



California Fair Political Practices Commission

June 21, 1993

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Re: Your Request for Advice
Our File Nos. A-93-030,
A-93-099 and A-93-109

Dear Mr. Ahern, Mr. Felts and Ms. Jamba,

This is in reply to the questions you have posed concerning the filing requirements for various court judges, commissioners and referees under the Political Reform Act (the "Act").¹

Though your letters were written to us individually, we have consolidated our reply because of the similarity of your questions. We have found the law on the subject of court commissioners and referees to be quite variable, depending on the jurisdiction in question. Accordingly, we apologize for the delay in responding to your questions. However, we hope this letter addresses your concerns and will clarify the Commission's approach to this issue.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000 *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

QUESTIONS

1. Are pro tem judges required to file statements of economic interests under the Act?
2. Are temporary court commissioners required to file statements of economic interests under the Act?
3. Are court referees, permanent or temporary, required to file statements of economic interests under the Act?

CONCLUSIONS

Questions 1 and 2.

Pro tem judges and temporary court commissioners who serve or expect to serve 30 days or more in a 12-month period must file Form 721 statements of economic interests under the Act. Otherwise they need not file unless they are required to file Form 730 statements of economic interests under the court's conflict of interest code.

Questions 3.

Court referees are generally not required to file Form 721 statements of economic interests under the Act. Therefore, to the extent the Commission's 1992-93 Statement of Economic Interests Form 721 and Instructions is inconsistent with this letter, this letter applies. However, individuals who have the title of "referee" but have been appointed to office as a court commissioner under a statute authorizing that appointment are required to file Form 721 statements of economic interests under the Act. In addition, even if a referee has not been appointed as a court commissioner, we believe that individual, if a non-volunteer court employee, should be designated in the court's conflict of interest code and should be required to file a Form 730 statement of economic interests.

FACTS

Under Section 87200, judges and court commissioners are required to publicly disclose their various economic interests by filing a statement of economic interests with the court.

The Commission has advised that this requirement applies to pro tem and retired judges, as well as temporary and part time court commissioners. Furthermore, the Commission has advised that this requirement applies to court referees.

ANALYSIS

Section 87200 states:

This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission,

members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

(Emphasis added.)

Accordingly, under Sections 87202-87210, judges and court commissioners are required to file detailed statements of economic interests (Commission Form 721).

In 1985, the Commission adopted Regulation 18724, which clarified the filing requirements for part time or temporary court commissioners, pro tem judges and retired judges who occasionally hear cases.

Regulation 18724 states:

Court commissioners, pro tem or retired judges shall not file statements of economic interests pursuant to Government Code Sections 87200, et seq., if they serve or expect to serve less than 30 days in any 12 month period. Provided, however, that this section shall not excuse these individuals from any filing obligations imposed by a conflict of interest code adopted pursuant to Government Code Sections 87300, et seq.

Thus, since 1985 the Political Reform Act has been interpreted to require retired and pro tem judges, as well as temporary and part time court commissioners, to file Form 721 statements of economic interests if they serve or expect to serve 30 days or more in any 12-month period. For such officials who serve less than 30 days in a 12-month period, the Commission has permitted the courts to determine whether it is necessary to include them in a conflict of interest code and thus file statements of economic interests pursuant to Section 87302 (Commission Form 730).

More problematic is the question of court referees and whether they are in fact "commissioners of the court" under Section 87200. If they are, then they too must file Form 721 statements of economic interests pursuant to Section 87200 and Regulation 18724. If they are not, then they only need to file Form 730 statements of economic interests if the court's conflict of interest code requires them to do so. (See Section 87302.)

Defining who is and is not a "court commissioner" under California law is a difficult task. Most superior courts are

generally authorized to employ court commissioners under Section 70141. In addition, there is authority for specific counties to employ court commissioners set forth throughout Sections 70141.1 through 70148. Likewise, specific municipal and justice courts are authorized to employ court commissioners (see Sections 72600 through 73399.7).

In addition to these specific references to "court" commissioners, we have found authority for municipal courts to employ "traffic trial commissioners" (Section 72450) and for specific superior courts to employ "probate commissioners" (see, for example, Sections 69894.1, 69897, 70142.11 and 70142.12).² In the case of "traffic trial commissioners," Section 72450 specifically endows them with the authority to "exercise all the powers and perform all the duties authorized by law to be performed by commissioners of municipal courts." Likewise, it appears that most "probate commissioners" have the powers of court commissioners, or in fact, are court commissioners specifically assigned to the probate court. (See Section 69897 and Sections 70142.11 and 70142.12.)³

Courts are also authorized to employ various forms of "referees." Section 72400 permits municipal courts to appoint "traffic referees." Section 69894.1 permits the Los Angeles County Superior Court to employ "referees" and "juvenile traffic referees." Welfare and Institutions Code Section 247 permits superior courts, through the presiding judge of the juvenile court, to appoint juvenile court "referees."⁴

However, some statutory provisions confuse the issue. For example, Section 72403 states that municipal court traffic referees "have the power of a deputy clerk.... In addition, if he possesses the qualifications prescribed by law for such office, he may be appointed...as a commissioner of the court...." Also, some courts are authorized to utilize their commissioners as juvenile court referees. (See Sections 70142.11, 70142.12 and 70142.13.)

² We do not purport to have located or to list all of the statutory sections under which court commissioner or similar "commissioner" positions have been created.

³ Though not among the questions posed to us, we believe that "traffic trial commissioners" and "probate commissioners" who, by statute have the same powers as "court commissioners," are likewise subject to Section 87200. The general powers and duties of court commissioners are set forth in Code of Civil Procedure Section 259.

⁴ We do not purport to have located or to list all "referee" positions authorized by statute.

Thus, it appears that some court commissioners may be doing work that is usually reserved to referees and could hold the title of "referee," though they are in fact commissioners.

Our reading of these provisions makes it clear that not all court "referees" should be classified as "court commissioners" for purposes of Section 87200. We believe that Section 87200's requirements should apply only to those "referees" who, regardless of title, have been officially appointed as a court commissioner under a statute which authorizes that appointment. Persons who have been appointed to the position of referee pursuant to a statute authorizing referee appointments are not court commissioners. Therefore, the Commission's statement in its 1992-93 Statement of Economic Interests Form 721 and Instructions that all court referees are subject to Section 87200's economic disclosure is hereby modified so that it is consistent with this letter. As mentioned, however, referees not classified as court commissioners may still have economic disclosure requirements under the Act if their court requires the disclosure in its conflict of interest code. Furthermore, we believe that non-volunteer referees should be designated in their court's conflict of interest codes and required to file a Form 730 statement of economic interests.

Finally, we would like to address the complaint that individuals such as pro tem judges and temporary court commissioners, who in many cases volunteer their time to these positions without pay, must in turn make their economic interests public. The Commission understands and sympathizes with this sentiment. However, the Commission is also charged with enforcing a statute that does not make a disclosure exemption for judges and court commissioners who engage in the normal activities of these offices, but work less than full time or for little or no pay. Nevertheless, Regulation 18724 was the Commission's attempt to strike a balance, exempting from disclosure those judges and commissioners who serve for less than 30 days in a 12-month period. These individuals were seen as persons whose time is more voluntary in nature and whose participation in government should not be discouraged by public disclosure of their economic interests.

We hope that this letter has been helpful. Should you have any additional questions, please contact me at (916) 322-5901.

Sincerely,



Scott Hallabrin
Assistant General Counsel

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