

1 Amend 2 Cal. Code Regs. Section 18530.45 to read:

2 **§ 18530.45. Legal Defense Funds--Local Candidates and Officers.**

3 (a) Application and Definitions.

4 (1) This regulation applies to the bank account permitted by Section 85304.5(a).

5 (2) For purposes of this regulation, the following definitions apply:

6 (A) "Legal defense funds" means money in the legal defense account.

7 (B) "Legal defense account" means the bank account established at a financial institution
8 located in the State of California pursuant to Section 85304.5(a).

9 (C) "Legal defense committee" means a committee formed pursuant to subdivision (c) of
10 this regulation.

11 (D) "Candidate" means a candidate for elective office in a local government agency.

12 (E) "Officer" means an elected officer in a local government agency.

13 (b) Local Regulation of Legal Defense Account.

14 (1) Except as provided in paragraphs (2) and (3), this regulation shall govern the legal
15 defense account and legal defense committee established by a candidate or officer under Section
16 85304.5.

17 (2) A local government agency may impose different requirements, including a
18 contribution limit, on a legal defense account and legal defense committee maintained by a
19 candidate or officer in its jurisdiction if its requirements regarding establishment of the
20 committee, recordkeeping, and reporting are at least as strict as those provided in subdivisions
21 (c), (e), and (f) of this regulation.

1 (3) If the local government agency does not enact local contribution limits applicable to
2 legal defense funds, the local requirements must also be at least as strict as those provided in
3 subdivision (i).

4 (c) Establishing the Legal Defense Account and Legal Defense Committee. A candidate
5 or officer who raises legal defense funds under this regulation shall deposit the funds in and
6 expend the funds from a bank account separate from any other bank account held by the
7 candidate or officer, including a campaign bank account and a legal defense account for a state
8 official and a candidate under Section 85304. The candidate or officer shall establish a
9 controlled committee for the legal defense account by filing a statement of organization pursuant
10 to Section 84101. The statement of organization shall contain a description of the specific legal
11 dispute or disputes for which the account is established, and shall be amended pursuant to
12 Section 84103, as legal disputes are either resolved or initiated. The words “Legal Defense
13 Fund” and the candidate’s or officer’s last name shall be included in the committee name.

14 (d) Separate Accounts For Each Local Elective Office. The candidate or officer shall
15 establish a separate legal defense account and legal defense committee for each local elective
16 office to which the legal proceeding or proceedings relate.

17 (e) Required Recordkeeping and Audits. The candidate or officer, and the treasurer of
18 the legal defense committee, are subject to recordkeeping requirements specified in Section
19 84104 and shall keep separate detailed accounts, records, bills, and receipts, for each legal
20 proceeding including documentation to support the basis and timing, as set forth in subdivision
21 (i)(3), for raising legal defense funds. The legal defense committee shall be subject to audits
22 under Chapter 10 of Title 9 of the Government Code. An audit under Section 90001 of a
23 candidate or officer, or

1 any controlled committee of the candidate or officer, shall include that candidate's or officer's
2 legal defense committee maintained during the audit period as described in Section 90002(c).

3 (f) Reporting Requirements. The legal defense committee shall file campaign statements
4 and reports pursuant to Title 9 of the Government Code at the same times and in the same places
5 as it otherwise would be required to do for any other candidate controlled committee in the
6 jurisdiction in which the legal defense committee was established.

7 (g) Contributions and Expenditures Not Subject to Certain Provisions. A contribution to
8 and an expenditure from a legal defense account under Section 85304.5 is not subject to the
9 provisions of Sections 85200 or 85201.

10 (h) State Legal Defense Accounts. A candidate or officer who is also a state candidate or
11 officer may establish a legal defense committee under Section 85304.

12 (i) Limitations. For the purposes of Section 85304.5 the following limitations apply:

13 (1) Legal defense funds may only be raised in an amount reasonably calculated to pay,
14 and may only be expended for, attorney's fees and other related legal costs.

15 (A) "Attorney's fees and other related legal costs" includes only the following:

16 (i) Attorney's fees and other direct legal costs related to the defense of the candidate or
17 officer.

18 (ii) Administrative costs directly related to compliance with the requirements of
19 subdivisions (c) and (f) and the recordkeeping requirements of subdivision (e) of this regulation.

20 (B) "Attorney's fees and other related legal costs" does not include for example expenses
21 for fundraising, media or political consulting fees, mass mailing or other advertising, or, except
22 as expressly authorized by subdivision (c) of Section 89513, a payment or reimbursement for a

1 fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to
2 any other committee controlled by the candidate or officer.

3 (2) A candidate or officer may only raise funds under this regulation for defense against a
4 civil or criminal proceeding, or for defense against a government agency's administrative
5 enforcement proceeding arising directly out of the conduct of an election campaign, the electoral
6 process, or the performance of the officer's governmental activities and duties. An
7 administrative enforcement proceeding includes a discretionary audit initiated under Section
8 90003, but not an audit initiated under Section 90001 until the candidate or officer reasonably
9 concludes that a government agency has commenced an investigation based upon the audit. A
10 candidate or officer may raise funds under this regulation and Section 85304.5 to defend against
11 an election contest conducted pursuant to Division 16 (commencing with Section 16000) of the
12 Elections Code, but may not raise or spend legal defense funds for attorney's fees and other legal
13 costs incurred in an election recount conducted pursuant to Chapter 9 (commencing with Section
14 15600) of Division 15 of the Elections Code.

15 (3) Legal defense funds may not be raised in connection with a proceeding until the
16 following has occurred:

17 (A) In a proceeding brought by a government agency, when the candidate or officer
18 reasonably concludes the agency has commenced an investigation or the agency formally
19 commences the proceeding, whichever is earlier.

20 (B) In a civil proceeding brought by a private person, after the person files the civil
21 action.

1 (j) Remaining Funds. Funds remaining in the legal defense account following payment of
2 all attorney's fees and other related legal costs for which the account and committee are
3 established shall be returned or disposed of as follows:

4 (1) If the total amount of remaining legal defense funds is more than \$5,000, the entire
5 sum shall be returned to legal defense account donors on a pro rata basis.

6 (2) Remaining legal defense funds not required to be returned under subdivision (j)(1)
7 shall be disposed of for any of the purposes set forth in subdivisions (b)(1) through (b)(5) of
8 Section 89519. Remaining legal defense funds may not be transferred, except as permitted under
9 subdivisions (b)(1) through (b)(5) of Section 89519.

10 (k) Termination and Reopening of Committees. A legal defense account and legal
11 defense committee shall be terminated, and all attorney's fees and other related costs returned or
12 disposed of, within 90 days of the date the last legal dispute for which the account and committee
13 are established has been resolved. The local ethics agency, or in the absence of an agency, the
14 FPPC Executive Director, may for good cause, and consistent with the purposes of Section
15 85304.5 and this regulation, extend the termination date or permit the candidate or officer to
16 reopen the account. The application to extend the termination date or to reopen the account shall
17 be in writing and shall include copies of all supporting documents including copies of billing
18 statements.

19 Note: Authority cited: Section 83112, Government Code. Reference: Sections 85304 and
20 85304.5, Government Code.