$1,500 for failing to timely file a registration form and a quarterly disclosure report.
- Todd Cardiff paid a fine in the amount of \$200 for failing to timely file a quarterly disclosure report.
- Gerding Edlen paid a fine in the amount of \$400 for failing to timely file a quarterly disclosure report.

During 2010, the Commission levied a total of \$20,900 in administrative fines by way of the stipulations discussed above. In addition, as discussed below, the Commission imposed two fines totaling \$35,000 following administrative hearings. 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

The Ethics Commission conducted two administrative hearings in 2010. The first involved Councilmember Marti Emerald and took place on April 8 and 29, 2010. After considering the witness testimony and documentary evidence, the Ethics Commission issued an Administrative Enforcement Order that required Councilmember Emerald to pay a fine in the amount of \$3,000 in connection with her admitted failure to timely disclose the win bonuses owed to two campaign consultants following her election to office in November of 2008.

The second administrative hearing involved Nancy Graham, the former President and Chief Operating Officer of the Centre City Development Corporation [CCDC]. Prior to joining CCDC, Ms. Graham partnered with several entities, including Lennar of South Florida, to develop a project in Lantana, Florida. While she was working at CCDC, Ms. Graham received profit distributions from this Florida project totaling over \$3.5 million. During her tenure with CCDC, Ms. Graham was extensively involved in the development of a \$1.5 billion mixed-use project known as Ballpark Village. One of the owners/developers of Ballpark Village is Lennar of California.

The Ethics Commission bifurcated the Graham hearing into two parts. The first, dealing with legal issues, took place on May 13, 2010. After considering the evidence and arguments presented by the parties, the Ethics Commission determined that when a City Official has received income from a business entity, the City Official's economic interests for purposes of the City's conflict of interest laws include the business entity as well as any "affiliated entities" of the business entity, in accordance with the criteria delineated in state regulations.

The second part of the Graham hearing took place on May 20, 2010, and was presided over by three Ethics Commissioners. These Commissioners in turn made a recommendation to the full Commission. Deliberations of the full Commission took place on August 12, 2010, at which time the Commission determined that Ms. Graham committed eighteen violations of the City's conflict of interest laws when she participated in and influenced CCDC decisions concerning the Ballpark Village project because it was reasonably foreseeable that these decisions would have a material financial impact on Lennar of California, one of her economic interests. The Commission issued an Administrative Enforcement Order that required Ms. Graham to pay a fine in the amount of \$32,000 in connection with her violations of the City's Ethics Ordinance.

LITIGATION

Thalheimer, et al. v. City of San Diego

On December 21, 2009, the following Plaintiffs filed suit with the United States District Court (Case No. 09-CV-2862 IEG) to enjoin the City from enforcing various provisions of its campaign laws:

- 1) Phil Thalheimer
- 2) Associated Builders & Contractors, Inc. San Diego Chapter
- 3) Lincoln Club of San Diego County
- 4) Republican Party of San Diego
- 5) John Nienstadt, Jr.

Specifically, the Plaintiffs challenged the following laws:

- ✓ the \$500 contribution limit to City candidates;
- ✓ the ban on contributions from organizations to City candidates
- ✓ the application of the source and amount limits to contributions made to groups that solely engage in independent expenditure activity; and
- ✓ the 12-month pre-election fundraising time limit.

The City retained outside counsel to defend the litigation and, during the course of 2010, Ethics Commission staff worked extensively with the City's attorneys to provide important information and assist with the defense of the lawsuit.

On February 16, 2010, the Court issued an order upholding the City's \$500 contribution limit but granting the Plaintiffs' request for a preliminary injunction with respect to the application of the \$500 contribution limit and the ban on contributions from organizations to groups that make independent expenditures to support or oppose City candidates. In addition, the court upheld the City's general ban on contributions from organizations to City candidates, but ruled that political parties may not be subjected to this ban and directed the City to adopt an appropriate limit. As discussed above, the Ethics Commission subsequently recommended a \$1,000 contribution limit for political parties, which was approved

by the City Council. Finally, the Court upheld the City's 12-month pre-election fundraising time limit, but ruled that it does not apply to a candidate's own funds.

Both parties appealed the Federal Court ruling to the Ninth Circuit Court of Appeals. Oral argument took place on October 4, 2010, and a decision is pending.

Petition to Enforce Commission Subpoena

For the first time in the Commission's history, a respondent did not comply with a Commission subpoena and the Commission staff was required to petition the San Diego Superior Court for an order compelling production of the requested documents. As discussed in greater detail above, one of the Commission's enforcement actions in 2010 involved Nancy Graham, the former President and Chief Operating Officer of CCDC. The Commission ultimately determined that Ms. Graham violated the City's conflict of interest laws when she participated in CCDC decisions concerning a project owned and developed by the affiliate of an entity that provided her with over \$3.5 million in income while she was employed by CCDC.

During the investigation, the Commission issued a subpoena to compel Ms. Graham to produce records reflecting all the payments she had received from the affiliate of the local developer. When Ms. Graham repeatedly failed to comply, the Commission staff filed a Petition with the San Diego Superior Court seeking an order to compel her compliance. Following several appearances and two Court Orders directing her to comply with the subpoena, Ms. Graham produced the requested documents shortly before the commencement of a contempt proceeding.