



# San Francisco Ethics Commission

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May 9, 2022

To: Members of the Ethics Commission  
From: Patrick Ford, Director of Enforcement  
Subject: **Agenda Item 7: Quarterly Enforcement Report including informational presentation on the Commission's administrative hearing process**

## Summary and Action Requested

This report provides general data about the cases handled by the Commission's Enforcement Division. The Enforcement Division will also provide an informational presentation as part of this agenda item that explains the Commission's administrative enforcement hearing process, including the probable cause process and the process for hearings on the merits.

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

The Commission's Enforcement Division is responsible for investigating violations of state and local laws relating to campaign finance, lobbying, conflicts of interest, governmental ethics, and whistleblower protection. Enforcement matters are initiated both in response to complaints the Division receives from members of the public and by the Director of Enforcement based on information contained in public records, media reports, and other sources.

All enforcement matters are first examined through the preliminary review process, which assesses whether there is reason to believe that a violation of law within the Commission's jurisdiction has been committed. Matters will be dismissed in preliminary review if they are outside of the Commission's jurisdiction, lack sufficient evidence to support further investigation, do not allege violations of the law, pertain to conduct that has already been investigated or resolved, or other similar bases that indicate an investigation would not serve the interest of justice.

Matters that are not dismissed in preliminary review are opened as investigations. The Enforcement Division seeks evidence through the investigation that would indicate whether a violation of the law has been committed. This may include interviewing witnesses, reviewing documents, and issuing subpoenas when necessary. Details about any matter that is opened as an investigation are shared with the City Attorney's and District Attorney's offices so that those offices may determine whether they wish to pursue civil or criminal penalties, respectively.

If the Enforcement Division finds evidence indicating that a violation of the law has been committed, it will seek to resolve the matter by securing penalties from the respondent in one of two ways. First, the respondent may enter into a stipulated settlement agreement with the Commission in which the respondent admits to violating the law and agrees to pay a penalty. Alternatively, the Enforcement Division may initiate an administrative hearing process.

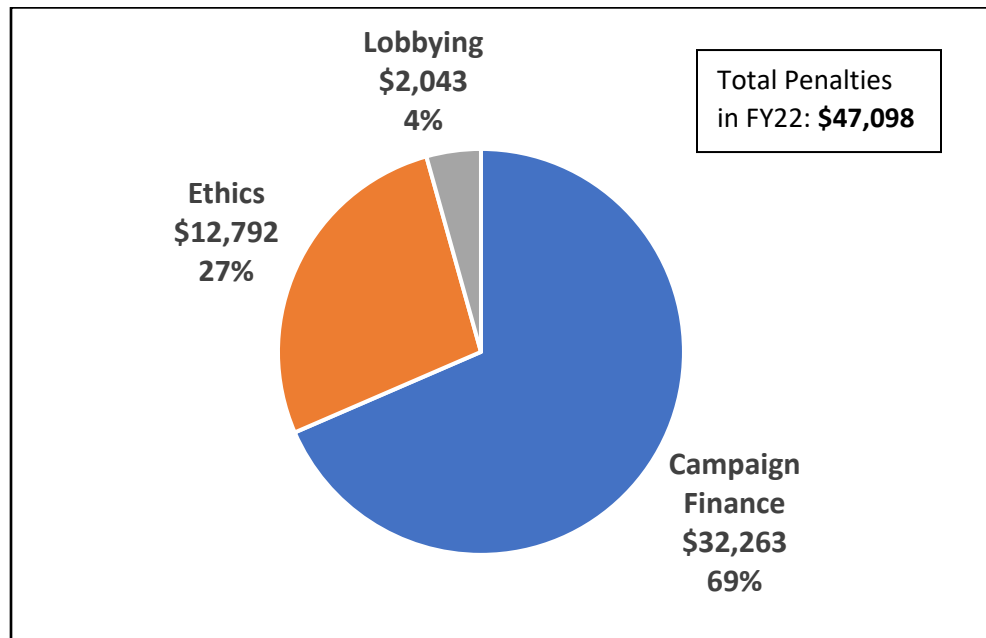
As part of this agenda item, Staff will provide an informational presentation that explains in greater detail how the administrative enforcement process works. This presentation will include information about the probable cause process and the process for holding a hearing on the merits.

Summary data is provided below regarding cases handled by the Commission’s Enforcement Division to assist the Commission and the public in understanding and following the Commission’s administration of its enforcement powers granted under the San Francisco Charter.

### Cases Resolved

So far in Fiscal Year 2022 (FY22) , the Enforcement Division has concluded 80 matters. Eleven of these matters (14 percent) resulted in stipulated settlements approved by the Commission. In total, these settlements represented penalties of \$47,098. The penalties are summarized in Chart 1 below and are categorized by program area.

**Chart 1 – Penalties Assessed in FY22 by Program Area**



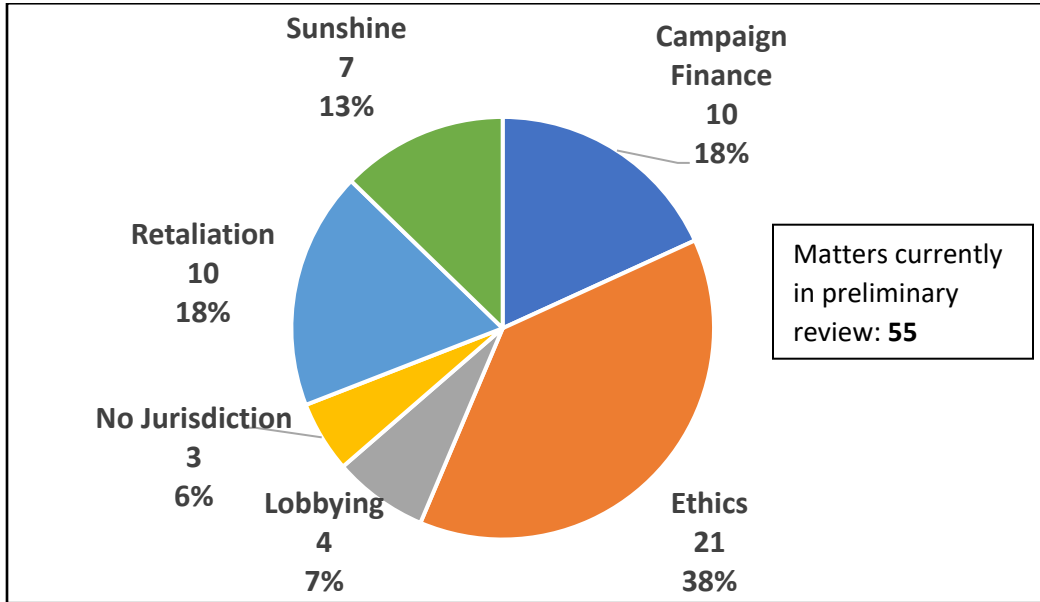
On the agenda for this month’s meeting is an additional settlement agreement that would impose \$20,000 in penalties for violations of ethics laws.

### Cases In Progress

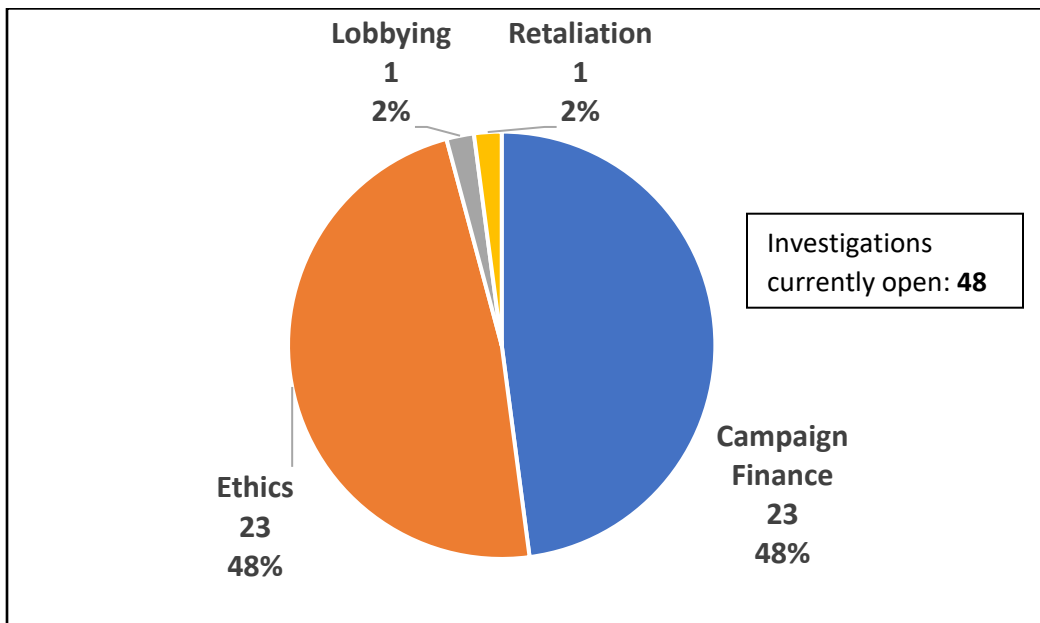
So far in FY22, 127 enforcement matters have been initiated. The majority of these began from complaints that the Commission receives from the public, but it also includes matters that the Staff initiated based on media reports, observations in public disclosures, independent research, and interactions with regulated persons. Some of these matters remain in progress while others have been resolved.

In total, 103 matters are currently in progress, including matters that were initiated during FY22 and matters that were initiated in prior fiscal years. Of these matters, 55 are in preliminary review, and 48 are open investigations. These matters are broken down by program area in Charts 2 and 3 below.

**Chart 2 – Matters in Preliminary Review by Program Area**



**Chart 3 – Open Investigations by Program Area**



Twelve of the 48 investigations (25%) are currently more than two years old. There are a variety of reasons a matter might not be resolved within two years, including respondents pursuing all available due process rights, voluminous records, complex facts, coordination with another law enforcement agency, and investigative holds requested by the District Attorney or City Attorney. In accordance with the Enforcement Division's case closure plan, the Division is actively working toward resolving all investigations that are currently more than two years old and to resolve all matters within two years moving forward.

# AN OVERVIEW OF THE ADMINISTRATIVE HEARING PROCESS

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SAN FRANCISCO ETHICS COMMISSION  
REGULARLY SCHEDULED MEETING

MAY 13, 2022



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## Probable Cause Proceedings

Probable Cause Report  
Response  
Rebuttal  
Probable Cause Conference



## Hearing on the Merits

Preliminary Matters  
Hearing on the Merits  
Finding



## Administrative Orders and Penalties

# GOAL

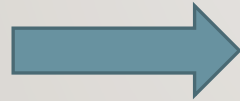
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To review the prosecution phase of the enforcement process to better understand:

- **The process** of handing a case that proceeds through an Administrative Hearing,
- **The role and obligations of each party** involved throughout the process,
- **The role and duty of the Commission** as the ultimate decision maker.

# THE ENFORCEMENT PROCESS: A QUICK LOOK

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## **Complaint/ Staff Initiation**

- Preliminary Review
- Open Investigation if reason to believe violation occurred

## **Investigation**

- Violations Identified

## **Stipulated Settlement**

## **Administrative Hearing Process**

- Probable Cause Proceedings
- Hearing on the Merits
- Commission's Finding





# THE ADMINISTRATIVE HEARING PROCESS

## Overview

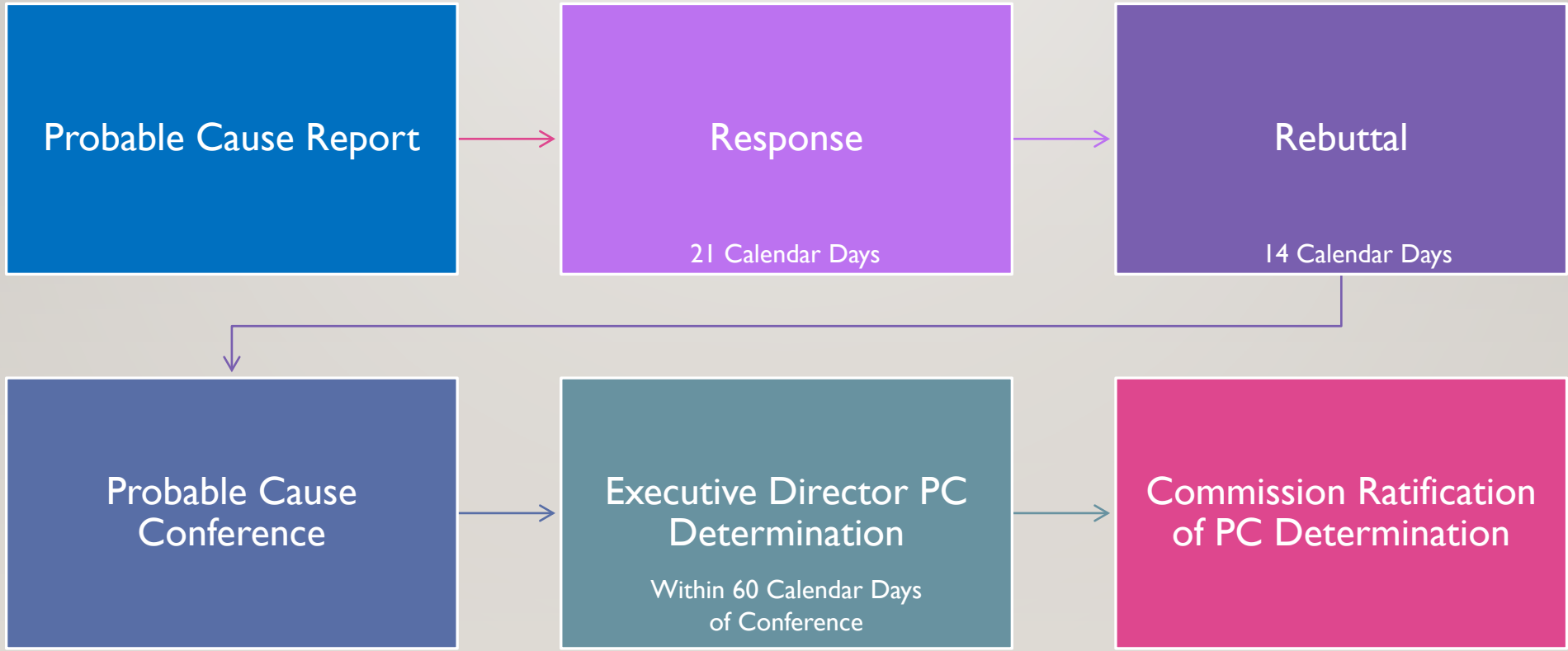
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# THE ADMINISTRATIVE HEARING PROCESS

## 1 - Probable Cause Proceedings

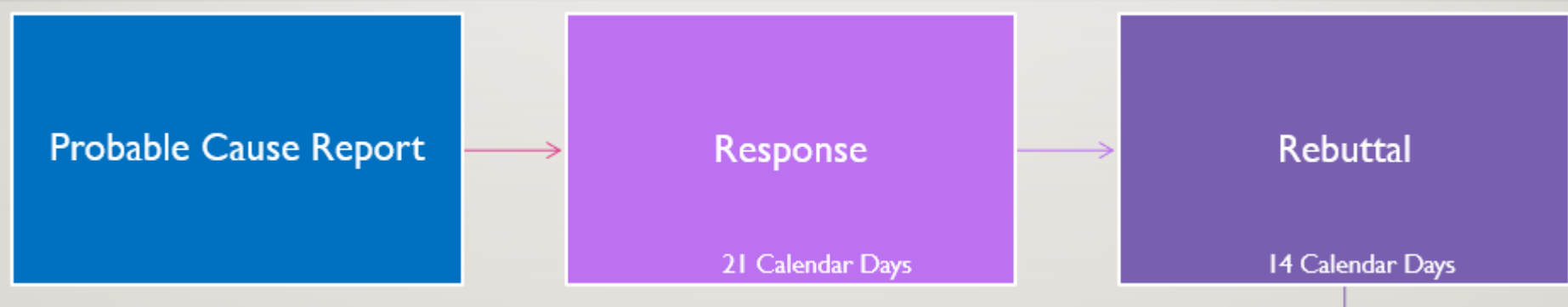
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# THE ADMINISTRATIVE HEARING PROCESS

## 1 - Probable Cause Proceedings

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### Director of Enforcement

- Prepares and delivers **Probable Cause Report** to Executive Director and each Respondent
- Identifies violations, states relevant law, summarize evidence obtained
- Notifies Respondent of Right to Request a Probable Cause Conference

### Respondent

- May submit a **Response** with evidence, legal arguments, and mitigating information
- Due 21 calendar days following service of Probable Cause Report
- Delivered to Executive Director, Director of Enforcement, each Respondent

### Director of Enforcement

- May submit a Rebuttal
- Due 14 calendar days after Response was filed
- Delivered to the Executive Director and each Respondent

# THE ADMINISTRATIVE HEARING PROCESS

## 1 - Probable Cause Proceedings



- Submit request within 21 calendar days of PC Report
- Conducted by Executive Director
- Informal Proceeding
- Confidential
- Respondents may retain counsel or another representative
- Parties may present witness testimony upon 7-day request

- Finding of Probable Cause OR
- Finding of No Probable Cause
- Executive Director notifies Commission

- Ratification without Review OR
- Request for Review: ratification by vote of 3 members
- Submit request within 5 calendar days of notification
- Review in closed session

# THE ADMINISTRATIVE HEARING PROCESS

## 2 – Hearing on the Merits

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- **Hearing on the Merits:** to determine whether the Respondent has committed or caused the alleged violation(s).
- **Charging Document:** the Probable Cause Determination serves as the charging document for the Hearing on the Merits.
- **Standard of Proof:** preponderance of the evidence (more likely than not).
- **Notice:** Executive Director **MUST** deliver Notice with the date, time, and location to each respondent at least **30 calendar** days in advance.

# THE ADMINISTRATIVE HEARING PROCESS

## 2 – Hearing on the Merits

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- **Preliminary Matters:** the Commission may consider any matters unrelated to the truth or falsity of the factual allegations in the Probable Cause Determination upon request by motion of any party.
  - Motion must be delivered **15 calendar days** prior to commencement of the hearing on the merits.
  - Responses are due **10 calendar days** prior to the hearing, while Replies are due **7 calendar days** prior to the hearing.
- **Hearing Briefs**
  - Executive Director must submit a hearing brief **30 calendar days** prior to hearing on the merits
  - Respondent may submit one 15 calendar days prior to hearing on merits

# THE ADMINISTRATIVE HEARING PROCESS

## 2 – Hearing on the Merits

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- **Public Hearing:** open to the public and held within a regularly scheduled meeting or in special session(s)
  - Administration of Oaths and Affirmations
  - Oral Arguments and Rebuttals
  - Exhibits
  - Witness Examinations
- Finding of Violation: vote by at least 3 Commissioners
- Note: Commission may delegate to a licensed attorney or one Commissioner the role of hearing officer



# ADMINISTRATIVE ORDERS AND PENALTIES

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**Finding of Violation:** by vote of at least 3 Commissioners, the Commission may issue orders and penalties requiring the respondent(s) to:

- Cease and desist the violation
- File any reports, statements, or other documents or information required by law
- Pay a monetary penalty of to the general fund of the City whichever is greater of:
  - Any amount under the law the Commission finds the Respondent has violated, or if the law doesn't specify the amount of the monetary penalty, then
  - An amount up to \$5,000 for each violation OR
  - **Three times the amount** of the Respondent failed to properly report, unlawfully contributed, expended, gave, or received.
- Order Forfeiture
- Any other relief the Commission deems appropriate and within its authority under Charter sec C3.699-13.





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