



AGENDA DOCUMENT NO. 18-07-A
APPROVED MARCH 8, 2018

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, DECEMBER 7, 2017

PRESENT:

Steven T. Walther, Chairman, presiding

Caroline C. Hunter, Vice Chair

Lee E. Goodman, Commissioner

Matthew S. Petersen, Commissioner

Ellen L. Weintraub, Commissioner

Alec Palmer, Staff Director

Lisa Stevenson, Acting General Counsel¹

Dayna C. Brown, Secretary and Clerk

¹ Mr. Greg Baker of the General Counsel's Office represented Acting General Counsel Stevenson.

Chairman Steven T. Walther called the Federal Election Commission to order in an open meeting at 10:14 A.M. on Thursday, December 7, 2017 with a quorum present.

Chairman Walther recognized and welcomed visitors from the Republic of Moldova who were in attendance to observe the Open Meeting ahead of their country's upcoming elections.

**I. RESUBMISSION: AUDIT DIVISION RECOMMENDATION
MEMORANDUM ON THE NY REPUBLICAN FEDERAL CAMPAIGN
COMMITTEE (NYR) (A13-11)**

**Memorandum from the Chief Compliance Officer and Audit
Division dated November 14, 2017**

Agenda Document No. 17-55-A

Chairman Walther recognized Mr. Tesfai Asmamaw of the Audit Division who stated that there were five (5) Findings in the report before the Commission: 1) Misstatement of Financial Activity; 2) Recordkeeping for Employees; 3) Disclosure of Occupation/Name of Employer; 4) Reporting of Apparent Independent Expenditures; and 5) Recordkeeping for Communications. Mr. Asmamaw further stated that the Commission approved the Draft Final Audit Report for this committee on August 10, 2017.

Chairman Walther recognized Commissioner Goodman who stated that state parties often run volunteer mail programs and do not always keep all of their records, however, the Commission has previously credited affidavits that made blanket representations under oath. Commissioner Goodman inquired of the Audit Division why the affidavit of the state party's Counsel, which stated that all of their mail in this election-cycle was conducted pursuant to the volunteer mail exemption, was not being credited in this matter.

Ms. Nicole Burgess of the Audit Division confirmed that the affidavit was not recognized in the report and stated that the committee submitted their affidavits in packets from the vendors and attached associated mail pieces as well as corresponding invoices. Ms. Burgess noted that the affidavits stated that the committee was attesting to the attached invoices and mail pieces, and explained that in the case of Atlas Direct, \$91,000 of \$236,000 noted in the report was not included in the packet and therefore the Audit Division only gave credit for mail pieces and invoices as attached to an individual vendor or campaign official's affidavit.

Discussion continued.

Commissioner Goodman pointed out the gap between what the committee's affidavit covered and the more all-inclusive representation by Counsel where he says, "all of the express advocacy mailings reported as

federal election activity on line 30b. of the committee's FEC disclosure reports during the 2012 election-cycle were part of the committee's volunteer mail program, and I followed the same procedures described in my February 2015 affidavit to ensure there was substantial volunteer participation in all of the mailings' production and distribution."

Commissioner Goodman then asked whether there was a group of direct mail expenditures that was not covered by this statement, to which Ms. Burgess replied there were none. Commissioner Goodman asked whether the gap was in the evidentiary submission, to which Ms. Burgess replied yes.

Discussion continued.

Chairman Walther recognized Commissioner Weintraub who stated her recollection that there were three different types of affidavits: 1) from the lawyer who stated he understood the volunteer exemption and explained to his clients the need for volunteers. Commissioner Weintraub agreed with the Audit Division that since the lawyer was not present when the mailers were being produced, he could not testify from personal knowledge as to whether there were any volunteers present when the mailers were produced.

2) Affidavits from the vendors who actually produced the mailers and confirmed the presence of volunteers at the production of specific mailers, which were attached to the affidavits. 3) An affidavit from a general contractor who enlisted the services of a sub-contractor to produce the

mailer, and in this case, an affidavit from the sub-contractor was not provided. Commissioner Weintraub stated her willingness to accept the affidavits from those who were close to the production of the mailers; however, as an evidentiary matter, it was harder to accept the affidavit of someone who was not there because the best they can do is articulate their understanding of the law.

Chairman Walther recognized Commissioner Goodman who stated that he read the lawyer's affidavit differently. Commissioner Goodman noted the lawyer's statement of responsibility for the legal compliance, and then read a portion of the affidavit wherein the lawyer stated that he personally coordinated, witnessed, and ensured the volunteer activity in the production of all of the mailers. Commissioner Goodman further stated that, in the past the Commission had seen evidence and affidavits not nearly as detailed as what was provided in this case, which received at least some votes from the Commission. Commissioner Goodman stated that if the lawyer's affidavit stated that he coordinated operations, and all of the committee's direct mail was run in conformation with the evidence that was submitted, it was a reasonable inference that if they showed evidence of this for \$1 million of \$1.1 million, then the last \$100,000 likely conformed as well.

Chairman Walther recognized Commissioner Weintraub who stated that the nature of volunteer activity is that it depends on volunteers showing up,

and it is therefore not inconceivable that even with best efforts made to get volunteers to show up, when volunteers don't show up, the mailers are still produced. Commissioner Weintraub further stated that she was not aware of personally approving past instances wherein committees provided affidavits and evidence to substantiate a percentage portion of the volunteer activity, along with a statement that the unsubstantiated activity was conducted in the same manner.

Discussion continued.

Chairman Walther stated that while he saw the committee's good faith attempt to recognize their responsibility and meet that responsibility for the most part, he shared some of Commissioner Weintraub's skepticism, noting the riskiness of accepting an overreaching affidavit from a person who clearly had no personal knowledge.

Chairman Walther recognized Commissioner Petersen who, with respect to Finding 1, Misstatement of Financial Activity, stated his understanding that the committee represented that it received both federal and non-federal contributions into its federal account and would then, due to their amount, source, or some other reason, transfer some of those funds to their non-federal account. Mr. Asmamaw confirmed the Commissioner's understanding. Commissioner Petersen noted that in 2011 \$190,000 came into the federal account and once determined to be for the non-federal

account was subsequently transferred, and in 2012 that amount was \$157,447. Commissioner Petersen then stated that the committee cited Advisory Opinion 2001-17 (DNC Services) to argue by analogy that, in essence, these deposits were made out of administrative convenience and none of these non-federal funds were actually used for federal purposes. He then asked whether there was any evidence that non-federal funds were actually used for federal purposes. Mr. Asmamaw stated that there were no non-federal funds used for federal purposes. Commissioner Petersen then asked the Office of General Counsel to speak to its conclusion that AO 2001-17, as cited by the committee, was not applicable in this case.

Mr. Joshua Blume of the Office of General Counsel stated that AO 2001-17 pertained to a national committee that made an inquiry about how it should handle contributions that were intended to be split between federal and non-federal accounts. The Commission authorized a process by which the national committee could take “composite” contributions and deposit the entire amount, although a portion of it was intended to be non-federal, into the federal account and subsequently transfer the non-federal portion to a non-federal account as long as the transactions were properly disclosed. Mr. Blume further stated that the substantive portion of the Office of General Counsel’s analysis concerned whether 11 C.F.R. § 102.5, which normally prohibits the introduction of non-federal funds into federal accounts, would

apply here. The procedural aspect of their analysis focused on the reporting and whether the transactions were properly disclosed. Mr. Blume stated that it was his understanding that none of the deposits and subsequent transfers to the non-federal account were disclosed in the federal reports, and the committee argued that it was not required to do so. Mr. Blume further stated that, given this, the Office of General Counsel concluded that AO 2001-17 would not cover the committee's non-reporting of the deposits and subsequent transfers. In terms of the substantive issue, Mr. Blume stated that the opinion itself was confined to the "composite" contribution issue, and it was unclear whether the contributions in question in the current case were actually composite contributions or whether they were intended wholly to be non-federal contributions. He stated that the Office of General Counsel considered this to be significant because the parameters of the 2001-17 opinion included representation by the national committee that any wholly non-federal contributions it received would be deposited directly into its non-federal account, rather than use the federal account as a conduit for the transfer. Mr. Blume stated that the Office of General Counsel's view, in this present case, was that the wholly non-federal contributions should have been deposited directly into the non-federal account.

Chairman Walther recognized Commissioner Goodman who asked Mr. Blume, regarding the deposits, whether the finding was one of reporting for

the committee not having reported the dollars, or a finding of depositing state funds into an improper account while regulations require there to be two separate accounts.

Mr. Blume stated that the finding in the audit report, as it currently read, was one of reporting; however, the General Counsel's Office raised the potential substantive issue and suggested that it too should perhaps be a part of the finding.

Commissioner Goodman inquired as to whether the substantive violation of the deposit of funds was a part of the finding, versus solely a reporting violation. The Audit Division confirmed that only the reporting violation was included in the report.

Discussion continued.

With regard to the reporting violation, Commissioner Goodman asked whether the Audit Division ever advised the committee that if they filed either a Form 99 or amended their reports to include memo entries, this would be a proper remedy to the reporting issue. Ms. Burgess indicated that they did not.

Chairman Walther articulated his belief that, as a matter of policy, there should be a disclosure requirement that shows the time that the federal account served as the custodian of non-federal funds.

Chairman Walther recognized Commissioner Petersen who stated that this issue has been resolved going forward, in that the committee has made representations that they have now come up with ways to code credit card contributions in order to have them dispersed immediately to the proper accounts. He noted that this activity took place back in 2011 and 2012, and stated that he would likely vote to put the amount pertaining to the credit card contributions in the "Additional Issues" section of the report.

Chairman Walther recognized Commissioner Goodman who noted the Finding of Failure to file Independent Expenditures. He stated that this was not a party coordinated expenditure limit case, and the consequence of not accepting the affidavits in this case is that they did not file 24 and 48 hour independent expenditure reports timely.

Chairman Walther recognized Commissioner Weintraub who asked whether the point of the volunteer material exemption is an exemption to coordinated spending. Commissioner Goodman stated that it may have that beneficial effect, but it also avoids treating them as independent expenditures and the 24/48 hour reporting of independent expenditures. Mr. Blume stated that the volunteer mail exemption was an exemption generally to the definition of expenditure.

Chairman Walther recognized Commissioner Petersen who sought clarification as it related to Finding 3, Disclosure of Occupation/Name of

Employer. He stated that there were 205 itemized individuals contributing a total of roughly \$563,000, and it was the Audit Division's conclusion that the committee had documentation to demonstrate best efforts for 110 of those individuals. Discussion continued with Ms. Erica Lee, Ms. Burgess, and Mr. Asmamaw of the Audit Division regarding the number of persons for which best efforts was made and the amendments filed to reflect this information.

Chairman Walther recognized Commissioner Petersen who

MOVED to approve Findings 2, 3, and 5 of the Audit Division Recommendation Memorandum on the NY Republican Federal Campaign Committee.

Chairman Walther recognized Commissioner Goodman who asked, regarding Finding 2, Recordkeeping for Employees, and the proposed finding of failure to maintain monthly payroll logs totaling \$713,427, whether any portion of that was funded by the state party wholly from state funds. Mr. Asmamaw answered no.

The motion carried by a vote of 5-0 with Commissioners Goodman, Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

Chairman Walther recognized Commissioner Weintraub who

MOVED to approve Finding 1 of the Audit Division Recommendation Memorandum on the NY Republican Federal Campaign Committee.

The motion failed by a vote of 2-3 with Commissioners Walther and Weintraub voting affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented.

Chairman Walther recognized Commissioner Petersen who

MOVED to approve Finding 1 of the Audit Division Recommendation Memorandum on the NY Republican Federal Campaign Committee, except that with respect to the amounts related to the credit card contributions received by the committee, \$190,000 and \$157,447, that portion of the finding be moved to the Additional Issues section.

The motion carried by a vote of 5-0 with Commissioners Goodman, Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

Chairman Walther recognized Commissioner Weintraub who

MOVED to approve Finding 4 of the Audit Division Recommendation Memorandum on the NY Republican Federal Campaign Committee, with the respective \$1,051,064 and \$91,439 totals stated by the Audit Division at the table, as well as the addition of the approximate \$35,000 covered by the Hazelwood affidavit.

Chairman Walther recognized Vice Chair Hunter who sought clarification as to whether the Hazelwood affidavit was being credited. Commissioner Weintraub stated that Mr. Hazelwood did not have personal knowledge of the production because he sub-contracted the work. She explained that while he gave instruction on what should be

done, he was not present when the mailers were produced and could not testify from personal knowledge as to whether there were volunteers involved.

Discussion continued.

Vice Chair Hunter noted the absence of a clear standard for the volunteer exemption and reiterated her interest in obtaining a fourth vote for the proposal put on the table a few years ago and again a few months ago. The Vice Chair further stated her intention to place the matter back on the Open Meeting agenda in the near future.

The motion failed by a vote of 2-3 with Commissioners Walther and Weintraub voting affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented.

Discussion continued with Mr. Larry Calvert of the Office General Counsel and Ms. Lee of the Audit Division as to whether an affirmative vote was now needed to have Finding 4 moved to Additional Issues section of the report. The Commission did not take to an additional vote, and it was determined that Finding 4 would be moved to Additional Issues.

II. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE HAWAII DEMOCRATIC PARTY (HDP) (A13-07)

Memorandum from the Chief Compliance Officer and Audit Division dated November 20, 2017

Agenda Document No. 17-56-A

Chairman Walther recognized Mr. Jeff Spilizewski of the Audit Division who stated that there were seven (7) Findings in the report before the Commission: 1) Misstatement of Financial Activity; 2) Receipt of Contributions that Exceed Limits; 3) Receipt of Apparent Impermissible Funds; 4) Reporting of Debts and Obligations; 5) Recordkeeping for Employees; 6) Failure to Properly Report Media Related Expenditures; and 7) Allocation of Expenditures.

Chairman Walther recognized Commissioner Weintraub who stated that there was some back and forth with the committee over the convention account, and sought confirmation from the Audit Division of their documentation of and satisfaction that this was purely a state convention account, to which Mr. Spilizewski replied yes. Commissioner Weintraub also sought confirmation, in regards to Finding 6, Failure to Properly Report Media Related Expenditures, that the finding was consistent with the audit of the Democratic Executive Committee of Florida. She requested confirmation from the Audit Division of her understanding that in this Hawaii audit, they spent more than they were authorized to spend on behalf of the senate candidate, however, the combined spending of the state party and the national party did not exceed the combined spending limiting. Mr. Spilizewski confirmed her understanding, and Commissioner Weintraub stated she would be happy to approve the report.

Chairman Walther recognized Commissioner Goodman who asked for the specifics on the findings from the audit of the Democratic Executive Committee of Florida. Mr. Spilizewski stated the Hawaii and Florida situations are very similar, and detailed that Hawaii exceeded their spending limit and only received about \$5,000 from the DSCC. In response, counsel provided a letter from the DSCC stating that had they known the Hawaii committee wanted more authority, they would have given the rest of their spending authority to them, though this statement was made after the committee had already made its expenditures. Mr. Spilizewski explained that in the case of the Florida audit, they made the coordinated expenditures claim prior to receiving the authorization for the additional spending authority. In the Florida case, the Commission accepted this and acknowledged that the overall limit was not exceeded. Commissioner Weintraub stated that the Commission made a finding but did not require a refund, which was the same result being recommended in this Hawaii audit.

Discussion continued.

With regard to Finding 4, Reporting of Debts and Obligations, and the total of amount \$115,000, Commissioner Goodman inquired as to whether the Audit Staff used the date of invoice as the trigger date for reporting a debt outstanding. Mr. Spilizewski stated that they primarily looked at the invoice date or the date of incurrence, but also reviewed the invoice to see whether

it stated “pay within 30 days.” Mr. Spilizewski further stated that in many cases for these vendors, payments were months later. Commissioner Goodman then asked what the Audit staff’s date of reporting was, the invoice date or the due date. Mr. Spilizewski stated that he traditionally uses the invoice date. Commissioner Goodman then surmised that it was inconsequential here because the \$115,000 was not paid within 30 days, which Mr. Spilizewski confirmed.

With regard to Finding 5, Recordkeeping for Employees, Commissioner Goodman noted the finding of \$12,413 in which employees were paid exclusively with non-federal funds. Commissioner Goodman asked if it was known what employees these were, for example receptionist, janitor, etc., or whether there was evidence that the employees paid exclusively with non-federal funds engaged in federal election activity. Mr. Spilizewski confirmed for Commissioner Goodman that he could follow up with him to get the granular detail on this information. Commissioner Goodman then stated to the Chairman that he may not be prepared to vote today, as he would like to work through these issues.

Ms. Lee of the Audit Division participated in the continuing discussion with regard to the legal requirement to maintain a monthly log.

With regard to Finding 3, Receipt of Apparent Impermissible Funds, Commissioner Goodman noted his lack of clarity, on page 13, with the

impermissible balance of \$104,451. Seeking the significance of this amount, Commissioner Goodman asked whether this balance was intended for transfer to the convention account but was ultimately retained by the federal account. Mr. Doug Kodish of the Audit Division pointed Commissioner Goodman to the schedule on page 18 which delineated this amount. Mr. Kodish explained that Audit excluded the convention account receipts of \$22,006 and that the remainder was comprised of other impermissible receipts. Commissioner Goodman concluded that these were ordinary improper contributions and that the \$104,451 was the amount of improper contributions that remained after Audit gave the committee credit for the \$22,006 convention account funds.

Commissioner Goodman then asked about an apparent independent expenditure totaling \$11,922 as highlighted in paragraph ii on page 25. He cited the television ad for which Audit drew the conclusion that, “she’s wrong for Hawaii” was express advocacy because it had the same meaning as defeat. Commissioner Goodman inquired as to whether Audit received legal advice regarding the legal conclusion that “wrong for Hawaii” constituted express advocacy. Ms. Margaret Forman of the Office of General Counsel (OGC) confirmed that there was an OGC memorandum that discussed this. Commissioner Goodman then asked whether that memorandum distinguished the advice OGC gave to the Alternative Dispute

Resolution (ADR) Office in a case called America's Liberty PAC, where an ad said, "Claire McCaskill, wrong on the issues, wrong for Missouri."

Chairman Walther recognized Commissioner Weintraub who stated her belief that each ADR agreement states explicitly in its terms that it is not precedential.

Ms. Forman confirmed that the Office of General Counsel's memorandum in this case did not reference the advice given in the America's Liberty PAC ADR case.

Commissioner Goodman stated that he may want to delve into this more outside of the current context. He stated that in the America's Liberty PAC case, which the Commission dismissed and he was recused from, the advice of General Counsel to the ADR Office was that the tag line was not express advocacy. He noted the similarities in the tag line of the audit currently before the Commission and his desire to look at the issue more closely. Commissioner Goodman noted that while the finding of \$11,922 was not remarkable in itself, the legal principle about what constitutes express advocacy was an important issue.

Ms. Erin Chlopak and Greg Baker of the Office of General Counsel and Mr. Spilizewski of the Audit Division participated in the continuing discussion.

Chairman Walther stated that this matter would be held over to the next Open Meeting.

III. PROPOSED FINAL AUDIT REPORT ON THE FREEDOM'S DEFENSE FUND (A13-14)

Memorandum from the Chief Compliance Officer and Audit Division dated November 16, 2017

Agenda Document No. 17-57-A

(Resolved on tally pursuant to removal of objection(s))

This matter was resolved on tally and was not discussed.

IV. PROPOSED FINAL AUDIT REPORT ON THE CONSERVATIVE MAJORITY FUND (A13-17)

Memorandum from the Chief Compliance Officer and Audit Division dated November 16, 2017

Agenda Document No. 17-58-A

(Resolved on tally pursuant to removal of objection(s))

This matter was resolved on tally and was not discussed.

V. FY 2017 ANNUAL FOIA REPORT

Memorandum from the Chief FOIA Officer/Deputy General Counsel – Administration, dated November 30, 2017

Agenda Document No. 17-54-A

Mr. Greg Baker of Office General Counsel recognized the hard work of the Administrative Law Division in the Freedom of Information Act (FOIA) realm this year, noting that there were a record number of requests, closures, and appeals.

Mr. Robert Kahn of the Office of General Counsel stated that during fiscal year 2017 the agency received a total of 150 FOIA requests and closed a total of 134 FOIA requests, each of which was a record for the agency. The Commission received a total of eight (8) appeals and closed nine (9) appeals, including one which was left over from a previous year. Each of these was also a record for the agency. Mr. Kahn highlighted that the 150 FOIA requests in fiscal year 2017 was a 16.3% increase from fiscal year 2016 and an increase of 64.8% over the number of such requests received in 2015. In terms of case closures, fiscal year 2017 was an increase of 15.5% from fiscal year 2016 and 65.4% from fiscal year 2015. Mr. Kahn compared the Commission's FY 2017 statistics with the 2016 government-wide statistics, the most recent available from the Department of Justice. The FEC's average response time for simple requests was 14.5 days, government-wide it was just over 28 days. For complex requests, the FEC's average response time was 97.2 days while government-wide this number was 128.5 days.

Chairman Walther asked for information regarding the distinction between pending cases and those that are held in abeyance due to other agencies. Mr. Kahn explained that the report does ask that agencies speak individually about FOIA requests that are in consultation with other agencies; however, that does not toll the FEC's clock in that all of this time is attributed to the FEC. Mr. Baker further explained that the length of time a

case is open is averaged into the statistics in the year the case is closed.

Chairman Walther inquired about the impact of this on the couple of cases long-outstanding due to the fact that the Commission is waiting for another agency, to which Mr. Kahn replied that it is their policy to routinely and consistently request updates from these agencies. Mr. Kahn also noted that the Administrative Law Division is currently hiring for a new position that would handle much of the FOIA and Privacy work.

Chairman Walther asked what could be done to inform the Commission of the status and age of those cases that are being held in abeyance so that the Commission can determine if or what it would like to do about it.

Chairman Walther also expressed concern that in those instances where a portion of a request is not able to be sent to a requestor due to needed consultation with another agency, that the portion that is able to be provided to the requestor is held back until such time as all information can be provided. Mr. Kahn stated that the agency routinely provides interim and partial responses to requestors inclusive of that information that the agency is readily able to provide at the time of request, and the requestor is informed of this in the cover letter provided with the response.

Chairman Walther recognized Commissioner Goodman who sought confirmation that the agency's old, open FOIA requests are not currently included in our averages and that when they are completed, the agency's

averages will increase. Mr. Kahn concurred. Commissioner Goodman asked whether the current average on complex requests was 458 days and 294 days for simple requests. Mr. Kahn concurred. Commissioner Goodman stated that the report requires the agency to highlight the ten (10) oldest pending requests, the oldest of which goes back to 2011 and was 1,583 days as of the date of the report. Mr. Kahn stated that the case was with the State Department. Of the ten (10) oldest requests, Commissioner Goodman asks which of the other requests were being held up at the State Department. Mr. Kahn stated that it appeared that there were two cases, the oldest and the 10th oldest. Commissioner Goodman then sought confirmation that eight (8) of the ten (10) oldest cases were not awaiting another agency's consultation. Mr. Kahn indicated that this was his understanding.

Mr. Kahn and Mr. Baker participated in the continuing discussion regarding the specifics of the ten (10) oldest cases.

Commissioner Goodman reiterated that the current 458 day average for complex cases would sky-rocket once these ten (10) oldest cases, and any case over 1,000 days old, was closed. Mr. Kahn explained that the chart highlighting the 458 days was inclusive of every current pending requests before the agency, and that the ten (10) oldest pending cases are in fact included in the current 458 day average for complex cases, and does not include any cases closed over the course of fiscal year 2017.

Commissioner Goodman then asked about the five (5) oldest pending Administrative Appeals and whether they were pending before the Commission, to which Mr. Kahn replied that they were not. Mr. Kahn explained that the Commission dealt with each of the appeals in question, however, in some cases the determination was that the Commission would continue producing documents on the underlying FOIA requests, and the appeal remains open until the request is completed.

Discussion continued with respect to the production of documents needed to close the Administrative Appeal cases.

Mr. Baker noted the continual efforts of the Administrative Law Division to address the backlog, and reiterated their primary goal of obtaining a staff person dedicated solely to FOIA and Privacy Act matters, which they believe will help considerably.

Chairman Walther recognized Commissioner Petersen who stated that the Commission was not oblivious to volume and complexity of FOIA requests received, as well as the document-intensive nature of many of the requests. Commissioner Petersen noted his appreciation for the Administrative Law Division's efforts in what can be a difficult and labor intensive undertaking.

Chairman Walther expressed his agreement with Commissioner Petersen's remarks and asked about the equipment that the Division was

planning to acquire to help speed things up. Mr. Kahn stated that they were in the process of going through the last review of the contract for the e-Discovery software that will be used to process many of the FOIA requests involving emails. He detailed the Office of the Chief Information Officer's excitement regarding the ease of use of the software. Mr. Baker stated that he looked forward to filling the FOIA Specialist position as well as backfilling the position of the Administrative Law attorney that recently left the agency, to be in the most advantageous position to work through the backlog.

Chairman Walther recognized Vice Chair Hunter who

MOVED to suspend the rules on the timely submission of agenda documents in order that the Commission may consider the late submission of Agenda Document Nos. 17-53-A, 17-53-B, and 17-53-C.

VI. ASSESSMENT OF COMMISSION ACTION ON ENFORCEMENT MATTERS AWAITING REASON-TO-BELIEVE CONSIDERATION

**Memorandum from Chairman Steven T. Walther
Dated November 15, 2017**

**Agenda Document No. 17-53-A
(Submitted Late)**

**Memorandum from Chairman Steven T. Walther
Dated November 15, 2017**

**Agenda Document No. 17-53-B
(Submitted Late)**

**Memorandum from Chairman Steven T. Walther
Dated December 6, 2017**

**Agenda Document No. 17-53-C
(Submitted Late)**

(Held over from the November 16, 2017 meeting)

Chairman Walther explained his desire that the Office of General Counsel provide a redacted version of the kind of material currently provided in-house so that the public is also privy to the information. He stated that he was happy to address any concerns that Commissioners may have at a later date, as he endeavored simply to get the matter out for consideration today.

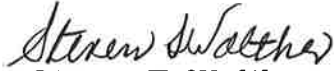
Chairman Walther recognized Commissioner Petersen who noted that this has been a consistent emphasis and theme of the Chairman's, and one which has been helpful. In terms of the motion to amend the Directive, Commissioner Petersen stated that nothing immediately stood out, though he had not yet had an opportunity to study it with the specificity he'd like. He indicated that off-line communication and the input of the Office of General Counsel would be helpful.

Chairman Walther stated that the matter would be held over to the next Open Meeting.

VII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 12:26 P.M.

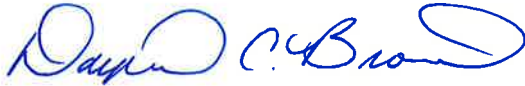
Signed:



Steven T. Walther

**Chairman of the Commission
(2017)**

Attest:



**Dayna C. Brown
Secretary and Clerk of the Commission**