



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

DAINA CHIU
CHAIR

Date: January 14, 2019

QUENTIN L. KOPP
VICE-CHAIR

To: Members of the Ethics Commission

PAUL A. RENNE
COMMISSIONER

From: Jeff Pierce, Director of Enforcement & Legal Affairs

YVONNE LEE
COMMISSIONER

Subject: **AGENDA ITEM 7: Enforcement Report for the January 18, 2019 Meeting**

NOREEN AMBROSE
COMMISSIONER

Summary: This report highlights programmatic information and operational updates related to the Enforcement & Legal Affairs division.

LEEANN PELHAM
EXECUTIVE DIRECTOR

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

Programmatic Highlights

The Commission now has 92 matters in preliminary review and 88 matters under investigation. The Enforcement Division received two new complaints since December 14, 2018 and consolidated two previous complaints for which the allegations substantially overlapped. In addition, the Executive Director dismissed seven complaints in the last month based on investigators' analysis, and the Enforcement Division opened four new investigations and closed one investigation. The following tables compare the number and average age of the Commission's enforcement docket to the same figures that existed in the prior month and in this month of the prior year:

Number and Average Age of Matters in Preliminary Review

Month	Jan. 2019	Dec. 2018	Jan. 2018
Number	92	100	58
Avg. Age (mo.)	6.2	5	5.5

Number and Average Age of Matters in Open Investigation

Month	Jan. 2019	Dec. 2018	Jan. 2018
Number	88	85	63
Avg. Age (mo.)	15	15	9.9

Attachment 1 contains additional detail regarding the type and age of matters under preliminary review. Attachment 2 contains additional similar detail regarding open investigations.

Amendments to the Whistleblower Protection Ordinance

On January 19, 2018, this Commission approved amendments to the Whistleblower Protection Ordinance, Article IV of the San Francisco Campaign & Governmental Conduct Code. As Senior Policy Analyst Pat Ford noted in this month's Policy Report, those amendments will become effective on January 20, 2019.

These amendments change the Whistleblower Protection Ordinance by:

- Expanding protections to reach not only City employees but also City contractors and employees of City contractors working within the scope of a contract with the City and County for activities covered by the Ordinance;
- Creating an affirmative duty upon supervisors to refer a retaliation complainant to the Ethics Commission, and creating new sanctions against supervisors who breach the confidentiality requirements;
- Expanding remedies by empowering the Ethics Commission to recommend that the City cancel an adverse employment action to restore a victim of retaliation to the position they previously occupied;
- Expanding and clarifying the kinds of complaints that constitute protected activity that form the underlying basis for a retaliation complaint;
- Requiring that the Controller and the Ethics Commission together prepare materials to publicize and promote whistleblower protections, and requiring that all City departments distribute those materials;
- Requiring that the Department of Human Resources, the Controller, and the Ethics Commission together prepare web-based training for supervisors regarding their responsibilities to assist retaliation complainants, and requiring supervisors to receive the training annually;
- Clarifying that the "preponderance of the evidence" standard to establish retaliation applies in a civil action or an administrative proceeding before the Ethics Commission and not at the outset of determining the merits of a complaint;
- Clarifying that the Ordinance delineates responsibilities for two different functions of City government: the investigation of whistleblower complaints by the Controller's Office Whistleblower Program and, separately, the investigation of complaints alleging retaliation for engaging in protected activity by the Ethics Commission;
- Creating a good faith exception whereby City employees or City contractor employees who mistakenly complain to the wrong department may nevertheless be considered to have engaged in protected activity;
- Expanding protections to City employees who complain to their own department verbally, instead of only in writing; and
- Strengthening accountability for investigations into alleged whistleblower retaliation by empowering the Ethics Commission to require a written report from another department that has investigated a complaint that the Ethics Commission referred to it.

Because the amendments expand the protections to reach City contractors and employees of City contractors, and because they create new sanctions for supervisors who breach the Ordinance’s confidentiality requirements, the Commission might expect to receive more complaints alleging retaliation than before these amendments took effect. In addition, because the amendments expand the scope of protected activity—including by reaching employees who complained to their own departments verbally in addition to those in writing, or who in good faith complained to the wrong department—the Commission might expect that fewer complaints alleging retaliation will suffer from jurisdictional defects. As a result, the Enforcement Division likely will be able to investigate more retaliation complaints than before the amendments took effect.

In addition to conforming its intake and investigative practices to these amendments, the Enforcement Division will work with the Engagement and Compliance Division to implement the publicity and training requirements of the new law. Commission staff will likewise work with the City’s Office of Contract Administration to publicize the protections that City contractors and their employees now enjoy.

Operational Updates/Investigative Caseload Data

Investigative matters under the jurisdiction of the Ethics Commission merit investigation after the Enforcement Director’s preliminary review finds there is reason to believe a violation of law may have occurred. Once the Enforcement Director has made that determination, the Enforcement division forwards the complaint to the City Attorney and District Attorney under San Francisco Charter section C3.699-13(a) and the complaint is converted into an open investigation. Table 1 summarizes the number of pending open investigations within the Ethics Commission’s jurisdiction that remained pending as of November 7, 2018 and as compared to the prior reporting period. As noted above, more detailed information about the Commission’s enforcement caseload is provided in Attachments 1 and 2.

Table 1 – Summary of Open Investigations by Type as of January 14, 2019:

Type	December 2018	January 2019
Campaign Finance	36	38
Governmental Ethics	33	34
Lobbyist Ordinance	5	6
Whistleblower Retaliation	10	9
Sunshine Ordinance	1	1
Total	85	88

Referrals to Bureau of Delinquent Revenues

Table 2 – Summary of the status of accounts that remain after referral by the Ethics Commission to the City’s Bureau of Delinquent Revenues.

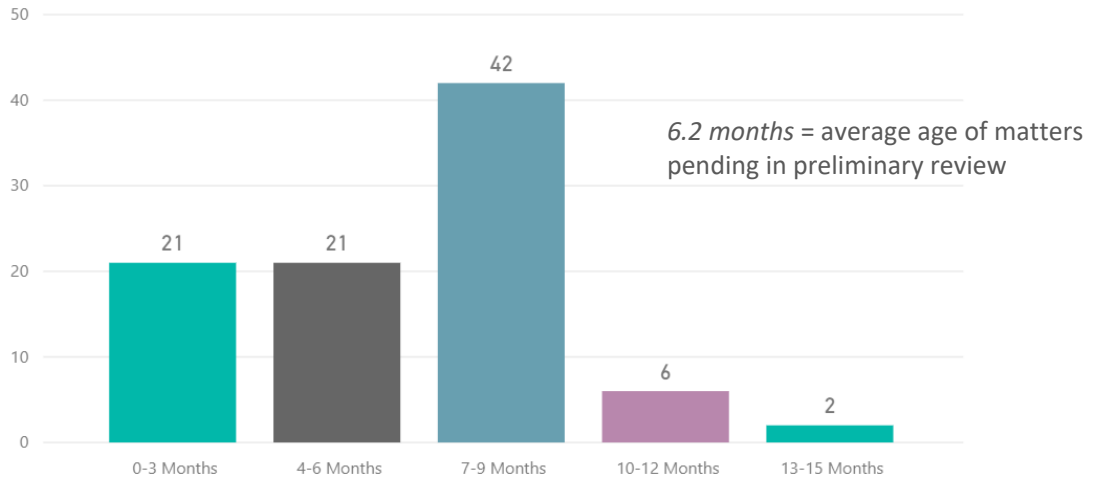
Committee/ Filer	ID #	Treasurer/ Responsible Officer	Referral Date	Original Amount Referred	Current Balance	General Status	Status
Chris Jackson	1347066	Chris Jackson	7/12/13	\$ 6,601.00	\$ 5,100.99	Judgment	Mr. Jackson has vacated his place of residence. According to all available information, he is unemployed; however, BDR continues to search for his employer. In order to locate him, his assets and place of employment, BDR will continue skip tracing. An Order of Examination Hearing has been rescheduled for 4/18/19 (to allow more time to serve the debtor), where the debtor is ordered to appear to disclose assets.
Chris Jackson	22- 12119	Chris Jackson	9/26/16	\$ 6,100.00	\$ 6,100.00	Judgment	<i>See above.</i>
Committee to Elect Norman for Supervisor	14- 131112	Jacqueline Norman	5/1/15	\$ 9,000.00	\$ 9,000.00	Judgment	Ms. Norman has vacated her family place of residence. According to all available information she is unemployed; however, BDR continues to search for her employer. In order to locate her, her assets and place of employment,

Committee/ Filer	ID #	Treasurer/ Responsible Officer	Referral Date	Original Amount Referred	Current Balance	General Status	Status
							BDR will continue skip tracing. An Order of Examination Hearing has been rescheduled for 4/18/19 (to allow more time to serve the debtor), where the debtor is ordered to appear to disclose assets.
Isabel Urbano	SFO-153993	Isabel Urbano	3/23/16	\$ 7,000.00	\$ 6,850.00	Legal Review	The Legal Department mailed their Intent to File Lawsuit letter via registered mail to all known addresses, since BDR could not confirm where the debtor lives. Pursuing process to serve out of state.
Lynette Sweet	1324331	Lynette Sweet	12/29/16	\$ 74,408.19	\$ 74,408.19	Bankruptcy	The debtor refiled under BK case 18-31033. The Bankruptcy unit filed a claim for the new BK case. Proof of claim filed 11/14/2018. No additional scheduled hearing dates.
Total:							\$101,459.18

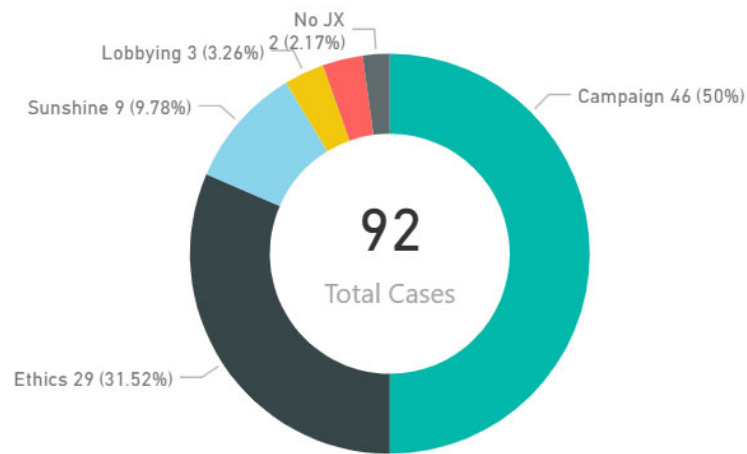
I look forward to answering any questions you might have at the upcoming Commission meeting.

Agenda Item 7, Attachment 1

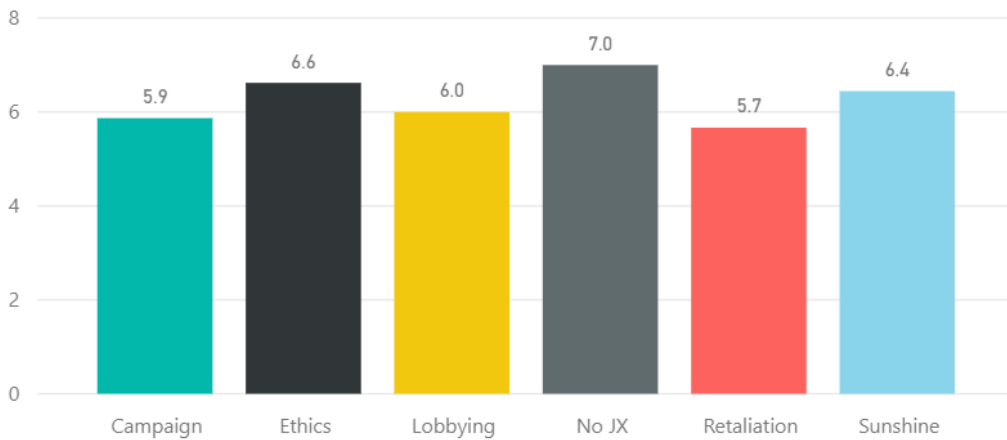
Age of Matters in Preliminary Review



Matters in Preliminary Review by Type

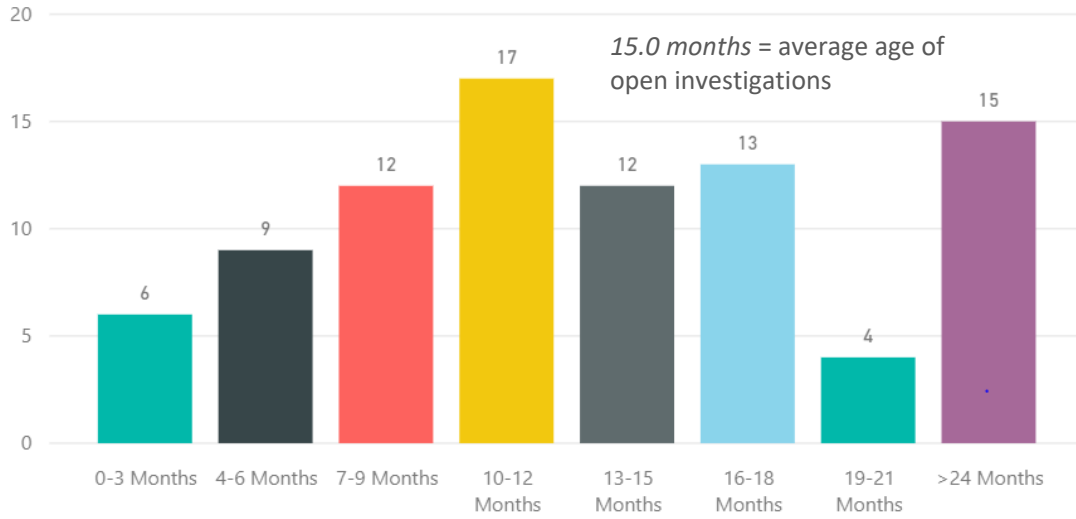


Average Age of Cases in Preliminary Review

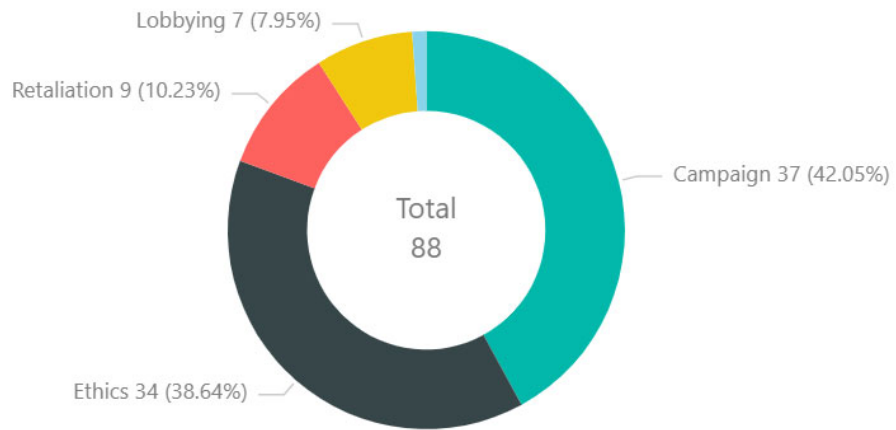


Agenda Item 7, Attachment 2

Age of Matters under Investigations



Open Investigations by Type



Case Type by Average Age in Months

