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By Office of the Commission Secretary at 1:51 pm, Aug 23, 2023



FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 23-21-A
AGENDA ITEM
For the meeting of August 30, 2023

TO: The Commission
The Office of the Commission Secretary

FROM: Allen J. Dickerson
Commissioner

DATE: August 23, 2023

RE: Investigations Conducted by the Office of General Counsel

The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that where the Commission finds reason to believe a violation of the Act has occurred, it “shall make an investigation of such alleged violation, which may include a field investigation or audit.” 52 U.S.C. § 30109(a)(2). The statute commits this authority “to conduct investigations” to the Commission, subject to the limitation “that the affirmative vote of 4 members of the Commission” be secured before any investigation may commence. 52 U.S.C. §§ 30106(c) and 30107(a)(9).

I am proposing a directive to regularize the Commission’s approval and oversight of investigations by the Office of General Counsel (“OGC”). It would require OGC to provide the Commission with a proposed Investigation Plan for approval at the time that it circulates a First General Counsel’s Report recommending reason-to-believe and an investigation. That document will lay out the proposed scope and conduct of the anticipated investigation and, upon approval, will govern the conduct of the investigation, subject to modification in light of new information or changed circumstances.

This approach has several practical advantages. It provides a means for regular communication between OGC and commissioners concerning the conduct of a given investigation. It allows the Commission to make informed decisions about the best use of increasingly scarce enforcement resources as the volume of complaints and internally-referred matters continues to grow. It empowers OGC to take the lead in planning and executing investigations while preserving the Commission’s oversight role. And it makes the Commission itself accountable for investigations made under its authority.

I ask that this matter be placed on the Commission's agenda for the Open Meeting of August 30, 2022.

FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE	
	REVOKES: N/A	NO. XX
		EFFECTIVE DATE: XX
Investigations Conducted by the Office of General Counsel; Enforcement Investigative Plans		

A reason-to-believe (“RTB”) finding in an enforcement matter is followed by either pre-probable cause conciliation or a post-RTB investigation. *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007). The purpose of this directive is to set forth how the Office of General Counsel (“OGC”) will conduct such investigations.

1. Where OGC recommends RTB, it must either recommend pre-probable cause conciliation or a post-RTB investigation. When finding RTB, the Commission will, at the same executive session at which its vote for RTB is taken, approve either a draft conciliation agreement or an Investigative Plan.
2. Where OGC recommends an investigation, the First General Counsel’s Report must contain a detailed proposed course of that investigation, including an addendum with a completed Investigative Plan. The addendum shall constitute OGC’s proposed Investigative Plan and will be subject to Commission approval as detailed herein. No investigation may be conducted by OGC except as directed in an Investigative Plan approved by the affirmative vote of four or more commissioners, subject to the procedures for revising such plan as detailed below.
3. The Investigative Plan will contain, at a minimum: (a) a brief narrative overview of the investigation and the information OGC intends to seek, (b) the amount of time OGC believes the investigation will consume, (c) each identified respondent subject to the investigation, (d) each witness, category of witnesses, and category of documents to be consulted, and (e) the proposed discovery methods OGC intends to use during the investigation.
4. Once an Investigative Plan has been approved and until the investigation is completed, OGC shall provide periodic updates to the Commission in writing via email or an informational memo on the following schedule:
 - a. For those investigations where OGC’s Investigative Plan states that the investigation will last fewer than six months: OGC shall provide such written updates on a monthly basis via email.

- b. For those investigations where OGC's Investigative Plan states that the investigation will last six months or more: OGC shall provide written updates on a quarterly basis via informational memo or email.
5. If, based upon new information discovered through, or during the course of, an ongoing investigation, OGC believes the investigation should be revised or expanded beyond what has been authorized, it shall circulate a revised Investigative Plan on a 48-hour no objection ballot, except in exigent circumstances where OGC determines that a shorter timeframe for the ballot is necessary. For purposes of this paragraph, the identification of new witnesses outside the categories of witnesses already identified in the Investigative Plan or sources for third-party document requests outside the categories of sources already identified in the Investigative Plan will be considered an expansion of the investigation. If any commissioner objects to OGC's recommendations, the matter shall be placed on the agenda for the next executive session of the Commission and will be adopted upon approval by four or more affirmative votes of the Commission. Any previously approved Investigative Plan shall remain in effect until such time as a revised Investigative Plan has been approved.
6. All compulsory process shall be conducted by subpoena or order. All specific requests for compulsory process by OGC shall be accompanied by a proposed subpoena or order. Each subpoena or order shall be circulated on a 48-hour no objection ballot. If any commissioner objects, the matter shall be placed on the agenda for the next executive session of the Commission and will be adopted upon approval by four or more affirmative votes of the Commission. After the Commission approves a subpoena or order, but before the issuance of any subpoena or order, OGC will, unless otherwise authorized, provide the intended recipient with written notice that the Commission has authorized the issuance of a subpoena or order and provide the recipient with two weeks to provide the information voluntarily or in the case of depositions provide the recipient with two weeks to voluntarily agree to appear at a deposition. OGC may proceed with issuing the subpoena or order at the end of the two-week period if the requested information is not received or in the process of being received. In the relevant 48-hour no objection ballot or by approval of four or more affirmative votes at an executive session, upon OGC's recommendation, the Commission may waive the requirement for a two-week waiting period prior to delivery of a subpoena or order to a recipient.
7. Upon the conclusion of a matter, all Investigative Plans circulated under this Directive, including the initial Investigative Plan attached to the First General Counsel's Report as well as further Investigative Plans expanding the scope of the investigation together with their accompanying memos, in addition to status reports relating to investigations, will be segregated and shall not be included in the public file, unless there are four affirmative votes of the Commission to do otherwise, with redactions as appropriate. Such Investigative Plans shall not be considered "supplements" to General Counsel's Reports, for purposes of the FEC's disclosure policy. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50702 (Aug. 2, 2016).
8. The procedures set forth herein shall apply to all investigations approved on or after the date on which this Directive is adopted.

The Commission approved Directive Number **XX** on .