



Oversight, Transparency & Administration Subcommittee

February 9, 2017
9:00 AM – 11:00 AM
Morris Hall

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Administration Subcommittee

Start Date and Time: Thursday, February 09, 2017 09:00 am
End Date and Time: Thursday, February 09, 2017 11:00 am
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

2016 Election Update

Educational presentation by the Department of State: Overview of Campaign Finance Laws

Educational presentation by the Florida Elections Commission: Overview of the Commission's Role in Enforcing Campaign Finance Laws

NOTICE FINALIZED on 02/02/2017 4:06PM by Larson.Lisa



Florida Department of State

Campaign Finance Overview

Chapter 106, Florida Statutes

Ken Detzner, Secretary of State

Maria Matthews, Esq., Director

Division of Elections

Presentation before the Florida House Oversight,
Transparency and Administration Subcommittee

February 9, 2017



Candidate Requirements

- File appointment of campaign treasurer and designate campaign depository (s. 106.021, Fla. Stat.) with filing officer:
 - Division of Elections: Federal, state, multi-county, and judges (except county)
 - Supervisor of Elections: All county offices
 - Municipal Clerk: Municipal candidates
- Should only obligate funds sufficiently covered by campaign account
- Must file periodic campaign finance reports (s. 106.07, Fla. Stat.)

Campaign Treasurer's Duties

- Keep detailed accounts current within 2 days
- File regular reports of all contributions and expenditures
- Preserve records for the number of years equal to the term of the office sought
- Is only person (other than the deputy treasurer) who can sign campaign check(s)
- Deposit contributions within 5 days of receipt

Candidate - Prohibited Acts

- Cannot accept anything of value in speaking in furtherance of candidacy
- No use of state-owned aircraft or motor vehicle for candidacy
- No solicitation or contributions in government-owned building
- No use of government officer or employee during work hours
- No solicitation of contributions in exchange for political support from any organization established for public good (religious, civic, charitable, etc.)
- No misrepresentation of military service
- No false or malicious charge against opposing candidate about code violation or false statement (actual malice)

Political Entities	# Registered as of January 2017
Political Parties	11
Affiliated Party Committees	2
Political Committees	982
Electioneering Communications Organizations	66

Political Committees (PCs)

- Two or more individuals, or a “person” as legally defined (*e.g.*, a business entity, law firm, etc.), who:
 - Accept contributions to give to candidates, other Florida PCs, affiliated political committees, or political parties; or
 - Accept contributions or makes expenditures for purpose of “**expressly advocating**” the election/defeat of candidate or issue.

in an aggregate amount in excess of \$500 in a calendar year

- The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

Political Committees - Statement of Organization

WHERE - If organized to support or oppose

- Statewide, legislative, or multicounty candidates or issues
→ File with Division of Elections
- County or other local jurisdiction (other than municipal) candidates or issues → File with Supervisor of Elections
- Municipal candidates or issues → File with Municipal clerk
- *Federal political action committees file with the Federal Election Commission*

WHEN

- Within 10 days of > \$500 in contributions or expenditures in calendar year or within 10 days of an election
- Before seeking voter signatures on an initiative

Political Committees - Scope of Activities

- Make **independent expenditures**
- Make **electioneering communications** (if the PC supports candidates)
- Contributions to the PC: No limit
- Contributions from the PC:
 - To candidate: \$1000 per election (\$3000 for statewide office or Supreme Court Justice)
 - To a PC: No limit
 - To a political party: No limit
 - To ECO: No limit

Political committees cannot contribute to federal political action committees

Electioneering Communications Organizations (ECOs)

- Any group (not a political party, APC, or PC)
 - Whose election-related activities are limited to making expenditures for **electioneering communications** or accepting contributions for purpose of making electioneering communications, and
 - Whose activities would not otherwise require the group to register as a political party or political committee.
- State law similar to federal law with some exceptions

ECOs -Statement of Organization

WHERE

- Statewide, legislative, or multicounty elections → File with Division of Elections
- County or other local jurisdiction (other than municipal) elections → File with Supervisor of Elections
- Municipal elections → File with Municipal clerk

WHEN

- If expenditures > \$5000 before the “30/60-day” window → Register within 24 hours after the start of the window
- If expenditures > \$5000 during the “30/60-day” window → Register within 24 hours of making such expenditures

ECOs - Scope of Activities

- Limited to electioneering communications
- May contribute to other ECOs but not to candidates, PCs or political parties
- May not expressly advocate; no independent expenditures
- Contributions to the ECO: No limit
- Contributions from the ECO: No limit
- Limited to making its own electioneering communications or contributing to other ECOs

Electioneering Communication Defined

- Any communication publicly distributed by a TV station, radio station, cable TV system, satellite system, newspaper, direct mail, or telephone that:
 - Refers to or depicts a clearly identified candidate without expressly advocating for/against a candidate's election/defeat BUT is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate; and
 - Made within 30 days before a primary/special primary, or 60 days before any other election for office sought by the candidate; and
 - Targets relevant electorate in the geographic area the candidate would represent if elected.

Political Advertisements Defined

- A paid expression
- In a “communications medium
- That **expressly advocates** the election or defeat of a candidate or approval or rejection of an issue
- Examples: VOTE FOR, VOTE AGAINST, ELECT, SUPPORT, CAST YOUR BALLOT FOR _____, DEFEAT, OPPOSE, REJECT

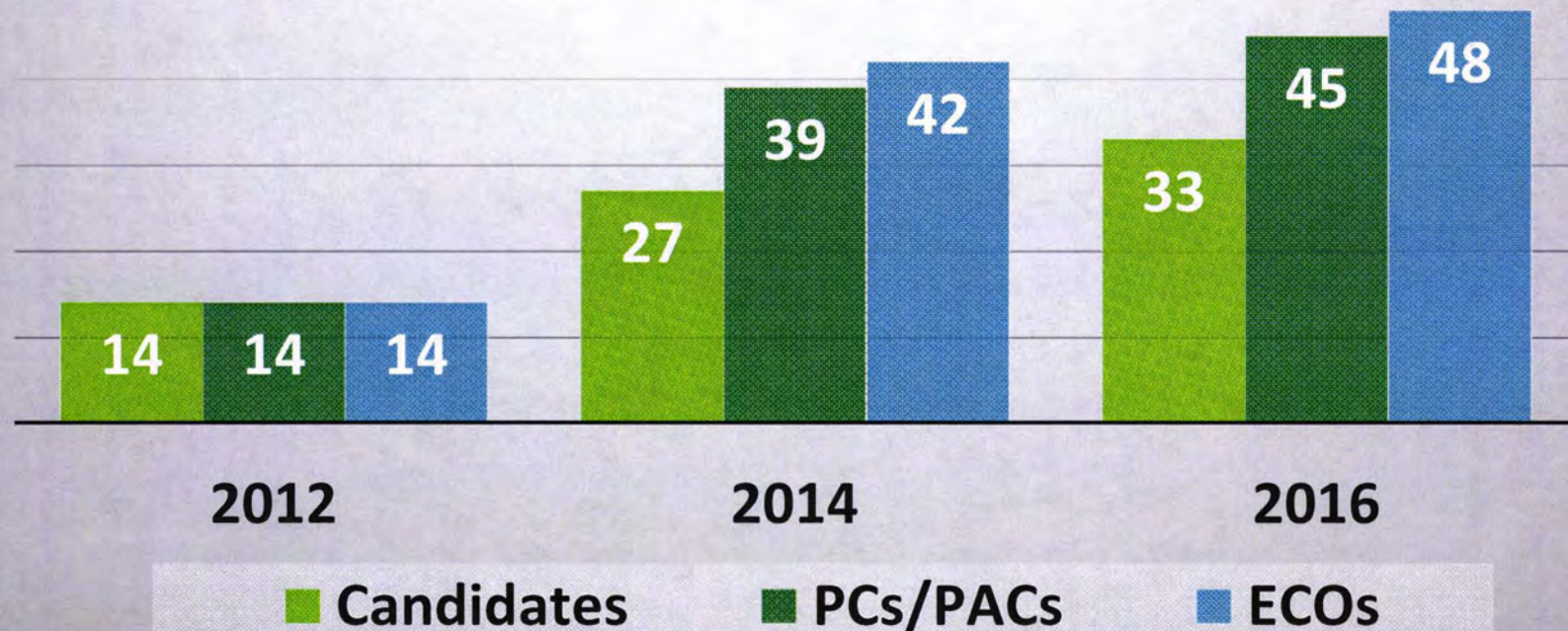
Political Disclaimers

- Triggered by “**political advertisement**”
- Paid for by a candidate:
 - *“Political advertisement paid for and approved by (Name), (party affiliation), for (office sought).” or*
 - *“Paid by (Name), (party affiliation), for (office sought).”*
- Exceptions including but not limited to:
 - Ad is designed to be worn by a person
 - No-cost blog on Internet
 - Placed on unpaid profile or on social networking site
 - Distributed as text message – maximum 200 characters

Independent Expenditures

- Is an expenditure independent of any candidate or political committee
- “Express advocacy” for/against candidate or issue required
- If more than \$5,000 spent, must file reports
- Disclaimer must appear on independent expenditure political ads (misdemeanor)
- No limit on amount of the expenditure

Number of Reports Required per Election Cycle



Statewide candidates file the same number of reports as political committees per election cycle.

Contributions Defined

- Anything of value made for the purpose of influencing Florida election (except service without compensation)
- Limitations include:
 - Cash and cashier's checks – No more than \$50/election
 - \$3000/election – Statewide office or Supreme Court Justice
 - \$1000/election – All other candidates
 - \$250,000 aggregate – Political party to statewide candidate
 - \$50,000 aggregate – county party executive committee + \$50,000 from all other party or APC sources
 - Opposed candidates cannot accept contributions within 5 days election

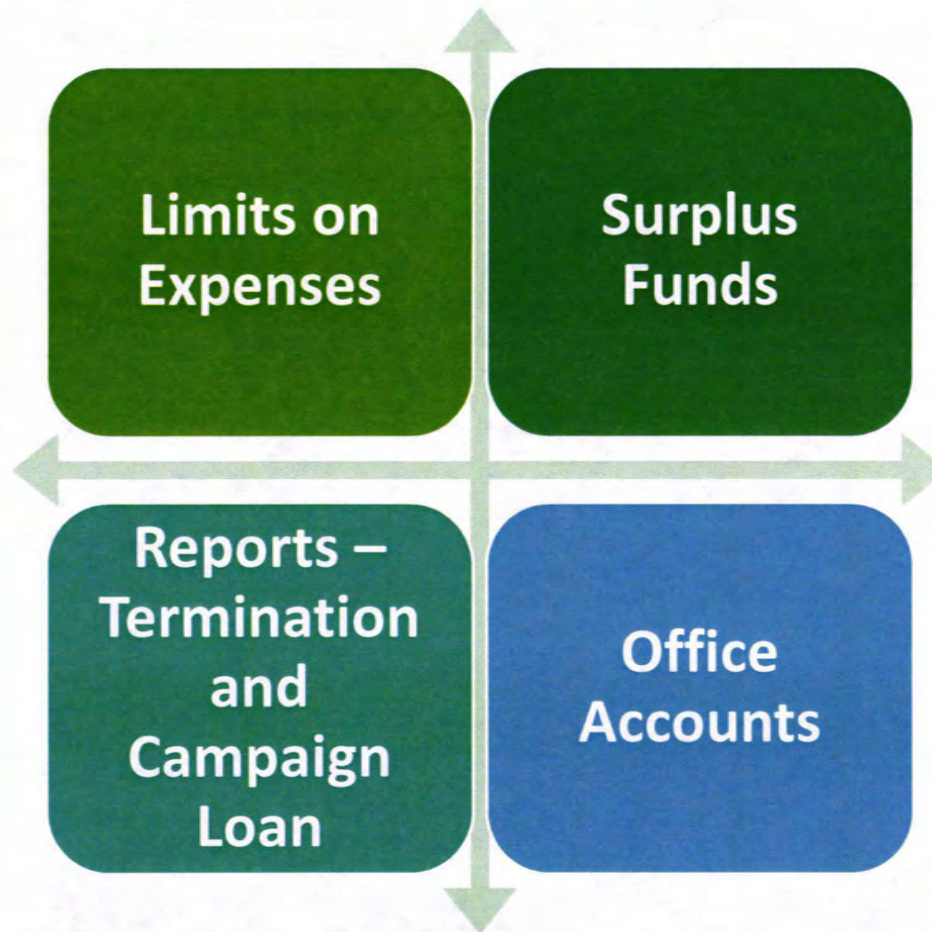
Expenditures Defined

- Spend on items that will influence election results
- Credit cards – can only be used by statewide candidates
 - Issued from campaign depository
 - List of users must be filed with Department
- Petty cash withdrawal –
 - \$500 quarterly before qualifying ends
 - \$100 weekly after qualifying ends
 - Office supplies, transportation and necessitates < \$100
- Debit cards –
 - Maximum 3 cards
 - No cash back
 - Specific receipt

Notices/Reports

- Notice of Waiver – No activity
- Timely Reports
- Amended Reports
- Untimely Reports
 - Statutory fines (no discretion)
 - \$50/ day for 1st three days
 - \$500/ day 4 days or more
 - Not to exceed 25% of expenditures or contributions whichever is greater for reporting period
 - Fines paid out of candidates personal funds
 - Repeated late filers → notification to Florida Elections Commission

Candidate Account Post Campaign



Limits on Expenditures

- Once a candidate withdraws, becomes unopposed, is eliminated or elected to office, expenditures limited to:
 - Purchase thank you advertising (up to 75 days)
 - Pay for items obligated
 - Pay for expenses necessary to close office down and prepare report
 - Reimburse candidate's personal contributions to campaign

Disposal of Surplus Funds

- Once a candidate withdraws, becomes unopposed, is eliminated or elected to office, surplus funds are to be used to:
 - Pay petition signature verification fees if qualified by petition method and waiver undue burden
 - Return contribution pro rata to each contributor
 - Donate funds to charitable organization
 - Give funds to applicable general revenue fund
 - Give funds to candidate's political party or affiliated political committee (\leq \$25K)
 - Transfer funds to office account (if candidate elected) of which maximum allowable amount is based upon elected office

Reports

- **Campaign Loan Report**

- Within 10 days of being elected to office
- Report all loans exceeding \$500 in value made for campaign purposes within the 12 months preceding election to office

- **Termination Report**

- File within 90 days of withdrawal, becoming unopposed, elected or eliminated
- Detail disposition of funds from campaign account

Office Accounts

- Legitimate purposes and expenses
 - Travel
 - Personal taxes payable on account funds
 - Office operational costs
 - Costs for constituent holiday cards newsletters
 - Religious, civic or charitable organizational membership fees/dues
- Quarterly reports until funds expended
- Final disposition upon leaving office
 - Donate to 501(c)3 charitable organization
 - Donate to applicable government general revenue fund
 - Pay towards cost of certified public accountant or attorney to prepare final report

Florida Department of State/Division of Elections

Administers chapter 106, F.S.

Operates state level electronic filing system

Maintains campaign documents, candidate, and committee databases

Registration and dissolution of political entities

Issues advisory opinions

Assesses statutory fines

Conducts audits

Florida Elections Commission

Enforces chapter 106, F.S.

Investigates sworn complaints

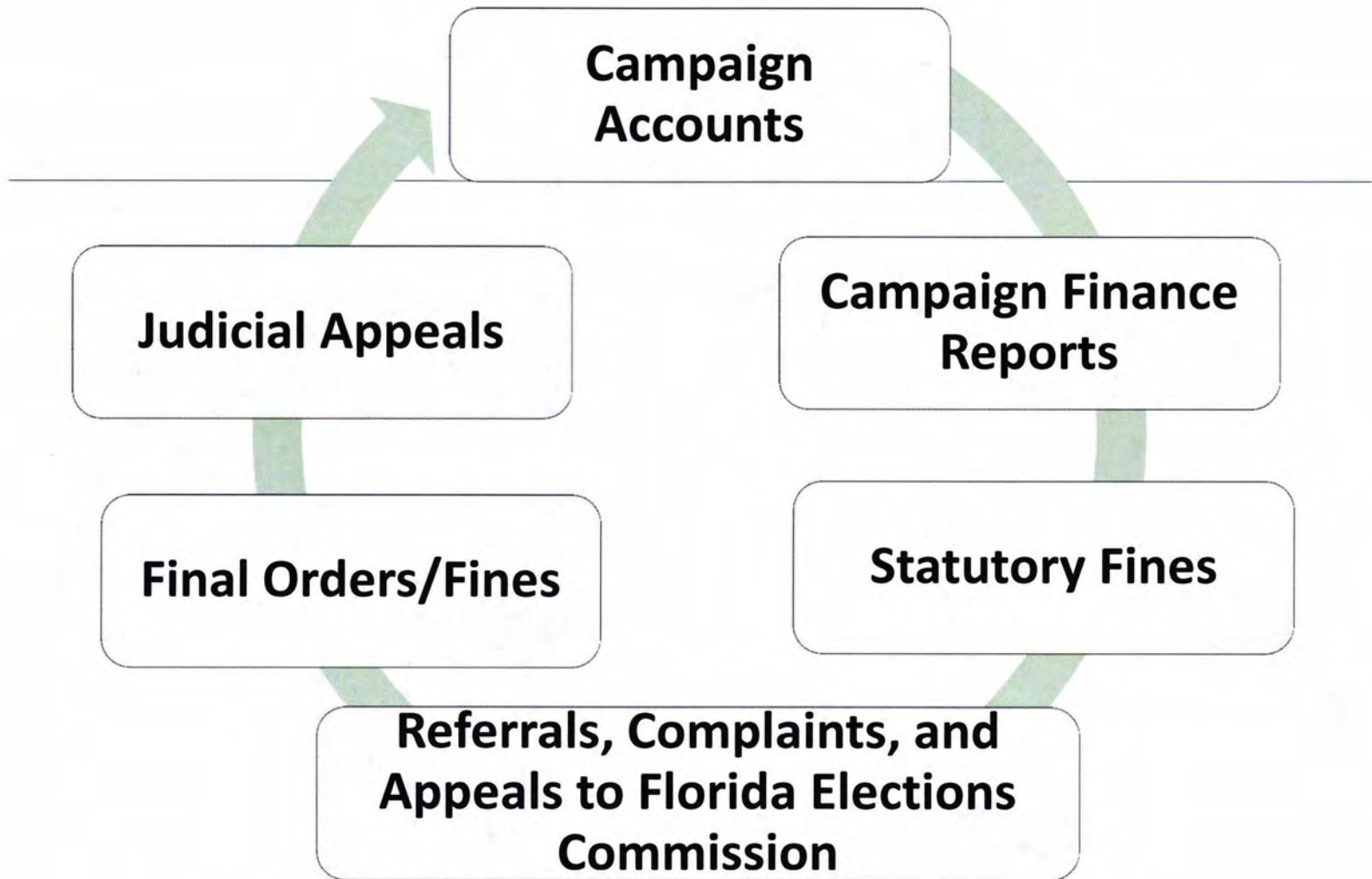
Referrals from the Division of Elections

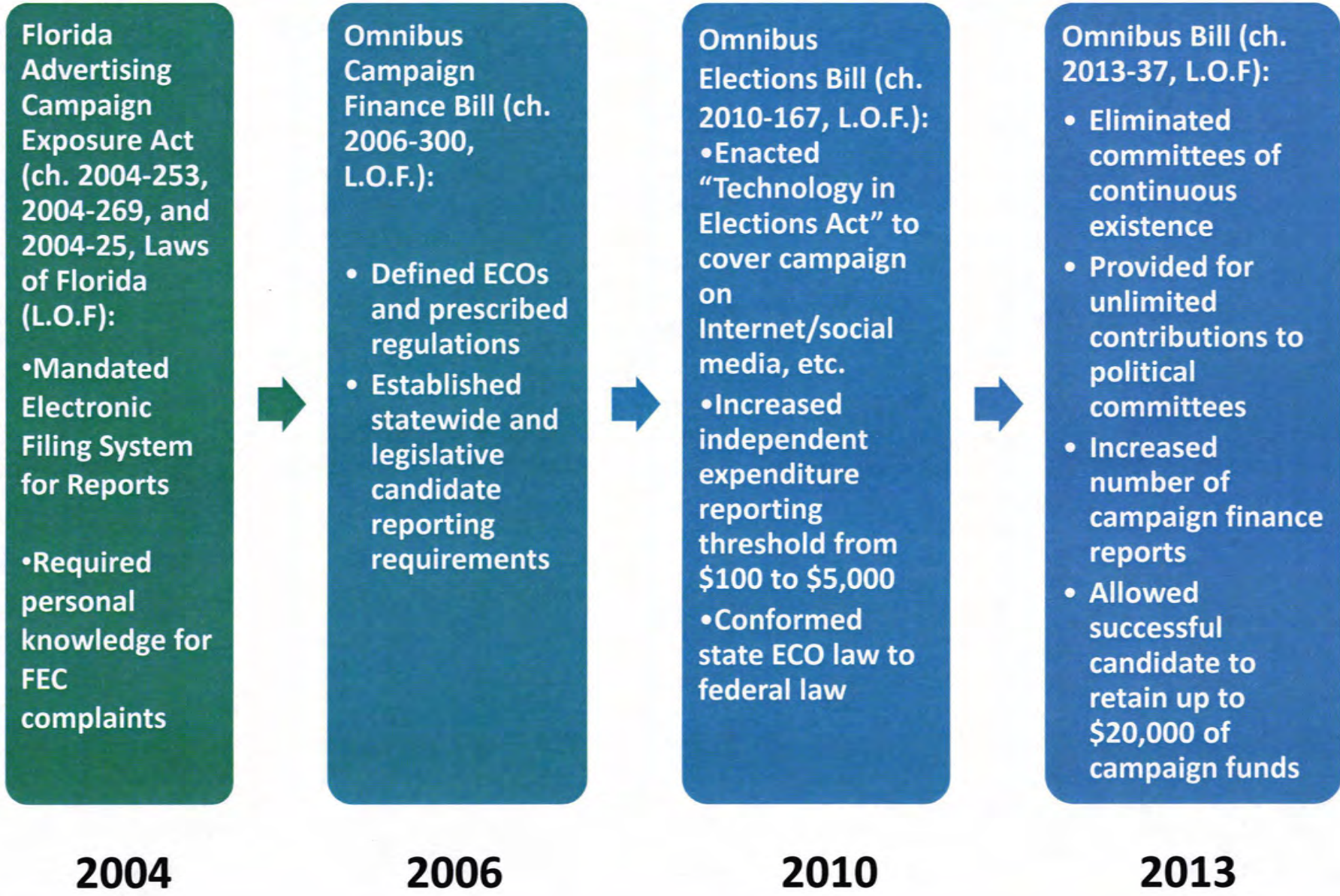
Appeals of automatic fines and dissolution of political entities

Determines violations of chapters 104 and 106, F.S.

Assesses fines

Issues final orders







FLORIDA DEPARTMENT *of* STATE

For more information, visit us online at:
dos.myflorida.com/elections/



Florida Elections Commission

PRESENTED BY:
SCOTT THOMAS, CHAIRMAN
AMY TOMAN, EXECUTIVE DIRECTOR

FEC Overview

Sections 106.24 and 106.25, F.S.

- Charged with Enforcement of Chapters 104 (“Election Code”) and 106 (“Campaign Financing”), Florida Statutes
- Nine Commissioner Members: Chair directly appointed by Governor; others nominated by House and Senate majority and minority leaders and appointed by Governor
- Administratively housed in the Office of the Attorney General (OAG) but not subject to the control, supervision, or direction of the OAG
- Commission acts as agency head and appoints the Executive Director to employ and supervise all staff and the day-to-day operations of the agency



FEC Commission Members

M. Scott Thomas, Chairman
Appointed by Governor Rick Scott
Term Expires January 5, 2019

Barbra Stern
Nominated by House Minority Leader
Term Expires December 31, 2019

Sean Hall
Nominated by Speaker of the House
Term Expires December 31, 2015*

Joni Poitier
Nominated by House Minority Leader
Term Expires December 31, 2019

J. Alex Kelly
Nominated by Speaker of the House
Term Expires December 31, 2019

KyMBERLEE Curry Smith
Nominated by Senate Minority Leader
Term Expires December 31, 2016*

Patricia Hollarn
Nominated by President of the Senate
Term Expires December 31, 2016*

Vacant (as of June 30, 2015)
Nominated by Senate Minority Leader

Vacant (as of February 19, 2016)
Nominated by President of the Senate

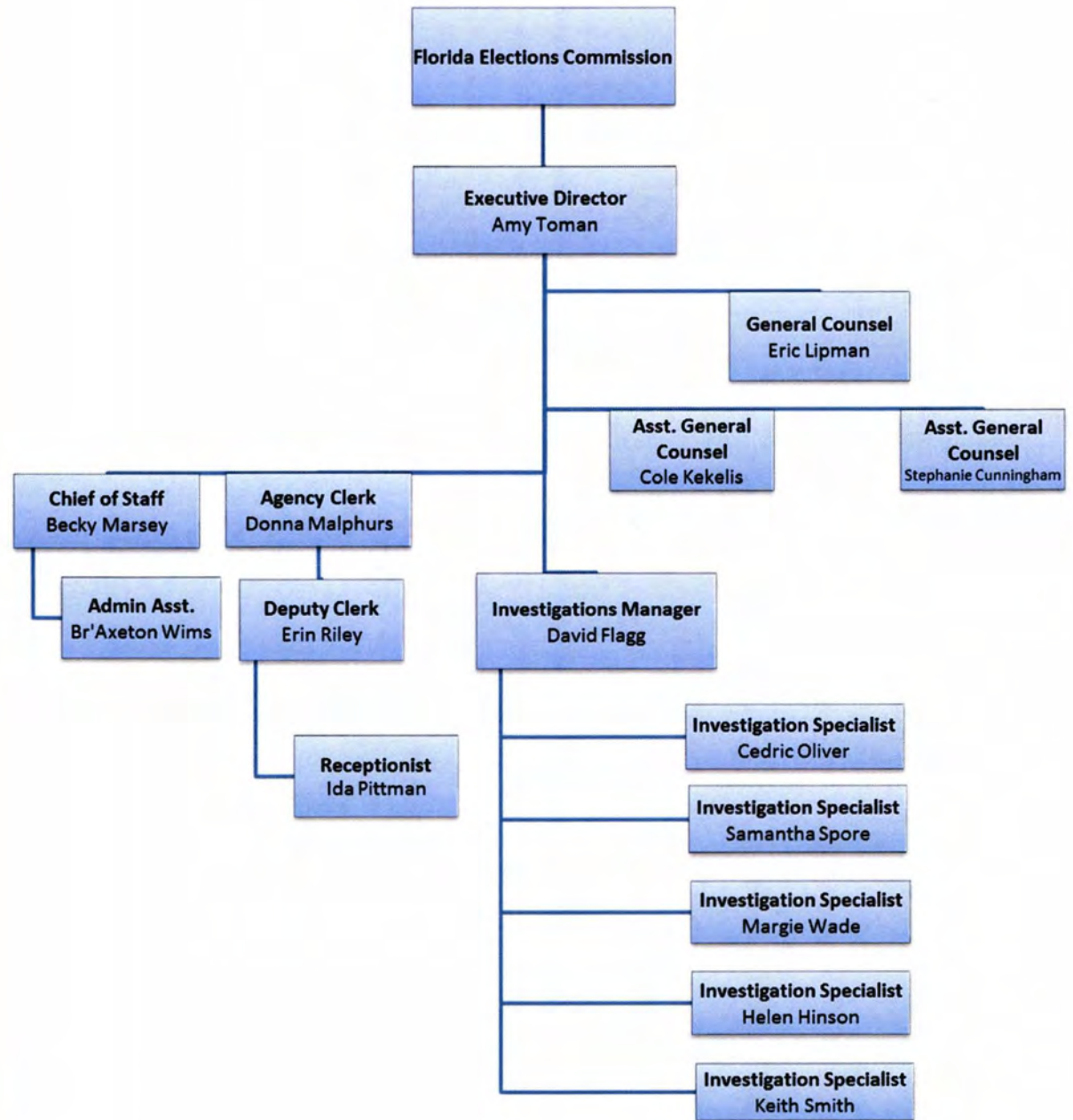
*Commissioner is currently holding over and seeking reappointment.

FEC Staff

Knowledgeable

Dedicated

Professional



FEC Case Load

Calendar Year	Cases Opened	Cases Closed
2016	868	564
2015	518	524
2014	506	452
2013	338	400
2012	442	272
2011	300	309

“Willful” Cases

- Sworn complaint or referral from the Division
- Alleges violation of chapter 104 (fraud) or 106 (campaign finance)
- Determined by Executive Director to be legally sufficient as defined by statute and rule
- FEC conducts investigation and makes probable cause recommendation to Commission
- Complaint is confidential
- Commission finds probable cause (PC) or no probable cause (NPC)
- If PC, case goes to hearing either before Commission or before DOAH
- Final Order subject to judicial appeal
- FEC enforces Final Orders in Circuit Court

Common Violations in “Willful” Cases

106.07(1) or 106.19(1)(c)	Failed to timely file a campaign finance report
106.07(7)	Failed to notify filing officer that no report would be filed because no reportable financial transactions occurred
106.07(5)	Certified that a report was true, correct and complete when it was not
106.19(1)	Additional charge for candidates, persons connected to campaigns and political committees for the following violations: <ul style="list-style-type: none"> (a) Acceptance of excessive contributions (b) Failing to report any contribution required to be reported (c) Falsely reporting or deliberately failing to include required information (d) Making or authorizing an unlawful expenditure
106.143(1)	Failed to use exact verbiage in paid political advertising disclaimer
106.141(1) and (7)	Failed to dispose of all remaining funds and file a termination report within 90 days
106.07(2)(b)1.	Failed to file an addendum within 7 days of notification that a filed report is incomplete
106.03(1)	Registration requirements for political parties and electioneering organizations
104.011	False swearing to any oath regarding voting or elections or submitting false voter info
104.15	Knowingly unqualified voters willfully voting

Penalties for “Willful” Cases

- ❑ Fine for most violations is up to \$1,000
- ❑ Some violations subject to enhanced penalty
- ❑ All fines returned to General Revenue
- ❑ The Florida Elections Commission cannot:
 - Prosecute a person criminally
 - Remove an official from office
 - Become involved in an election or campaign
 - Stop an election

FEC Consent Orders

- ❑ Negotiated by staff attorneys and approved by Commission
- ❑ Approximately 50% of cases resolved by Consent Order

- ❑ Consent Agreement
 - Anytime after complaint is determined to be legally sufficient
 - Respondent is not required to admit violation

- ❑ Minor Violation Consent Order (MVCO)
 - Commission rule defines “minor offenses” and sets the fine amount

“Auto-Fine” Cases

- Late-filed campaign finance report
- Fine automatically imposed by Filing Officer (no statutory discretion):
 - \$50 per day for first three days
 - \$500 per day for each subsequent day
 - No more than 25% of total receipts or total expenditures for reporting period, whichever is greater
- Candidate may dispute or “appeal” fine to FEC
- Commission decides whether to uphold, waive, or reduce the fine based on “unusual circumstances” as defined by rule
- FEC enters Final Order
- Division enforces Final Orders in Circuit Court

Examples of “Unusual Circumstances” in Auto-Fine Cases

Rule 2B-1.0055, Florida Administrative Code

Unusual circumstances mean uncommon, rare or sudden events over which the actor has no control and which directly result in the failure to act according to the filing requirements.

Examples include, but are not limited to:

- Natural Disaster
- Death
- Serious illness
- Computer or equipment failure
- Abrupt and unexpected loss of campaign treasurer

Attorney's Fees

Section 106.265(6), Florida Statutes and Rule 2B-1.0045, F.A.C

- Commission determines complaint was filed with malicious intent to injure reputation AND
 - Complainant had knowledge that complaint contained one or more false allegations OR
 - Complainant acted with reckless disregard for whether one or more allegations were false AND
- False allegations were material to the alleged violation

Florida Elections Commission

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