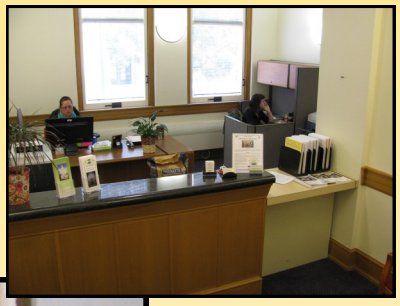
City of Oakland

Public Ethics Commission



Annual Report
2015

Public Ethics Commission
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FAIRNESS INTEGRITY HONESTY OPENNESS

CITY OF OAKLAND

ETHICS EXPANSION IN OAKLAND

On the heels of having been legislatively reshaped to better accomplish the goals for which the Commission was originally designed, the Public Ethics Commission (PEC or Commission) focused its attention in 2015 on making major structural, policy, staffing, and operational changes, while also increasing enforcement fines and enhancing ethics education.

In 2015, the Commission accomplished a number of significant transformational tasks, including the following:

- Relocating and expanding into new, publicly accessible office space on the ground floor of City Hall,
- Designing a new staffing framework and division of responsibilities for the 5 new positions,
- Creating 4 new City job classifications, with new job descriptions and salary ranges approved by the Civil Service Board and City Council,
- Modifying the reporting structure of the Executive Director who now serves solely at the pleasure of the citizen Commission,
- Revising Commission Operations Policies to govern the work of the Commission, and
- Developing new Enforcement Penalty Guidelines, required by the City Charter, to ensure consistent and fair enforcement of the laws within the Commission's jurisdiction.

Transformation in 2014

The legislative changes made in 2014 were designed to equip the Commission with more authority, independence, and resources to ensure compliance with ethics, transparency, and campaign finance laws that promote fairness, openness, honesty, and integrity in City government.

Oakland City Charter:
Measure CC was adopted by Oakland voters on November 4, 2014, to amend the Oakland City Charter to augment the authority, independence, and staffing of the Public Ethics Commission. The new provisions became effective on January 1, 2015, and the new staff positions were budgeted in July 2015.

Government Ethics Act:
In December 2014, City Council approved the PEC's proposed Oakland Government Ethics Act, to consolidate government ethics rules into one local ordinance and to enhance education and enforcement of those rules in and around City Hall.

In October, the Commission hired a Deputy Director to lead the enforcement team to investigate and prosecute violations of the laws under the Commission's jurisdiction. In December, the Commission hired a Commission Assistant to provide administrative and office management support.

In addition to its expansion activities in 2015, Commission staff created new ethics training and outreach materials to ensure that City public servants know about the new Government Ethics Act (GEA) and its restrictions. PEC staff designed the Commission's first-ever training video: a ten minute summary of the main provisions of GEA to be shared with all City public servants.

In addition, the Commission continued to build its enforcement program. In 2014-15 combined, the PEC imposed twice the number of monetary fines than in the entire prior decade.

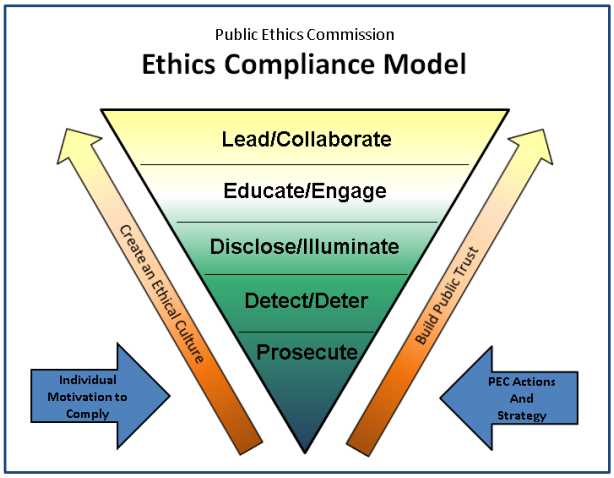
This report summarizes Commission accomplishments and challenges in 2015.

PEC AUTHORITY AND DESIGN

The Public Ethics Commission (PEC or Commission) was created in 1996 to ensure fairness, openness, honesty and integrity in City government. The PEC's work is governed by local ordinances in three key areas: campaign finance, transparency, and ethics. The Commission's authority and ability to do its work rests heavily on the provisions outlined in the City Charter, as amended in 2014, as well as in each relevant ordinance, listed as follows:

- Oakland's Campaign Reform Act (OCRA)
- Oakland Sunshine Ordinance (Open Meetings and Public Records)
- Limited Public Financing Act
- Lobbyist Registration Act
- Oakland's False Endorsement in Campaign Literature Act
- Government Ethics Act (2014)
- Conflict of Interest Code (NEW PEC enforcement authority – 2014)

The Commission's activities, and the new 6-person staffing structure provided by the amended City Charter, are organized according to the following ethics compliance framework to ensure a strong, effective, and fair ethics commission:



- **Lead/Collaborate** – Lead by example and facilitate city policy, management, and technological changes to further the Commission's mission.
- **Educate/Engage** – Provide education, advice, technical assistance, and formal legal opinions to promote awareness and understanding of the city's campaign finance, ethics, and transparency laws.
- **Disclose/Illuminate** – Facilitate accurate, effective, and accessible disclosure of government integrity data, such as campaign finance reporting, conflicts of interest/gifts reports, and lobbyist activities, all of which help the public and PEC staff monitor filings, view information, and detect inconsistencies or noncompliance.
- **Detect/Deter** – Conduct investigations and audits to monitor compliance with the laws within the Commission's jurisdiction.
- **Prosecute** – Enforce violations of the laws within the Commission's jurisdiction through administrative or civil remedies.

The Commission's comprehensive approach on these issues emphasizes **prevention, enforcement, and collaboration.**

PREVENTION

Prevention activities consist of education, outreach, and online information to facilitate compliance with government integrity laws. The Commission educates and advises candidates for local elective office, elected officials, public officials, City staff, lobbyists, people doing business with Oakland, City residents, businesses, and organizations.

EDUCATION AND ADVICE

Following passage of the new Oakland Government Ethics Act (GEA) in December 2014, Commission staff developed educational materials to assist City Public Servants with their government ethics obligations. With the help of Commissioner Dana King, Commission staff created a **ten-minute GEA training video** that provides an overview of the new law and restrictions. The video is available on the Commission's website and is shown at every new City employee orientation. It will also be displayed widely at City board and commission meetings as well as throughout the ranks of all City departments.

In January 2015, Commission staff conducted an **orientation for new Council Members** who were elected in 2014. In addition, Commission staff shared information with all elected officials regarding the **AB 1234 state-required ethics training**, providing a link to free, online training, confirming training completion, and posting compliance on the Commission's website. All City of Oakland elected officials submitted their current AB 1234 training certificates to the PEC.

Candidates often had questions about how to comply with Oakland's officeholder account rules, which allow an elected official to maintain an officeholder committee as an elected official, and to collect contributions into that account to be used to pay for political or legislative expenses. The Commission **modified and clarified its Officeholder Committee advice** in January 2015 to rescind an outdated regulation and offer a simplified approach through its Officeholder Committee Fact Sheet. The Fact Sheet was approved in January and provided to candidates and campaign treasurers.

To assist candidates in meeting state and local campaign reporting requirements, the Commission revised and published the **Oakland Campaign Reform Act Guide and the Limited Public Financing Guide** in preparation for the 2016 election.

In 2015, Commission staff responded to approximately **80 calls for assistance or advice** regarding campaign finance, government ethics, or lobbyist registration laws. PEC staff issued **advisories to City staff** regarding ethics rules such as gift limits and reporting requirements for gifts received by staff. Commission staff also **consulted with City officials on issues** including ethics training for all staff, City Council non-interference in City administration, use of public funds for campaign or personal purposes, electronic filing of campaign statements, gift limits and reporting requirements, and officeholder account rules and restrictions.

COMMUNICATIONS

Commission staff continued to **reorganize information on the Commission's website** to enhance the quality of information for all of the Commission's clients. The Commission was an early adopter of the City's Granicus platform to integrate meeting agendas and recordings in one place so that **meeting videos are accessible online and immediately** to the public.

The Executive Director **outlined the Commission's progress and vision in a letter to Oaklanders**, posted on the PEC's website in November 2015, to share recent and projected Commission expansion activities with the public. To provide ongoing updates on significant Commission activities, PEC staff began to include an enforcement report and an executive director's report for each meeting in 2015 and beyond.

PEC staff have continued to utilize social media platforms, including Twitter and Facebook, that were initiated in 2013 in order to enhance the PEC's communications capability.

In October 2015, Commissioner Eddie Tejeda and Executive Director Whitney Barazoto **spoke together on stage at the Code for America Summit,** the leading national conference for civic technologists who work to build technology capacity in government. Tejeda and Barazoto shared the story of the partnership between the Oakland Public Ethics Commission and OpenOakland, the local Code for America brigade that helped create the new online web-tool for viewing Oakland Mayoral campaign finance data in a user-friendly way. The application, www.opendisclosure.io, has been hailed as one of the most successful volunteer citizen-brigade and City government partnerships.

ENFORCEMENT

The Public Ethics Commission conducts investigations, performs audits, holds public hearings, issues subpoenas, and imposes fines and penalties as provided for by ordinance. City ordinances give the Commission the authority to issue penalties for violations of ethics laws, campaign finance laws, lobbyist registration requirements, and for false endorsements in campaign literature, and limited ability to mediate and require "cure and correction" for violations of public records and open meetings laws respectively.

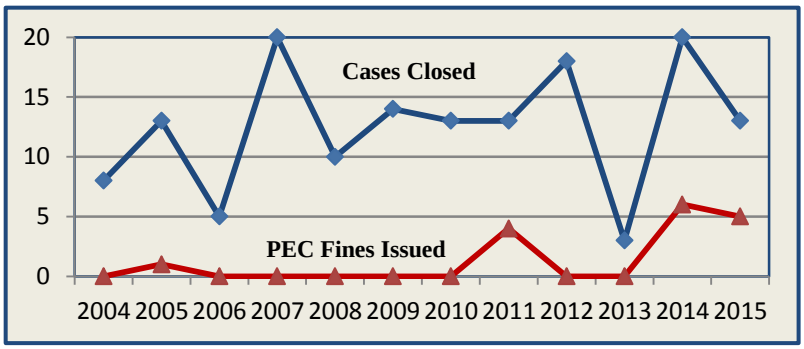
FOCUSED ENFORCEMENT

Despite receiving more resources and authority via legislation in 2014, the Commission still had **only one FTE for half of 2015**. As a result, **the Commission continued to prioritize its cases** based on the following considerations to determine priority level: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources. This meant that in 2015, investigations into allegations of campaign finance violations were prioritized ahead of all others given the timing of the then-recent 2014 election and considering the Commission's solid penalty authority for such violations. By focusing on these violations, the PEC significantly increased the number of fines it issued in 2014 and 2015 compared with prior years.

INCREASED FINES

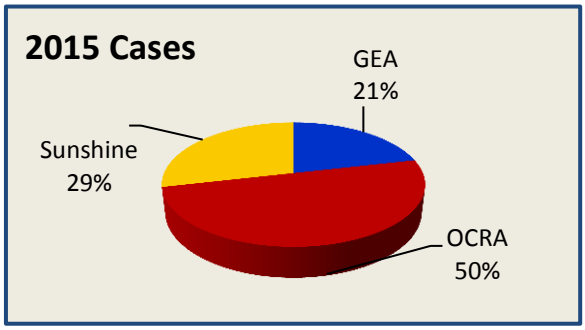
Between 2014 and 2015, the PEC imposed **twice the number of fines than in the prior 10 years combined**. The line graph to the right illustrates the number of cases closed and fines issued by the Commission per year since 2004.

Number of Cases Closed and Fines Issued per Year



COMPLAINTS

The Commission received a total of **14 new complaints in 2015** alleging violations of campaign finance, conflicts of interest, open meetings, public records, and other ethics-related laws; three of the 14 complaints processed in 2015 were PEC-initiated. Of the 14 complaints received in 2015, four were dismissed and **one PEC-initiated case resulted in a $1,600 fine.**

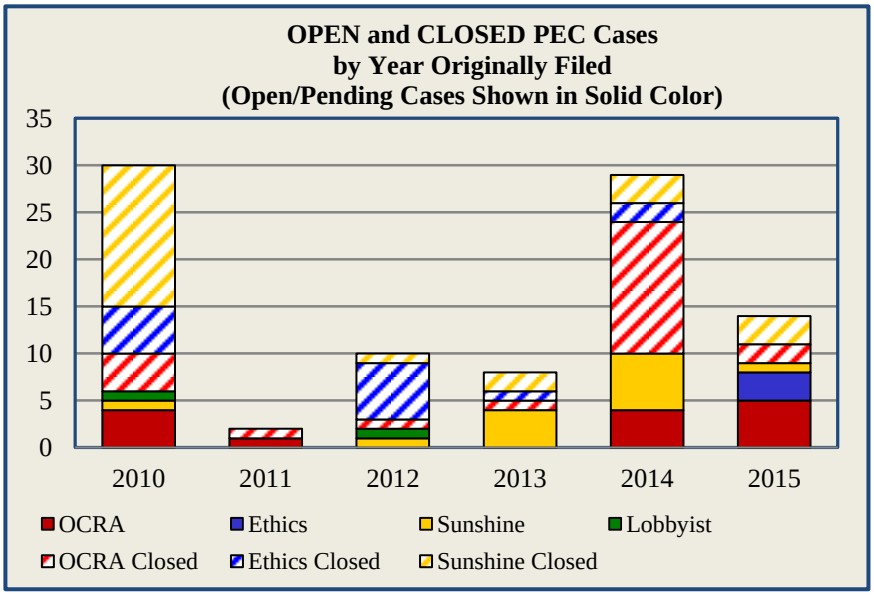


The number of complaints received in 2015 is less than the near-record high of 29 complaints in 2014, which followed a total of nine complaints in 2013, 14 complaints in 2012, and five complaints in 2011.

Regarding all complaints on the Commission's docket, including cases received prior to 2015, the PEC closed a total of 14 cases in 2015, including **five cases totaling $6,300 in fines**. The Commission ended 2015 with a total of 31 open cases, 8 of which were opened in 2015.

PRE-2013 COMPLAINTS

Of the approximately 92 cases opened since 2010, nine cases remain from 2012 and earlier.



The graph to the right illustrates the distribution and type of open cases (shown in solid colors), compared with cases that have been resolved (shown in stripes). Cases are organized by year in which the complaint was filed and color-coded by the law allegedly violated: Oakland Campaign Reform Act (OCRA), Lobbyist Registration Act, Government Ethics Act, and the Sunshine Ordinance.

CHALLENGES AND GROWTH

Although Commission fines have increased dramatically due to the way the Commission focused its attention in 2015, the Commission was not able to complete its goal of completing the full backlog of cases by the end of 2015. In addition, newer complaints regarding Sunshine Ordinance violations (open meetings and public records) have remained on the docket far longer than they should, and Commission staff also has not had the capacity to pursue potential proactive cases that it could have opened. This is due to the PEC's lack of staffing, which was addressed by the new Charter Amendment but is not yet a full reality.

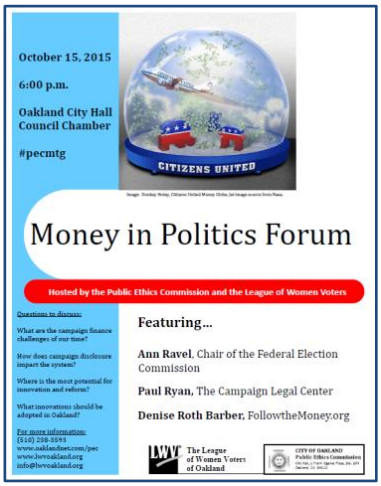
The Commission hired its first Deputy Director in late 2015, and the PEC anticipates hiring its first investigator in March 2016. These two positions will drive most of the Commission's enforcement outcomes in the years ahead.

ENFORCEMENT PENALTY GUIDELINES

The Commission developed and approved new Enforcement Penalty Guidelines in December 2015 that outline general principles and factors to consider as the PEC and staff determine an appropriate penalty in any given case. The guidelines provide a broad policy to ensure that the PEC's enforcement program, and the fines imposed over time, works to ensure timely, fair and consistent enforcement that is proportional to the seriousness of each type of violation.

COLLABORATION

The Public Ethics Commission enhances government integrity through collaborative approaches that leverage the efforts of City and community partners working on similar or overlapping initiatives. A collaborative approach recognizes that lasting results in transparency and accountability are achieved not through enforcement alone, but through a comprehensive strategy that aligns all points in the administration of City government – including clear laws, policies and process, effective management and use of staff resources, technology that facilitates desired outcomes, and an understanding of staff culture and citizen expectations.



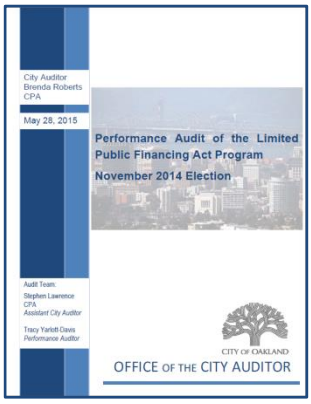
OAKLAND CAMPAIGN REFORM ACT MODERNIZATION

The PEC created a subcommittee to review the Oakland Campaign Reform Act and recommend potential amendments to modernize the law. As part of this project, the subcommittee will also consider revisions to its public financing program. The subcommittee initiated its review with a public forum in late 2015 and plans to draft amendments in 2016.

PUBLIC FORUM ON MONEY IN POLITICS

In collaboration with the League of Women Voters of Oakland, the Commission hosted a widely-attended public forum on Money in Politics on October 15, 2015. The goal of the forum was to kick-off the Commission's review of the Oakland Campaign Reform Act, note issues and concerns with the state of the law and money in politics, and discuss best practices. The forum featured Ann Ravel, Chair of the Federal Elections Commission, as well as speakers from the Campaign Legal Center and the National Institute on Money in State Politics, all of whom offered their thoughts about the current state of campaign finance laws and future possibilities for reform.

PUBLIC FUNDS FOR CANDIDATES



The **Oakland City Auditor released a positive review** in May 2015 after auditing the Commission's administration of the Limited Public Financing Program for the 2014 election. The audit results found that "[t]he Public Ethics Commission's systems and internal controls are sufficient to ensure that candidates comply with the Act's requirements." The Auditor further recommended that "[g]iven the positive results of this and prior audits, as well as the level of internal controls put into place by the Executive Director, we recommend that the PEC work with the City Attorney to revise the Municipal Code so that regular post-election audits are no longer required."

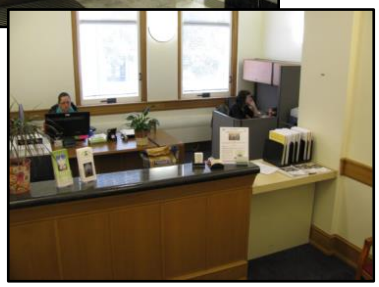
As follow-up to the 2014 election, Commission staff **recovered $10,576.38 in public funds** that were deemed surplus (unused by candidates at the end of the election season) according to the rules of the Limited Public Financing Act.

LOBBYIST ACTIVITY DISCLOSURE

To facilitate compliance with the Lobbyist Registration Act and to share information about lobbyist activities, the Commission continues to **publish lobbyist registration and report forms on its website and on the City's Socrata Open Data platform**. In 2015, a total of **45 lobbyists registered and submitted quarterly reports** throughout the course of the year. Commission staff **maintains an electronic database of all lobbyist activity** including the date a report was submitted, lobbyist's clients, the subject of governmental action lobbied upon, and who was lobbied.

Commission staff revised lobbyist forms in 2015 to enhance lobbyist data collection by providing information on lobbyist type and amounts of economic consideration received for lobbyist activity in Oakland. In 2015, **over $1.2 million was reported** by lobbyists as economic consideration received for lobbying activities in Oakland.

COMMISSION EXPANSION AND ADMINISTRATION

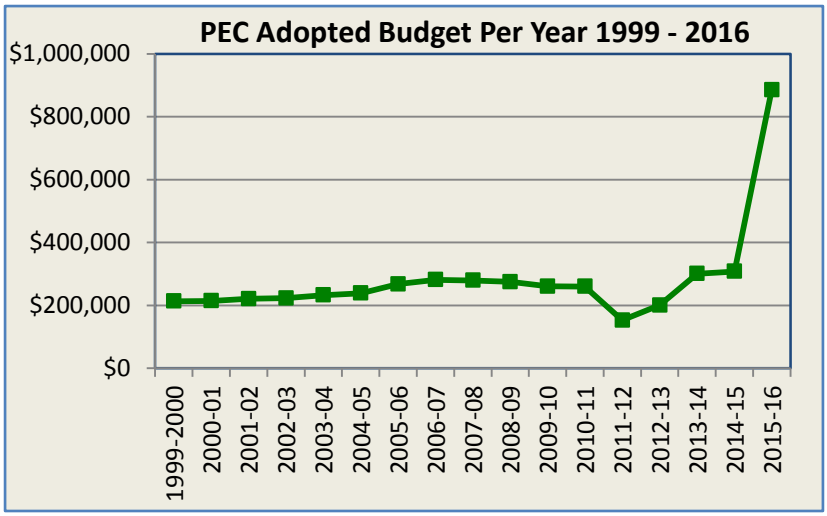


As part of the implementation of the City Charter amendment of 2014, the PEC moved into **new office space on the first floor of City Hall** (Room 104) in June 2015 to provide an easily accessible and public-facing location for all Commission services. The new space has two private offices and a welcoming public counter for providing information and advice to City staff, officials, and the public, receiving complaints submitted by citizens and staff, and collecting local campaign finance forms beginning in 2017. The Commission retained its former offices on the 11th floor of City Hall for its new enforcement team.

In July 2015, the Commission completed the first 360 degree **performance review of the Executive Director**, who now serves solely at the pleasure of the Commission pursuant to the revised City Charter.

The PEC also **approved new Operations Policies** in November 2015 to replace its former By-Laws to outline and formalize the Commission's operational activities and policies in alignment with the amended City Charter.

The Commission's **budget tripled** as a result of the City Charter amendment in 2014, effective July 1, 2015. The current budget of roughly $884,781 is the highest amount ever budgeted for the Commission, for a total of six staff positions. Below is a summary of the PEC's budget, as adopted, per year.



COMMISSION STAFFING

The peak in the budget shown above reflects five new and permanent positions that are in the process of being filled in coordination with the Department of Human Resources Management. All five positions were new positions for the PEC, and **four of the five required full position creation**, including new job specifications approved by the Civil Service Board, amended salary ordinance approved by City Council, job analyses, and recruitment. The Executive Director **hired staff into two of the five positions in late 2015**, and the remaining three positions (Investigator, Ethics Analyst I, and Ethics Analyst II) are projected to be filled in early 2016.

Meanwhile, Commission staff utilized salary savings from these vacant positions in late 2015 to pay part-time workers to assist with the office move, provide administrative support, conduct research, and create the ethics education materials described above. Commission staff also invested in additional office equipment, furniture, and supplies to support the new duties and staffing under the amended City Charter.

2015 COMMISSIONERS

Jenna Whitman, Chair

Commission Appointee 1/22/2013 – 1/21/2016

Jenna Whitman is a legal research attorney at the Alameda County Superior Court, where she advises judges on law and motion matters in civil litigation, serving one of the court's two complex litigation departments that handle class actions and other lawsuits requiring exceptional judicial management. Before that, Ms. Whitman represented both corporate clients and class action plaintiffs in a wide variety of complex civil disputes. She has provided pro bono representation to low-income clients, and for three years served on the board of the AIDS Legal Referral Panel, a non-profit legal services organization. While in law school, Ms. Whitman clerked in the U.S. Department of Justice, Criminal Division, Economic Crimes Unit, and participated in the U.S. Department of Defense, General Counsel's Office Summer Honors Program, where she provided analysis and counsel on issues relating to ethics and conflicts of interest.

Ms. Whitman is a Bay Area native who earned her undergraduate degree at Yale College, majoring in American Studies, studying Russian, and competing for the varsity swimming squad, and her law degree at Georgetown University Law Center.

Sonya Smith, Vice-Chair

Mayoral Appointee 5/1/2014 - 1/21/2017

Sonya Smith is a 10-plus-year Oakland resident, residing in the Santa Fe neighborhood in North Oakland. She is an attorney for the California Commission on Judicial Performance, which is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges, pursuant to the California Constitution. Her background includes international work on Rule of Law projects through the American Bar Association and other U.S. Agency for International Development-funded organizations. She served as the director of a Rule of Law project in Yerevan, Armenia between 2006 and 2008 and also participated in Rule of Law projects in Serbia, The Republic of Georgia, and Ecuador. These projects, in collaboration with local counterparts, worked toward the goal of building strong, independent, and transparent legal and political institutions that engender public trust and confidence. Ms. Smith previously worked as an attorney for the California Judicial Council/Administrative Office of the Courts, where she made policy recommendations and drafted rules of court and legislative proposals on the administration of justice and judicial independence.

Ms. Smith received her undergraduate degree from the University of Washington and her law degree from the University of California, Berkeley School of Law.

Dana King

Commission Appointee 1/22/2015 - 1/21/2018

Dana King traveled the world during her 25-year career as a broadcast journalist. She reported from Afghanistan, Iraq, Israel, Jordan, Turkey, Taiwan, Kosovo, Central America, Ghana, and Rwanda. Ms. King is the recipient of 5 Emmy Awards. She also earned an Edward R. Murrow Award for her reporting on the aftermath of the Rwandan Genocide.

In 2012, Ms. King announced she would be leaving San Francisco's KPIX-TV to pursue her lifelong passion for creating art. She is currently working on a commemorative sculpture for the City of Berkeley of civil rights leader and former California Assemblyman Byron Rumford, whose significant legislation changed the landscape for minorities in California with regard to housing and employment.

King volunteers with "Rites of Passage", a program for young men jailed in the Alameda County Juvenile Justice Center's maximum-security units. She is the Distinguished Journalist in Residence at Dominican University of California.

Marc Pilotin

City Attorney Appointee 3/5/2015 - 1/21/2018

Marc Pilotin is a trial attorney with the Office of the Solicitor for the U.S. Department of Labor. Previously, he was an associate at Lieff Cabraser Heimann & Bernstein LLP, where he represented consumers and employees, and a law clerk to a federal district judge in Oakland. Prior to law school, he worked as a fourth-grade teacher in the Los Angeles Unified School District and as the administrative director for the UCLA Center for American Politics and Public Policy.

Mr. Pilotin received his bachelor's degree in Political Science and Psychology and his master's degree in education from UCLA. He received his law degree from the University of California, Berkeley, School of Law (Boalt Hall). In addition to serving on the Public Ethics Commission, Mr. Pilotin serves on the board of directors for the Filipino Bar Association of Northern California.

Stephen Shefler

Commission Appointee 1/22/2014 - 1/21/2017

Stephen Shefler is a retired attorney. He worked in a variety of legal and administrative positions over the course of his career including Chief Assistant United States Attorney for the Northern District of California, Deputy Assistant Secretary for Policy and International Affairs at the United States Department of Transportation, and counsel on the United States Senate Banking, Housing and Urban Affairs Committee. During more than more twenty years as an attorney in the United States Department of Justice, Mr. Shefler specialized in fraud cases brought on behalf of the United States. He was a pioneer in the development of the False Claims Act. Following his retirement from the Justice Department, Mr. Shefler taught a course on fraud as an adjunct professor at the University of San Francisco.

Mr. Shefler received both his undergraduate degree and law degree from Stanford University.

Eddie Tejeda

Mayoral Appointee 1/22/2013 - 1/21/2016

Eddie Tejeda is a self-described civic technologist who has devoted his career to building technologies to help civic institutions become more transparent, ethical, and efficient. Mr. Tejeda recently co-founded OpenOakland, a group of developers, designers, and organizers working to bring innovative solutions to Oakland governance. Serving as a 2012 Code for America fellow in New Orleans, his focus as a fellow was on building tools that encouraged civic participation. His team most recently led a successful collaboration with the City of New Orleans to develop and launch BlightStatus. Previously, Mr. Tejeda co-founded Digress.IT, a paragraph-level commenting system used by local governments and universities around the world. He also lead the development of Regulation Room, a project lead by Cornell University in collaboration with the Department of Transportation, aimed at increasing public participation in federal rule making. Mr. Tejeda worked at the Institute for the Future of the Book, a small publishing think-tank working on innovative publishing projects and developed LittleSis.org, a free database detailing the connections between powerful people and organizations.

Mr. Tejeda earned his B.A. from Hampshire College with a focus on the digital divide and wrote his senior thesis on power efficient microprocessors.

Carol Wyatt

Commission Appointee 1/22/2014 - 1/21/2017

Carol Wyatt is a Director of HR and Creative Talent for a highly regarded and recognized SF Bay Area-based advertising/marketing creative communications corporation. Ms. Wyatt devotes her 25+ year people management career to the service of diverse business owners sourcing top-notch creative talent, full-cycle recruiting, corporate compliance and business management. Her work passion connects individuals from all walks of life to share their unique business experiences, professionally and socially, with the goal of designing diverse and inclusive work-life balances. An active participate within her West Oakland community, Ms. Wyatt's community service includes mentoring children and teens to showcase access to their interests, dreams and goals and engaging neighbors and community care partners in identifying creative opportunities that bridge the community, and spark discussions that advocate action toward in-common goals.

Ms. Wyatt received a B.S. in Business Administration from Long Island University, Brookly, NY. Born and raised in Brooklyn, NY and an Oakland resident for 11 years, Ms. Wyatt lives in a restored 100+ year old Victorian in West Oakland.