



# Biennial Report of the Alaska Public Offices Commission

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2017 – 2018

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Prepared and published pursuant to AS 15.13.030(8)

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## **I. Executive Summary**

The Alaska Public Offices Commission (APOC) is an independent agency housed in the Department of Administration. The Commission’s mission is to encourage public confidence in their elected and appointed officials by administering Alaska’s disclosure statutes and publishing financial information regarding the activities of election campaigns, public and legislative officials, lobbyists and lobbyist employers. It is required by AS 15.13.030(8) to “prepare and publish a biennial report concerning the activities of the Commission, the effectiveness of this chapter, its enforcement by the attorney general’s office, and recommendations and proposals for change.”

The Commission saw five new Commissioner appointments throughout 2017 – 2018 with two resignations, two term expirations, and one replacement appointment.

Complaint activity remained low in 2017 but saw a general uptick leading into the State’s 2018 General Election. The agency continues to prioritize its education and training. These efforts appear to have contributed to a general declining trend of complaints, evident since 2010.

In 2017 there were 37 local elections and four special legislative sessions. In 2018 election activity was at its peak; in addition to 38 local elections, the state conducted its primary and general elections, electing a new Governor and Lieutenant Governor, 10 Senators and 40 Representatives. Due to the state election and subsequent change of Administration, there was also a steady rise in public official financial disclosure activity. The general election also decided a hotly contested ballot measure related to Alaska’s fish habitat permitting law, spawning groups supporting and opposing the measure.

## **II. Laws Administered by APOC**

APOC administers four disclosure laws, each requiring disclosure of information that enables citizens to identify the influence of private interests in election campaigns and public decision-making.

### **A. Campaign Disclosure (CD) (AS 15.13)**

Campaign disclosure statutes require state and municipal candidates, and political groups, to file periodic, detailed reports disclosing all campaign contribution and expenditure activity. The statute places limits on permissible contributions and requires identification of all political communications. The statute has similar requirements for all persons engaging in independent expenditure activities for or against a candidate or ballot measure.

### **B. Regulation of Lobbying (LOB) (AS 24.45)**

Under the regulation of lobbying, lobbyists are required to attend annual ethics training, register annually with APOC, and to disclose compensation and expenditures related to lobbying activities during any month in which the legislature is in session, including special session. When the legislature is not in session, lobbyists file quarterly reports. Employers of lobbyists are required to file quarterly reports of lobbying payments and expenditures.

### **C. Legislative Financial Disclosure (LFD) (AS 24.60.200 - 260)**

Legislative financial disclosure statutes require legislators, legislative directors, and the members of the Select Committee on Legislative Ethics to file personal financial disclosure statements disclosing business interests, property interests, beneficial interests, sources and amounts of income, and certain loans.

### **D. Public Official Financial Disclosure (POFD) (AS 39.50)**

Public official financial disclosure requires state and municipal candidates, elected officials, and many appointed officials to file financial disclosure statements disclosing business interests, property interests, beneficial interests, sources and amounts of income, close economic associations, and debts.

## **III. Activities of the Commission**

APOC's core services can be broken down into two major categories: Administering Alaska's disclosure statutes; and publishing financial information related to election campaigns, public officials, lobbyists and lobbyist employers.

## **A. Administering Alaska's Disclosure Statutes**

Administering the disclosure statutes involves three key components. First, interpreting the law and assisting filers with compliance. Next, enforcing the laws by tracking required reports, assessing civil penalties for late-filed reports, and investigating complaints or violations. Third, examining and comparing reports for possible violations.

### **1. Interpreting the laws and assisting with compliance**

APOC provides public trainings for its filers. In addition to the number of people served through in-person training sessions, participants are also able to attend sessions online via webinar. Lobbyists and employers of lobbyists are required, by statute, to complete training on the lobbying laws and ethics on an annual basis. The agency provides a series of in-person trainings for lobbyists leading into the new year in Juneau and Anchorage. The training program can also be completed online. In preparation for the 2018 gubernatorial election, the agency ramped up its educational efforts throughout 2017-2018. Although the agency endeavors to provide training in various locations throughout the state, travel costs and staffing levels have curtailed most travel to venues outside of Anchorage or Juneau.

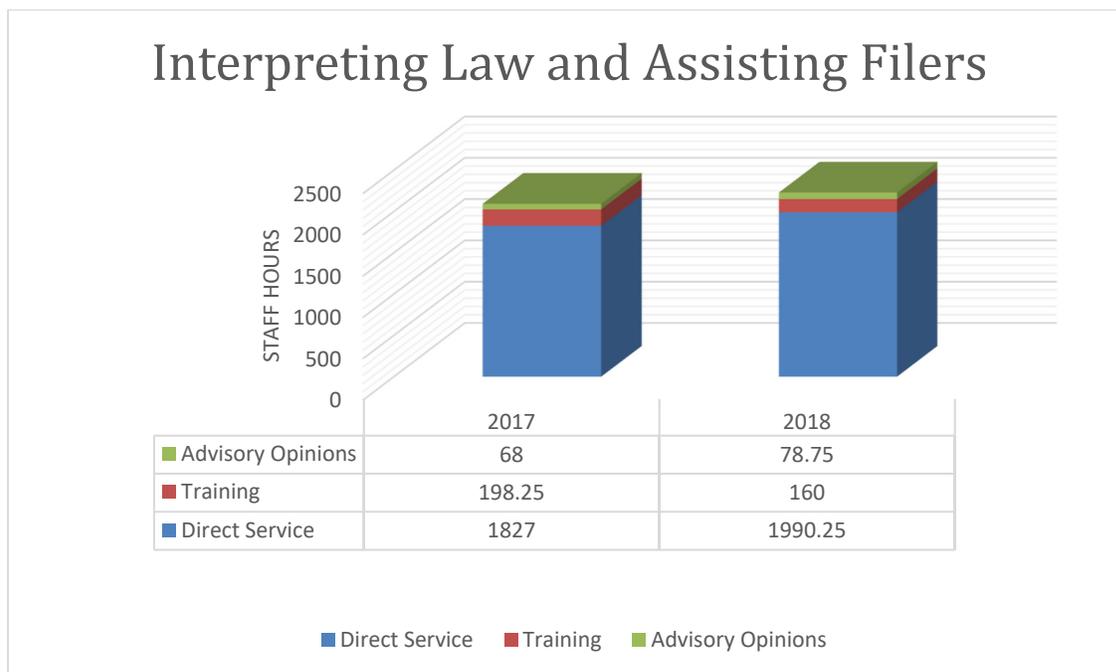
The agency is looking toward providing more self-paced training online for other areas of the law in the future, but still deems the in-person sessions as critical to its educational efforts. Additionally, reductions in staff make it challenging to provide outreach, as preparing and delivering training consumes a substantial amount of time.

APOC staff prioritizes its direct service to the public. Staff encourages filers and the public to reach out with questions by telephone or e-mail. This activity contributes to the training and outreach services, providing staff the opportunity to engage with filers, to provide guidance on best practices based on specific facts and scenarios, and to monitor trending issues that may need to be further addressed through additional training and development. As with other aspects of APOC's work, this activity increases as reporting deadlines approach.

The agency must also prepare advisory opinions within seven days of receiving a request for formal guidance. The draft opinions are then considered by the Commission for a final decision. Providing thorough and timely drafted opinion within the mandated timeline can be challenging. Single straightforward questions require less time than multi-tiered, complex questions that may require in-depth legal analysis, research, and department of law review. The agency has seen a general decline in requests since 2012, which may be attributable to its education and outreach efforts. Even numbered

years typically receive more requests which is most likely attributable to the increased activity that surrounds statewide elections.

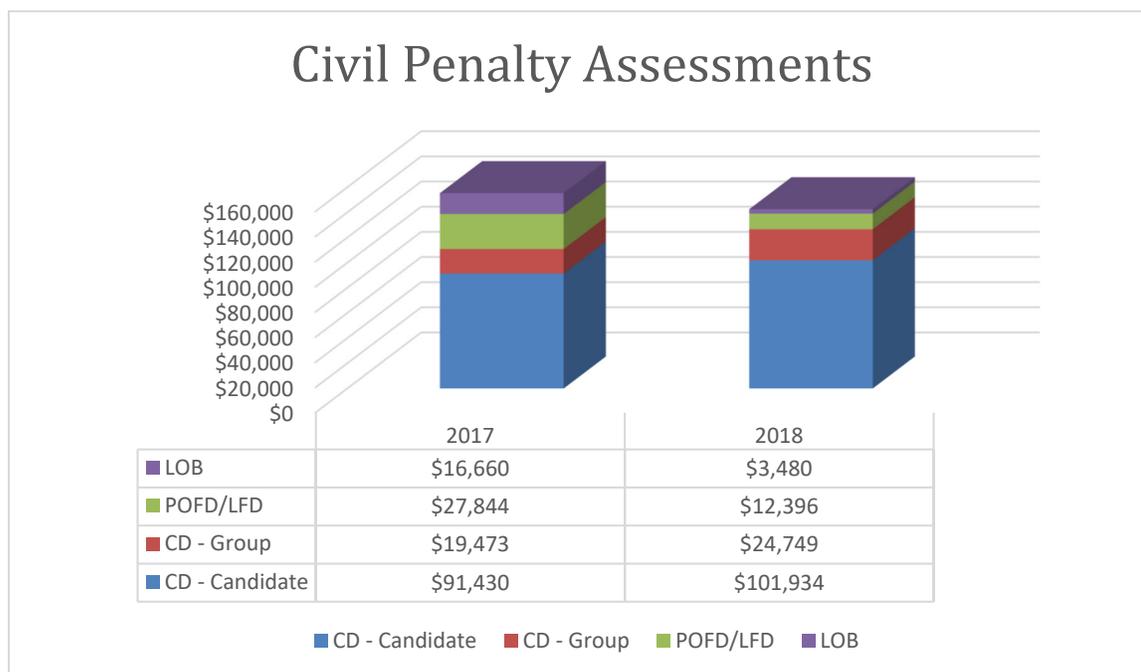
**Figure 1**  
**Staff Hours Interpreting Law and Assisting Filers**



## 2. Enforcing the disclosure laws

APOC enforces statutes and regulations requiring timely filing of financial reports. Late-filed reports incur civil penalties which staff is responsible for assessing. Filers can either pay the assessed penalty or they may appeal the assessment to the Commission. Filers who do not pay or appeal their civil penalty are referred to the Attorney General’s Office for collection. In even calendar years, when activity includes municipal and statewide elections, reportable activities peak and generally generates more penalty assessments. In late 2016, the agency adopted new regulations which allow for reduction the maximum penalty in staff’s initial assessment, up to a complete waiver for many filers. In instances where mitigating factors may be applicable, filers are encouraged to appeal their assessed penalties. This allows staff to recommend the Commission further reduce, or in certain instances, waive a civil penalty based on standard criteria codified in regulation.

**Figure 2**  
**Civil Penalty Assessments**

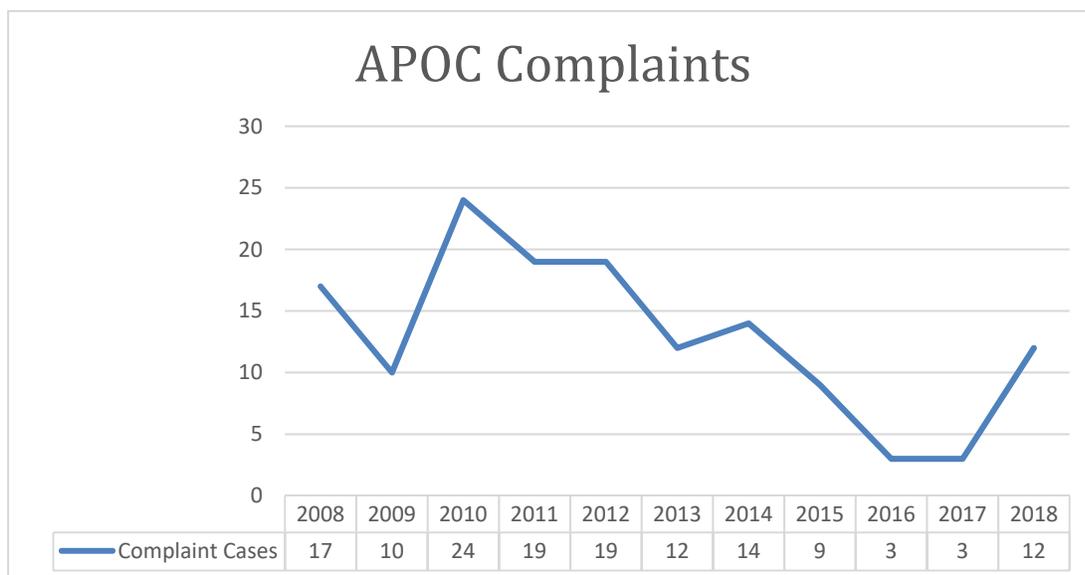


Disclosure statutes also allow anyone, including APOC staff, to initiate a complaint matter at any time within five years of the alleged violation. Within one day of receipt, APOC staff must determine whether the complaint can be accepted based on specific criteria. If accepted, staff must complete an investigation and issue its report within 30 days. Meeting this abbreviated timeline can be difficult when complaints involve voluminous records, complex issues, or multiple parties.

A party may also request expedited consideration of a complaint. A request for expedited consideration must be considered by the Commission within two days. If the Commission determines the complaint warrants expedited consideration, a hearing on the merits must then be held within 2 days. Unlike a regular complaint, APOC staff is not a party in an expedited complaint, and the party that requests expedited consideration bears the burden of proof.

Election years that see controversial ballot measures or contentious races lead to more complaints. This can be attributed to the increased publicity surrounding the measures or races, as well as the increased financial activity that occurs when there are staunch supporters from both sides. Although complaint activity has experienced a general downward trend since 2010, a highly publicized ballot measure as well as a gubernatorial election led to an uptick in complaint activity in 2018.

**Figure 3**  
**Volume of APOC Complaints**



### 3. Examining and comparing reports

With limited exception, filers are mandated by statute to complete their filings electronically. This shift alleviated the vast majority of data entry work for staff but it has also diminished review of reports to a certain extent. Paper filing required staff to conduct an initial intake requiring at least a cursory review of the document and data. These initial reviews often-times noted discrepancies or missing information prompting further auditing and/or follow up with the filer. With electronic filing, there is no longer an initial intake step. Instead, leading up to and after a reporting deadline, staff queries the online system to identify filers who owe but have not yet filed a report and then focuses on gaining compliance and the civil penalty process.

Audits for each area of law are unique and certain types of reports take more time than others. Specifically, campaign disclosure reports require a review and cross-check of transactional data to ensure compliance. Depending on the type and size of the campaign, this can range from a few to thousands of entries. In odd numbered years, where there is no state election, staff is able to devote more time to its auditing. Although cuts to the FY2016 and FY2017 agency budgets, and the associated loss of personnel, have significantly hindered staff’s efforts in this regard, it is nevertheless still mandated by statute. To satisfy this requirement, staff has begun to conduct more limited audits that do not include comprehensive review of all transactions. However, even with truncated audits, given the current staffing level, auditing of all reports remains unrealistic.

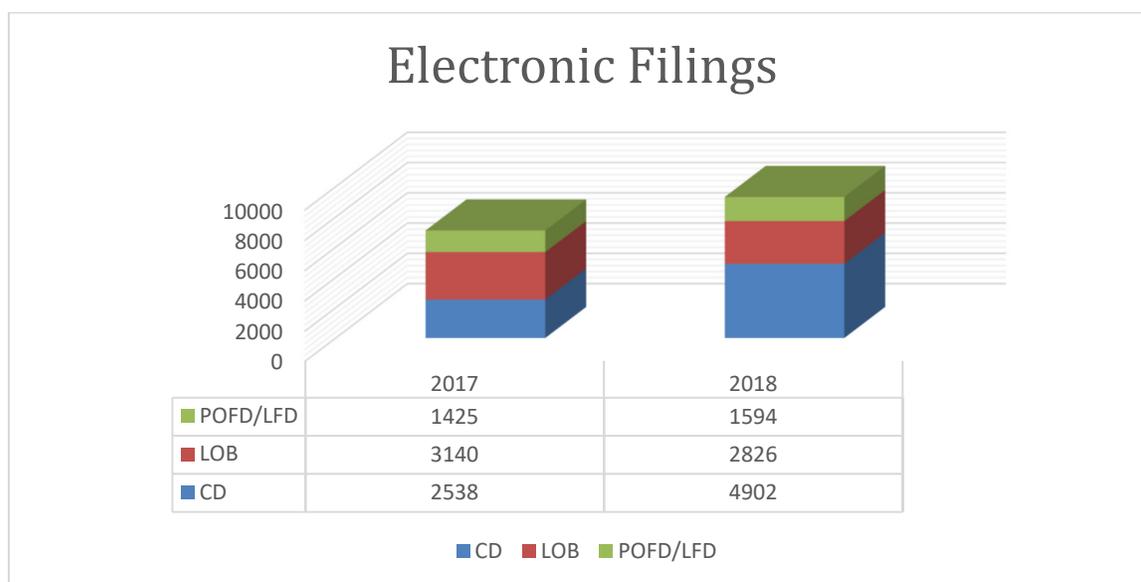
## B. Publishing financial information

The vast majority of reports and other filings are submitted electronically and are immediately accessible to the public online. This has resulted in fewer formal public records requests. In consideration of the potential chilling effect on membership of volunteer Boards and Commissions, difficulty in recruiting appointed members of the executive branch, and matters of security for judicial officers the Commission does not publish all public official financial disclosure (POFD) statements online. They are, however, still public records and account for the majority of the agency’s public records requests followed by historical campaign disclosure (CD) information.

Filing activity differs from year to year for each area of law. These differences can be attributed to external variables. For example, in 2017 lobbying reports saw a spike with the extended regular and four special legislative sessions. Whereas campaign disclosure reporting was at its peak in 2018 with a hotly contested ballot proposition and the gubernatorial election. Election activity also influences POFD filings as all state and many municipal candidates must file a POFD when running for office. Although the numbers below do not reflect any subsequent amendments to filings, the numbers grow exponentially when such amendments are taken into account.

Electronic filing has made information more readily available to the public facilitating financial transparency and providing voters with information to assist them in informed decision-making.

**Figure 3**  
**Number of Electronic Filings**



#### **IV. Enforcement by the Attorney General's Office**

The Attorney General's Office provides legal representation for both the Commission and APOC staff. The Commission's attorney assists with procedural matters and drafting final orders. APOC staff's attorney assists with many day-to-day activities including providing legal review of draft advisory opinions issued for Commission consideration, responses to informal requests, review of proposed legislation, as well as public records requests. The Attorney General's Office also represents the Commission in matters that are filed directly with or are appealed to state or federal court. Over the course of 2017 and 2018 two notable cases related to the agency have made their way to the courts.

##### **17-35019, Thompson, et al. v. Hebdon, et al.**

In 2016 four plaintiffs filed suit in Federal District Court challenging four of Alaska's campaign contribution limits as unconstitutional. In November 2016, after a seven-day bench trial, the district court found in favor of the state and upheld all challenged provisions. Plaintiffs appealed to the Ninth Circuit Court of Appeals in early 2017. Oral arguments were held in Anchorage on June 11, 2018. On November 27, 2018, the Ninth Circuit issued its Opinion finding three of the four challenged provisions were closely drawn to serve the state's interest in combating quid pro quo corruption or its appearance. The Opinion, however, did not agree that Alaska's nonresident aggregate limit furthered the state's interest and found that, at most, the limit targets contributors' influence over Alaska politics which is no longer a legitimate basis for restricting contributions.

##### **3AN-18-05726 CI, Patrick, et al. v. Interior Voters for John Coghill, et al.**

In February 2018 three plaintiffs filed an appeal in State Superior Court challenging the Commission's decision affirming staff's rejection of three complaints. Staff's rejection of the complaints was supported by a prior Advisory Opinion concluding that Alaska's statutory limits on contributions to independent expenditure groups were likely unconstitutional as a matter of federal law. The appeal sought review on that single point of law. Briefing has been completed and the matter now awaits oral argument, after which, it will be ripe for decision.

## V. Challenges, recommendations, and proposals for change

APOC's biggest challenge is meeting its statutory mandates with its limited staffing. An agency of eight is expected to provide regulatory oversight of thousands of filers statewide who spend millions of dollars each year to influence legislative and administrative action and election results. With the aid of two administrative staff, five staff members provide direct oversight of the four complex laws that the agency is charged with regulating. The last of APOC's eight fulltime PCNs is an analyst/programmer whose primary focus is development and maintenance of the online filing system. While the position is currently filled, recruitment and retention for the position has proved to be challenging.

Given the state's ongoing fiscal concerns, the agency does not expect staffing levels to change anytime soon. In light of these constraints, it is recommended that mandated auditing of all reports be relaxed to provide for discretionary auditing.

Exempting communities with populations of 1,000 or less from POFD reporting requirements would serve to reduced overall civil penalty assessments and would also harmonize requirements of POFD law with that of campaign disclosure. Currently, campaign disclosure statutes apply only to those communities with populations of more than 1,000, yet, this threshold does not exist for POFD filers. Staff spends considerable time and money attempting to notify filers of their requirements and delinquent statements. Many of these communities lack regular postal service, internet, and have persistent staff turnover in their municipal clerk's office.

Extending reporting exemptions to certain candidates and groups who have small campaigns could also alleviate significant burden for staff and filers alike. Currently municipal candidates who do not raise and spend more than \$5,000 are able to file for an exemption, relieving them from any further reporting requirements. This exemption could be extended to smaller state candidate campaigns and smaller groups and would significantly decrease the number of required filings, the amount of staff time spent assisting and bringing these small campaigns into compliance, and the number of civil penalties assessed for late or missing reports.

Comprehensive revisions to campaign disclosure statutes should also be considered. After *Citizens United*, the Alaska Legislature quickly enacted reforms to require reporting from persons engaged in independent expenditure activities. These statutes, however, have not been revisited since. 2018's state election saw a rise in independent expenditure groups, also known as "super PACs." These groups, by far, outspent candidate committees and other conventional groups. However, they are not specifically defined or contemplated under Alaska's statutes. Therefore, through advisory opinions, the agency continues to interpret Alaska's law to conform with legal precedent and the ever changing legal landscape.

### APOC Organizational Chart

