



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*April 21, 2016 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of March 3, 2016 through April 7, 2016, the Enforcement Division received 107 referrals and complaints as detailed in the chart below.

Type	SWORN	PROACTIVE/INFORMAL	NON-FILER
Number Received	46	24	37
Case Opened	12	2	29
Complaint Rejected	17	15	7
Under Review	17	7	1

Also during this time, the Division closed a total of 223 cases including:

- 30 warning letters,
- 2 advisory letters,
- 51 no action letters,
- 26 as a result of the adoption of stipulations and defaults at the March Commission meeting, and
- 114 committees were administratively terminated.

The Division had 679 cases in various stages of resolution at the time of the March Monthly Report and currently has 499 cases in various stages of resolution, including the 25 cases before the Commission as listed in the April 2016 agenda.

On May 1, 2015, the enforcement Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 179 have been resolved with fines and 597 are being actively worked. On October 22, 2015, the Enforcement Division received the 2014 \$50 Annual Fee referrals which totaled 1,786. Of those, 40 have been resolved with fines and 662 are currently being worked.

## II. LEGAL DIVISION

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STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

### A. Pending Litigation

*Frank J. Burgess v. Fair Political Practices Commission.*

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission's decision and order in *In re Frank J. Burgess*, Case No. 12/516. Following an administrative hearing in front of an Administrative Law Judge (ALJ), Mr. Burgess challenged that decision to the Commission. After oral argument before the Commission on March 19, 2015 and a thorough review of the record, the Commission rejected the ALJ's decision and decided the case based on the record, oral argument, and the parties' supplemental briefing on the "governmental decision" element of the case. The Commission found that Mr. Burgess violated Government Code Section 87100 of the Political Reform Act (the "Act")<sup>1</sup> and imposed a \$5,000 fine on July 7, 2015. Mr. Burgess challenges that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. The administrative record has been produced and the parties will brief the matter over the next several months, at which point the court will schedule a hearing.

### B. Outreach and Training

- During the month of March, Assistant Chief Trish Mayer provided the following training:
  - March 17 (Sacramento) – Form 700 filers webinar in conjunction with the California Special District's Association and hosted by the Institute for Local Government.
  - March 21 (Union City) – Candidate and Treasurer Workshop, requested by Commissioner Casher and sponsored by Meyers, Nave.

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

- March 23 (San Bernardino) – Candidate and Treasurer Workshop for San Bernardino County candidates subject to the campaign ordinance which FPPC enforces under contract.
- On March 7, 2016, Senior Commission Counsel Heather Rowan and Commission Counsel Toren Lewis met with UC Hastings School of Law Legislative Clinic students. Topics included the regulatory process, the function of the Commission, and the relationship between the legislature passing bills and administrative bodies enacting regulations. Ms. Rowan and Mr. Lewis also discussed careers in public entities and options in career paths.
- On March 11, 2016, Assistant General Counsel John W. Wallace was a co-presenter in a seminar for County Counsels in Los Angeles. The training covered conflicts of interest under the Act, Section 1090 conflicts of interest (contracts), post-governmental employment (“revolving door”) restrictions and Section 84308 (disqualification and campaign contributions). The County Counsels were part of a new unit in the Los Angeles County Counsel’s Office intended to serve as dedicated general counsel to the Los Angeles County Board of Supervisors.
- On March 24, 2016 Senior Commission Counsel Emelyn Rodriguez conducted a conflicts of interest webinar for the California Special Districts Association and the Institute for Local Government. Ms. Rodriguez covered conflict of interest and disqualification rules under the Act for more than 30 special district chairpersons, directors, managers and staff.

### C. Advice

In March 2016, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and attorneys collectively responded to more than 1,539 email and telephone requests for advice.
- **Advice Letters:** The Legal Division received 20 advice letter requests and issued 27 advice letters.
- **Section 1090 Letters:** Legal Division did not receive or issue any advice letter requests concerning Section 1090 in March. This year to date we have received seven requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

## D. Advice Letter Summaries

### Campaign

#### **Jerome M. Behrens**

**A-16-009**

A charter school formed by a non-profit organization under the Charter Schools Act is a local government agency under Section 82041 of the Act.

### Conflicts of Interest

#### **Michael A. Guina**

**A-16-002**

A Mayor may participate in decisions regarding a pedestrian path within 500 feet of her residence because it is unlikely that the small improvement will have a measurable impact on her residence.

#### **Marcia L. Scully**

**A-16-011**

The Act's conflict of interest provisions requires an official to disqualify from budget decisions that will foreseeably have a material financial effect on the board members' interests, or those of his or her spouse. However, if a water district board member's business completely and unequivocally renounces any financial benefits resulting from the budget decision during the budget year, the board member may participate in the decision since the decision will not have a foreseeable, material financial effect on his financial interests.

#### **Minh C. Tran**

**A-16-024**

A planning commissioner may participate in decisions regarding the wine industry even though her husband works for a winery when the impact of the decisions will affect all wineries in the unincorporated areas of the county and wineries make up 35% of businesses in that jurisdiction. The planning commissioner may not, however, participate in decisions regarding the County's Climate Action Plan because she has a nexus in the decision at issue based on her employment.

#### **Ruthann G. Ziegler**

**A-16-025**

The public generally exception applies to all councilmembers who have property within 500 feet of the decision areas when the only decisions at issue relate to sidewalk additions and improvements.

#### **Debra Hill**

**A-16-026**

The Act's "revolving door provisions," including the one-year ban and permanent ban, do not prohibit a former employee of the Department of Motor Vehicles (DMV) from accepting a part-time administrative position with a nonprofit, so long as the former official's duties will not involve appearing before or communicating with DMV, or assisting her new employer with the intent of influencing a judicial, quasi-judicial or other proceeding involving the State of California.

**Anthony R. Taylor****A-16-027**

Three City Councilmembers were advised that they could participate in governmental decisions to resolve unpaid water utility fees between the City and a home owner's association in which all three city council members owned residences because the public generally exception applied.

**Michael C. Ghizzoni****A-16-028**

A County Supervisor was advised that she was prohibited from discussing constituent complaints with County departments when such complaints could result in enforcement actions against the developer of a project located within 75 feet of her home. She would be prohibited because the complaints and the discussion of them with County departments were inextricably interrelated to a previous governmental decision on the project in which she had a conflict. The Supervisor's Chief of Staff would not be prohibited from discussing the complaints with County staff, because the Chief of Staff had no conflict in the matter

**Kristin Gaspar****A-16-033**

Mayor may participate in decisions made by the City concerning a lawsuit filed against it by a property development firm despite the fact that the attorney for the firm is a source of income to the Mayor. The attorney is a client of the Mayor's physical therapy company which thereby creates a financial interest in the attorney. However, decisions made by the city concerning the lawsuit will not have a financial effect on the financial interest.

**Elizabeth G. Pianca****A-16-034**

The Act's conflict of interest provisions do not prohibit a Santa Clara County Counsel from advising the County on Stanford University's application to build additional university housing units approximately three miles from her home.

**John Bakker****A-16-038**

Hotel decisions, a subpart of the Grafton Plaza Project, are discrete in relationship to the entire plan and can be segmented from other decisions about the plan. However, Regulation 18706(a)(3) requires that the decisions in which the official has a conflict of interest must be considered first and a final decision reached by the agency without the disqualified official's participation. Consequently, the Vice Mayor could only participate in the segmented hotel decisions after all the project decisions for which he has a conflict are decided.

**Dianne Jacob****A-16-039**

County supervisor may take part in, and vote on, a decision by the board of supervisors to authorize staff to enter into an Intergovernmental Agreement and Settlement of a pending lawsuit involving the construction of a casino notwithstanding owning a residence approximately 2.8 miles from the casino and a large tract of undeveloped property approximately 6.7 miles from the casino, neither of which is adjacent to the state route that will serve as the primary point of access for the casino.

**Albert S. Yang****A-16-047**

It is not reasonably foreseeable that the City Council's decisions related to funding sources for the non-profit Transportation Management Association will materially affect the city officials' real property interests in or around downtown Palo Alto. The decisions all involve the refinement of the funding to an independent Transportation Management Association and it would not be a realistic possibility that these decisions would affect specific property or business interests in area. As actual plans or proposals come before the city, we would need to analyze these questions based on the facts and circumstances involved.

**Corrine L. Neuffer****A-16-049**

The Act does not permit the City of San Diego Planning Commission to invoke the "legally required participation" exception since three of seven commissioners were disqualified under the Act and a fourth commissioner stated that he would voluntarily abstain. Because a quorum of commissioners not disqualified under Section 87100 could be convened with respect to the decision at issue, the Planning Commission may not invoke the exception.

**Marina Castillo-Augusto, M.S.****A-16-054**

In his official capacity, Mr. Schweigman, an employee of the California Department of Public Health, will oversee contracts/grants concerning the California Reducing Disparities Project. Mr. Schweigman used to work for and/or interfaced with the California Indian Rural Health Board, The Native American Health Center, Friendship House and other Native American organizations that have and will be submitting proposals for the Project. However, since Mr. Schweigman has not received any payments/wages from these organizations within the last 12 months or longer, he does not have any financial interests recognized by the Act as a basis for disqualification. Thus, he will not have a conflict of interest.

**Thomas A. Beltran****A-16-056**

The Borrego Springs Community Sponsor Group ("BSCSG") will be considering and possibly voting on a Property Specific General Plan Amendment to rezone 172.9 acres from allowing one dwelling unit per 10 acres to one dwelling unit per 1 acre. The subject property is within a few hundred feet of a vacation home owned by the chairperson of the BSCSG. Based on the size of the subject property, the magnitude of the change to the subject property and the proximity of the Chairperson's property to the subject property, there will be a foreseeable and material financial effect on his property and he will have a conflict of interest.

### **Conflict of Interest Codes**

**Charles M. Gale**

**A-16-019**

The Alameda Corridor Operating Committee is a “local government agency” under the Act. The impetus for the Operating Committee’s formation originated with a government agency; it is substantially funded by a government agency; one of its principal purposes for which it was formed is to provide services that public agencies are legally authorized to perform; and it is treated as a public entity by other laws. Therefore, the Act requires the Operating Committee to adopt a conflict of interest code or be included within an existing code, and its members are subject to regulation under the Act.

### **Gift Limits**

**Colleen Winchester**

**A-16-023**

Because travel, lodging, and subsistence payments (paid by a non-profit entity) are reasonably related to a councilmember’s speaking engagements at two separate policy issue-related events, the payments are not subject to gift limits. However, the payments are reportable gifts and acceptance of gifts above the \$460 amount from either non-profit entity may prohibit the councilmember from participating in governmental decisions affecting those sources.

### **Honoraria**

**Ronald J. Powell, Ph.D**

**A-16-036**

The Political Reform Act’s prohibition on a designated employee’s acceptance of honoraria does not prohibit a First 5 San Bernardino Commissioner from accepting payment for giving a speech, conducting a training or publishing an article in connection with the Commissioner’s consulting business because the business is a “bona fide business.” The prohibition on the acceptance of honoraria does not prohibit the Commissioner from accepting payment for authoring a book because authoring a book does not fall within the prohibition’s scope.

### **Lobbying**

**Matthew Alvarez**

**A-16-015**

The exception to the definition of a “placement agent” under Section 82047.3(b) applies to managers of real estate funds who spend one-third or more of their time managing fund properties and projects.

### **Statement of Economic Interests**

**Matthew G. Jacobs**

**A-16-050**

Contract legal counsel who serve in a staff capacity, participate in making governmental decisions, and perform the same duties for an agency that would be performed by staff, are public officials under the Act, and must file a Form 700 (Statement of Economic Interests). Here, the contract attorney is hired to advise the CalPERS Board of



Administration on Office of Administrative Hearings decisions. The attorney works directly with the Board and was hired to ensure that ex parte communications with staff does not occur.

### **E. Upcoming Regulations**

None planned for the next two months.

### **F. Conflict of Interest Codes**

The FPPC is the code reviewing body for over 200 state agencies and 600 multi-county agencies. Since the last report the following conflict of interest code adoptions/amendments/exemptions were processed and approved:

#### *Conflict of Interest Code Adoptions and Amendments*

##### *Multi-County Agencies*

- Palo Verde Irrigation District

#### *Conflict of Interest Code Exemptions and Exemption Extensions*

Regulation 18751 provides a procedure and standards for obtaining an exemption from Section 87300, which requires adoption and promulgation of a conflict of interest code. The following exemptions and extensions were granted in March:

##### *Exemptions*

- Department of Toxic Substances, Independent Review Panel (E-16-001)

##### *Extensions*

- California Rehabilitation Oversight Board

### **G. Probable Cause Decisions**

*\* Please note: a finding of probable cause does not constitute a finding that a violation has actually occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.*

The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.

1. ***In the Matter of Keith Reeder, Case No. 15/029.*** On March 3, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

COUNT 1: As a Board Member of the California Avocado Commission, Keith Reeder failed to timely file his 2013 annual statement of economic interests (SEI), in violation of Sections 87300 and 87302(b).

COUNT 2: As a Board Member of the California Avocado Commission, Keith Reeder failed to timely file his 2014 annual SEI, in violation of Sections 87300 and 87302(b).

**2. *In the Matter of Gayla Dagata, Case No. 14/1244.*** On March 3, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

COUNT 1: Gayla Dagata failed to file an Assuming Office SEI within thirty days of being appointed to the governing board on October 10, 2013, in violation of Sections 87300 and 87302.

COUNT 2: Gayla Dagata failed to file an Annual SEI for the year of 2013 in violation of Sections 87300 and 87302.

COUNT 3: Gayla Dagata failed to file an Annual SEI for the year of 2014 in violation of Sections 87300 and 87302.

**3. *In the Matter of Albert Robles, Friends of Albert Robles, Officeholder Account, Committee to Re-Elect Albert Robles, and Robles for Carson City Council 2013, Case No. 13/217.*** On March 3, 2016, probable cause was found to believe Respondents committed the following violations of the Act:

***Friends of Albert Robles Officeholder and Committee to re-elect Albert Robles***

COUNT 1: Respondents Albert Robles and Committee to Re-Elect Albert Robles failed to timely file and properly disclose required information regarding \$24,986 in contributions received and failed to timely file and properly disclose required information regarding \$23,277 in expenditures made, during the January 1, 2012, through June 30, 2012, semi-annual campaign statement, in violation of Sections 84200(a) and 84211(a)-(j).

COUNT 2: Respondents Albert Robles, Friends of Albert Robles Officeholder Account and Committee to Re-Elect Albert Robles failed to file pre-election campaign statements for the reporting period July 1, 2012, through September 30, 2012, by the October 5, 2012 due date, in violation of Sections 84200.5(b) and 84200.7(b).

COUNT 3: Respondents Albert Robles, Friends of Albert Robles Officeholder Account and Committee to Re-Elect Albert Robles failed to file pre-election campaign statements for the reporting period October 1, 2012, through October 20, 2012, by the October 25, 2012 due date, in violation of Sections 84200.5(b) and 84200.7(b).

- COUNT 4: Respondents Albert Robles, Friends of Albert Robles Officeholder Account and Committee to Re-Elect Albert Robles failed to file a semi-annual campaign statement for the reporting period October 21, 2012, through December 31, 2012, by the January 31, 2013 due date, in violation of Section 84200.
- COUNT 5: Respondents Albert Robles and Committee to Re-Elect Albert Robles failed to file a pre-election campaign statement for the reporting period January 1, 2013, through January 19, 2013, by the January 24, 2013 due date, in violation of Sections 84200.5(c) and 84200.8(a).
- COUNT 6: Respondents Albert Robles and Committee to Re-Elect Albert Robles failed to file a pre-election campaign statement for the reporting period January 20, 2013, through February 16, 2013, by the February 21, 2013 due date, in violation of Sections 84200.5 (c) and 84200.8(b).
- COUNT 7: Respondents Albert Robles and Committee to Re-Elect Albert Robles failed to file a semi-annual campaign statement for the reporting period January 1, 2014, through June 30, 2014, by the July 31, 2014 due date, in violation of Section 84200.
- COUNT 8: Respondents Albert Robles and Committee to Re-Elect Albert Robles failed to file a semi-annual campaign statement for the reporting period January 1, 2015, through June 30, 2015, by the July 31, 2015 due date, in violation of Section 84200.

***Albert Robles and the Robles for Carson City Council 2013***

- COUNT 9: Respondents Albert Robles and Robles for Carson City Council 2013 failed to file a 24 hour report to timely disclose a \$1,500 contribution received on January 16, 2013, from Kalyn Tran, within the 90 day period prior to the March 5, 2013 election, in violation of Section 84203.
- COUNT 10: Respondents Albert Robles and Robles for Carson City Council 2013 failed to file a 24 hour report to timely disclose a \$1,500 contribution from Foundation for Policy and Government and a \$5,000 contribution from Harris and Associates received on January 18, 2013, within the 90 day period prior to the March 5, 2013 election, in violation of Section 84203.
- COUNT 11: Respondents Albert Robles and Robles for Carson City Council 2013 failed to file any reports to timely disclose three in-kind contributions received over \$1,000 during January 2013, due within 48 hours of receipt and received within the 90 day period prior to the March 5, 2013 election, in violation of Sections 84203 and 84203.3.

- COUNT 12: Respondents Albert Robles and Robles for Carson City Council 2013 failed to file any reports to timely disclose three in-kind contributions received over \$1,000 during February 2013, due within 48 hours of receipt and received within the 90 day period prior to the March 5, 2013 election, in violation of Sections 84203 and 84203.3.
- COUNT 13: Respondents Albert Robles and Robles for Carson City Council 2013 failed to file a semi-annual campaign statement for the reporting period January 1, 2014, through June 30, 2014, by the July 31, 2014 due date, in violation of Section 84200.
- COUNT 14: Respondents Albert Robles and Robles for Carson City Council 2013 failed to file a semi-annual campaign statement for the reporting period January 1, 2015, through June 30, 2015, by the July 31, 2015 due date, in violation of Section 84200.
- COUNT 15: Respondents Albert Robles and Robles for Carson City Council 2013 failed to identify the controlled committee by name when making a written solicitation for contributions, in violation of Sections 83112, 85201 and Regulation 18523.1(a).

***Albert Robles***

- COUNT 16: As the Mayor of Carson, Respondent Albert Robles failed to timely file a 2014 Statement of Economic Interests, which was due by April 1, 2015, in violation of Section 87203 and Regulation 18723(b)(2).
- COUNT 17: As an Alternate Governing Board Member of the South Bay Cities Council of Governments, Respondent Albert Robles failed to file an Assuming Office Statement of Economic Interests, which was due within 30 days of assuming office in July 2015, in violation of Sections 87300 and 87302(b).

**4. *In the Matter of Lori Acton, Case No. 14/574.*** On March 21, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

- COUNT 1: As a City Council Member for the City of Ridgecrest, Acton had a duty to timely file an Assuming Office SEI by January 5, 2013. By failing to timely file her Assuming Office SEI, Acton violated Section 87202(b).
- COUNT 2: As a City Council Member for the City of Ridgecrest, Acton had a duty to timely file a 2013 annual SEI by April 1, 2014. By failing to timely file her 2013 Annual SEI Acton violated Section 87203.

**5. *In the Matter of Sid Scott and Scott Lakeside Water 2014, Case No. 15/283.*** On March 21, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

Count 1: The Committee and Scott failed to file the semi-annual statement for the period ending December 31, 2014, due February 2, 2015 in violation of Section 84200.

Count 2: The Committee and Scott failed to file the semi-annual statement for the period ending June 30, 2015, due July 31, 2015 in violation of Section 84200.

**6. *In the Matter of Karen Verham, Case No. 13/1080.*** On March 21, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

Count 1: Verham assumed office as a member of the Point Dume Community Services District on December 5, 2011. As a designated employee, Verham had a duty file an Assuming Office SEI within 30 days of assuming office. By failing to timely file her Assuming Office SEI within 30 days of assuming office, Verham violated Section 87300.

Count 2: As a member of the Point Dume Community Services District, Verham had a duty to file a 2012 Annual SEI by the April 2, 2013, deadline. By failing to timely file her 2012 Annual SEI, Verham violated Section 87300.

Count 3: Verham left her position as a member of the Point Dume Community Services District on January 2, 2014. As designated employee, Verham had a duty to timely file a combined 2013 Annual and Leaving Office SEI within 30 days of leaving office. By failing to timely file this statement within 30 days of leaving office on January 2, 2014, Verham violated Section 87300.

## III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: TARA STOCK, MANAGER

### **Phone Advice Requests**

The External Affairs and Education Division responded to over 1,300 requests for advice via telephone in March.

### **Forms, Manuals and Other Materials**

The division is continuing the process of updating the campaign manuals to incorporate recent legislative and regulatory changes. The lobbying manual is also being updated to include recent regulatory changes approved by the Commission, including the requirement for more detailed disclosure when reporting “other payments to influence,” and the clarification on which individuals are included in the “ride along” exception.

The advertisement disclaimer charts were updated to reflect the AB 990 (Bonilla) changes, which included new requirements for ballot measure advertisements and advertisements paid for by independent expenditures.

### **Workshops and Webinars**

Political Reform Consultant Cynthia Fisher, along with Associate Governmental Program Analyst Rene Robertson, held a workshop at the FPPC for state agency staff responsible for performing the administrative duties on Statements of Economic Interests (SEIs). Staff Services Analyst Gail Perry and I held a similar workshop at the FPPC for local agency staff. Consultant Alex Castillo made a presentation to SEI filers at the Rancho Santiago Community College District and also made a presentation regarding campaign and SEI filing officer requirements to the Central California City Clerk’s Association at their Division meeting.

Consultants Cynthia Fisher and Alex Castillo conducted a webinar for SEI filers and one for staff responsible for performing the administrative duties on campaign statements. Consultants John Kim and Cynthia Fisher conducted a webinar for local agency staff responsible for performing the administrative duties on SEIs. Approximately 145 individuals registered for these three webinars.