

(Regulations of the Fair Political Practice Commission, Title 2, Division 6, California Code of Regulations.)

§ 18329. Formal Written Advice and Informal Assistance.

(a) General. Commission staff provides formal written advice and informal assistance to persons subject to the Act to facilitate compliance with the requirements of the Act. Advice provided by Commission staff does not establish legal precedent and is not binding on any party, except to the extent formal written advice provides the requestor with immunity within the parameters set forth in Section 83114(b). However, written advice may provide guidance to other parties in similar circumstances for purposes of determining the requirements of the Act. Written advice is not an Opinion of the Commission under Section 83114(a), nor a declaration of policy by the Commission. It may be subject to further review and action by the Commission.

(b) Formal Written Advice. Formal written advice is provided pursuant to Section 83114(b) as follows:

(1) Request. Any person whose duties under the Act are in question, or that person's authorized representative, may request formal written advice. A request for advice must include:

(A) The name, title, position, and contact information of the person whose duties are in question and, where applicable, a statement of authorization and contact information for the authorized representative; and

(B) A statement of the material facts. If additional facts are needed, Commission staff will contact the requestor. If a requestor fails to respond to a request for additional information within 14 days, Commission staff may decline to provide formal advice under subdivision (b)(6)(C). The time period for formal written advice begins upon receipt of the additional information.

(2) Acknowledgment of Receipt. Commission staff will provide the requestor with a written acknowledgement of receipt of the request, and any additional written information.

(3) Time for response. Commission staff will provide formal written advice within 21 working days of receiving the request or, where applicable, receiving the additional information requested by Commission staff. The General Counsel may extend the time for the response upon a determination of good cause.

(4) Immunity. The immunity provided by Section 83114(b) is limited to the person(s) identified as the subject(s) of the request, and to the specific facts set forth in the formal written advice.

(5) Withdrawal. A requestor may withdraw the request at any time prior to receiving formal written advice. Commission staff will provide written confirmation of the withdrawal.

(6) Decline to give advice. A formal advice request will be declined in writing where the request:

(A) Relates to past conduct;

(B) Seeks advice about another person's duties under the Act without authorization from that person;

(C) Presents material facts that appear inaccurate, incomplete, or in dispute;

(D) Presents a question outside the jurisdiction of the Act;

(E) Regards an unsettled area of law, or an area of the law susceptible to multiple reasonable interpretations, and thus presents one or more issues that require an interpretation best considered through the Commission Opinion process set forth in Regulation 18320, the regulatory process, or a legislative action;

(i) When appropriate, Commission staff will provide the requestor with guidance regarding making a request for a Commission Opinion.

(ii) Where advice may be provided without construing the unsettled law or interpretation issue, Commission staff may provide advice or assistance to the requestor to facilitate timely compliance with the Act pending further action by the Commission. Advice or assistance provided under this provision will be reported to the Commission pursuant to subdivision (d)(1).

(F) Presents an overly broad, or hypothetical question that lacks a specific issue or accompanying facts necessary to evaluate and analyze the required elements of compliance with the Act. However, if the request presents hypothetical facts that represent an intended course of conduct, or sufficiently identifies the area of the Act at issue, the General Counsel may treat it as an informal assistance request under subdivision (c);

(G) Concerns a party or a factual scenario that is the subject of a pending Enforcement action, or other judicial or administrative proceeding, and the requested advice may affect or determine a question of law relating to the pending proceeding; or

(H) Presents circumstances where formal written advice would be inappropriate or otherwise not in the public interest.

(7) Reconsideration. General Counsel may amend a formal advice letter, or reconsider a decision to decline advice, if the requestor provides sufficient additional relevant facts to satisfy the requirements of this subdivision. The requestor may challenge formal written advice by seeking a Commission Opinion pursuant to Regulation 18320.

(c) Informal Assistance. Commission staff provides informal assistance as follows:

(1) Request. A request for informal assistance may be made either orally or in writing and by any person whose duties under the Act are in question, or that person's authorized

representative, by any person with a duty to advise other persons relating to their duties or actions under the Act, or by any agency whose members or employees are subject to the provisions of the Act.

(2) Response. Commission staff may respond to a request for informal assistance either orally or in writing.

(3) No immunity. Informal assistance does not provide the requestor with the immunity set forth in Section 83114.

(4) Decline assistance. Informal assistance will be declined or limited where the request:

(A) Regards past conduct, unless the request regards corrective action to satisfy requirements of the Act, such as filing delinquent or amended statements or reports;

(B) Does not identify the person whose rights and duties are at issue, identify the person making the request, or state that it is made by an authorized representative of the person;

(C) Presents an overly broad or hypothetical question, or presents facts too vague or insufficient to render informal assistance;

(D) Presents an issue outside the jurisdiction of the Act;

(E) Presents a question too complex or otherwise inappropriate for resolution by informal assistance. Where appropriate, Commission staff will notify the requestor that a request may be made for formal written advice pursuant to subdivision (b), or for a Commission Opinion pursuant to Regulation 18320;

(F) Concerns a party or a factual scenario that is the subject of a pending Enforcement action, or other judicial or administrative proceeding, and the requested advice may affect or determine a question of law relating to the pending proceeding; or

(G) Would be inappropriate or otherwise not in the public interest.

(d) Commission Oversight.

(1) Reports to the Commission. The Commission may periodically require a report of formal written advice issued by Commission staff. The report may include assistance or advice provided pursuant to subdivision (b)(6)(E)(ii). The report will be part of the Commission meeting agenda and may be noticed for Commission review and action regarding the reported advice letters.

(2) Action on formal advice. The Commission may rescind or modify any formal written advice on grounds that it:

(A) Substantively misstates the law;

(B) Misapplies the law; or

(C) Regards an unsettled area of law, or an area of the law susceptible to multiple reasonable interpretations, and thus presents issues that require an interpretation best considered through the Commission Opinion process set forth in Regulation 18320, the regulatory process, or a legislative action.

(3) Immunity. If the Commission rescinds or modifies formal written advice, then any immunity conferred under Section 83114(b) is limited to actions prior to the date the requestor receives notice of such action.

(e) Records. Written responses and related requests for advice are public records subject to public inspection unless protected from disclosure under the Public Records Act.

Note: Authority cited: Section 83112, Government Code. Reference: Section 83114(b), Government Code.

HISTORY

1. New section filed 5-10-76 as an emergency; effective upon filing (Register 76, No. 20).
2. Certificate of Compliance filed 7-28-76 (Register 76, No. 31).
3. Repealer and new section filed 3-31-77; effective thirtieth day thereafter (Register 77, No. 14).
4. Amendment of subsections (c)-(g) filed 11-2-78; effective thirtieth day thereafter (Register 78, No. 44).
5. Amendment of section heading filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).
6. Amendment of subsection (g) filed 7-14-83; effective thirtieth day thereafter (Register 83, No. 29).
7. Repealer and new section filed 7-16-85; effective thirtieth day thereafter (Register 85, No. 29).
8. Repealer and new section filed 7-22-2019; operative 8-21-2019 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2019, No. 30).