

May 29, 2012

Aram Shumavon  
516 Whitewood Drive  
San Rafael, CA 94903

Re: Your Request for Informal Assistance  
**Our File No. I-12-074**

Dear Mr. Shumavon:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the “Act”)<sup>1</sup> and is based on the facts presented. The Fair Political Practices Commission (“the Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Because your question is general in nature and not limited to any specific facts or decisions, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTIONS

1. Does the Act’s one-year ban apply to a former designated employee’s new company or that company’s other employees?
2. Does the one-year ban allow a former governmental employee to appear before an administrative law judge at his former agency?

### CONCLUSION

1. No. The one-year ban applies only to the former designated employee and does not extend to his new employer.

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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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. Yes. A former designated employee may appear before an administrative law judge, per Section 87406(c).

### **FACTS**

You are a former designated employee of the California Public Utilities Commission (the “CPUC”). You left state service on August 31, 2011 and you are now the Executive Director of the Distributed Energy Consumer Advocates (“DECA”). DECA is a non-profit corporation that informs and educates residential and small commercial electric service customers of their options and rights to make and sell their own electricity. DECA advocates for those customers in a variety of ways, including before the CPUC.

Your organization will occasionally appear before the CPUC and before administrative law judges at the CPUC in representing its clients and members. Since becoming executive director of DECA, you have not personally “appeared” before the CPUC. You have stated that you understand that communications between you and CPUC staff for the purpose of influencing a decision is prohibited under the one-year ban. You have limited your inquiry to the one-year ban.<sup>3</sup>

### **ANALYSIS**

Section 87406(d)(1) of the Act provides:

“No designated employee of a state administrative agency . . . for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing 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. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers’ Compensation Appeals Board.”

*Does the One Year Ban apply to DECA or its other employees?*

The one-year ban applies to the former “designated employee of a state administrative agency.” The one-year ban therefore applies to you as the designated employee, not to your current employer. Additionally, the Act does not prohibit others from DECA from

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<sup>3</sup> You have limited your inquiry to the one-year ban. We have enclosed a fact sheet on the permanent ban for your information.

communicating with or appearing before the CPUC or an administrative law judge, unless the other employees with DECA are independently subject to the Act and specifically the one-year ban.

We have previously advised that a former agency official may draft proposals on a client's behalf that will be submitted to the official's former agency if the official is not identified in connection with the client's efforts to influence the agency. (See *Stephenson* Advice Letter, No. I-10-127; *Cook* Advice Letter, No. A-95-321.) Similarly, a former agency official may use his or her expertise to advise clients on the procedural requirements, plans, or policies of the official's former agency so long as the employee is not identified with the employer's efforts to influence the agency.<sup>4</sup> (See *Stephenson, supra*; *Perry* Advice Letter, No. A-94-004.)

*Does the Act permit you to appear before an Administrative Law Judge at the CPUC?*

You have asked specifically whether the Act permits you personally to appear before an ALJ at the CPUC. The Act exempts appearances before an ALJ from the one year ban. In the *Harris* Advice Letter, No. A-10-183a, we advised that communications that relate to a hearing before an ALJ and that are linked to that hearing are also exempted if they occur after an "accusation" has been filed. While we do not know the details of the proceedings before the ALJ under your facts, we recommend to you the *Harris* Advice letter, in which we advised based on the point after which an accusation is filed:

"At this point, the parties and their attorneys typically engage in discovery and in settlement discussions. At the conclusion of discovery, if the parties have not settled, the matter proceeds to a hearing before an ALJ. In light of this interconnected procedure, we see no reason to distinguish between an appearance before an ALJ and pre-hearing communications relating to a matter that, if not settled, will be heard by an ALJ. Interpreting the extension in this manner raises the question: at what point is the exception applicable to pre-hearing communications? Because all prehearing communications are interconnected with an appearance before an ALJ, the exception applies once a person reasonably concludes that a government agency has commenced an investigation." (*Harris, supra.*)

The Act allows you to appear in front of an ALJ while representing DECA. You have stated that you are aware of the confines of the one-year ban as well as the permanent ban. If you have further questions regarding applying either of these, please write in again for clarification.

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<sup>4</sup> Note that this exception applies solely to the one year ban, but does not apply to the permanent ban. (See Regulation 18741.1 (copy enclosed).)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heather M. Rowan  
Counsel, Legal Division

HMR:jgl

Enclosure