



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR

Date: January 18, 2017

To: Members of the Ethics Commission

From: Jessica Blome, Deputy Director, Enforcement & Legal Affairs

Subject: **AGENDA ITEM 10**
Enforcement Program Report for the January 23, 2017, Meeting

Summary: This report highlights programmatic information and operational updates related to the Enforcement Program.

Action Requested: No action is required by the Commission, as this item is for informational purposes only.

Programmatic Highlights

Suspended Investigations & Parallel Proceedings Policy. Staff researched a developed a proposed policy to govern when and for how long the Ethics Commission will suspend its administrative investigations at the request of either the City Attorney or District Attorney. The draft Enforcement Policy appears on this agenda at Item 7.

Weekend Filing Deadlines. Staff has been working with our contract vendor Netfile to update filing deadlines for calendar year 2017. In doing so, Staff has learned that the Campaign Finance Reform Ordinance and Campaign Consultant Ordinance give filers grace periods when filing deadlines fall on weekends or City holidays, much like state law for campaign finance filings. The Lobbyist Ordinance, San Francisco Campaign & Governmental Conduct Code, and Sunshine Ordinance, however, do not provide for similar grace periods. As part of our ongoing review of each law, Staff plan to propose a new regulation in February to be added to the Ethics Commission's Enforcement Regulations for Investigations and Enforcement Proceedings that provides a waiver to all filers when filing deadlines fall on weekends or City holidays, with some exceptions (e.g. campaign filing deadlines that fall within twenty-four hours of an expenditure the weekend prior to an election).

Sunshine Ordinance Task Force Hearings

On the evening of January 9, 2017, Staff appeared before the Sunshine Ordinance Task Force's (SOTF) Compliance & Amendment Committee to represent the Commission in the matters

Michael Petrelis v. LeeAnn Pelham, et. al., SOTF Complaint No 16091 (“Item 8”), and Michael Petrelis v. LeeAnn Pelham, et. al., SOTF Complaint No 16099 (“Item 9”).

As you will recall, Michael Petrelis filed Complaint No. 16091 on September 28, 2016, two days after the Commission’s September 26 regular meeting during which Mr. Petrelis attempted to hold up a political sign with vulgar language on the back during his and others’ public comment periods. Throughout the meeting, the Commission asked Mr. Petrelis repeatedly to put his sign down. Mr. Petrelis alleged that the Commission violated Sunshine Ordinance sections 67.15 by failing to allow him three minutes of public comment and 67.21 by failing to respond to a records request during the Commission meeting.

The Committee took up Item 8 and began the hearing by replaying the video from Mr. Petrelis’s interaction with the Commission at the September 26 meeting. Over the course of the next hour, the Committee then heard presentations from Mr. Petrelis and Staff before voting unanimously to refer the complaint to the full SOTF with findings that (1) the SOTF has jurisdiction and (2) the Commission did not violation sections 67.15 or 67.21 as alleged. In its referral to the full SOTF, the Compliance and Amendments Committee asked the SOTF to determine whether the Sunshine Ordinance permits commissioners to interrupt speakers during public comment. The SOTF has ordered the Commission or a knowledgeable Staff representative to appear again for a hearing before the full SOTF on February 1, 2017, at 5:30 p.m., when it will continue its deliberations at a formal hearing on the matter.

The Compliance and Amendments Committee then took up Item 9, Mr. Petrelis’s second complaint against the Commission—Complaint No. 16099. Mr. Petrelis filed his second complaint on October 18, 2016, after the Commission’s October 16 special meeting during which Mr. Petrelis objected to Chair Renne’s reading aloud of a new “Meeting Decorum” paragraph on the standard agenda without giving the public an opportunity to comment. The Committee began the hearing by replaying the video from Mr. Petrelis’s interaction with the Commission at the October 16 meeting.

The Committee then heard presentations from Mr. Petrelis and Staff before voting unanimously to refer the complaint to the full SOTF with findings that (1) the SOTF has jurisdiction and (2) the Commission violated section 67.15(a) and (c) and 67.7 by failing to provide the public notice and opportunity to comment on a regulatory change. The SOTF has ordered the Commission or a knowledgeable Staff representative to appear again for a hearing before the full SOTF on February 1, 2017, at 5:30 p.m., when it will continue its deliberations at a formal hearing on the matter.

Staff may respond to the Committee’s determination that the Commission violated the Sunshine Ordinance in writing on or before January 27, 2017.

Operational Updates/Investigative Caseload Data

Investigative matters under the jurisdiction of the Ethics Commission are treated as formal complaints meriting investigation if, based on the allegations and Executive Director’s preliminary review, the Executive Director determines there is reason to believe a violation of law may have occurred. Once the Executive Director has determined that she has reason to believe a violation of law may have occurred, that complaint is logged as a formal complaint.

Current Investigations. Table 1 summarizes the number of pending formal complaints within the Ethics Commission’s jurisdiction that remained pending as of January 15, 2017. This includes the oldest matter

that remains open, a hearing on the merits arising from the 2013 election that the Commission will hear at its January 23, 2017 meeting. More detailed information about the Commission’s enforcement caseload is provided in Attachment 1. Attachment 1 offers a snapshot of the number, age, and general nature of matters in preliminary review as well as our open formal complaints as of January 15, 2017. It also visualizes the impact on caseload timeframes with the resignation of the Commission’s last investigator in early November, as complaints older than 4-6 months have been resolved, while those filed after mid-November are still awaiting preliminary review. Staff is prioritizing preliminary review of those complaints for the February meeting.

Staff continues to approach its pending caseload by focusing on the oldest complaints and investigations, logging and reviewing all new matters, and also being attentive to work demanded by the most serious cases, whatever their age. Staff continues to prepare probable cause reports and move certain investigations along even as the application and exam process for four investigator positions is underway. We anticipate holding two probable cause hearings potentially in March, once our three Investigator/Legal Analysts have joined the staff.

Table 1 – Summary of Pending Formal Complaints, by Type, as of January 16, 2017

Type	Number
Campaign Finance	9
Governmental Ethics	13
Lobbyist Ordinance	3
Sunshine Ordinance	0
Whistleblower Ordinance (Retaliation)	3
Total	28

Calendar Year Data. In an ongoing effort to visualize data for added transparency and for improving how we manage our caseload to our enforcement priorities, Staff created two charts to track the average age and number of enforcement matters from month-to-month. The charts reflect data from April 2016 to January 2017. Reviewing this summary data on a regular basis is a tool to help Staff monitor and better assess the age and pace of its case work.

We note, for example, that the number of formal complaints and matters under preliminary review held relatively steady until an expected uptick in October, the month preceding the election. Soon after the election, the number of complaints fell, but the Commission’s remaining investigator left City service. In total for calendar year 2016, Staff logged 167 matters for preliminary review. Of those complaints, 25 (20 percent) were staff-initiated, with over two-thirds of those 25 initiated after mid-August when the new Deputy Director joined the Commission staff. Of the 167 matters logged, 72 (43 percent) were dismissed by the Executive Director, and 19 (11 percent) became formal investigations. Seventy-six (46 percent) remain under preliminary review and will be prioritized for review over the next month.

Referrals to Bureau of Delinquent Revenues

On January 10, 2017, Staff met with several members of the Bureau of Delinquent Revenues to better understand how BDR handles collection of administrative penalties and late fines assessed by the Ethics Commission. Staff listened to an informal presentation by the BDR staff assigned to handle Ethics

Commission collection efforts and learned that BDR employs several active and passive collection tools to obtain payment on Commission debts. For example, BDR employees actively send collection notices to debtors, execute garnishments on a debtors' wages, and issue bank levies on debtors' personal assets. BDR also obtains abstracts of judgments on debts over a certain monetary threshold. Abstracts appear as liens in every county in the state of California. BDR only passively monitors an abstract's status because the City registers as a lienholder on the debtor's assets, the priority for which depends on the type of debt that underscores the abstract (e.g., tax debt is a higher priority than administrative penalties). Staff thanks BDR meeting with us.

During the January 23, 2017, BDR will make a presentation to the Commission about its collections process and the status of Ethics Commission matters on which it is currently working. BDR will be represented by Assistant Director Jeffrey Smejkal and Collection Supervisor Sheila Robleto. Senior manager Amanda Fried may also attend.

The following chart summarizes the status of accounts that remain active that have been referred by the Ethics Commission to the City's Bureau of Delinquent Revenues:

Committee/Filer	ID #	Treasurer/ Responsible Officer	Date Referral Effective	Original Amount Referred	Last Month's Balance	Current Balance	Status
Chris Jackson	1347066	Chris Jackson	7/12/13	\$6,601	\$6,601	\$6,601	Judgement issued 11/18/15 Small Claims Court
Committee to Elect Norman for Supervisor	1327771	Jacqueline Norman	5/01/15	\$9,000	\$9,000	\$9,000	
Bob Squeri for District 7	1346150	Bob Squeri	5/01/15	\$2,000	\$2,000	\$2,000	
Isabel Urbano	153993	Isabel Urbano	3/23/16	\$7,000	\$7,000	\$7,000	
Chris Jackson	1347066	Chris Jackson	9/26/16	\$6,100	-	\$6,100	
Lynette Sweet	3544713	Lynette Sweet	12/29/16	\$74,408.19	--	\$74,408.19	
					Total	\$99,009.19	

I look forward to answering any questions you might have at the upcoming Commission meeting.

Agenda Item 10, Attachment 1

Age of Open Formal Complaints Caseload as of January 15, 2017 (n=28)

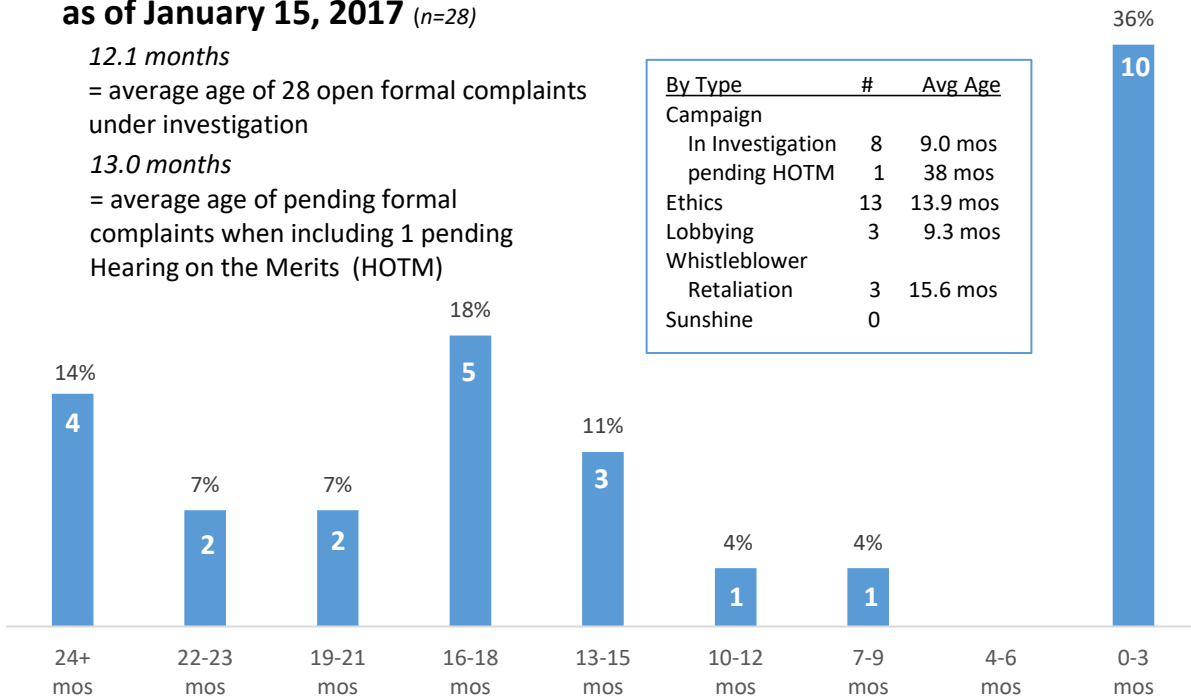
12.1 months

= average age of 28 open formal complaints under investigation

13.0 months

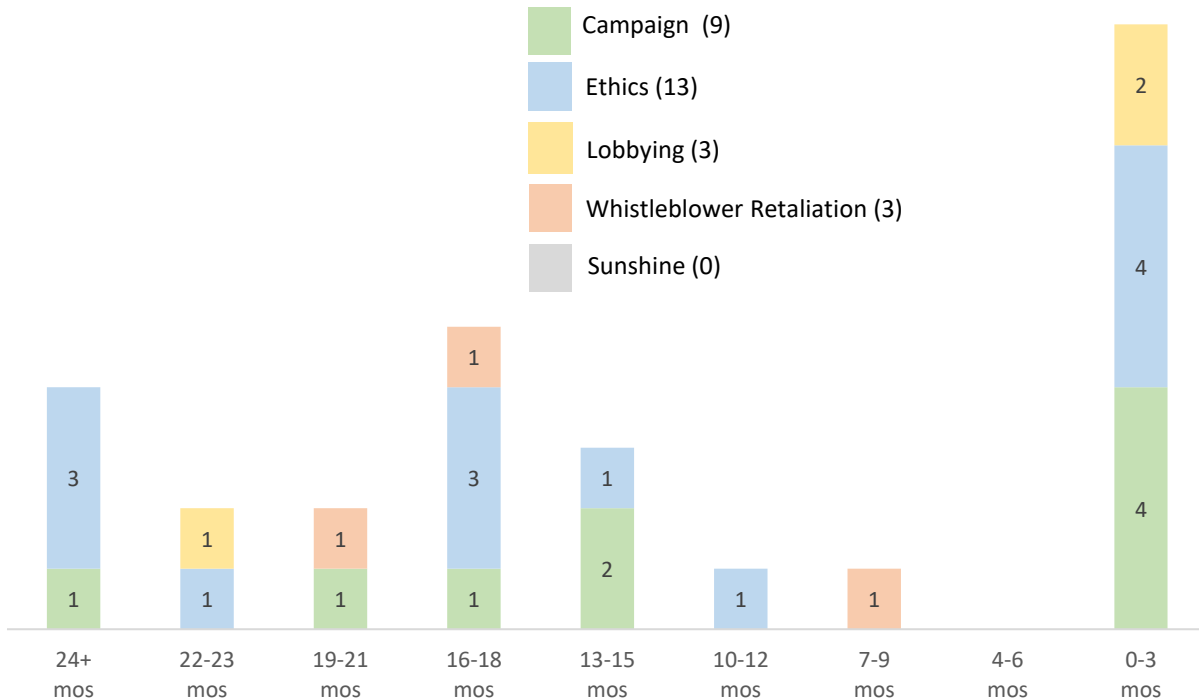
= average age of pending formal complaints when including 1 pending Hearing on the Merits (HOTM)

By Type	#	Avg Age
Campaign		
In Investigation	8	9.0 mos
pending HOTM	1	38 mos
Ethics		
Ethics	13	13.9 mos
Lobbying		
Lobbying	3	9.3 mos
Whistleblower		
Retaliation	3	15.6 mos
Sunshine	0	



Caseload of Open Formal Complaints, by Age and Type as of January 15, 2017 (n=28)

Campaign (9)
Ethics (13)
Lobbying (3)
Whistleblower Retaliation (3)
Sunshine (0)



Agenda Item 10, Attachment 1

Age of Matters in Preliminary Review

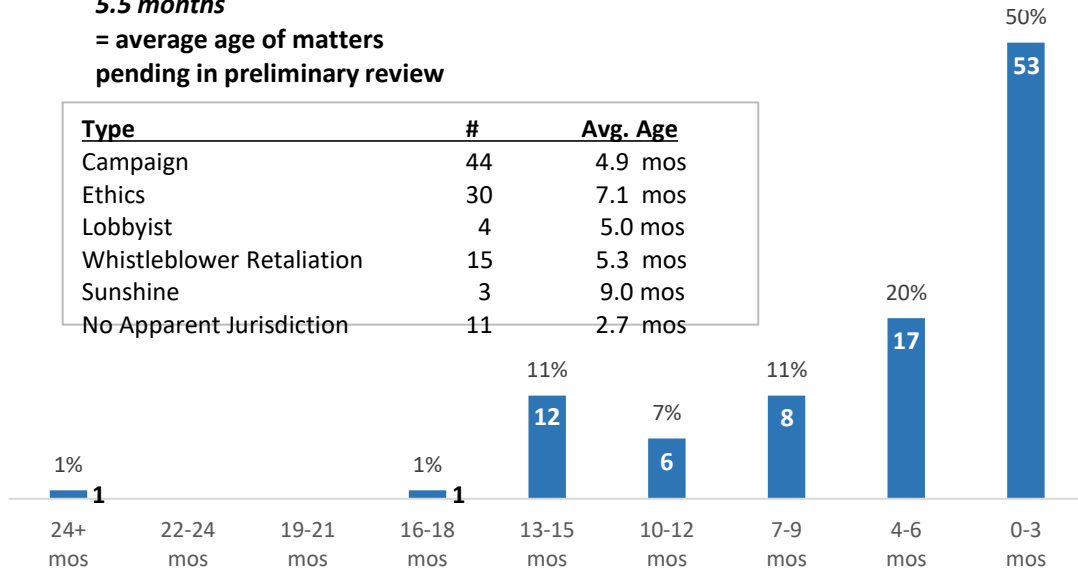
as of January 15, 2017 (n=107)

5.5 months

= average age of matters

pending in preliminary review

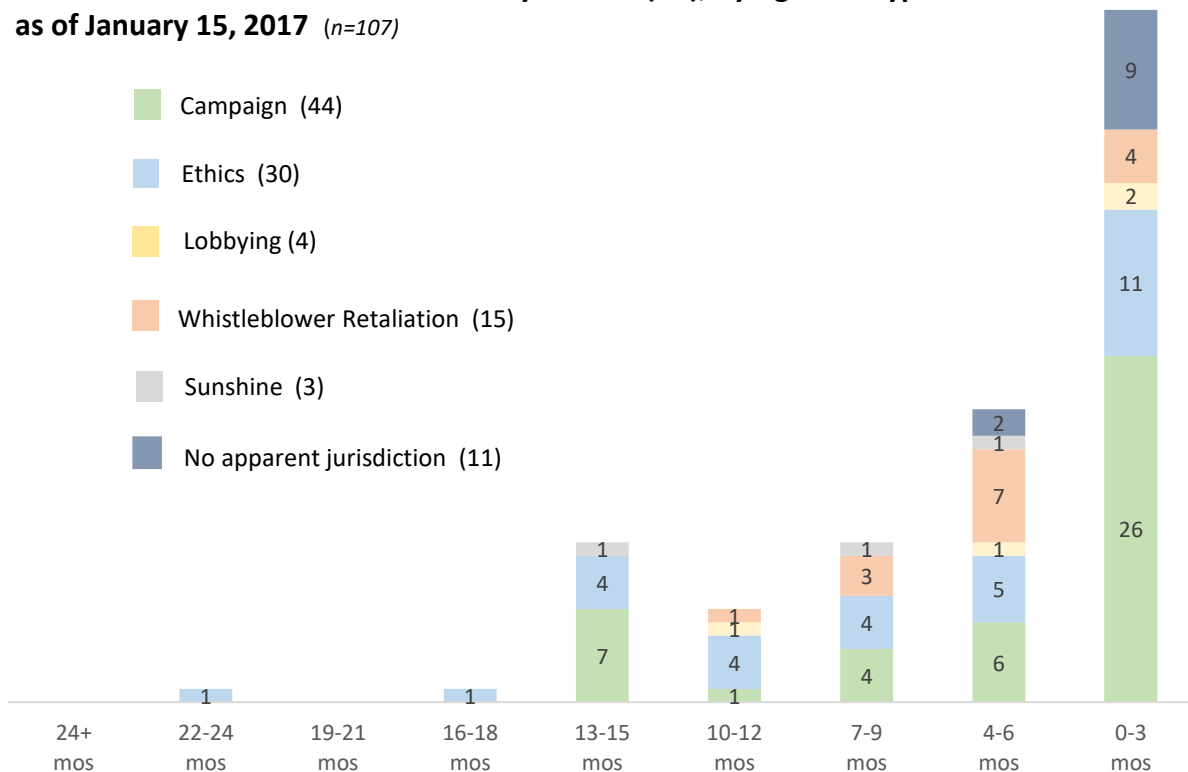
Type	#	Avg. Age
Campaign	44	4.9 mos
Ethics	30	7.1 mos
Lobbyist	4	5.0 mos
Whistleblower Retaliation	15	5.3 mos
Sunshine	3	9.0 mos
No Apparent Jurisdiction	11	2.7 mos



Caseload of Matters Under Preliminary Review (PR), by Age and Type

as of January 15, 2017 (n=107)

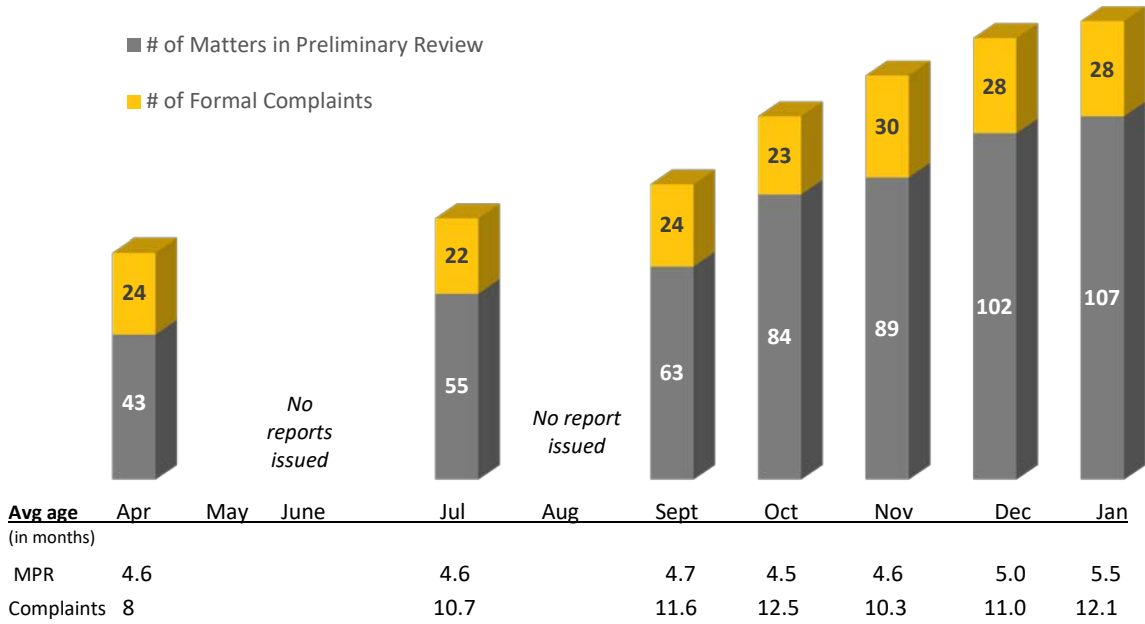
- Campaign (44)
- Ethics (30)
- Lobbying (4)
- Whistleblower Retaliation (15)
- Sunshine (3)
- No apparent jurisdiction (11)



Agenda Item 10, Attachment 2

SFEC Enforcement Caseload

Data reported at Ethics Commission Meetings
April 2016 through January 2017



Average Age of SFEC Enforcement Caseload, in Months

Reported at Ethics Commission Meetings April 2016 through January 2017

