



## MEMORANDUM

**To:** Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne  
**From:** Hyla Wagner, General Counsel  
**Subject:** Legal Division's Monthly Report  
**Date:** September 4, 2015

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### A. PENDING LITIGATION

*Board of Pilot Commissioners for the Bays of San Francisco, San Pablo & Suisun v. Fair Political Practices Commission.* The Board of Pilot Commissioners filed a writ of mandate in Sacramento Superior Court on March 3, 2015, seeking relief from the Commission's decision and order in *Pacific Merchant Shipping Association v. Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun*. Following an administrative hearing, the parties presented oral argument to the Commission at its July 2014 meeting, and the Commission found that the Port Agent should be designated in the Board of Pilot Commissioners' conflict of interest code under Government Code section 87300. The Board of Pilot Commissioners challenges the decision on both jurisdictional and statutory grounds. A hearing on the writ will be held on September 25, 2015.

### B. OUTREACH AND TRAINING

Senior Commission Counsel Sukhi K. Brar presented at an Ethics Roundtable hosted by Assemblymembers Henry T. Perea and Christina Garcia in Fresno on August 14, 2015. Ms. Brar informed local elected and appointed officials of the rules that apply to them under the Political Reform Act and Government Code Section 1090. Ms. Brar also led a group discussion on these issues with the participants using hypothetical situations that implicate these rules. A summary of the 2015 presentations conducted to date by the Legal Division is provided at the end of this report.

### C. 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 Political Reform Act (the Act)<sup>1</sup> unless a violation is proven in a subsequent proceeding.*

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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

The matter that follows was decided based solely on the papers. The respondents did not request a probable cause hearing.

***In the Matter of Rabbi Nachum Shifren, and Committee To Elect Rabbi Shifren, FPPC No. 14/1109.*** On August 12, 2015, probable cause was found to believe that the named Respondents (Rabbi Nachum Shifren and Committee to Elect Rabbi Shifren) committed seven violations of the Act, as follows:

- COUNT 1: Respondents, in or about 2010, purposefully or negligently caused, or aided and abetted, Paul Anthony Novelly to make a contribution of \$22,680 to Committee to Elect Rabbi Shifren in a name other than the name by which he was identified for legal purposes in violation of Section 84301.
- COUNT 2: Respondents, in or about 2010, purposefully or negligently caused, or aided and abetted, Jared Novelly, Chandra Niemann and Thomas Niemann to make a contributions totaling \$9,720 to Committee to Elect Rabbi Shifren in a name other than the names by which they were identified for legal purposes in violation of Section 84301.
- COUNT 3: Respondents, in or about 2010, purposefully or negligently caused, or aided and abetted, Paul Anthony Novelly to make a contribution to the Republican Central Committee of Los Angeles County on the condition or with the agreement that the contribution would be ultimately contributed to Committee to Elect Rabbi Shifren, and the intermediary and the original contributor information for the earmarked contribution was not disclosed in violation of Section 85704.
- COUNT 4: Respondents, in or about 2010, purposefully or negligently caused, or aided and abetted, Jared Novelly, Chandra Niemann and Thomas Niemann to make contributions to the Republican Central Committee of Los Angeles County on the condition or with the agreement that the contributions would be ultimately contributed to Committee to Elect Rabbi Shifren, and the intermediary and the original contributor information for the earmarked contributions were not disclosed in violation of Section 85704.
- COUNT 5: Respondents, on or about August 25, 2010, received and accepted a contribution of \$22,680 from Paul Anthony Novelly, which was in excess of the \$3,900 individual contribution limits applicable to Shifren and Committee in violation of Section 85301 and Regulation 18545, subdivision (a)(1).
- COUNT 6: Respondents, on or about October 4, 2010, filed a false pre-election campaign statement for the reporting period of July 1 through September 30, 2010, concealing the violations described in Counts 1 through 4 by falsely reporting that the \$32,400 contribution was received from Republican Central Committee of

Los Angeles County—when in fact the contribution was received from four members of the Novelty family, and Republican Central Committee of Los Angeles County was merely an intermediary for the transaction in violation of Section 84211, subdivision (f).

COUNT 7: Respondents failed to maintain the detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to comply with the campaign reporting provisions of the Act, in or about January 1 through December 31, 2010, in violation of Section 84104.

#### **D. LEGAL ADVICE**

In August 2015, the Legal Division attorneys responded to the following requests for legal advice:

- ***Email & Telephone:*** Responded to more than 86 email and telephone requests for legal advice.
- ***Advice Letters:*** Received 22 advice letter requests and issued 8 advice letters.
- ***Section 1090 Letters:*** Received 9 advice letter requests concerning Section 1090 and issued 7 advice letters. This year to date we have received 38 requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

#### **E. ADVICE LETTER SUMMARIES**

##### **Campaign**

###### **Michael Howerton**

**A-15-122**

A newspaper gives a contribution to a columnist if the columnist is paid to discuss his candidacy for elective office. An exception applies if 1) the other candidates for the same office are invited to write about their candidacy and 2) the newspaper does not pay for the submissions.

##### **Conflict of Interest**

###### **Joseph M. Montes**

**A-15-103**

For decisions regarding the future development of a city block including a possible movie theatre, there are insufficient facts to indicate that there will be no reasonably foreseeable measurable impact on councilmember's interest in her residence, which consists of 7 acres and is within 500 feet of the project. Accordingly, the councilmember is prohibited from making, participating in making, or using her position to influence the decisions. However, we do not find a foreseeably measurable impact on another councilmember's interest in his non-profit employer, which operates a live production theatre in the downtown area. Barring any other interests, the Act does not prohibit this councilmember from taking part in the decisions.

**Mike Tracy****A-15-129**

The Ventura City Council will be considering a proposal to build 55 luxury single family homes on approximately 40 acres of residentially zoned property and create approximately 175 acres as permanent open space on the hillside in midtown Ventura. The proposed development is directly above the councilmember's existing hillside neighborhood. Based on the substantial scope of the entire project (including the proposed development and open space), it is reasonably foreseeable that the government decisions will have a material financial effect on the councilmember's properties and therefore he is prohibited from participating.

**Jennifer Lee****A-15-130**

The Ventura City Council will be considering a proposal to build 55 luxury single family homes on approximately 40 acres of residentially zoned property and create approximately 175 acres as permanent open space on the hillside in midtown Ventura. The proposed development is directly above the councilmember's existing hillside neighborhood. Based on the substantial scope of the entire project (including the proposed development and open space), it is reasonably foreseeable that the government decisions will have a material financial effect on the councilmember's properties and therefore she is prohibited from participating.

**Randolph S. Hom****A-15-133**

Three city council members have a conflict of interest in a vote to approve a property tax reimbursement where each owns property that would receive the reimbursement. However, under the "legally required participation" exception, one of them may vote to establish the minimum number of members needed for approval by a supermajority.

**Jeff Ginsburg****I-15-138**

The city is considering a project that would revitalize approximately 35.6 acres of the Pier and Harbor area. The main components include proposed demolition of approximately 221,347 square feet of existing structures, demolition/renovation of the existing pier parking structure, and construction renovation of up to approximately 523,732 square feet (289,906 square feet net new development) to include retail, restaurant, creative office, specialty cinema, a market hall, and a boutique hotel. The proposed project includes public recreation enhancements such as a new boat launch ramp, improvements to Seaside Lagoon, new parking facilities, and pedestrian, and bicycle pathways. Site connectivity would be improved by the establishment of a new pedestrian bridge across the Redondo Beach Marina Basin 3 entrance and the reconnection of Pacific Avenue. The councilmember owns numerous commercial properties, business, and has a variety of sources of income in the general vicinity of the project. Due to the councilmember's numerous interests near the Project site, he may not participate in the city council's discussions and decisions related to the Project.

**Anne Russell****A-15-139**

A volunteer hearing administrator is a public official subject to the Act's disclosure and disqualification provisions, even if he or she is not compensated for the position. Furthermore, the hearing administrator is making and participating in making governmental decisions even though his or her decision may be appealed. Even if the decision is appealed, the hearing administrator has made the initial investigation and issued an opinion which required the

exercise of independent judgment and discretion. While an appeal would result in a review of the decision, the city appeals boards would rely on information provided by the hearing administrator.

### **Lobbying**

#### **Julie M. Snyder**

**A-15-150**

Any lobbyist who registers for one legislative session, and was previously registered for a prior legislative session, is renewing his or her registration, not submitting a new registration. Since the lobbyist was registered for the previous legislative session, she is considered to have renewed her registration. Nothing in the Act or its implementing regulations gives the Commission authority to waive the ethics course requirement.

### **Mass Mailing**

#### **Deborah M. Cooke Jackson**

**A-15-144**

The Board of Equalization (BOE) may utilize the exception for essential mailings in Regulation 18901(b)(6) to send out a notice to taxpayers informing them of the specific Board Member that has been designated to be a point of contact for taxpayers in dealing with each of the BOE's Out-of-State District offices.

### **Section 1090**

#### **Jeffrey Steen**

**A-15-097**

An elected member of a state board is prohibited from participating in decisions involving potential consulting clients who are applying for grants from board. The official has a conflict of interest in the grant decisions under the Act and Section 1090 because he has a financial interest in his clients, and it is reasonably foreseeable that the decisions will have a material financial effect on them.

#### **Amy R. Webber**

**A-15-127**

Section 1090 precludes the City of Long Beach from entering a sales tax sharing agreement with a corporation and consultant where the consultant advises and assists the city on such matters and assisted the city in developing the sales tax sharing policy at issue.

#### **Tom Hammond**

**A-15-134**

A county supervisor who owns a gas station in a remote part of the county does not violate Section 1090 when county employees use his gas station to fill up their county vehicles, including emergency vehicles, where the county pays the same rate as the general public, he has no contract with the county and does not solicit county business. In any event, the "rule of necessity" would apply where the only alternative source for gas is 35 miles away from his gas station.

#### **Steven L. Dorsey**

**A-15-136**

A city council member may participate in decisions regarding contracts for a streetscape improvement project where he provides services to the owner and operator of an amusement

park on the same street. Under the Act, it is not reasonably foreseeable that the decisions would have a material financial effect on this source of income, given the large size of the park, and its owner, and the modesty of the proposed improvements. Under Section 1090, the councilmember does not have a discernible financial interest in the contracts.

**Sheila Carbahal****A-15-137**

Section 1090 prohibits a cemetery district employee from participating in a contract in which the district may purchase a piece of construction equipment from her husband's company. Provided the employee recuses herself from any phase of the contract's negotiation or formation, however, the district may enter the contract.

**Sonia R. Carvalho****A-15-140**

Section 1090 does not prohibit the mayor of Claremont from taking part in decisions relating to a contract under which the city of La Verne would provide water services to Claremont residents where he already receives such services from La Verne. Because the contract is unlikely to affect Claremont residents already receiving water services from La Verne, he does not have a financial interest in the contract.

**Candice K. Lee****A-15-149**

Mr. Lee is the Director of Community Development for the City of Covina. Because Mr. Lee's spouse has taught at a public school for four years prior to the consideration of a contract between the city, the school district and a developer, pursuant to Section 1091.5(a)(6), Mr. Lee does not have a financial interest in his spouse's salary from the district. Thus, Mr. Lee may participate in the decisions in question consistent with Section 1090. Further, based on the "government salary" exception in Section 82030(b)(2) of the Act, Mr. Lee will not have a conflict of interest under the Act and may participate in the decisions.

**SEI****Sara Urakawa****A-15-115**

While the public official's notary income is derived from payments by the parties to real property transactions, the title insurance companies are the sources of the notary income. The official is contracting directly with the title insurance companies and the buyers and sellers/borrowers exercise no control over the choice of notary. Because the public official works for the Department of Insurance, and the Dept. of Insurance regulates title insurance companies under California Insurance Code Sections 12340.3, 12340.4, and 12340.6, the notary income must be reported on the official's Form 700 Statement of Economic Interests.

## F. UPCOMING REGULATIONS

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

### October 15, 2015

- **Regulation 18225.7 Made at the Behest; Regulation 18550.1 Independent and Coordinated Expenditures.** Commission regulations contain guidelines to ensure that political expenditures made by outside groups and entities are truly independent of the candidate they are supporting. California's regulations on independent expenditures seek to require the highest degree of separation permitted by law between the outside spender and the candidate. To make sure expenditures by outside groups are actually independent of a candidate or measure committee, additional presumptions will be proposed for when an expenditure will be considered to be coordinated with a candidate or committee. In addition, the proposal will consider merging Regulations 18225.7 and 18550.1 into one regulation because they contain virtually the same language.

### November 19, 2015

- **Regulation 18630 Complaints - Enforcement Procedures.** Revision to Regulation 18360 to reflect current and future procedures and include the Commission's press policy. Review of other Enforcement procedural regulations.

### December 17, 2015

- **Regulation 18313: Forms and Manuals.** Consider modifying Regulation 18313's requirement for formal Commission approval of manuals so individual chapters of new manuals can be updated quickly to keep current with changes to the Act or regulations.
- **Regulation 18313.5: Online Posting.** Amend subdivision (c) to permit the FPPC to use the standard retention periods for forms posted on the website (including filed Form 700s, behested payments reports, and warning, advisory and closing letters) and not require Commission approval before each removal.
- **Regulation 18996: Scope of Audits and Investigations.** Last year Section 90002(c) was completely deleted to authorize the Commission to make preelection audits of specific transactions. Subsection (c) of Section 90002 stated what the audits will cover and what the audit period would be for candidate controlled, primarily-formed, and measure committees, as well as general purpose committees. Regulation 18996 still refers to Section 90002(c). In light of the repeal of Section 90002(c), amend Regulation 18996 to state clearly what the mandatory audits pursuant to Section 90001 will cover. Enforcement is still following the same rules as in deleted Section 90002(c).

2015 Date	Location	Presentations	Participants
August 14	Fresno	Senior Commission Counsel Sukhi K. Brar presented at an Ethics Roundtable hosted by Assemblymembers Henry T. Perea and Christina Garcia. Ms. Brar informed local elected and appointed officials of the rules that apply to them under the Act and Government Code Section 1090. Ms. Brar also led discussion using hypothetical situations.	30+ elected and appointed public officials and legislative staff
July 18	Los Angeles	Senior Commission Counsel Emelyn Rodriguez conducted ethics workshop for elected officials organized by Assemblymember Garcia, including an overview of campaign and conflicts of interest laws, and an interactive discussion about state ethics rules using case studies.	30+ elected and appointed public officials and legislative staff
April 15	Orange County	Senior Commission Counsel Emelyn Rodriguez participated in an Ethics Roundtable Discussion organized by Orange County Supervisor Todd Spitzer and presented an overview of the Commission (including the agency's background, history, structure, and jurisdiction) and a summary of campaign and conflicts of interest laws that the Commission interprets and enforces.	40 attendees from Orange County Counsel's Office, the District Attorney's Office, the LA Ethics Commission, and Orange and Los Angeles Counties, and the Legislature
Jan. 22 Feb. 26 April 9 June 16	Sacramento	Senior Commission Counsel Heather M. Rowan participated in four sessions of the Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics' lobbyist ethics training course, required for all registered lobbyists in California.	Approximately 300 at each session. All registered lobbyists and placement agents