
Overview of Enforcement Practices

A. Introduction

The Ethics Commission is required, among other varied responsibilities, to conduct confidential investigations and enforce against violations of laws relating to campaign financing, lobbying, conflicts of interests, and governmental ethics. To support this mandate, the Ethics Commission has adopted enforcement regulations and policies that are designed to facilitate effective and efficient investigations, while protecting the procedural rights of respondents.

At the Ethics Commission's August 2017 meeting, staff presented an informational overview of the agency's existing enforcement processes. The Ethics Commission members asked that the overview be brought back at this meeting as an action item, so that they could formally vote on it. In response to a public comment, they also asked staff to include a discussion regarding issuing closing letters to the subjects of inactive investigations. This report responds to those requests.

Three attachments are included to help explain the enforcement processes. Attachment A identifies the complaint intake process, Attachment B outlines the settlement process, and Attachment C outlines the administrative hearing process.

B. Background

The Los Angeles City Charter (Charter) requires the Ethics Commission to conduct confidential investigations of and enforce against alleged violations of City Charter provisions and ordinances relating to campaign financing in City and Los Angeles Unified School District Board of Education (LAUSD) elections, lobbying in the City, conflicts of interests, and governmental ethics for City officials, City employees, and those who do business with the City. Charter §§ 706, 803.

City law provides criminal, civil, and administrative remedies for violations of laws within the Ethics Commission's jurisdiction. *See, e.g.* Charter §§ 470(o), 706(c), 803(v); Los Angeles Municipal Code (LAMC) §§ 48.09, 49.5.16, 49.7.38. If a violation occurs, then the Ethics Commission is empowered to impose an order and an administrative penalty against the violator. Los Angeles Administrative Code (LAAC) §§ 24.27(h)-(i). The Ethics Commission's administrative jurisdiction is separate from and may be exercised in addition to the law enforcement or disciplinary jurisdiction that may exist with other agencies. *See* LAAC §§ 24.22(c), 24.25(b)(2).

All of the laws within the Ethics Commission's jurisdiction impose strict liability, meaning no specific intent is required to find that a violation occurred. Penalties may be shaped by the relevant circumstances of a case, including the severity of the violation; whether the violator intended to conceal or deceive; whether the violation was deliberate; whether the violator consulted with staff about how to comply with the law; whether the violation is part of a

pattern; whether the violator has a history of violating laws within the Ethics Commission's jurisdiction; the violator's degree of cooperation; and the overall interests of justice. LAAC § 24.27(h)(2).

Penalties issued by the Ethics Commission may include a cease and desist order; an order requiring the respondent to file reports, statements, or other documents required by law; or an order requiring the respondent to pay the City up to the greater of \$5,000 per violation or three times the amount of money that was improperly reported, spent, or received. Charter § 706(c). The Ethics Commission may also refer the matter to another law enforcement or disciplinary agency. Charter § 706(d); LAAC §§ 24.22(c), 24.25(b)(2).

When appropriate, Enforcement staff seek to resolve matters without resorting to enforcement action. If staff identifies information suggesting that a violation is either about to occur or has occurred but can be mitigated, they will act promptly to address such activity. Generally, this results in the Director of Enforcement contacting relevant parties, educating them about the applicable laws, and seeking any voluntary compliance that may be necessary. Sometimes staff is informed of activity too late in the process to avoid violations, but the goal is always to mitigate if appropriate and to educate about how and why to comply with the law.

C. Enforcement Processes

Administrative regulations govern the Ethics Commission's administrative enforcement processes, beginning with the intake of complaints and continuing through the investigative phase, a probable cause determination, and an administrative hearing. *See* LAAC §§ 24.21 *et seq.*

Enforcement policies, including settlement practices, are also informed by guidance from the Ethics Commission members. However, because they sit as adjudicators in enforcement matters, the Ethics Commission members are made aware of the facts in a specific case only if the case reaches a public stage. The Ethics Commission members exert no authority over a case's investigation, preliminary enforcement determination, or settlement negotiations, which are conducted by the Enforcement staff.

1. Intake Process

The first stage of enforcement is receiving and reviewing complaints. The steps include complaint intake, investigations, and preliminary enforcement determinations. The steps are summarized in Attachment A and explained in more detail below.

a. Complaint Intake

The Ethics Commission receives complaints through a variety of sources, such as the mandatory whistleblower telephone hotline, the online complaint form on the Ethics Commission website, in-person meetings, telephone calls, and postal and electronic mail. All complaints are confidential and are not subject to disclosure. Charter § 706(a)(2); LAAC § 24.23(a)(4). Complaints may be made by any person. LAAC §§ 24.23(a)(1)-(2). Complaints can be based on any source of information, including personal knowledge, an audit, a news

article, and a referral from another government or law enforcement agency. LAAC § 24.23(a)(2).

Upon receipt, each complaint is reviewed by Enforcement staff. LAAC § 24.23(b). If a complaint does not contain sufficient facts or information to pursue an investigation, does not express any specific actionable allegation, or falls outside the Ethics Commission's jurisdiction, it may be immediately closed. LAAC § 24.23(d)(3). If a complaint provides sufficient detail and alleges violations within the Ethics Commission's jurisdiction, the Senior Investigator assigns the complaint to an investigator for further review.

The assigned investigator seeks to assess the accuracy of the facts alleged in the complaint and determine the likelihood that those facts constitute a violation. This initial review can lead to a full investigation, a referral to another agency, or no action. LAAC § 24.23(d). The Director of Enforcement determines how to proceed with each complaint.

b. Investigation

When the initial review identifies sufficient evidence to suggest that a violation occurred, the Director of Enforcement initiates an investigation. Enforcement staff routinely seek voluntary compliance to foster and maintain cooperation throughout investigations. Staff also rely on multiple tools in conducting their investigations, including but not limited to sworn interviews, field work, and document requests. When voluntary compliance is not achieved or anticipated, the Director of Enforcement may issue a subpoena requiring an individual to be present at an interview or to submit information that is material to the determination of whether a violation took place. LAAC § 24.24(a).

When appropriate, Enforcement staff may work with another City department or conduct a joint investigation with another law enforcement agency, such as the Los Angeles County District Attorney's Office or the California Fair Political Practices Commission. This type of interagency cooperation can be useful when violations of both City and state laws have occurred or when another department or agency is able to provide additional investigative resources.

Each investigation presents a unique set of facts, witnesses, and issues that govern the speed at which a resolution can be reached. Generally, investigations continue until, in the judgment of the Director of Enforcement, all probable avenues of fact finding are exhausted. Investigations conducted by Enforcement staff are confidential. Charter § 706(a)(2); LAAC § 24.29(c).

c. Preliminary Enforcement Determination

When an investigation is complete, the Director of Enforcement must decide whether sufficient evidence exists to initiate an enforcement action, whether to refer the matter to another government or law enforcement agency, or whether to close the case without further action. LAAC §§ 24.25(a)–(b). If a referral is made, information gathered through the investigation may be provided to the agency receiving the referral. LAAC §§ 24.22(c), 24.25(b)(1).

3. Settlement Process

The Director of Enforcement typically attempts to reach a stipulated settlement following the decision to initiate an enforcement action. Attempts to settle are not legally required, but settlements do conserve public and private resources, encourage cooperation with Ethics Commission investigations, and result in timely resolutions and public disclosure of violations. Attachment B summarizes the steps in the settlement process, which are further detailed below.

Generally, the Director of Enforcement drafts a proposed stipulation and exhibit and presents it to the respondent. The stipulation outlines the terms of the agreement, while the exhibit memorializes facts established through the staff's investigation. Respondents normally receive two weeks to consider and negotiate the proposed settlement. During this period, the Director of Enforcement works collaboratively with the respondent and the respondent's counsel to reach a mutually agreeable result.

To encourage settlements, the Director of Enforcement proposes a 50-percent reduction in the maximum charged penalty when mitigating circumstances warrant a reduction and the respondent agrees to settle prior to the issuance of a probable cause determination. This approach was established by an Ethics Commission enforcement subcommittee and has been in effect for over five years. It is designed to establish an objective standard for penalties, maintain consistency across different cases, and preserve limited public resources.

Staff may deviate from this approach when particular facts merit a departure. For example, the Ethics Commission has determined that, when a disclosure violation is clearly an administrative error, the maximum penalty should generally be \$5,000 and not three times the amount of money at issue, which can easily become unreasonably high. In other instances, because of the conduct involved, the proposed penalty may be increased to 75 percent or 100 percent of the maximum allowed under the law. *See* Section B, above. Recent examples of conduct that has increased the penalty include threatening witnesses, withholding evidence, seeking or abusing a position of public trust, attempting to defraud the public, and engaging in money laundering.

In considering recently proposed settlements, the Ethics Commission members have expressed concern that the exhibits have not contained sufficient details regarding the facts of the cases to permit a robust public discussion or to clearly indicate why the proposed penalty amount was considered appropriate. To address this concern and facilitate a better understanding of proposed settlements, exhibits now include more detailed information regarding the course of the underlying investigation, the conduct of the respondent, mitigating and aggravating factors, and the charged violations.

A stipulated settlement agreement between the Director of Enforcement and a respondent must be approved by at least three members of the Ethics Commission to become effective. LAAC § 24.27(i)(2)(C). Proposed stipulations are presented to the Ethics Commission members at public meetings, at which the members may discuss the matter with the Director of Enforcement and, if present, the respondent.

If the settlement is approved, an order is signed by the Ethics Commission president, and the matter is resolved. If the settlement is rejected, the Director of Enforcement and the respondent may reopen settlement negotiations or move to the administrative hearing process outlined in the next section.

4. Administrative Hearing Process

Either the Director of Enforcement or the respondent may elect to proceed with an administrative hearing, rather than enter into a stipulated settlement. The steps in the administrative hearing process include a probable cause determination, an accusation, and the hearing, itself. They are summarized in Attachment C and further detailed below.

a. Probable Cause Determination

To initiate an administrative hearing process, the Director of Enforcement must file a probable cause report with the Executive Director. The probable cause report must identify the alleged violations, state the relevant law, and summarize evidence gathered through the investigation, including known exculpatory information. LAAC § 24.26(a)(1)(A). Generally, the report must be filed within four years after the date of the alleged violation. LAAC § 24.26(a)(2). However, that time is tolled if the respondent engaged in concealment or deceit or failed to comply with a subpoena. *Id.*

The respondent may submit a written response to the probable cause report, and the Director of Enforcement may submit a rebuttal to that response. LAAC §§ 24.26(a)(3)–(4). In addition to or instead of a written response, a respondent may request a probable cause conference. LAAC § 24.26(a)(3). The probable cause conference is conducted by the Executive Director and provides the respondent and Enforcement staff with an opportunity to present evidence and make arguments to the Executive Director about whether probable cause exists. LAAC § 24.26(b)(3).

The Executive Director is required to determine whether probable cause exists, *i.e.*, whether the evidence in the case would lead a reasonable person to believe that the alleged violations occurred and that the respondent committed or caused them. LAAC § 24.26(c). The Executive Director does not have the authority to determine whether a violation actually occurred or whether a penalty is appropriate.

The probable cause determination must be based exclusively on the probable cause report, any response and rebuttal, and the arguments and evidence presented by the parties at the probable cause conference, if one is held. LAAC § 24.26(c)(1)(A). The determination is required within 45 days following the date of the probable cause conference or, if a probable cause conference is not held, the date of the last pleading. LAAC § 24.26(c)(2). If the Executive Director does not find that probable cause exists, the case is then closed.

b. Accusation

If the Executive Director finds that probable cause does exist, the Director of Enforcement must prepare an accusation and serve it on the respondent. LAAC §§ 24.26(d)(1),

(3). The accusation must specify the provisions of law that were allegedly violated by the respondent and provide a summary of the facts at issue. LAAC § 24.26(d)(2).

After it is served on the respondent, the accusation must be publicly announced. LAAC §§ 24.26(d)(3)–(4). That announcement is the first public step in the enforcement process.

c. Administrative Hearing

Once an accusation has been publicly announced, an administrative hearing must be held. LAAC § 24.27(a)(1). The matter is placed on an Ethics Commission agenda, and the Ethics Commission members must decide whether to hear the matter themselves or refer it to an outside hearing officer, such as the California Office of Administrative Hearings. *Id.*

The hearing officer conducts a public hearing, at which Enforcement staff and the respondent appear and may present oral argument, exhibits, and witness testimony. LAAC § 24.27(f). If the Ethics Commission does not hear the matter as a panel, the individual hearing officer must make a written recommendation to the members regarding whether any violations occurred. LAAC § 24.27(g)(2). The hearing officer's report must contain proposed findings of fact, conclusions of law, and a summary of the evidence supporting each proposed finding. LAAC § 24.27(g)(2)(A). The hearing officer does not make recommendations regarding penalties, which lie solely within the purview of the Ethics Commission members. LAAC § 24.27(h)(1). The hearing officer's report is submitted to the Ethics Commission members, and any party may file a response. LAAC § 24.27(g)(2)(B).

A final decision regarding whether any violations occurred is made by the Ethics Commission members, who must review the entire record and conduct another public meeting. LAAC § 24.27(g)(1). They must then determine whether a violation occurred, whether a penalty is appropriate, and, if so, what that penalty should be. LAAC §§ 24.27(g)-(h). As with the settlement process, these determinations do not become effective unless at least three members of the Ethics Commission vote to approve them. LAAC §§ 24.27(g)(1)(A), (h)(1)(A).

If the Ethics Commission members determine that no violation occurred, the staff must publish a statement to that effect. Charter § 706(c)(3); LAAC § 24.27(g)(4). If the Ethics Commission members determine that a violation did occur, they must issue a verbal order, and the staff must prepare for the Ethics Commission president's signature a written statement reflecting the order. LAAC § 24.27(i)(1). The respondent must comply with any imposed penalties. *See, e.g.,* LAAC § 24.27(h)(3).

Enforcement decisions that are approved by the Ethics Commission members—including stipulated settlements, statements of no violation, and orders imposed following an administrative hearing—are publicly available on the Ethics Commission's website.

D. Inactive Investigations

By law, all information related to an enforcement investigation must be treated confidentially unless public disclosure is specifically authorized or required. Charter § 706(a)(2); LAAC §§ 24.23(a)(4), 24.29(c). Confidentiality regarding investigations is important

because it protects the parties involved, safeguards the integrity and reputation of the Ethics Commission's enforcement work, and helps to ensure that the Ethics Commission cannot be used for personal or political purposes.

In certain instances, however, information about an investigation may be disclosed. For example, when necessary to conduct an investigation, information may be disclosed to a respondent or to a person designated in writing by a respondent as the respondent's counsel or representative. LAAC § 24.29(c)(2). One piece of information that is deemed necessary in the course of an investigation is notice that the investigation has become inactive. When a respondent has been made aware by Ethics Commission staff that the respondent is the subject of an investigation, it can be unsettling to be unaware that a decision has been made to take no further action. Instead of denying the respondent finality until the statute of limitations runs out, the Ethics Commission staff verbally notifies the respondent when the investigation becomes inactive.

It is possible for Ethics Commission staff to be made aware of new information about an investigation after a decision to take no further action has been made. For that reason, the notice provided to respondents includes statements that no evidentiary conclusions may be drawn from the decision and that the investigation may be resumed if new information comes to light within or that tolls the statute of limitations.

E. Conclusion

The Ethics Commission is required by law to investigate and enforce against violations of the laws within its jurisdiction. Its enforcement regulations and policies are designed to protect the rights of respondents while effectively addressing violations. They seek to educate and mitigate, promote cooperation and compliance, and provide opportunities to challenge regulatory action. They also seek to promote accountability, encourage the efficient use of public resources, and safeguard against the inequitable treatment of respondents.

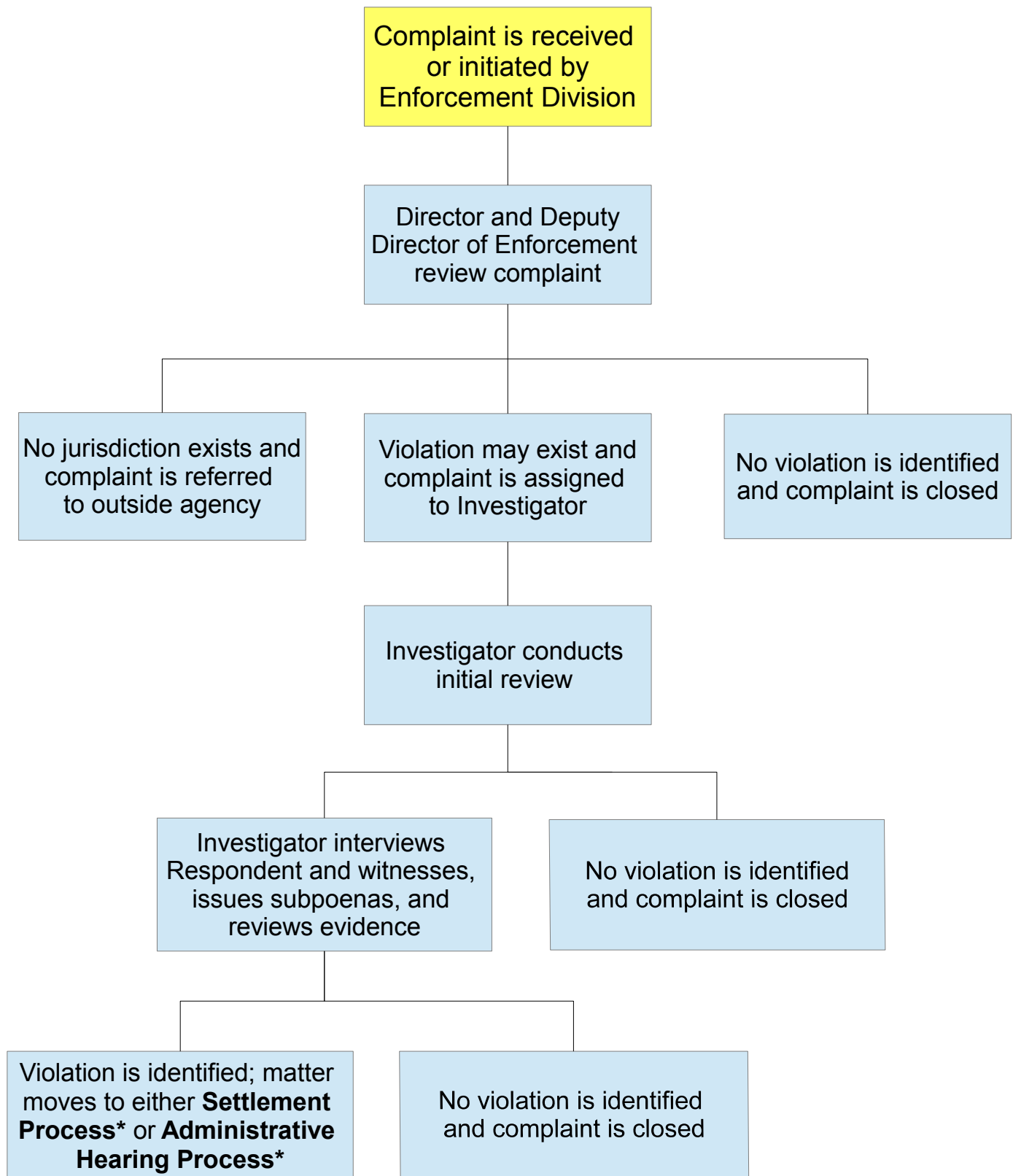
These varied goals lend a layer of complexity to the enforcement mandate. However, they are all considered at every stage of every case. Perhaps the most important consideration is what constitutes the best outcome for the public. Complete compliance, negating a need for enforcement, is the ideal. And when the ideal is not achieved, meaningful and timely accountability helps to preserve the public trust.

We recommend that you ratify the existing enforcement practices outlined above. We also note that specific issues related to the enforcement regulations or policies may be reevaluated whenever needed or desired.

Attachments:

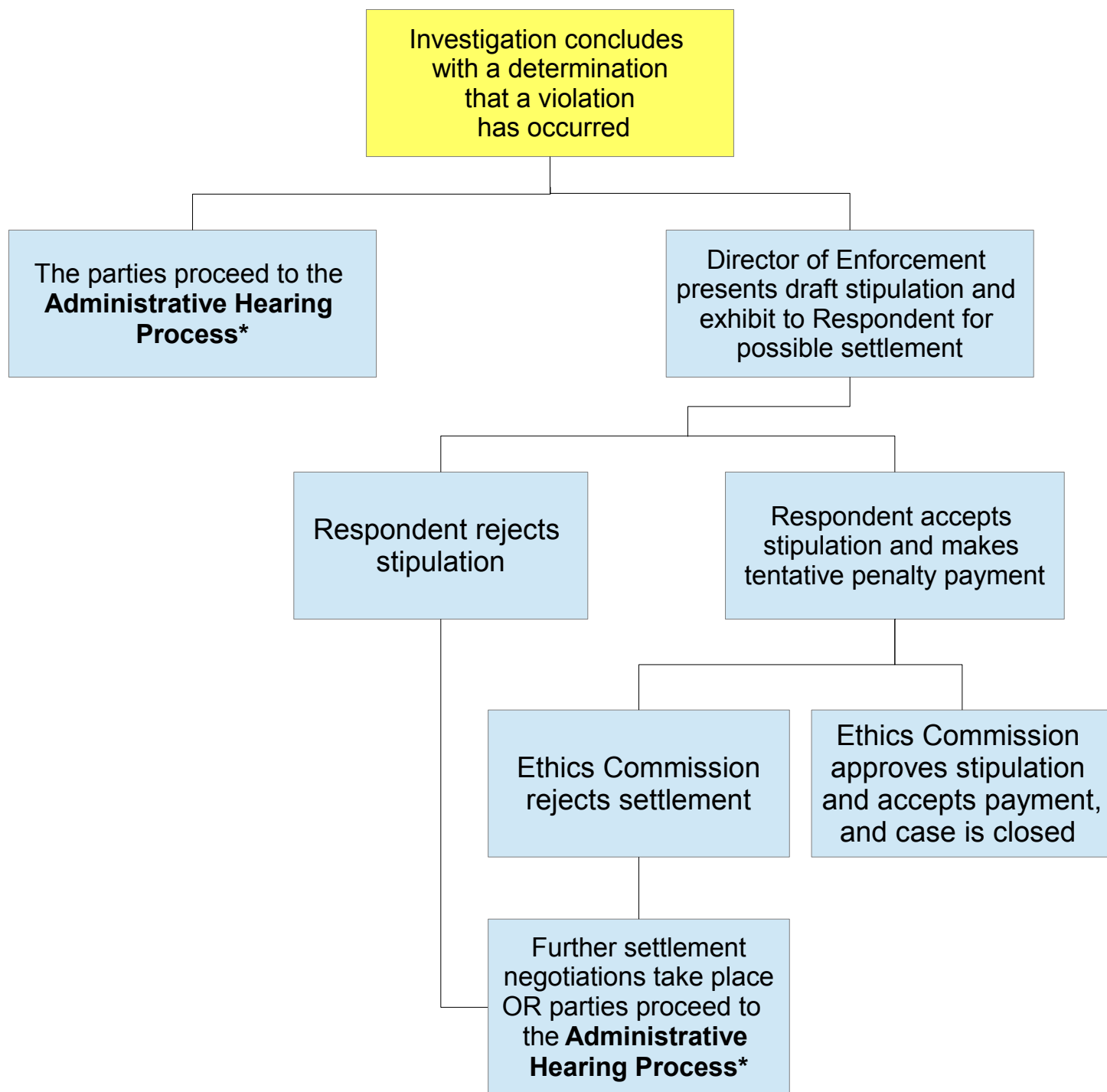
- A Intake Process*
- B Settlement Process*
- C Administrative Hearing Process*

Intake Process



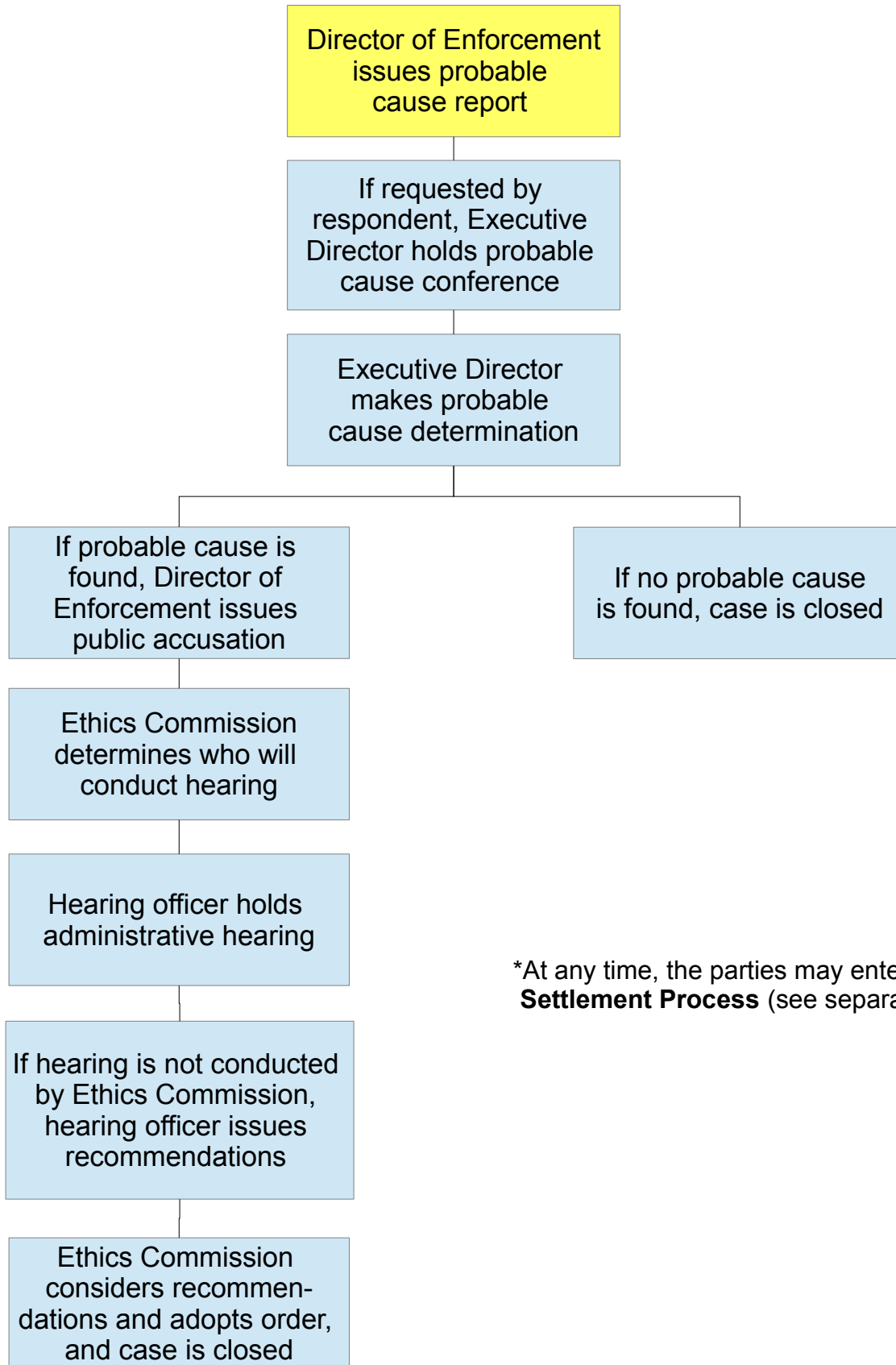
*See separate flow chart.

Settlement Process



*See separate flow chart.

Administrative Hearing Process*



*At any time, the parties may enter into the **Settlement Process** (see separate flow chart).