

A Report of the 2004-05 Civil Grand Jury
For the City and County of San Francisco

**The San Francisco Ethics Commission
Budgeting and Staffing Issues**

Released May 17, 2005

Pursuant to State law, reports of the Civil Grand Jury do not identify the names or identifying information about individuals who provided information to the Civil Grand Jury.

Departments and agencies identified in the report must respond to the Presiding Judge of the Superior Court within the number of days specified, with a copy sent to the Board of the Supervisors. As to each finding of the Grand Jury, the response must either (1) agree with the finding, or (2) disagree with it, wholly or partially, and explain why. Further as to each recommendation made by the Grand Jury, the responding party must report either (1) that the recommendation has been implemented, with a summary explanation of how it was; (2) the recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation; (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a timeframe for the officer or agency head to be prepared to discuss it (less than six months from the release of this Report); or (4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (Cal. Penal Code, sec. 933, 933.05)

**The San Francisco Ethics Commission
Budgeting and Staffing Issues**

SUMMARY OF RECOMMENDATIONS

1. Investigative resources of the Ethics Commission (EC) should be increased by some combination of available alternatives: increases in budget, decreases in mandated responsibilities, and/or delegation of existing investigative duties to other City departments within the limits of the law.
2. Department heads should be assessed penalties for their failure to comply with Statement of Incompatible Activities (SIA) requirements and deadlines. This is in keeping with the practices of assessing penalties for other non-compliant entities, such as lobbyists and candidates for public office, under the jurisdiction of the Ethics Commission.
3. If the staff of the EC is expanded, random audits of SEIs required to be on file in City departments should be conducted.
4. If the staff of the EC is expanded, random audits of the content of those SEIs on file in the EC should be conducted.
5. The Board of Supervisors must initiate an independent, rigorous, and ongoing evaluation of Campaign Finance Reform and the voluntary public campaign financing program.
6. The Ethics Commission should hire a well-qualified Education and Training Officer.

GLOSSARY

CFRO Campaign Finance Reform Ordinance

CGJ 2004-2005 San Francisco Civil Grand Jury

EC Ethics Commission

FPPC Fair Political Practice Commission

Proposition C passed 11/03; transferred the task of handling the whistleblower telephone hotline to the Controller's Office

Proposition E passed 11/03; revised and updated the City's conflict of interest laws, requiring all City departments, boards, and commissions to develop statements identifying "incompatible activities."

Proposition G passed 11/97; Campaign Consultants Ordinance; mandated, expanded audits of financial statements filed by candidates and political committees.

Proposition J passed 11/00; 'the taxpayer protection amendment' was intended to reduce the influence of gifts and prospective campaign contributions on the decisions of public officials.

Proposition K passed 11/93; created the Ethics Commission, transferring ethics functions then divided among five city departments to a single Ethics Commission

Proposition N passed 11/95; called for the enforcement and administration of the CFRO.

Proposition O passed 11/00; amended the San Francisco Campaign Finance Reform Ordinance (CRFO), by providing for the limited public campaign financing of candidates for the Board of Supervisors.

San Francisco City Charter The fundamental law of the City of San Francisco

SEI Statement of Economic Interest; required by CA Codes, Gov't. Code Section 87100

SIA Statement of Incompatible Activity; required by San Francisco Government Code Section 1126

Administration Code XIIB Section 16.535-539 Mandates electronic filing for certain campaign filing entities.

State Proposition 208 went into effect 1/97; required the Ethics Commission to implement further campaign reform provisions to be in compliance.

INTRODUCTION

Eleven years ago, the San Francisco Board of Supervisors voted to place on the November 1993 ballot Proposition K, which would, through a charter amendment, create an Ethics Commission (EC). When arguing in favor of this proposition, the Board of Supervisors noted, “the people of San Francisco are in danger of losing faith in our city government. Every few weeks another scandal arises and public confidence sinks to new lows. We need an Ethics Commission to turn things around at City Hall. Proposition K will establish an independent body to clean up our city government.”¹ “The Ethics Commission will: investigate and punish wrongdoing... establish tougher rules for city lobbyists... strengthen the city’s whistle blower program...draft stricter guidelines for city officials...educate and advise on ethics laws.”²

Prior to approval of Proposition K in November 1993, five city departments administered ethics functions: the Registrar of Voters (later known as the Department of Elections) administered campaign finance disclosure and audits; the Clerk of the Board of Supervisors handled lobbyist rules and regulations as well as conflict of interest reporting; the District Attorney and City Attorney gave advice and wrote opinions, dealt with complaint investigations and enforcement; the Mayor’s Office handled issues relating to improper government activities and the whistleblower program.

Following the initial appointment of five commissioners (one each by the Mayor, Board of Supervisors, Controller, City Attorney, and District Attorney), the Ethics Commission opened its office in 1994 with interim and part-time staffing. Budgeting allowed for a permanent staff of four (executive director, administrative assistant, whistleblower-investigator/educator, and investigator/auditor) to be hired in the spring and summer of 1995. A pro bono consultant and student interns augmented the staff. It is worth noting that “...the total cost of ethics related functions administrated by the five City Departments is \$481,438... \$123,093 of ethics related functions will be transferred to the Ethics Commission... The available funding in the Ethics Commission budget to administer these functions is \$97,868 or \$25,225 less than is currently allocated... to the City departments to perform these functions.”³

Over the years, newly passed state or local propositions and ordinances have added to the responsibilities shouldered by the EC. The 2004-2005 Civil Grand Jury (CGJ) believes that the EC was under-funded from its beginning, as evidenced by its inability to fulfill mandates and investigations, resulting in the need to triage tasks. Should they:

- Focus on duties with seemingly greater importance and let the others remain undone,
- Transfer some of their duties to another agency to execute, or
- Request additional resources so that they can complete all of their mandates in a timely manner?

The voters demonstrated a commitment to the promulgation and enforcement of high ethical standards when they passed Proposition K. The measure of the EC's importance is in our willingness to properly fund it, thereby allowing it to complete all mandates.

The CGJ decided to examine the operations of the Ethics Commission. This report is the result of that examination and represents the first report ever issued by a civil grand jury on the state of the San Francisco Ethics Commission.

CGJ inquiries focused on those areas that occupy most of the Ethics Commission staff's time:

- Complaints and Investigations,
- Statement of Incompatible Activities/Statement of Economic Interest,
- Lobbyists and Campaign Consultants,
- Campaign Finance Reform.

The CGJ identified several common threads that ran through each area of the investigation. These common threads were staffing and workload, training, and budgeting/funding.

This report presupposes the Ethics Commission has central and crucial mandated duties. All other assignments, though important and necessary, are less central to the mission of the Ethics Commission and are transferable to other agencies.

COMPLAINTS AND INVESTIGATIONS

The duty and responsibility of the Ethics Commission (EC) to investigate allegations of violations of laws within its jurisdiction is defined by City Charter section C3.699-13. Charter and city ordinances within its jurisdiction are those relating to campaign finance, lobbying, conflicts of interest and governmental ethics.

This Charter section also defines the investigative process and the penalties for violations that are substantiated by investigations. The investigative process and the procedures for filing complaints are described in detail on the EC website.⁴

Ethics Commission

Status of Investigations, 1999-2004

Source of Investigation:	1999-00	2000-01	2001-02	2002-03	2003-04	Total	% Increase 1999 2004
External Complaint Initiated by Ethics Commission	18	28	33	48	43	170	139%
Total Investigations	19	28	34	50	46	177	142%

Status of Investigation*:	1999-00	2000-01	2001-02	2002-03	2003-04	Total	% of Total 1999- 2004
Resolved	19	28	31	43	24	145	82%
Pending	0	0	3	7	22	32	18%

*as of November 16, 2004

Source: Ethics Commission Staff

The volume of complaints that the EC has received has increased in the past five years from 18 in FY 1999-2000 to 43 in FY 2003-04. During this five-year period, only seven investigations were conducted on the EC's initiative, rather than in response to complaints. These self-initiated investigations were only 4% of the total of 177 investigations during this period. Thirty-two of the 177 (18%) investigations initiated between FY 1999 and 2004 were still pending in November 2004. Three of the pending investigations were initiated in FY 2001-02 and 7 in FY 2002-03.⁵ These 10 investigations are in jeopardy of being invalidated by statutes of limitation.⁶

The following are indicators of inadequate investigative resources:

- The number of complaints is increasing
- The EC is initiating few investigations. Most investigations are instigated by complaints
- The EC has been unable to complete all investigations in a timely manner because of inadequate staff resources

The EC has only one investigator. However, this investigator is also responsible for two unrelated duties: the administration of both the Campaign Consultant and Lobbyist Ordinances, for which he responds to inquiries regarding the ordinances, prepares reports, maintains a database tracking system, and provides quarterly training to lobbyists.⁷

The EC investigator is responsible for all phases of the investigation, from the initiation to the resolution of the complaints. He may be required to participate in the closed hearings of the

complaint and he may be involved in negotiating a settlement when violations of law are substantiated.⁸

Many other City departments conduct investigations in the course of executing their responsibilities, e.g., City Attorney, Office of Citizen's Complaints, Controller's Office, etc. However, the duties of investigators in these departments are often confined to the investigative process only. The prosecutorial and settlement phases of investigations in those departments are often delegated to others with expertise in those areas.⁹

As an example, Proposition C, passed by the voters in November 2003, gave the Controller many new audit functions, including the creation of a whistleblower hotline. The whistleblower hotline was moved from the Ethics Commission to the Controller's Office at the beginning of August 2004. The Controller's Office forwards to the EC those complaints within their jurisdiction (campaign finance, conflicts of interest, lobbyists, campaign consultants, and other governmental ethics issues).¹⁰ Only 4 complaints to the whistleblower hotline were referred to the EC during the period August 2004 to February 2005.

Although the whistleblower hotline has received a total of 144 complaints from August 2004 to February 2005 (including those referred to the Ethics Commission), the Controller's Office estimates that only a third of those complaints are truly whistleblower complaints. Others are "political matters, grievance issues, or miscellaneous informational questions," according to the Controller's Office. The Controller's Office also cautions that they anticipate many more complaints when they begin to advertise the existence of the hotline in March 2005.

The Controller's Office has hired two full-time investigators to investigate the complaints to the hotline. Unlike the new voter mandates to the EC, Proposition C provided the funding necessary to provide the new mandated services.

We understand that there are two vacancies in the EC for two Assistant Investigators.¹¹ These vacancies were created by reductions in the EC budget at a time when the number of complaints is increasing and the duties of the EC are expanding. For example, the Statements of Incompatible Activities (SIAs) are in the process of being completed and approved by the EC, as described in another section of this report. New complaints are likely to result when the SIAs are approved because they will establish many new prohibitions against actions by City employees and officials.

The fact that the EC has inadequate resources to fulfill its responsibilities is documented in the EC's annual report for FY 2003-04:

"...the Commission remains severely constrained in its ability to process and finalize complaints because it has only one investigator whose time is also consumed by the administration of both the Campaign Consultant and Lobbyist Ordinances. Unless the Commission is able to achieve full funding for its enforcement program, the current backlog of complaints will likely increase."

The inadequacy of the EC budget has been reported in the press:

“A decade into its existence, the San Francisco Ethics Commission is entering a ‘downward spiral’ due to unfunded mandates and budget cuts, according to the agency’s annual report.”¹²

Bob Stern, President of the Los Angeles-based Center for Governmental Studies, recommends in the same article, that San Francisco “amend its charter to provide guaranteed funding for the Commission, as in LA.”¹³ Mr. Stern concludes with the observation that the EC is responsible for investigating allegations of misconduct of the same City officials who now have authority over the funding of these investigations, “It’s the people they are monitoring who set their budgets, and that’s always a problem.”¹⁴

The new Executive Director of the EC, John St. Croix, has been creative in addressing these staffing issues. He has reviewed all pending investigations and recommended to the Commission that those cases no longer viable be closed. Complaints were, until recently, investigated on a first-in-first-out basis.¹⁵ The Executive Director has also recommended a policy to the EC to prioritize investigations to optimize the use of scarce investigative resources:

“The Commission refined its guidelines for determining priority among complaints for purposes of timely action. Where a complaint alleges failure to report information, Commission investigative staff will now consider – among other things – the importance to the public of the omitted information. Where a complaint alleges other violations, investigators will consider – among other things – whether the respondent is a candidate in the current election.”¹⁶

The cost of investigating complaints is often partially covered by the settlements that result from investigations. Revenues generated by settlements are deposited to the City’s general fund rather than directly credited to the budget of the EC as required by law.¹⁷ This ensures that investigations are initiated and pursued without regard to their potential to generate revenue. The City is essentially partially reimbursed for the increased expense of increasing investigative resources through the collection of fees, fines, and settlements. For example, a settlement of \$100,000 was reached in Fall 2004 with PG&E for violations of the campaign ordinance. This is another justification for providing the EC with adequate staffing to conduct investigations.

In conclusion, laws do not, in and of themselves, prevent their violation. If the EC does not have the ability to enforce the laws that have been created to protect the citizens of San Francisco from unethical conduct in political campaigns and amongst City employees and officials, the laws are far less effective. New laws should be accompanied by the funding to implement them. Without such funding, the public should conclude that the laws are unlikely to produce the desired outcome.

Findings

1. Investigative resources of the EC do not appear to be adequate because they are primarily responding to complaints rather than initiating their own investigations. Furthermore, they are not able to complete investigations in a timely manner.
2. The EC has attempted to respond to the fact that it has inadequate resources by prioritizing complaints and closing investigations that are unlikely to be resolved

Recommendation

Investigative resources of the EC should be increased by some combination of available alternatives: increases in budget, decreases in mandated responsibilities, and/or delegation of existing investigative duties to other City departments within the limits of the law.

Required Responses:

Mayor – 60 days

Board of Supervisors – 90 days

Ethics Commission – 60 days

STATEMENT OF ECONOMIC INTEREST (SEI)

The California Political Reform Act (Government Code 87100) requires all public officials with significant decision-making authority to disclose their financial interests by filing a Statement of Economic Interest (SEI). The Ethics Commission is responsible for ensuring that these SEIs are filed as required by state law. Employees of City departments (except department heads) are required to submit their SEIs to the head of their department. The department head is in turn responsible for certifying that the SEIs are on file in the department by reporting to the EC. The EC does not confirm that these certifications by department heads are indeed accurate by auditing the SEIs on file in the department.

All other City officials as well as candidates for elective office are required to submit their SEIs directly to the Ethics Commission. The EC is responsible for ensuring that the SEIs are submitted as required. The EC maintains a public file room for the SEIs. The public is permitted to find the SEIs in which they have an interest and to copy them at the cost of the copies. The EC also maintains a master file of the SEIs to which the public does not have access. If a member of the public is unable to find a particular SEI in the public files, he/she can request that the staff find it in the master files. The staff then copies the master copy for distribution to the public. The public is not given direct access to the master copy.

The EC does not conduct any audits of the contents of SEIs. If there is no specific complaint from the public concerning an SEI, there is no investigation of the content of the SEI. We do not believe that the EC has the staff resources to conduct such audits. However, we believe that such audits would be helpful to ensure the full and accurate disclosure of the economic interests of public officials, employees, and political candidates. As it is presently, SEIs can be completed inaccurately with impunity.

Findings

1. No random audits of SEIs on file in City departments are being conducted by the EC. Consequently, there is no means of confirming that the SEIs are indeed on file, as required.

2. There is no supervision by EC staff of the public file room for SEIs filed in the EC. Therefore, it is theoretically possible for the public to alter the content of an SEI on file in that room.
3. There are no random audits of the content of SEIs. Therefore, the content of the SEIs is not questioned unless there is a specific complaint from the public.

Recommendations

1. If the staff of the EC is expanded, random audits of SEIs required to be on file in City departments should be conducted.
2. If the staff of the EC is expanded, random audits of the content of those SEIs on file in the EC should be conducted.

Required Responses:

Mayor – 60 days

Board of Supervisors – 90 days

Ethics Commission – 60 days

LOBBYISTS, CAMPAIGN CONSULTANTS, AND ELECTRONIC FILING

The Ethics Commission is charged with the authority to register and investigate alleged violations of laws regarding lobbying and the work of campaign consultants. The EC has developed comprehensive manuals and modifies them as new regulations and ordinances are added. These manuals explain to lobbyists and campaign consultants the “rules of the road” as to required ethical behavior. Fees and fines pertaining to filing entities are structured to ensure compliance with the ethics laws in order to give confidence to the public that elections are fair and honest.

Prior to 1995 auditing for Lobbyists and Campaign Consultants was the responsibility of the Clerk of the Board of Supervisors. Since the Ethics Commission is primarily focused on elected and appointed officials, and Lobbyists and Campaign Consultants are neither, perhaps another agency could take on this duty. There could be a perception that “free speech” in campaigns does not have the same restrictions as those on candidates for elected office. Also, the fact that advice and enforcement are in the same department could be construed by the public as a conflict.

Lobbyists, (defined as Contract Lobbyists, Business and Organization Lobbyists, and Expenditure Lobbyists) are required by ordinance to register with the Ethics Commission and to file quarterly reports of activity. No audits of filed reports are begun unless a complaint is filed. Thus, the reporting is taken at face value. There are specific penalties for late or non-filing violations.¹⁸ The Commission has been very diligent in pursuing those not in compliance with timely reporting.

Campaign Consultants are also required to register with the Ethics Commission and to file quarterly reports of financial activity. This information is available on-line. As with Lobbyists, there are penalties for late or non-filing violators¹⁹ and, as with Lobbyists, no audits are made unless a complaint is filed.

The Ethics Commission is authorized, at its discretion, to impose fines on those not in compliance with the Lobbying and Campaign Consultant filing ordinances.²⁰ Anyone seeking a waiver must demonstrate why enforcement will not further the purpose of the law.²¹ Due to staffing insufficiency there is a considerable backlog of unaudited accounts, some of which concern Lobbyists and Campaign Consultants. These delays impact the collection of fees and fines and may cause filers to request waivers. More waivers are being granted or expire on the statute of limitations rules as time goes on. There is no way to get up-to-date without additional staff.²²

The SF Electronic Filing Ordinance required certain campaign statements be filed electronically as well as in hard copy. Several required forms cannot be filed electronically due to insufficiency in the current computer system used by the EC staff. The Executive Director has indicated he would like to put the “Netfile” filing system in place.²³ This system would handle all filing requirements for the EC. All data received electronically could then be posted directly to the web site.

CAMPAIGN FINANCE REFORM

The EC placed Proposition O (the Fair Elections Ordinance) on the ballot in response to citizen concerns regarding the high cost of running a campaign for the Board of Supervisors. Five months of intensive research by EC staff (hearings, testimony at commission meetings, interviews with community members as well as with campaign finance authorities from around the country) resulted in the drafting of Prop. O. The proposed campaign finance reforms were to

- encourage candidates to limit their spending
- decrease the time candidates spend raising money
- increase the opportunity for candidates to run for office, and
- ensure the integrity of the electoral process.

Approved by voters in November 2000, Prop. O amended the San Francisco Campaign Finance Reform Ordinance (CRFO) in several ways. Most significantly, it provided for the limited public campaign financing of candidates for the Board of Supervisors. Qualified candidates who met specific requirements and who agreed to limit campaign spending could receive from \$5000 to \$43,750 for a general election and up to \$17,000 in a run-off election.²⁴

The implementation of campaign finance reform has put pressure on the EC’s limited staff resources; for the most part, EC staffing levels have remained constant, yet they currently are responsible for the administration of public financing of election campaigns and its accompanying set of laws and regulations. The following are additional tasks:

- running an extensive education program for both the public and candidates to ensure compliance with the complex filings of the public financing program
- certifying eligibility for public financing campaign funds
- providing written and oral clarification to candidates regarding forms and new (or amended) regulations

- performing mandatory audits of the campaign finances for all candidates receiving public financing
- conducting a public hearing to assess the value and implementation of campaign finance reform
- preparation of the report for the Mayor and Board of Supervisors evaluating the public campaign financing program, as required by law.

Formal data collected by the EC and used to evaluate the public financing program include:

- number of candidates participating in the program
- candidate spending
- public funds disbursed
- independent expenditures
- contributions
- acceptance or rejection of voluntary spending limits

A questionnaire evaluating the public campaign financing program was sent to all candidates for the BOS and public testimony was solicited following the November 2002 election.²⁵ This survey was designed and distributed to the nine candidates who participated in the public financing program. Four candidates completed the survey; however, all candidates who ran for supervisor in 2002 were invited to present their comments regarding the program to the EC either in person at the 12/16/02 meeting or in writing. Seven candidates who did not participate in the public campaign finance program provided the EC with feedback.

A similar questionnaire was sent out after the November 2004 election to the 23 candidates who participated in the public financing program; four completed and one incomplete survey was returned. As was the case in 2002, all candidates were invited to present comments to the EC in writing or in person. Although the public finance administrator requested feedback from candidates and their staff by e-mail, regular mail and telephone, cooperation was difficult to obtain. After the 2004 election, four candidates or representatives spoke at the 2/14/05 meeting of the EC.²⁶

By law, the cost of the public financing program cannot exceed \$2.00 per resident. A total of \$315,989 was disbursed to eligible candidates for the 2002 general and run-off elections.²⁷ According to the EC Executive Director's Report to the Ethics Commission, January 10, 2005, a total of \$757,678 had been disbursed to date for the 2004 election, more than double the amount spent in 2002.

Reducing campaign spending was one of the goals of campaign finance reform. Therefore, candidates for the Board of Supervisors applying for public campaign financing are required to agree to limit campaign spending to \$83,000.²⁸ However, the campaign spending limits are lifted if any candidate for the same office who declines to accept the expenditure limit receives contributions or makes expenditures in excess of the limit. As a result, campaign spending limits have not been observed in most elections for Supervisors:

- In the 2000 election for supervisors, the expenditure ceiling was lifted in 9 of the 11 districts.
- In 2002, the expenditure ceiling was lifted in 3 of the 5 districts in which there were elections.

- In 2004, the expenditure ceiling was lifted in 5 of the 7 districts in which there were elections.

Findings

1. There is no adequate method of evaluating the efficacy of campaign finance reform.
2. Public financing of candidates for supervisor has not been successful in reducing campaign expenditures.

Recommendation

As the elected representatives for the citizens of San Francisco, the BOS must initiate an independent, rigorous, and ongoing (it will take several election cycles) evaluation of the campaign finance ordinance and the voluntary public financing program.

Required Responses:

Mayor – 60 days

Board of Supervisors – 90 days

Ethics Commission – 60 days

EDUCATION AND TRAINING

The Charter mandates the EC "to advocate understanding of the charter and city ordinances related to campaign finance, conflicts of interest, lobbying, governmental ethics and open meetings and public records, and the roles of elected and other public officials, city institutions and the city electoral process."²⁹

From our perspective, most significantly, the EC is "to develop an educational program including but not limited to the following components:

(a) Seminars to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, and lobbyists with city, state and federal ethics laws and the importance of ethics to the public's confidence in municipal government.

(b) Annual seminars for top-level officials, including elected officers and commissioners, to reinforce the importance of compliance with, and to inform them of any changes in the law relating to conflicts of interest, lobbying, governmental ethics and open meetings and laws."³⁰

Over the 10 years of its existence the EC has devoted resources to fulfilling its charter mandates through its publications and other materials, training sessions and workshops for various groups of public officials and others, and public outreach, public workshops and lectures to civic groups by commissioners and staff.³¹

We are satisfied that, given its limited resources and staff, and its other mandates, the EC has made creditable efforts to carry out its crucial educational and training roles. However, we believe training can be improved to enhance city officers' understanding and appreciation of the role that ethical considerations should play in their daily activities.

We do not believe that one can train people to be ethical. We know that programs that rely heavily on inspirational goals are unlikely to be effective. However, we believe that one can train people to be more fully aware of the ethical dimensions of their activities on behalf of the public they serve.

When, for example, a person is a newly appointed officer or commissioner and he or she is given published materials and indoctrination into the mysteries of conflict-of-interest law and the Sunshine Ordinance, is there more that can and should be done? We believe so. We believe that officials should be induced to consider seriously the ethical issues and dilemmas that they will inevitably face and will need to resolve in their public roles.

We believe that such training in ethical behavior is not only desirable, but also feasible. Other jurisdictions have made some efforts along these lines. Hawaii passed a new law mandating an ethics training class for all top officials, including the governor, lieutenant governor and executive department heads.³² The Mayor of Boston recently ordered 350 city board and commission members to attend ethics training seminars.³³ Jacksonville, Florida has a wide-ranging ethics program for elected and appointed officials; newly elected officials must complete training within 180 days of assuming office.³⁴ New York offers extensive on-line ethics training.³⁵

The Josephson Institute regularly offers "Living Up To The Public Trust" two day seminars dealing with ethical and risk issues for public administrators and managers, one of which, for example, included 33 participants from various levels of government in Roseville, California. Other clients have included the FBI, U.S. Army War College, California State Legislature, and the U.S. Conference of Mayors.³⁶

The Markkula Center for Applied Ethics at Santa Clara University offers instructional materials and seminars for public officials. This program is headed by Judy Nadler, former Mayor of Santa Clara, California. We note that Appendix D was developed at a conference of mayors and council members from Santa Clara and San Mateo counties.³⁷

Recommendation

The Ethics Commission should hire a well-qualified Education and Training Officer who would:

1. Train newly elected and appointed officers of the City to explore the ethical dimensions of their prospective positions. (A useful beginning model is to be found in Appendix D.)
2. Offer seminars for officials on a regular basis, focusing on specific issues such as improving decision-making in one's domain, dealing with the media, establishing and improving ethical standards within one's jurisdiction, understanding how and why the discretionary power one has, though a highly valued asset, is ethically problematic and dangerous, and the like
3. Assist in performing all other City Charter mandated education and training functions.

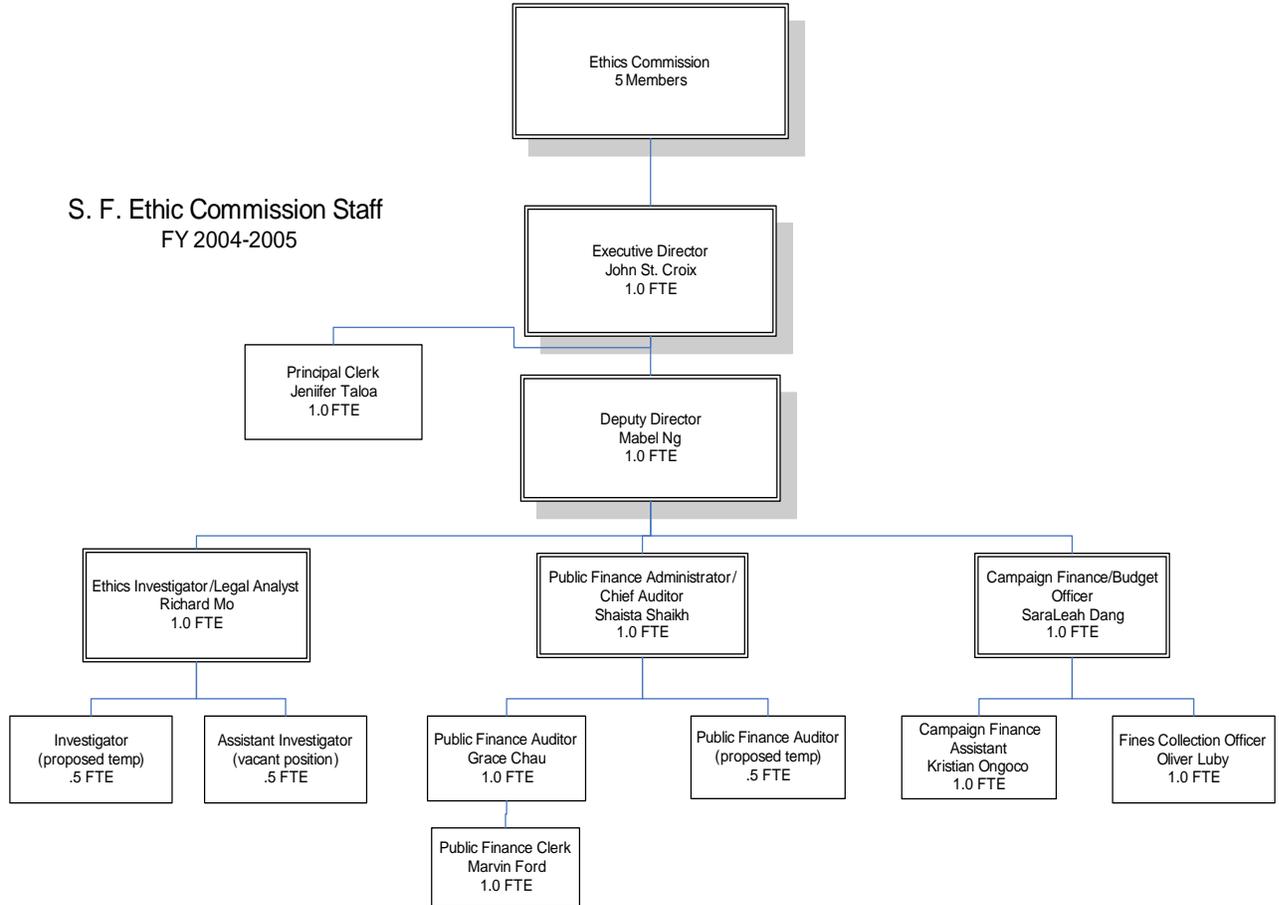
Required Responses:

Mayor – 60 days

Board of Supervisors – 90 days

Ethics Commission – 60 days

Appendix A: Organization Chart ³⁸



Appendix B: Chronology of Increasing Ethics Commission Responsibilities

FY 1995-1996

A new responsibility was added by the passage of Proposition N in November 1995, which called for the enforcement and administration of the CFRO. In addition, consolidation and transfer of mandated functions from the Registrar of Voters, Clerk of the Board of Supervisors, and the Mayor's Office took place. Regulations for investigations and enforcement procedures underwent review and were revised.

1996-1997

In January 1997 State Proposition 208 went into effect. This required the Ethics Commission to implement further campaign reform provisions to be in compliance. Government officials, filers, and the public needed to be educated, necessitating an expenditure of \$11,620. In addition, significant budgetary resources and staff time were required to implement the Administration Code XIIB, Section 16.535-539 which mandates electronic filing for certain campaign filing entities. A revised and expanded lobbyist manual was published this year: 53 lobbyists were registered. A dedicated whistleblower telephone line was activated in July 1996.

1997-1998

This year the EC began to implement Charter-mandated, expanded audits (between 5% and 10% of randomly chosen statements) of campaign finance statements filed by candidates and political committees. Proposition G (Campaign Consultants Ordinance) was approved in November 1997. A total of 35 consultants were registered and reports were issued by June 1998. Annual staff costs to administer this ordinance were estimated at \$29,000. The Board of Supervisors proposed a fee schedule for approval. A supplemental budget appropriation enabled the Ethics Commission to increase its staff from 4 to 6, and to double its office space and acquire additional computer equipment.

1998-1999

In October 1998, the Commission proposed, and the Board and Mayor approved, a new law prohibiting false endorsements on campaign literature. The Ethics Commission voted to place on the November 1999 ballot a proposition (Proposition K) that voluntarily reduced a candidate's spending limit from \$250,000 to \$75,000 (because the election of supervisors changed from city-wide to district elections). Amendments to the Lobbyist Ordinance along with a revised lobbyist manual were proposed and adopted by the Board of Supervisors and signed into law by the Mayor.

1999-2000

Proposition O, which called for the partial financing of candidates running for Supervisor as well as new limits on campaign contributions to campaign committees, was placed on the November 2000 ballot by the EC and passed.

An amendment to the Sunshine Ordinance named the Ethics Commission filing officer for the annual signed declaration, stating under penalty of perjury that department heads and members of boards and commissions who are required to file Statements of Economic Interests have read the Sunshine Ordinance. A full-time staff assistant/elections clerk was hired, bringing the total staff to seven full-time positions.

2000-2001

New amendments to the campaign finance ordinance regarding recorded campaign telephone calls, mass mailings, and the use of unexpended funds from the general election in run-offs were adopted. Proposition J (Taxpayer Protection Amendment of 2000) was approved in November 2000, effective July 2001. It was intended to reduce the influence of gifts and prospective campaign contributions on the decisions of public officials. This amendment provided for enforcement by the Ethic Commission, the District Attorney and any private citizen. Proposition E proposed various changes in the commission's structure, authority and the political activity of its commissioners and staff and was approved November 2001.

2001-2002

In November 2001, the Ethics Commission, under CFRO, became Filing Officer for the County Central Committees of various political parties and Filing Officer for Sunshine Ordinance Declarations by City department heads and commissioners. The EC worked to ensure a smooth transition after Prop. E reconstituted the commission's membership.

2002-2003

The Ethics Commission assumed another new CFRO duty: regulating campaign mail. A considerable number of substantive Amendments to the CFRO were proposed by the Ethics Commission and approved by the Board of Supervisors; some related to the public financing program. The Commission engaged in a comprehensive review of the various conflict of interest laws that govern City employees and officers. Over a period of 10 months, the Commission considered problems that had arisen over the interpretation and enforcement of local conflict of interest laws, including issues pertaining to complaints received over the years and laws from various other jurisdictions. Media reports about ethic-related matters were surveyed; revisions to conflict of interest laws were proposed and received public comment.

The Commission also responded to requests for comments and recommendations from the Board of Supervisors for the following: an ordinance requiring permit expeditors to register with the Ethics Commission, a Charter Amendment relating to setting salaries for the Board of Supervisors, and a Charter Amendment creating the Office of Public Advocate. Three advice letters were issued concerning public campaign funding and regulations. Partial funding for a second investigator position was allocated.

2003-2004

The duties of the EC require a staff of 15 people, yet it had to manage through FY 03-04 with 8 employees (and for several months with 6 or 7.) The Commission spent nearly a year developing proposals to strengthen the City's conflict of interest laws, which were approved by voters in the form of a Charter Amendment, Proposition E, at the November 2003 election. This amendment was the first ever proposed by the Commission. The adoption of this amendment diverted substantial staff resources for implementation and execution, yet since no additional revenues were provided for this effort, the staff's ongoing struggle to perform its mandates was made even more difficult.³⁹

Regulation implementing Proposition E were developed by the EC and sent to the Board of Supervisors for approval. These included regulations governing gifts from subordinates and

post-employment restrictions, concerning incompatible activities, and regulating the disclosure of personal, professional, and business relations.

Proposition C, passed in November 2003, and transferred the task of handling the whistleblower telephone hotline to the Controller's Office. The Controller's Office continues to assign the investigation of complaints to the Ethics Commission within its jurisdiction.

Pursuant to a resolution of the Board of Supervisors, the Ethics Commission conducted a public hearing to seek recommendations for screening applicants to city commissions and at will employment, for training commissioners and staff in conflicts of interest laws and Sunshine requirements, and for developing policies to promote ethical conduct of commissioners and staff. The Commission adopted recommendations and sent them to the Board in October 2003.

Another set of regulations were developed during this fiscal year, but became effective only in July 2004. These governed gifts from restricted sources, decisions involving family members, the prohibition on dual office holding, compensated advocacy, referrals, and the ability of officers and employees to rely on hypothetical examples set forth in the regulations.

The Commission also proposed changes to the public financing program under the CFRO. These new regulations related to expenditures and contributions, filing requirement, and the use of campaign funds. Pursuant to regulations adopted by the Commission that became effective August 2004, an expedited enforcement procedure for non-filers was established. Under this procedure, non-responsive committees are posted to the Commission's website." ⁴⁰

The Board of Supervisors adopted a new ordinance regulating consultants who assist applicants seeking a building or other permit in June 2004 with an effective date of December 15, 2004. The Commission is required to conceive, draft and adopt code of conduct for permit processing within 60 days of December 15, 2004.

Appendix C: Investigation Scope and References

Documents and Publications:

S.F. Chronicle, S.F. Examiner, The Independent
Ethics Commission Executive Director's Monthly Reports
Ethics Commission Annual Reports 2001 – 2004
Good Government Legal Guide, Dennis Herrera, City Attorney, March 2004
Mayor's Budget 2004-2005
"On the Brink of Clean: Launching San Francisco's New Campaign Finance Reforms." Center for Governmental Studies, March 2002, page 1

External References:

Practices of other jurisdictions (San Diego, Miami-Dade, Los Angeles, Oakland)
The Markula Center for Applied Ethics, Santa Clara University
Council on Governmental Ethics Laws (COGEL)
Josephson Institute of Ethics

Meetings Attended:

Ethics Commission Monthly Meeting
S.F. Stat

Interviews – Representatives of:

Budget Analyst
City Attorney
Civil Service Commission
Controller's Office (*for the Whistleblower hotline information*)
Ethics Commission
Ethics Commission Staff
Interested Citizens
Local 790 SEIU

Appendix D: Recommended Training Focus

“Unavoidable Ethical Dilemmas of Newly Elected Local Officials”

As part of the Markkula Center's commitment to government ethics, Senior Fellow Judy Nadler convened mayors and council members from Santa Clara and San Mateo counties to share the top ethical dilemmas confronting every person who comes into local elected office. The following dilemmas are the top 20 identified by this group of officials.

1. Now that you are elected, with whom can you meet, and what can you talk about?

- Members of council outside of public meetings (Brown Act rules)?
- Union leaders without violating the collective bargaining process?
- Petitioners and special interest groups?
- Contractors who are bidding on government projects?
- Developers and others with business before cities?

2. What do you owe those who supported and elected you?

- Can you show favoritism to supporters?
- Should you vote against those who worked against you?
- Should appointments to commissions go to political friends and insiders?

3. Whom do you represent?

- Your personal priorities and values?
- Your neighborhood or the larger community?
- Your community or broader regional and national priorities?

4. Are you a public servant or a politician—or both?

- Supporting good public policies vs. advancing your political interests
- Supporting good public policies vs. the interests of your political group
- Supporting good public policies vs. creating political IOUs

5. Where are your personal conflicts of interest?

- Employment?
- Family and personal relationships?
- Community involvements?
- Personal relationships?
- Partisan affiliations?
- What do you have to resign from?
- On what matters should you recuse yourself?

6. How do you honestly present your positions on issues?

- When do you reveal your position?
- Should you obfuscate your position for political gain?
- Do you reveal why you voted for something?
- When can you legitimately abstain from voting?
- How can you present an honest change of position?

7. What ethical standards apply to the process of decision making and contracting?

What are the standards of due consideration?
What is fair treatment of petitioners?
What is fair treatment of bidders for city contracts?
What communication with bidders or vendors is permitted?

8. How can you use your power and position in other parts of your life?

Benefiting your business or profession?
Job seeking for yourself, for your family and friends?
Favoring your charities, your associations, etc.?
Using your title, using the city seal?
Abrogating parking tickets, etc.?
Using influence to get grants for favorite causes?

9. What gifts and freebies can you take?

What are the requirements of California Fair Political Practices Commission (FPPC) standards?
What actually compromises you?
What appears to compromise you?
What is the motive of others who are giving you gifts?
What are the limits on seeking freebies and preferential treatment?

10. How can you help those who seek your assistance?

Friends
Community groups
Other elected officials—I'll scratch your back; you scratch mine
Building your own political IOUs

11. What is your proper relationship with city staff?

With whom can you confer?
What can you discuss with a staff person who is a personal friend?
When can you make specific requests of staff?
What important information should you share with staff?
Are there different standards for meetings, conversations, correspondence, emails, etc.?

12. What information should you bring to your decisions?

Should you rely totally on formal information and recommendations presented to you by staff?
Can you investigate issues personally?
What actions undermine city staff?

13. What is personal integrity in political life?

Your commitment to work hard enough to do a quality job
Your willingness to speak the truth even if it is uncomfortable
Your ability to withstand pressures to influence your votes
Your ability to resist temptation to take advantage of your position

14. How do you handle conflicts between your role as a council member and as member of a special commission?

Differences between your position and that of your city
Differences among the several cities you may represent

15. How do you deal with "friends of the city?"

Former elected officials
Former city officials and staff
Prominent community members

16. How do you function as a minority or even a whistleblower?

Should you join a voting bloc or remain independent?
When should you voice dissent from a majority position?
When should you be a whistleblower?

17. What level of respect and civility should exist among council members?

What do respect and civility require toward colleagues, staff and the public, especially when offering criticism?
Toward those you do not trust?
What is your duty to respect the will of the council when you have lost on a particular issue?
When should you seek outside information or expertise?
How can trust be built and sustained?

18. How do you protect the confidentiality of information made available to you as a council member?

Closed session confidentiality
Personnel issues
Contracting issues
Trading and doing business based on insider information

19. How do you deal ethically with the press?

Respecting the confidentiality of sessions and issues
Keeping colleagues and staff informed
Clearly label your views vs. the city's views
Accurately characterizing your opponent's views

20. How can you ethically campaign while in office?

Twisting arms with implied threats regarding current business?
Making current decisions based on political contributions or support?
Using insider information to favor your campaign?
Using privileged access to city government and community to favor your campaign?
Promoting initiatives solely to create a record for your campaign?
Accurately representing your record and past role in government?"

Endnotes

- ¹ “Proponent’s Argument in Favor of Proposition K”, Nov. 2003 Voter Pamphlet, pg 104
- ² “Proponent’s Argument in Favor of Proposition K”, Nov. 2003 Voter Pamphlet, pg 104
- ³ Budget Analyst Report to the Board of Supervisors dated 3-3-95, page 1
- ⁴ http://www.sfgov.org/site/ethics_index.asp?id=13732
- ⁵ Data provided by EC staff, November 16, 2004
- ⁶ “Regulations for Investigations and Enforcement Proceedings”, XIIIIF
- ⁷ Letter to CGJ from EC, October 5, 2004
- ⁸ Interview with EC Staff
- ⁹ Interview with EC Staff
- ¹⁰ Written documentation from Controller’s Office
- ¹¹ EC letter to CGJ of October 5, 2004
- ¹² “Budget trouble plagues Ethics Commission”, San Francisco Examiner, November 29, 2004
- ¹³ Ibid.
- ¹⁴ Ibid.
- ¹⁵ Interview with EC staff, 12/1/04
- ¹⁶ Annual Report of the Ethics Commission, FY 2003-04
- ¹⁷ San Francisco Ethics Commission Regulations for Investigations and Enforcement Proceedings, Section XII. C.1.c.
- ¹⁸ City Charter, Ethics Commission Section C3.699-13: Investigations and Enforcement Proceedings
- ¹⁹ Ibid.
- ²⁰ Section 2.145 Lobbyist Ordinance 4.04 SF Campaign & Government Conduct Code
- ²¹ Policy and Procedure on Late Filing http://www.sfgov.org/site/ethics_page
- ²² Executive Director’s Report to Commission January 10, 2005
- ²³ Executive Director’s Report to Commission February 14, 2005
- ²⁴ The 2004 ranked-choice vote process has eliminated the need for run-off elections. See appendix E Overview: Candidate Eligibility Requirements for Public Funds - 2004
- ²⁵ Report on San Francisco’s Limited Public Financing Program, Board of Supervisors November 5, 2002 Election
- ²⁶ One representative was a volunteer campaign manager for 4 former candidates. All speakers praised the EC staff for their willingness to be of assistance
- ²⁷ Report on San Francisco’s Limited Public Financing Program, Board of Supervisors November 5, 2002 Election, page 1
- ²⁸ “Candidate’s Guide for City Elective Offices”, EC website
- ²⁹ [C3.699 - 11, 10]
- ³⁰ [C3.699 - 11 , 14]
- ³¹ We recognize that other City agencies contribute to providing informational materials and training to City officers. These include the “City Administrator’s Guidebook for New Department Heads and Senior Managers”, the “Clerk of the Board’s Handbook for the Board of Supervisors”, and the “Good Government Legal Guide”
- ³² Honolulu Star Bulletin, 1/1/05
- ³³ Boston Globe, 12/30/04
- ³⁴ Ch 602, Jacksonville Ethics Code
- ³⁵ <http://www.goer.state.ny.us/train/onlinelearning/ETH/OOI.html>
- ³⁶ www.josephsoninstitute.org
- ³⁷ www.scu.edu/ethics
- ³⁸ 2004-2005 EC staff organization chart received from Mabel Ng
- ³⁹ San Francisco Ethics Commission Annual Report, July 1, 2003 - June 30, 2004, page 3
- ⁴⁰ Ibid. page 6