

Item 10 - Enforcement Report



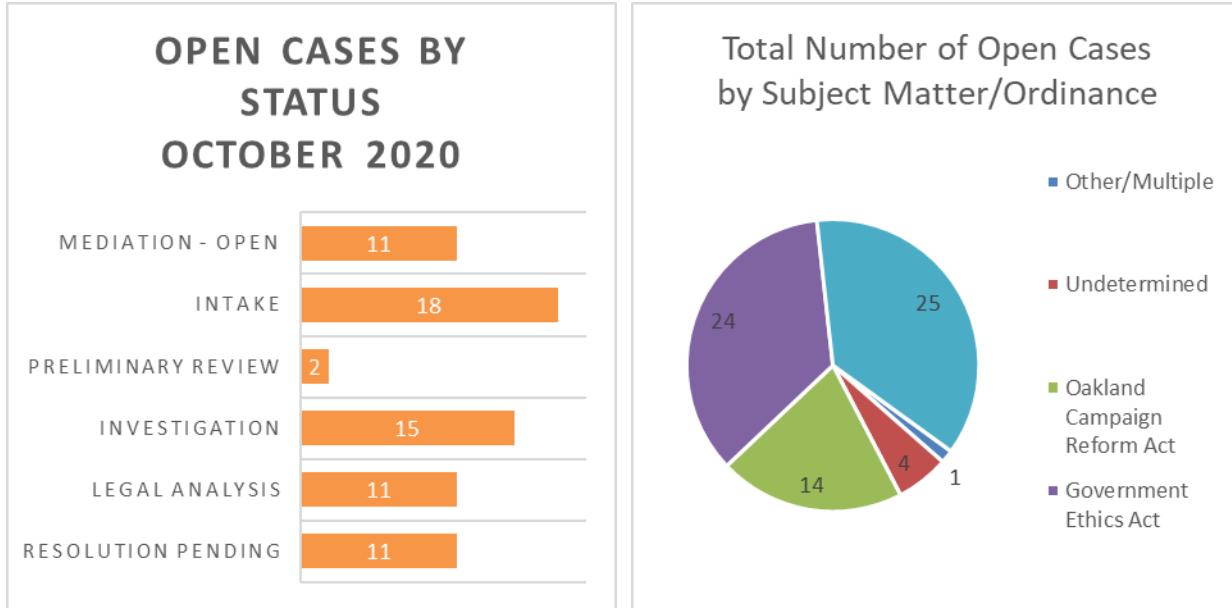
James E.T. Jackson, Chair
Jill M. Butler, Vice-Chair
Michael MacDonald
Janani Ramachandran
Joseph Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: October 20, 2020
RE: Enforcement Program Update for the November 3, 2020, PEC Meeting

Current Enforcement Activities:

Since the last Enforcement Program Update on October 3, 2020, Commission staff received 2 complaints. This brings the total Enforcement caseload to 68 enforcement and mediation cases: 20 matters in the intake or preliminary review stage, 15 matters under active investigation, 11 matters under post-investigation analysis, 11 matters in settlement negotiations or awaiting an administrative hearing, and 11 ongoing public records request mediations.



Summary of Cases:

Since the last Enforcement Program Update in October 2020, the following status changes occurred:

1. *In the Matter of the City of Oakland Fire Department and Assistant Fire Marshal Vincent Crudele [Mediation Summary]* (Case No. M2020-16). On September 30, 2020, the Commission received a request for mediation from the Requestor alleging that the City of Oakland Fire Department failed to provide responsive documents to a public records request. The Requester initiated their respective public records request in July 2020, seeking copies of documents that were in the possession of Assistant Fire Marshal Vincent Crudele, the department did not provide a response. Staff initiated the Mediation process and on October 1, 2020. On October 7, 2020, the Department uploaded responsive documents and closed the public records request. Staff recommends that the Commission close the mediation without further action. (See Action Items)

2. *In the Matter of Candidate for Oakland City Council Carroll Fife* (Complaint No. 20-35). On September 21, 2020, the PEC received this complaint that alleged, among other things, that Carroll Fife a candidate for District 3 City Council Seat and a participant in the PEC Limited Public Financing Program, failed to timely file her Recipient Committee Campaign Disclosure Statement Form 460 or her Statement of Organization Recipient Committee Form 410. It was further alleged that Fife functioned as a lobbyist in the City of Oakland in 2017 but failed to register as a lobbyist with the City. After careful review of the allegations, facts and the law Staff determined that the complaint failed to establish a violation of the Campaign Finance Reform Act, the Lobbyist Registration Act or any other provision within the jurisdiction of the PEC and dismissed the complaint. (See attached)

**CITY OF OAKLAND**

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Public Ethics Commission
Enforcement Unit

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October 20, 2020

Re: PEC Complaint No. 20-35; Notice of Dismissed Complaint

Dear Sir or Madam:

On September 21, 2020, the City of Oakland Public Ethics Commission (PEC) received an anonymous complaint (the sender did not include contact information and the signature was illegible) (#20-35) alleging that Carroll Fife, Candidate for District #3 City Council Seat, violated the Campaign Reform Act and the Lobbyist Registration Act when she failed to timely file her Recipient Committee Campaign Disclosure Statement Form 460, Statement of Organization Recipient Committee Form 410 and failed to register as a lobbyist after function as a lobbyist in the City of Oakland in 2017. After a careful evaluation of the allegations and the law, we have concluded our preliminary review of the allegations and we are dismissing this complaint because there is no evidence of a violation within the PEC's enforcement jurisdiction.

The source of the Complaint's allegations stem from a Facebook Post that was publicly shared on June 29, 2020 and a Twitter post from July 17, 2020. On June 29, 2020, it is alleged that Fife or someone on her behalf uploaded a social media post that said "Did we just raise more than our \$10K goal in just over 24hrs? Carroll 4 Council 2020!" Based on this post the complainant alleged that Fife had an obligation under the law to immediately file a Form 410 once her campaign had raised over \$2,000 but that her campaign failed to do so until after the deadline for that filing period. Our preliminary investigation confirmed that the Fife's committee did timely file its Form 410 indicating that the committee had not yet "qualified," or raised over \$2,000 up until that date.

A review of the campaign bank statements confirmed the account did not contain the campaign threshold amount at the date of the filing. On July 22, 2020, the Fife campaign filed an amended Form 410 representing that the campaign had reached the qualification threshold on July 12, 2020. A candidate can file a Form 410 prior to reaching the threshold \$2,000. However, an amended Form 410 must be filed within 10 days of reaching the \$2,000 threshold amount. Our investigation confirmed Fife's amended Form 410 was filed within ten days of the date her campaign reached the campaign amount.

The PEC's preliminary investigation also confirmed that the Fife campaign timely filed its Prelection Statement Form 460 on September 24, 2020.

Even if the Facebook post was made by the candidate or her campaign, and even if it represented that the campaign may have raised over \$10,000 when the campaign had not actually raised that amount at that time, there is no provision of the Campaign Reform Act or any other law under

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the PEC's jurisdiction that would give the PEC authority to investigate misrepresentations made by a campaign in a social media post regarding how much money they raised. The Campaign Reform Act provides specific financial reporting requirements on advertisements (print and broadcast), campaign reports and financial statement forms where a misrepresentation about the amount actually raised or spent could result in a violation of the Act. The facts presented in this complaint did not allege nor was their evidence found those violations occurred.

Further, the complaint alleged that on July 17, 2020, a person by the name of "Sassmaster Deane," posted an article on Twitter announcing that Fife was running for Oakland City Council. Under the posted article, a Twitter user posted a statement acknowledging that Fife has done good work with Moms 4 Housing but questioned whether she had more to offer Oakland.

The Twitter user posed the question "How involved with the city has she been?" and then stated, "She'll need 2 have some knowledge of City issues." To which the poster, Sassmaster Deane responded, "...Carroll Fife has been the People's Lobbyist at almost every single council meeting for the past 6 years. She leads the Refund Oakland coalition of community & labor groups fighting for an equitable budget. She's been shaping policy in Oakland for yrs."

The complaint did not provide any additional information on the Twitter user to establish that this was an account owned or controlled by Fife or anyone associated with her campaign. Nonetheless, the complaint alleged that this Twitter post established that Fife was, in fact, a lobbyist since June 2017 and that she failed to register as such with the City of Oakland for multiple years. The information provided in the complaint does not establish that Fife was or is a lobbyist required to register with the City of Oakland as defined by the Oakland Municipal Code 3.20.030.

Because Candidate Carroll Fife's alleged conduct does not constitute a violation of the Campaign Reform Act or the Lobbyist Registration Act, we are dismissing this complaint pursuant to the PEC's Complaint Procedures. The PEC's Complaint Procedures is available on the PEC's website.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting as part of our regular monthly update on Enforcement actions. That meeting will take place on November 2, 2020, at 6:30 p.m. by teleconference as will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission