



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

# EXECUTIVE STAFF REPORTS

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*May 19, 2016 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of April 7, 2016 through May 5, 2016, the Enforcement Division received 107 referrals and complaints as detailed in the chart below.

Type	SWORN	PROACTIVE/INFORMAL	NON-FILER
<b>Number Received</b>	34	22	20
<b>Case Opened</b>	4	5	15
<b>Complaint Rejected</b>	6	6	2
<b>Under Review</b>	24	11	3

Also during this time, the Division closed a total of 121 cases including:

- 58 warning letters,
- 34 no action letters,
- 24 as a result of the adoption of stipulations and defaults at the April Commission meeting, and
- 5 committees were administratively terminated.

The Division had 499 cases in various stages of resolution at the time of the April Monthly Report and currently has 402 cases in various stages of resolution, including the 28 cases before the Commission as listed in the May 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, 180 have been resolved with fines and 472 are being actively worked. On October 22, 2015, the Enforcement Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 45 have been resolved with fines and 567 are currently being worked. As for the remaining referrals, they were rejected; the committees were terminated locally without notice to Secretary of State; the committees were administratively terminated or are slated for administrative termination; or the committee received no violation or warning letters.

## II. LEGAL DIVISION

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STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JACK WOODSIDE, SENIOR COMMISSION COUNSEL

### 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 plaintiffs filed their opening brief on May 2, 2016. The parties will continue to brief the matter over the next two months, at which point the court will schedule a hearing.

### B. Outreach and Training

- Legal Division attorneys Emelyn Rodriguez, Brian Lau and Sukhi Brar provided in-house ethics training for all FPPC staff on April 12 and 14 covering gift restrictions, conflicts of interest and other ethics rules. This ethics training is required for state employees once in every two-year period.

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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.

### C. Advice

In April 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 1,128 email and telephone requests for advice.
- **Advice Letters:** Legal Division received 18 advice letter requests and issued 15 advice letters.
- **Section 1090 Letters:** Legal Division received eight advice letter requests concerning Section 1090 and issued five. This year to date we have received 15 requests regarding Section 1090.

### D. Advice Letter Summaries

#### Section 84308

##### **William M. Wright**

**A-16-055**

Under the unique facts presented, the formation of a Recreation and Park District is an entitlement for use and subject to the provisions of Section 84308. The term “entitlement for use” does not have a set legal meaning. In this case, because a small group of specific, identifiable persons will derive financial benefits from and will be directly affected by this decision, formation of the district will have a direct substantial financial impact upon the applicants and is considered an “entitlement for use.”

#### Conflict of Interest

##### **Kelso Barnett**

**A-16-032**

A member of the Sonoma Design Review and Historic Preservation Commission may submit written comments and speak at an upcoming planning commission meeting about a development project for which he has a conflict of interest so long as the official limits his comments to the project’s impact on his personal residence. The official’s appearances or comments before the planning commission are permissible under a narrow exception to the definition of “influencing” under the Act. Because there is shared staffing between the planning commission and the official’s agency, the official is prohibited from meeting or otherwise communicating with shared staff beyond the scope of the exception.

##### **Brian A. Pierik**

**I-16-040**

A city councilmember who owns a lodging business located within the Atascadero Tourism Business District and serves on the district’s advisory board may not address the city council to give an update regarding district matters. If a city staff member gives the update, he must recuse himself and leave the room for the duration of the report and any

discussion. However, under the personal interest exception, he may address the city council regarding district matters to represent his personal interests provided he recuses himself from voting on the matter, leaves the dais to speak from the same area as the members of the public and limits his remarks solely to his personal interests.

**Christine Dietrick****A-16-041**

A city councilmember has a conflict of interest in decisions related to a development project in downtown San Luis Obispo because it is reasonably foreseeable that the decisions regarding the project could have a material financial effect on a multi-year lease entered into by his spouse's law firm for a building just over 500 feet from the project.

**Kelly C. Fincher****A-16-051**

A city councilmember wishes to propose an annexation of approximately 900 acres of farm land as industrial zoned land. Included in the potential annexation is a 160-acre parcel of land owned by a trust that is controlled by councilmember's wife's cousin's spouse. The 160-acre parcel of land is not a financial interest of the councilmember. Therefore, the councilmember does not have a conflict of interest in decisions concerning the annexation.

**Richard D. Pio Roda****A-16-061**

The Act prohibits a City of San Leandro Rent Review Board Member from participating in a rent review hearing, in which the Board will make a non-binding recommendation on a rent increase, if the Member is the landlord of the rental unit at issue in the hearing. Because the Member and his wife exercise full direction and control over the apartment complex at issue, however, the Act authorizes the Member to appear as a member of the general public in the rent review hearing on matters solely related to his personal interest in the apartment complex.

**Quinn M. Barrow****A-16-063**

The Act prohibits a Manhattan Beach City Councilmember from taking part in the government decision on whether to approve the Downtown Specific Plan ("DSP") due to the reasonably foreseeable material financial effect of the decision on the councilmember's retail clothing businesses. Not only may the decision result in improvements and parking upgrades within the DSP area near his businesses, but one of the primary purposes of the DSP is to encourage economic development within the DSP area, and one of the foremost goals with respect to that economic development is to retain and expand existing businesses (such as the councilmember's) within the DSP area.

**Trina Sartin****A-16-066**

Since an employee employed by a Board Member's private business is not a financial interest, the Board member will not have a conflict of interest under the Act in Board decisions that affect the employee.

**Abel Guillen****A-16-077**

The councilmember owns a condominium that is currently leased to tenants. The city is considering an ordinance that would (1) limit the increase in rents allowed; (2) disallow rent increases for substantially rehabilitated units; (3) appoint Rental Adjustment Board members to create a majority of tenant representatives; (4) impose penalties on landlords for not following ordinance; and (5) require owners who want to move into rental property to make payment to tenants. The councilmember would have a conflict of interest in the decisions.

**Conflict of Interest Codes****Mark Paxon****A-16-046**

Consistent with the determination that a regional Federal Home Loan Bank was not a federal actor (*Xiangyuan Zhu v. Fed. Hous. Fin. Bd.* (2005) 389 F. Supp. 2d 1253, 1281) and the Act's liberal construction to ensure that assets and income of public officials that may be materially affected by their official actions should be disclosed, we concluded that the Federal Home Loan Bank of San Francisco is not a governmental agency for purposes of the Act. Accordingly, compensation received from the entity is reportable and potentially disqualifying.

**Gifts****Honorable Jeffrey S. Bostwick****A-16-064**

A superior court judge asked whether or not his attendance, his wife's attendance, and his guest's attendance at an award event held for volunteers of the Boy Scouts of America is a reportable gift under the Act. The event will take place at the host's home while the host is present. The host is a personal friend whom the judge has known since 2011. The cost will exceed \$50. The hospitality and long-term close personal friend exceptions apply to the gift reporting requirement for requestor and his wife.

**Revolving Door****Michelle Wagner****A-16-045**

The Act's conflict of interest provisions do not prohibit a California Coastal Commission employee from simultaneously working on a project for the Cachuma Operation and Maintenance Board, a joint powers agency in Santa Barbara, since salary received from a governmental agency is not considered "income" under the Act, and the employee has no other financial interests that could create a conflict under the Act.

**David Roose****A-16-048**

A former state employee was advised under the Act and Section 1090 that he could work as a contractor for a private company as a project manager on a project for the Department of Water Resources when he retired from the agency less than a year ago. The contract he is seeking to work on was already in place before he left the agency and he did not participate in the making of the contract while he was employed at the Department of Water Resources.

**Carlos Ramos****I-16-057**

A retired former director of the Department of Technology is prohibited under the Act's one-year ban from appearing before, or communicating with, his former state agency employer for compensation when such appearance is for the purpose of influencing administrative or legislative action or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. The Act's permanent ban prohibits him from participating in any proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which you participated as a state employee.

**Section 1090****Jon Ansolabehere****A-15-180(a) and A-16-029**

A Planning Commissioner may not participate in city meetings, staff briefings, or internal or external discussions regarding the development of the Mission Plaza Assessment and Master Plan if his spouse's employer (a source of income to him) is awarded the contract for the Plan because the source of income is explicitly involved in the decisions.

However, the Commissioner may participate in city meetings, staff briefings, or internal or external discussions regarding San Luis Ranch application since these decisions will not have a financial effect on his source of income nor on his or his spouse's personal finances. (SUPERSEDES *Ansolabehere* Advice Letter No. A-15-180.)

**Andreas C. Rockas****A-16-017**

A nonprofit that oversees a Joint Powers Authority (JPA) was advised that one executive from the JPA could participate in merger negotiations with another JPA even though his salary and job status may be affected as a result of the merger and Section 1090 applied because the rule of necessity applied.

**Colleen Winchester****A-16-030**

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

**E. Miscellaneous Decisions****Regulation 18740 Exemption Request**

Regulation 18740 provides that, with the approval of the General Counsel, an official or candidate is not required to disclose the name of a person on their statement of economic interests if disclosure would violate California or Federal law. The following exemption request was approved in April:

*Request by Fair Political Practices Commissioner Gavin Wasserman*

## F. Upcoming Regulations

The proposed regulations schedule for the upcoming months is set forth below, subject to modification.

### July 21, 2016

- **18239 Lobbying.** Under the definition of lobbyist, the proposed amendment would create a presumption that if a person contracts with another person to provide services, and the services include any direct communication with a qualifying official for the purpose of influencing legislative or administrative action, all compensation paid is presumed to be for communicating with the official for purposes of the \$2,000 threshold to register as a lobbyist. This change would require persons who are paid to directly communicate with a qualifying official to maintain more accurate recordkeeping of all payments in order to establish whether payments were for direct communication or other goods or services.

### August 18, 2016

- **18751 Procedure and Standards for Obtaining Exemption from Adoption of Conflict of Interest Code.** The Commission streamlined rules governing the adoption of conflict of interest codes in April. Similar changes will be proposed for this regulation to simplify the process for an agency to obtain an exemption from adopting a conflict of interest code. This will complete revisions to the conflict of interest code regulations.

## G. 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 or extensions were processed and approved:

### Adoptions and Amendments:

#### *Multi-County Agency Conflict of Interest Codes*

- Redwood Empire Schools Insurance Group
- Yosemite Community College District

#### *State Agencies Conflict of Interest Codes*

- Legislative Counsel Bureau
- Victim Compensation Government Claims Board

**Exemptions and Exemption Extensions:**

Regulation 18751 provides a procedure and standards for obtaining an exemption from Section 87300's requirement to adopt and promulgate a conflict of interest code. The following exemptions and extensions were granted in April:

- Exemptions – None
- Extensions - California Child Welfare Council

**H. 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.

- 1. In the Matter of George Alai, FPPC No. 13/1135.** On April 13, 2016, after hearing, probable cause was found to believe that the named Respondent committed three violations of the Act's conflict of interest provisions by making three separate decisions as the Chief Technology Officer for Department of General Services to contract with Hewlett-Packard in which Respondent knew or should have known he had a financial interest.

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

- 2. In the Matter of Ann Garbien, FPPC No. 15/083.** On April 18, 2016, probable cause was found to believe that the named Respondent committed one violation of the Act, as follows:

COUNT 1: Garbien failed to file a Leaving Office Statement of Economic Interests (SEI) within 30 days of leaving office in 2014 in violation of Sections 87300 and 87302.

- 3. In the Matter of Allison Scott, FPPC No. 15/1129.** On April 19, 2016, probable cause was found to believe Respondent committed the following violations of Section 87300 of the Act:

COUNT 1: Scott failed to file a 2011 Annual SEI by April 1, 2012.

COUNT 2: Scott failed to file a 2012 Annual SEI by April 1, 2013.

COUNT 3: Scott failed to file a 2013 Annual SEI by April 1, 2014.

COUNT 4: Scott failed to file a 2014 Annual SEI by April 1, 2015.

**4. In the Matter of Aaron Medina, FPPC No. 14/1040.** On April 27, 2016, probable cause was found to believe that the named Respondent committed three violations of the Act, as follows:

COUNT 1: As a member of the California Travel and Tourism Commission, Medina had a duty to file an Assuming Office SEI by the June 3, 2013, deadline. By failing to file his Assuming Office SEI, Medina violated Section 87300.

COUNT 2: As a member of the California Travel and Tourism Commission, Medina had a duty to file a 2013 Annual SEI by the April 1, 2014 deadline. By failing to file his 2013 Annual SEI, Medina violated Section 87300.

COUNT 3: As a member of the California Travel and Tourism Commission, Medina had a duty to file a 2014 Annual SEI by the April 1, 2015 deadline. By failing to file his 2014 Annual SEI, Medina 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 700 requests for advice via telephone in April.

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

The division updated the campaign manual for local candidates (Manual 2) to incorporate legislative and regulatory changes and it is now available on the website. We are continuing the process of updating the other campaign manuals. 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 clarification on which individuals are included in the “ride-along” exception.

The division is creating a fact sheet to summarize where primarily formed ballot measure committees file campaign reports. Similar fact sheets exist for candidates, general purpose committees and judges.

### **Workshops and Webinars**

Political Reform Consultant Deborah Hanephin and I conducted a webinar and also held a workshop at the FPPC for candidates and treasurers. Consultant Alex Castillo held a workshop in San Diego County for candidates and treasurers. Consultants John Kim and Deborah Hanephin conducted a webinar for candidates and treasurers, and Consultants Cynthia Fisher and John Kim conducted a webinar for campaign filing officers.

The division is planning to hold several workshops throughout the State in the upcoming months for campaign filing officers and for candidates and treasurers involved in the November election.