

September 24, 2012

Margo Baxter  
Special Assistant  
L. A. County District Attorney's Office  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012-3210

Re: Your Request for Informal Assistance  
**Our File No. I-12-119**

Dear Ms. Baxter:

This letter responds to your request for advice, on behalf of Los Angeles County District Attorney Steve Cooley, regarding the revolving door provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A) and (c)(4)(A).) In addition, this letter 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 questions are general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTIONS

1. After leaving office, may the former District Attorney appear before or communicate with the District Attorney's Office in regards to the office's internal policies or procedures?
2. May the former District Attorney ask the District Attorney's Office to support or oppose legislation, or propose or draft legislation on the office's behalf?

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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).)

3. Is the former District Attorney prohibited from representing criminal defendants prosecuted by the District Attorney's Office?

4. May the former District Attorney appear before or communicate with other county officials outside of the District Attorney's Office, such as the County Board of Supervisors or the County's Chief Executive Officer?

### **CONCLUSIONS**

1. The former District Attorney is prohibited from making an appearance or communication before the District Attorney's Office for the purpose of influencing a decision regarding the office's internal policies or procedure if he is being compensated to make the appearance or communication on behalf of another person.

2. The former District Attorney is prohibited from making an appearance or communication before the District Attorney's Office for the purpose of influencing a decision regarding the office's support or opposition of legislation if he is being compensated to make the appearance or communication on behalf of another person.

3. The former District Attorney is not prohibited from representing a criminal defendant prosecuted by the District Attorney's Office or who may be prosecuted by the office.

4. The former District Attorney is not prohibited from appearing before or communicating with county officials outside of the District Attorney's Office.

### **FACTS**

Steve Cooley is currently the elected Los Angeles County District Attorney and plans to leave office in December 2012. Mr. Cooley seeks assistance regarding the Act's revolving door rules for local officials (Section 87406.3), and more specifically whether those rules prohibit him from influencing the office's internal policies and procedures, asking the office to support or oppose legislation or proposing or drafting legislation on the office's behalf, representing criminal defendants prosecuted by the office, or appearing before other county officials such as the County Board of Supervisors or the County's Chief Executive Officer.

### **ANALYSIS**

Local government officials who leave governmental service are subject to the Act's one-year ban for local officials in Section 87406.3, also known as the "local one-year ban."<sup>3</sup>

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<sup>3</sup> All public officials, including local officials, leaving governmental service are also subject to restrictions when negotiating prospective employment. Under Section 87407 and Regulation 18747, prior to separation from government service, a public official is prohibited from making, participating in making, or influencing a "governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment." Additionally, the Act's conflict-of-interest provisions prohibit an official

Generally, this restriction prohibits certain former local officials from communicating with their former agencies, for compensation and in representation of another person, for the purpose of influencing any legislative or administrative actions, including quasi-legislative and quasi-judicial actions, or any discretionary actions involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.

Section 87406.3(a) provides:

“A local elected official . . . shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, 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.”

As an elected official, Mr. Cooley is a public official subject to the local one-year ban after leaving office. (See Regulation 18746.3(a)(1).) To determine whether Mr. Cooley is prohibited from making an appearance or communication after leaving office, Regulation 18746.3(b) provides the following six-step analysis.

**Step One: Has the local official left office or employment?**

Regulation 18746.3(b)(1) provides that the local one-year ban applies when the official permanently leaves, or takes a leave of absence, from that particular office or employment specified in Regulation 18746.3(2). For purposes of the local one-year ban, Regulation 18746.4(b) states the following:

“[T]he date on which an official permanently leaves office or employment is the date on which the official is no longer authorized to perform the duties of the office or employment, and stops performing those duties, including making, participating in making, or attempting to use his or her official position to influence any governmental decision.”

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from making, participating in making, or influencing any governmental decision with a reasonably foreseeable material financial effect on the source of promised income. (See Sections 87100, *et seq.* and Regulations 18700, *et seq.*) If Mr. Cooley needs additional assistance regarding these provisions, he should seek further advice describing the governmental decision involving his prospective employer.

**Step Two: Is the appearance or communication within 12 months of leaving office or employment?**

After leaving office or employment as specified in Step One, a former official is subject to the local one-year ban if the official makes an appearance or communication “within 12 months after leaving that office or employment.” (Regulation 18746.3(b)(2).)

**Step Three: Is the local official compensated for the appearance or communication?**

An appearance or communication is prohibited only if the former official is compensated, or promised compensation. (Regulation 18746.3(b)(3).) “Compensation” has been defined broadly. The Commission has advised that the term “compensation includes remuneration or payment of any kind . . .” (*Souza* Advice Letter, No. A-06-114.) “Payment” is defined to mean a “payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.” (Section 82044.)

**Step Four: Will the appearance or communication be made on behalf of any other person?**

An appearance or communication is prohibited only if “made on behalf of any person as an agent, attorney, or representative of that person.” (Regulation 18746.3(b)(4).) Note, however, that an appearance or communication made by an official to represent his or her own personal interests is not prohibited or limited unless the appearance or communication is made in a quasi-judicial proceeding in which the official participated while serving as a local agency employee or officer. (*Ibid.*)

**Step Five: Is the appearance or communication made for the purpose of influencing legislative or administrative action, or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property?**

An appearance or communication is prohibited if “made for the purpose of influencing any legislative or administrative action, or any discretionary act involving the issuance, amending, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.”

Regulation 18746.3(5) provides the following definitions:

“(A) ‘Administrative action,’ as defined in Section 87406.3(d)(1), means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding including a ratemaking proceeding, whether quasi-legislative or quasi-judicial. ‘Administrative action’ does not include any action that is solely ministerial.

“(B) ‘Quasi-legislative’ means any proceeding involving the adoption of rules of general applicability, including but not limited to annexations of territory to a city or district, adoption or amendment of zoning ordinances, adoption of regulations, or granting of franchises.

“(C) ‘Quasi-judicial’ means any proceeding that determines the rights of specific parties, or applies existing laws to specific situations, including but not limited to any proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits.

“(D) ‘Legislative action,’ as defined in Section 87406.3(d)(2), means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.”

**Step Six: Is the appearance or communication made before the official’s former agency?**

An appearance or communication is prohibited only if it is made before the local governmental agency for which the official held an office or employment that subjected the official to the local one-year ban or any other local governmental agency whose budget, personnel, and other operations are subject to the direction and control of that agency. (Regulation 18746.3(6).)

*1. After leaving office, may the former District Attorney appear before or communicate with the District Attorney’s Office in regards to the office’s internal policies or procedures?*

The local one-year ban potentially applies to appearances or communications in any “administrative action,” which is broadly defined to include the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of *any matter . . .* (Emphasis added.) This broad definition of “administrative action” includes any discretionary action involving the internal policies and procedures of the District Attorney’s Office. Accordingly, Mr. Cooley is prohibited for one year after leaving office from making an appearance or communication before the District Attorney’s Office for the purpose of influencing a decision regarding the office’s internal policies or procedure if he is being compensated to make the appearance or communication on behalf of another person. We note that the Act does not prohibit Mr. Cooley from making an appearance or communication before the District Attorney’s Office to influence a decision regarding the office’s internal policies or

procedures if Mr. Cooley is not receiving compensation for the appearance or communication, or is making the appearance or communication in representation of his own personal interests.<sup>4</sup>

*2. Can the former District Attorney ask the District Attorney's Office to support or oppose legislation, or propose or draft legislation on the office's behalf?*

As broadly defined by Section 84706.3 for purposes of the local one-year ban, "administrative action" encompasses any decision by the District Attorney's Office regarding its support or opposition of legislation. Mr. Cooley is prohibited after leaving office from making an appearance or communication before the District Attorney's Office for the purpose of influencing a decision regarding the office's support or opposition of legislation, including legislation proposed or drafted on the office's behalf, if he is being compensated to make the appearance or communication on behalf of another person. We note that the Act does not prohibit Mr. Cooley from making an appearance or communication before the District Attorney's Office to influence a decision regarding the office's support or opposition of legislation if Mr. Cooley is not receiving compensation for the appearance or communication or is making the appearance or communication in representation of his own personal interests.

*3. Is the former District Attorney prohibited from representing criminal defendants prosecuted by the District Attorney's Office?*

The local one-year ban applies only to an appearance or communications before the official's former agency. To determine whether Mr. Cooley is prohibited after leaving office from representing a criminal defendant prosecuted by the District Attorney's Office, we must first determine whether representing a criminal defendant prosecuted by the District Attorney's Office is an appearance or communication before the official's former agency.

For comparison, the one-year ban for state officials specifically states that the ban does not apply to appearances or communications "in a court of law, before an administrative law judge, or before the Workers' Compensation Appeals Board." (Section 87406(c) and (d).) Applying this same principle, we do not find that the local one-year ban extends to appearances or communications in a court of law. Moreover, because prehearing communications are interconnected with an appearance before a court, we have previously advised that the state one-year ban does not prohibit appearances or communications in representation of a person if the former official could reasonably conclude that the person is under investigation by the official's former agency. (*Harris Advice Letter*, No. A-10-183a.) Similarly, Mr. Cooley is not prohibited

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<sup>4</sup> "Personal interests" include, but are not limited to:

"(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

"(B) A business entity wholly owned by the official or members of his or her immediate family.

"(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control."

(Regulation 18700.1(b)(1).)

under the local one-year ban from representing a criminal defendant prosecuted by the District Attorney's Office or who may be prosecuted by the office.<sup>5</sup>

*4. May the former District Attorney appear before or communicate with other county officials outside of the District Attorney's Office, such as the County Board of Supervisors or the County's Chief Executive Officer?*

As stated above, the local one-year ban applies to appearances or communications before the official's former agency. Pursuant to Regulation 18746.3(b)(6), an official's former agency includes both the agency for which the official worked for or represented and any agency whose budget, personnel, and other operations are subject to the direction and control of that agency. Nonetheless, the Los Angeles District Attorney's Office is distinct from the County of Los Angeles because the office's operations are primarily controlled by the Los Angeles District Attorney, an independently elected official. Accordingly, the local one-year ban does not apply to Mr. Cooley's appearance or communications with county officials outside of the District Attorney's Office.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Brian G. Lau  
Counsel, Legal Division

BGL:jgl

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<sup>5</sup> Because the Commission may only provide advice within the confines of the Act, we express no opinion regarding Mr. Cooley's representation of a criminal defendant if Mr. Cooley has previously participated in the investigation of the defendant prior to leaving office. For actions in which Mr. Cooley previously participated, we urge you to consult any other laws that may apply including, but not limited to, rules of professional conduct.