

1 Amend 2 Cal. Code Regs., Section 18316.5 to read:

2 **§ 18316.5. Application of Government Code Section 83116.5.**

3 (a) The Commission will not apply Government Code Section 83116.5 to find a violation  
4 of this title<sup>1</sup> by a person who provides incorrect advice interpreting any provision of this title  
5 which causes the advisee to violate this title under any of the following circumstances:

6 (1) Government Employees or Contractors. If the person is an employee of or under  
7 contract to a state or local government agency and is giving advice interpreting the provisions of  
8 this title as part of the person's government contract or employment.

9 (2) Private Sector Filers. If the person is not exempted by subdivision (1), and the person  
10 has filing or reporting obligations under this title, if either of the following applies:

11 (A) There is no direct relationship between the advice given and the duties or activities of  
12 the position for which the person has filing or reporting obligations; or the client being advised is  
13 not the client for whom the filing occurs; or

14 (B) If the person's conduct in giving the advice was not grossly negligent. "Grossly  
15 negligent" means that the person giving an incorrect interpretation failed both to diligently  
16 research the subject related to the advice given and to use ~~his or her~~ informed judgment in  
17 providing the advice, and the advice was clearly erroneous.

18 A person will be deemed to have "diligently researched" the subject related to the advice  
19 given if ~~he or she has~~ the person reviewed the applicable provisions of this title and the  
20 regulations, opinions, and manuals of the Commission, including the compilation of such  
21 documents contained on the agency website at [www.fppc.ca.gov](http://www.fppc.ca.gov), as well as any applicable

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<sup>1</sup> All references to "this title" are references to Title 9, Sections 81000- 91015 of the Government Code.

1 reported appellate court decisions and the California Code of Regulations.

2 (3) Attorneys in Private Capacity. If the person is not a government employee or  
3 contractor, as defined in subdivision (a)(1), or a private sector filer, as defined in subdivision  
4 (a)(2), and the person is an active member of the State Bar of California whose only service in  
5 connection with the violation was providing legal advice and who was not also engaged in the  
6 planning, organizing, or directing of an activity from which the violation occurred. "Legal  
7 advice" means the rendering of oral or written advice including the preparation of documents and  
8 reports incidental to the rendering of such advice, but shall not include the preparation of any  
9 report or document required to be filed under this title by the person providing the advice.

10 (b) This regulation is not applicable where a person renders advice which is intended to  
11 result in a violation of this title. Furthermore, nothing in this regulation shall be construed to  
12 exempt a person from liability for a violation of any other provision of this title.

13 Note: Authority cited: Section 83112, Government Code. Reference: Sections 83116 and  
14 83116.5, Government Code.