

- (b) Any *person* may file an informal complaint alleging violations of *Governmental Ethics Laws*. The *Executive Director* shall have no obligation, but has the discretion, to review and process informal complaints. Informal complaints include the following: written complaints that are not verified or signed under penalty of perjury; written complaints that do not contain all of the information required by Section 26.0421(a); unwritten complaints; anonymous complaints; and referrals from other governmental agencies.
- (c) The *Commission*, individual Commissioners, the *Executive Director*, and the staff of the *Commission*, may submit a complaint for a *Preliminary Review* on their own initiative.
- (d) The *Commission* shall not receive complaints at public meetings. The *Commission* shall urge the public in the strongest terms possible not to make complaints at public meetings.
(Amended 4-7-2003 by O-19165 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)

§26.0422 Preliminary Review

- (a) The *Executive Director* shall, within five business days of receipt of a formal complaint, issue a letter to the *Complainant* acknowledging that the complaint has been received and is being processed.
 - (1) The letter shall be in substantially the following form:

“The City of San Diego Ethics Commission has received your complaint alleging conduct by the above-named Respondent that may be within the Commission’s investigative and enforcement authority. The Ethics Commission is currently conducting a Preliminary Review of the information contained in the complaint. During the Preliminary Review, the Commission will not be investigating any facts alleged in your complaint, but will simply be making a determination regarding whether or not (a) the Commission has jurisdiction over the subject of the complaint; or (b) the complaint contains allegations already acted upon by the Commission; or (c) the Commission is presently investigating the same allegations from a different complaint; or (d) the complaint consists of opinions or frivolous accusations.

The Ethics Commission will make reasonable efforts to complete the Preliminary Review within thirty calendar days, or within fifteen calendar days if the complaint was received within ninety calendar days of a municipal election and alleges violations by a candidate seeking office at that election. After the Preliminary Review, your complaint may be presented to the Ethics Commission for a vote on whether or not to conduct a formal investigation.

Please do not provide any additional information to the Commission at this time. During the Preliminary Review process, the Ethics Commission will only consider information contained in the complaint.”

- (2) The *Executive Director* shall have no obligation to send such notification to the *Complainant* if the complaint is an informal complaint filed with the *Commission* pursuant to Section 26.0421(b).
- (b) The *Executive Director* shall make reasonable efforts to complete a *Preliminary Review* within thirty calendar days of the receipt of each complaint.
 - (1) Failure of the *Executive Director* to complete the *Preliminary Review* within thirty calendar days shall not preclude the *Commission* from pursuing administrative remedies against the *Respondent* in accordance with these procedures.
 - (2) The purpose of the *Preliminary Review* is not to determine the truth or falsity of the allegations, but to determine whether the subject of the complaint is appropriate for consideration by the *Commission*.
- (c) Notwithstanding Section 26.0422(b), a *Preliminary Review* based on a formal complaint received by the *Commission* within ninety calendar days of a municipal election and alleging violations by a candidate seeking office at that election shall be completed by the *Executive Director* within fifteen calendar days of receipt of such complaint.
- (d) Notwithstanding subsections (b) and (c) of this section, if the complaint alleges a violation of the Election Campaign Control Ordinance (Chapter 2, Article 7, Division 29 of the San Diego Municipal Code) and the *Respondent* is the subject of a pending *Commission* audit, the deadline for completing *Preliminary Review* may, at the discretion of the *Executive Director*, be suspended until thirty calendar days following the submittal of the applicable final audit report to the *Commission*.
- (e) After completing a *Preliminary Review*, the *Executive Director* may determine that the allegations in the complaint do not warrant a formal investigation for any of the following reasons:
 - (1) The *Commission* has no jurisdiction over the allegations made in the complaint. A matter is outside the jurisdiction of the *Commission* if:
 - (A) the subject of the complaint is a *person* who is not identified in Section 26.0413(a) as being within the scope of the *Commission's* investigative and enforcement authority; or

- (B) the complaint does not allege a violation of *Governmental Ethics Laws*; or
 - (C) the allegations made in the complaint pertain to actions or events that occurred prior to July 1, 2001.
- (2) The complaint restates other complaints containing essentially similar or identical allegations that have already been disposed of, and the evidence presented does not warrant reopening the previous case; or
 - (3) The allegations contained in the complaint are already under investigation by the *Commission*; or
 - (4) The complaint consists of speculation, opinion, frivolous contentions, or absurd accusations; or
 - (5) The complaint consists entirely of one or more non-material violations that were previously discovered in a *Commission* audit and, in the *Executive Director's* judgment, were appropriately excused or remedied; or
 - (6) The complaint consists entirely of one or more material findings of a *Commission* audit, and the *Commission* has already voted against initiating an enforcement action based on those findings.
- (f) If, after completing the *Preliminary Review*, the *Executive Director* determines that a formal investigation is not warranted for one or more of the reasons set forth in Section 26.0422(e)(1), (2), (4), (5), or (6), the *Commission* and its staff shall take no further action in the matter, except as follows:
- (1) The *Executive Director* may refer the complaint to another governmental or law enforcement agency for appropriate action.
 - (2) The *Executive Director* shall issue a letter to the *Complainant* and *Respondent* within five *business days* of making the determination, indicating why a formal investigation by the *Commission* will not be conducted. Such a letter is not a conclusive finding and is not intended to be used as evidence in any enforcement action initiated by another agency.
- (g) Public disclosure of documents related to the disposition of matters at the *Preliminary Review* stage is subject to the provisions of Section 26.0455.
(Amended 4-7-2003 by O-19165 N.S.)
(Amended 12/5/2005 by O-19448 N.S.; effective 1/11/2006.)
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