

September 25, 2020

Ms. Tara Stock
Intake Manager, Enforcement Division
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Re: Re: FPPC Complaint No. COM-08302020-01527; Frost, Timberlake D'Adamo, Vincent

Dear Ms. Stock:

This firm represents the California Public Employees Retirement System (CalPERS) and its three employees named in the above referenced complaint. We write to request that the Commission dismiss the complaint without further investigation on the grounds no violation has been stated nor any public harm articulated.

Background

As the complaint notes, Respondent Marcie Frost is the Chief Executive Officer of CalPERS. As CEO Ms. Frost has no specific duties related to the filing of statements and reports required of CalPERS board members and employees pursuant to the Political Reform Act.

Marlene Timberlake D'Adamo is the Chief Compliance Officer for CalPERS. As Chief Compliance Officer Ms. Timberlake D'Adamo is in charge of the Office of Enterprise Compliance. That office has overall responsibility to ensure, promote, and support an organizational culture that builds compliance awareness into the daily business processes for investments, health, and retirement.

Tifani Vincent is the CalPERS employee responsible for receiving Statements of Economic Interest required to be filed with CalPERS.

The complaint alleges a violation of Government Code section 81010 which imposes duties upon the "filing officer" of public agencies. The complaint specifically references the Form 700 filings of CalPERS Board Member Theresa Taylor. (The same complainant involved in this matter also is the complainant in a complaint filed against Ms. Taylor in June of this year.) In the above referenced complaint, the complainant alleges that each of the respondents violated section 81010. Specifically, the complainant alleges the respondents failed to forward to the FPPC amended Form 700 filings submitted by Ms. Taylor on July 1, 2020 until August 20, 2020.

As an alternative theory, complainant also alleges, without any facts or evidence to support the allegation, that the amended complaint was not in fact lodged with the FPPC on July 1, 2020, and that the date stamp indicating such was "falsified" thereby creating an aiding and abetting violation pursuant to Government Code section 83116.5.

Analysis

Long Beach
555 E. Ocean Blvd, Ste. 420
Long Beach, CA 90802

Sacramento
555 Capitol Mall, Ste. 400
Sacramento, CA 95814

Oakland
1901 Harrison St., Ste. 1550
Oakland, CA 94612

Government Code section 87500(a) provides that elected board members of CalPERS, such as Ms. Taylor, are required to initially submit their Form 700 with CalPERS. However, the statute provides that the original Form 700 is to be forwarded by CalPERS to the Commission. The statute does not address when the agency should forward the original Form 700. Under the statute, the FPPC is designated as the “filing officer,” not CalPERS.

Commission regulation 18115(b)(1) clarifies that the filing officer “is the person or agency which receives and retains original statements. . . .” In this case the filing officer is clearly the FPPC. The same regulation does provide that where an agency is to forward the original Form 700 to the Commission (as is the case with elected CalPERS board members), CalPERS is to do so within “five days *after the filing deadline* or five days *after receipt in the case of a statement filed late.*” (Emphasis added.) The regulation does not address when amendments are to be forwarded to the Commission.

An agency may permit electronic filing of the Form 700 by persons required to file such forms with the agency. (See Government Code section 87500.2.) CalPERS is an agency which the Commission has certified an electronic filing system, thus permitting filers to file their Form 700 electronically, although they may also file the form by submitting it to the agency in paper form. For Form 700 filings submitted electronically and required to be forwarded to the FPPC, CalPERS requires the original to be first sent to it so the agency may forward the original to the Commission as required by law. When a filer submits the Form 700 manually, the form is uploaded into the electronic filing system by Ms. Vincent’s staff and the original is then mailed to the FPPC.

The complainant has alleged a violation of section 81010. That section provides:

Pursuant to this title, the filing officer shall: (a) Supply the necessary forms and manuals prescribed by the Commission; (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this title; (c) Notify promptly all persons and known committees who have failed to file a report or statement in the form and at the time required by this title; (d) Report apparent violations of this title to the appropriate agencies; and (e) Compile and maintain a current list of all reports and statements filed with this office.

The statute does not impose any duties beyond those specified above, and the complainant alleges no violations of the specified duties. Moreover, section 81010 imposes no duties upon agencies with whom an official initially submits her Form 700 and where the agency then forwards the original to the Commission. While original statements are to be forwarded to the FPPC within 5 days, regulation 18115(b)(1) does not impose a duty upon the agency to forward amendments, as is the case here.

In summary, there is no violation of the filing officer duties as alleged in the complaint since CalPERS is not the “filing officer” for Ms. Taylor’s Form 700 filings. Even if CalPERS and its employees were the “filing officer” none of the duties imposed by section 81010 were violated. Nor is there any violation of the Commission’s regulation by CalPERS since by its own terms the five-day requirement is not applicable to amendments.

In addition to the clear lack of legal liability for the respondents, the circumstances regarding the filing of Ms. Taylor’s amendments will help explain the discrepancy in the submission and later transmittal to the FPPC. Upon notification on July 1, 2020, that a complaint had been filed

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against her for failure to disclose certain income, Ms. Taylor immediately prepared amendments to her prior filings. She then mailed her amendments to the CalPERS offices on July 1 or 2, 2020. She dated the forms July 1, the same day she prepared the amendments.

Due to the COVID pandemic, the CalPERS offices were (and remain) essentially closed with employees working from home. This includes the three named respondents as well as the staff assigned to receiving Form 700 filings. As a result, no one was at the CalPERS offices to process the mail. Eventually the amendments were located. On August 3 Ms. Timberlake D'Adamo went into the CalPERS office, scanned the amendments and forwarded them via email to the staff responsible for filing.

Initially there was some confusion since CalPERS staff understood from Ms. Taylor that Ms. Taylor had also filed the amendments directly with the FPPC. On August 4, Ms. Vincent emailed her contact at the FPPC asking if the forms had also been filed directly with the Commission. She received a reply from Andrea Carey indicating no amended filings had yet been received for Ms. Taylor. On August 11, the originals were given to a CalPERS staff member who date stamped the filings using the signature date, uploaded the filings to the CalPERS e-filing system and then mailed the originals to the FPPC.

In addition, there appears to have been some miscommunication within the FPPC. Although Ms. Carey indicated the amendments had not been received at the FPPC, Ms. Taylor in fact emailed on July 9 to Ms. Cheng Saetern at the FPPC's Enforcement Division (and with whom Ms. Taylor had previously spoken regarding the complaint filed against her) copies of the amendments. So as a practical matter the Commission had the amendments a week following notification of Ms. Taylor concerning the complaint.

Conclusion

But for the pandemic, the forms would have been received by CalPERS in due course in early July, uploaded to the CalPERS e-filing system and the originals mailed to the FPPC. There was no violation of duties nor any "falsification", just a delay associated with a worldwide pandemic that has affected both government and private sector in disrupting normal operations. Moreover, the Commission had copies of the amendments on July 9, 2020.

For the above reasons we request that the complaint be dismissed without further action.

Sincerely,



Lance H. Olson