



2010 ANNUAL REPORT TO THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS

Prepared by

State Personnel Board

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**ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE
COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY
PUBLIC EMPLOYEES (WHISTLEBLOWER RETALIATION)**

June 30, 2011

Introduction

Government Code section 19683(f) provides, “In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year¹, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.” This report is prepared by the State Personnel Board (SPB) for the calendar year of January 1, 2010 through December 31, 2010.

Background

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the SPB was assigned responsibility for investigation of complaints of whistleblower retaliation.

Amendments to the whistleblower retaliation protections were made in 1987, 2000, 2001, and 2004. In 2002, SPB adopted regulations to implement the whistleblower retaliation laws.

Effective March 8, 2006, the SPB’s regulations were revised to include the requirement that the Executive Officer refer cases for investigation or schedule an informal hearing before an administrative law judge.

Information

Whistleblowing is defined as either disclosing information that a state or community college employee, or applicant for state or community college employment, reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive.

Three agencies play major roles in whistleblower retaliation, the Bureau of State Audits (BSA), the Office of the Inspector General (OIG), and the SPB.

¹ Six reports were produced between 1987 and 1992. In 1992, Chapter 710 legislation (Government Code section 7550.5) instituted a moratorium on most reports to the Legislature. The moratorium was renewed in 1994 and 1996, and became inoperative on October 1, 1999. After the moratorium was finally repealed as of January 1, 2000, Whistleblower Retaliation Reports were again produced for calendar years 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009.

BSA accepts complaints in reference to improper governmental activities. BSA is the investigative agency that has jurisdiction to investigate the underlying improper governmental activity.

OIG's specific responsibility in whistleblower retaliation complaints is to investigate complaints of retaliation against those who report misconduct on the part of state correctional agencies and employees. OIG may, with the approval of the complaining employee, forward its investigative findings to the SPB for the purpose of bringing disciplinary action against an employee who is found to have violated the retaliation provisions when the department fails to do so. As an independent agency, OIG reports to the Governor. OIG also provides impartial analysis and policy recommendations to the Governor, the Legislature, and correctional administrators.

SPB is the adjudicatory body that hears and decides complaints of whistleblower retaliation by state civil service or community college employees or applicants who allege being subject to or threatened with an improper personnel action for disclosing improper governmental activity or refusing to obey an illegal order or directive.

The SPB has jurisdiction in whistleblower retaliation cases when all of the requirements listed below are met:

- A state or community college applicant or employee files the complaint.
- The complaint states a prima facie case of retaliation.
- The appeal is filed within one year of the most recent act or reprisal.
- A perjury statement is included with the complaint.

SPB does not accept filed appeals when any of the above requirements are not met or the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

Complaint Activity

In calendar year 2010, 49 whistleblower retaliation complaints were filed, which is approximately a 32% decrease from 2009 (72 complaints received). Of the 49 complaints filed in 2010, 15 of those complaints were accepted.

Of those 15 cases accepted, 1 was "granted," 7 were "dismissed," and 4 are "Pending Hearing." Of the 4 "Pending Hearing," 3 cases are scheduled for formal evidentiary hearing before an Administrative Law Judge (ALJ), and 1 case is scheduled for an informal hearing before a Staff Hearing Officer. Of the remaining cases 1 was withdrawn and 2 were settled by stipulated agreement. A detailed complaint activity chart appears on page 4.

**SPB Whistleblower Retaliation Complaints
Activity Report
(January 2010 – December 2010)**

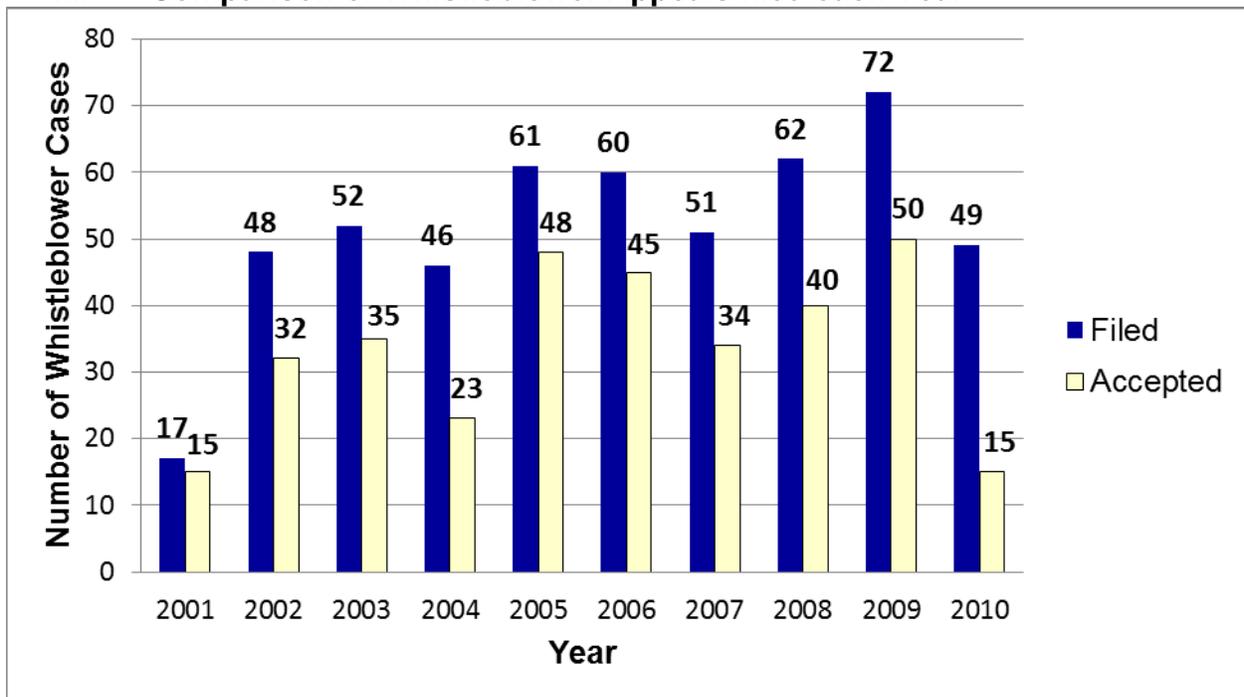
I. Whistleblower Appeals filed

Total Filed	Appeals Not Accepted ²	Appeals Accepted
49	34	15

II. Disposition of Whistleblower Appeals Accepted

Granted	Denied/Dismissed	Pending Hearing	Stipulated Agreement	Withdrawn	Total
1	7	4	2	1	15

III. Comparison of Whistleblower Appeals filed each Year



² SPB does not accept filed appeals when: (a) The complaint fails to state a prima facie case of retaliation; (b) the complaint is not filed within one year of the most recent act of reprisal; (c) the complaint is not signed by penalty of perjury; or (d) the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2010**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Formal/Informal Hearing
1	10-0026E	1/12/2010	Closed – Notice of Findings(Dismissed)	Corrections and Rehabilitation	N/A	N	Informal
2	10-0151N	1/25/2010	Closed – No Jurisdiction	CSU - Cal State University	N/A	N	N/A
3	10-0376N	2/9/2010	Closed – No Jurisdiction	City of Adcianto	N/A	N	N/A
4	10-0370	2/17/2010	Closed – Notice of Findings(Dismissed)	Forestry and Fire Protection	N/A	Y	Informal
5	10-0483N	2/18/2010	Closed – No Jurisdiction	Grossmont Union High School San Diego, CA	N/A	Y	N/A
6	10-0472N	2/24/2010	Closed – No Prima Facie Case	Consumer Affairs	N/A	N	N/A
7	10-0629N	3/9/2010	Closed – No Prima Facie Case	California Community Colleges Victor Valley	N/A	N	N/A
8	10-0659E	3/9/2010	Pending Hearing	Corrections and Rehabilitation	AA – 09-1810	Y	Formal
9	10-0633N	3/10/2010	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
10	10-0689N	3/14/2010	Closed – No Prima Facie Case	Parks and Recreation	N/A	N	N/A

³ AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action appeal.
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint appeal.
RA: Whistleblower Retaliation Complaint consolidated with prior Reasonable Accommodation Complaint Appeal.
WB: Whistleblower Retaliation Complaint consolidated with prior Whistleblower Retaliation Complaint appeal.

⁴ RDAT: indicates whether complainant requested disciplinary action be taken.

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11	10-0732N	3/16/2010	Closed – No Prima Facie Case	Forestry and Fire Protection	N/A	Y	N/A
12	10-0721N	3/17/2010	Closed – No Prima Facie Case	Transportation	N/A	Y	N/A
13	10-0801N	3/24/2010	Closed – No Jurisdiction	Housing Authority of the City of Los Angeles	N/A	N	N/A
14	10-0925E	4/5/2010	Closed – Appeal Withdrawn	Developmental Services	N/A	Y	N/A
15	10-2062N	4/20/2010	Closed – No Prima Facie Case	General Services	N/A	Y	N/A
16	10-2127E	4/23/2010	Pending Hearing	Food and Agriculture	N/A	Y	Formal
17	10-2128N	4/23/2010	Closed – No Prima Facie Case	Food and Agriculture	N/A	N	N/A
18	10-2126	4/27/2010	Closed – Notice of Findings(Dismissed)	Food and Agriculture	N/A	N	Informal
19	10-2165N	4/29/2010	Closed – No Prima Facie Case	General Services	N/A	N	N/A
20	10-2295	5/10/2010	Closed – Notice of Findings(Dismissed)	Corrections and Rehabilitation	N /A	Y	Informal

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21	10-2343	5/12/2010	Closed – No Prima Facie Case	Mental Health	N/A	N	N/A
22	10-2575N	5/18/2010	Closed – No Jurisdiction	CSU - Cal Poly-Pomona	N/A	N	N/A
23	10-2573N	5/20/2010	Closed – No Prima Facie Case	Department of Justice	N/A	N	N/A
24	10-2638	6/7/2010	Closed – No Prima Facie Case	Social Services	N/A	N	N/A
25	10-2718	6/10/2010	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Y	N/A
26	10-2737	6/10/2010	Closed - Stipulation	Science Center	AA – 10-0971	N	Formal
27	10-2891	6/25/2010	Closed – Notice of Findings(Dismissed)	Highway Patrol	N/A	N	Informal
28	10-3309N	7/30/2010	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
29	10-3404	8/2/2010	Closed – No Prima Facie	Employment Development Department	N/A	N	N/A
30	10-3310N	8/2/2010	Closed - Stipulation	Transportation	N/A	Y	Formal

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31	10-4593	8/3/2010	Closed – No Prima Facie Case	Veterans Affairs	N/A	N	N/A
32	10-3485E	8/9/2010	Closed – Notice of Findings(Granted)	Highway Patrol	N/A	N	Informal
33	10-3483	8/13/2010	Closed – No Prima Facie Case	California Community Colleges - West Hills College District	N /A	N	N/A
34	10-3544	8/18/2010	Closed – No Prima Facie Case	Public Health	N/A	Y	N/A
35	10-3768	9/8/2010	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Y	N/A
36	10-3836	9/9/2010	Closed – No Jurisdiction	Administrative Office of the Courts	N/A	N	N/A
37	10-3792	9/9/2010	Closed – No Prima Facie Case	Mental Health	N/A	N	N/A
38	10-3921	9/20/2010	Closed – No Prima Facie Case	Environmental Protection Agency	N/A	Y	N/A
39	10-3956	9/23/2010	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
40	10-4288	10/18/2010	Closed – Notice of Findings(Dismissed)	Motor Vehicles	N/A	N	Informal

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41	10-4301	10/19/2010	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
42	10-4286	10/21/2010	Closed – Notice of Findings(Dismissed)	Fish and Game	N/A	N	Informal
43	10-4299	10/25/2010	Pending Hearing	Mental Health	AA – 09-6633	Y	Formal
44	10-4300	10/26/2010	Closed – No Jurisdiction	UCD Medical Center	N/A	N	N/A
45	10-4461	11/8/2010	Closed – No Jurisdiction	CSU - Cal State University	N/A	N	N/A
46	10-4553	11/10/2010	Pending Hearing	Corrections and Rehabilitation	N/A	Y	Informal
47	10-4695	11/24/2010	Closed – No Prima Facie Case	California Technology, Trade & Commerce Agency	N/A	N	N/A
48	10-4733	11/30/2010	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
49	10-4994	12/29/2010	Closed – No Prima Facie Case	Mental Health	N/A	Y	N/A

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