



## FAIR POLITICAL PRACTICES COMMISSION

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December 3, 2001

S. Guy Puccio, CRA, RMU  
W•P Wallace Puccio  
1107 9<sup>th</sup> Street, Suite 701  
Sacramento, CA 95814

**Re: Your Request for Informal Assistance**  
**Our File No. I-01-079**

Dear Mr. Puccio:

This letter is in response to your request for advice regarding the revolving door provisions of the Political Reform Act (the "Act").<sup>1</sup> Since you are not inquiring about a particular proceeding, we are treating your request as one for informal assistance.<sup>2</sup> (Regulation 18329(b)(8)(c).)

### QUESTIONS

Does your past service as a state administrative official prevent you from participating in any proceedings or assisting your partner with any proceedings before the Department of Real Estate? May you offer legislative advocacy services on behalf of a client by appearing before the Department of Real Estate or the Department of Corporations?

### CONCLUSIONS

Permanent Ban: After termination of your employment with the State of California, you may not, for compensation, represent, aid, advise, counsel, consult, or assist in representing a client before *any* court or state administrative agency in any proceeding where the State of California is a party or has a direct and substantial interest,

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

<sup>2</sup> Pursuant to enclosed Regulation 18329(c)(3), informal assistance does not confer immunity.

and where the proceeding is one in which you participated during your tenure. Therefore, you would be prohibited from assisting your partner with any proceeding in which you yourself would be prohibited from representing a client.

One-Year Ban: For a period of one year after leaving state service, you may not, for compensation, communicate with or appear before the Department of Real Estate for the purpose of influencing administrative or legislative action or any of the actions identified in section 87406(d)(1) (cited herein). Because your service to the Department of Real Estate ended in August of 2000, this one-year period has passed, and the one-year ban is no longer in effect with regard to your appearances before this agency. The one-year ban also would not apply to the Department of Corporations since your last service to this agency terminated in the mid-nineties.

### FACTS

The following facts are based on your letter and a phone conversation with Commission staff counsel.

You are a registered legislative advocate and perform contract-lobbying services on behalf of various clients. The lobbying services in the past have included issues potentially affecting the statutory and regulatory schemes overseen by either the California Department of Corporations ("DOC") or the California Department of Real Estate ("DRE"). You have a partner, Clark Wallace, who is a former real estate commissioner. You are a former advisory commissioner to the DRE. Your service in this position ended in May 1995. However, you have performed several contracts for the DRE since then. In the summer of 1997, you prepared academic materials to be incorporated into the DRE's reference book entitled *Real Estate Reference Book*. Additionally, you were last under contract in August of 2000 to testify on the department's behalf as an expert witness in a proceeding to discipline a licensee. With regard to the DOC, you similarly testified on behalf of the DOC in disciplinary cases in the early to mid-nineties; you have not performed any services for the DOC in the past year.

As an advisory commissioner you offered opinions regarding statutory schemes. The services you performed included offering testimony at administrative law hearings regarding proposed regulatory action, offering testimony at civil and criminal trials, and the completion of projects involving the development and preparation of consumer oriented disclosure brochures, certain reference materials, standard forms, etc., to be published by the regulator. However, the testimony and expert opinions that you have rendered generally pertained to a particular issue and did not address specific parties. For example, you addressed the following issue: What types of disclosure should a mortgage broker make to private trust deed investors in multi-lender transactions?

To the best of your recollection, you have not been required to complete Form 700, the Statement of Economic Interest, as a prerequisite to providing these services. None of your consulting services has ever resulted in granting you any policy-making

authority; rather, your assignments are typically to accomplish research, to provide written reports of that research, and to offer observations and recommendations, and, on those occasions where expert testimony was required, to offer your opinion as an expert witness called to testify by either department in an administrative enforcement proceeding or other proceedings as referred to in your letter.

### ANALYSIS

Officials who leave state service are subject to two types of restrictions under the Act. The first is a permanent ban, and the second is a one-year prohibition.

#### Permanent Ban on "Switching Sides"

Sections 87401 and 87402 (collectively, the "permanent ban") prohibit former state administrative officials from advising or representing any person for compensation in any judicial or other proceeding in which the official participated while in state service. (Sections 87401 and 87402.) Specifically, section 87401 provides:

"No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

- (a) The State of California is a party or has a direct and substantial interest.
- (b) The proceeding is one in which the former state administrative official participated."

The prohibitions of sections 87401 and 87402 apply to any state administrative official if all of the following criteria are met:

- ...(1) The official has permanently left state service or is on a leave of absence.
- (2) The official is compensated, or promised compensation, for making an appearance or communication, or for aiding, advising, counseling, consulting, or assisting in representing another person, other than the State of California, in a judicial, quasi-judicial or other proceeding. However, a payment made for necessary travel, meals, and accommodations received

directly in connection with voluntary services are not prohibited or limited by this section.

(3) The official makes an appearance or communication before any officer or employee of any state administrative agency for the purpose of influencing, as defined in 2 Cal. Code Regs. Section 18746.2, a judicial, quasi-judicial or other proceeding, including but not limited to any proceeding described in 2 Cal. Code Regs. Section 18202, subdivisions (a)(1) - (a)(7).

(4) The judicial, quasi-judicial or other proceeding includes any proceeding in which the official participated personally and substantially by making, participating in the making, or influencing of a governmental decision, as defined in 2 Cal. Code Regs. Sections 18702.1 - 18702.4, but excluding any proceeding involving the rendering of a legal advisory opinion not involving a specific party or parties. Any supervisor is deemed to have participated in any proceeding which was "pending before," as defined in 2 Cal. Code Regs. Section 18438.2, subdivision (b), the official's agency and which was under his or her supervisory authority.

(5) The judicial, quasi-judicial or other proceeding is the same proceeding in which the official participated."  
(Regulation 18741.1.)

"State administrative official' means every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity." (Section 87400(b).) As a former advisory commissioner or consultant to the DRE or DOC, you are a former state administrative official for purposes of the permanent ban. (Section 87400(b).) Therefore, the permanent ban restricts your activities in the private sector. In addition, section 87402 prohibits former state administrative officials from being paid to "aid, advise, counsel, consult or assist in representing" any other person in any proceeding in which the official would be prohibited from appearing under section 87401. Therefore, you would be prohibited from assisting your partner with any proceeding in which you yourself would be prohibited from representing a client.

Please note that the permanent ban only applies to "judicial, quasi-judicial or other proceedings" in which you participated<sup>3</sup> on behalf of the DRE or DOC. A "judicial, quasi-judicial or other proceeding" is any proceeding, application, request for a

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<sup>3</sup> "Participated' means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties." (Section 87400(d).)

ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter *involving a specific party or parties* in any court or state administrative agency. (Section 87400(c).)

You have indicated that many of the opinions and testimony that you rendered did not pertain to specific parties. In those instances where your opinions or testimony applied generally and not to a specific party or parties, such as an opinion submitted pursuant to proposed regulatory action, you will not be deemed to have participated in a “judicial, quasi-judicial or other proceeding.” However, you have stated that you offered testimony in civil and criminal trials. In those situations, you will have participated in a “judicial, quasi-judicial or other proceeding” if you rendered advice on a substantial basis in trials which involved specific parties. Under the permanent ban, you may not for compensation assist or represent any person regarding any such proceeding that was pending before your former agency and in which you participated during your tenure.

The permanent ban applies throughout the duration of any proceeding in which you participated. It does not prohibit you from representing a client in any new proceeding although the client may have been a party to a previous proceeding in which you participated, provided the one-year ban does not apply, as discussed below.

#### One-Year Ban

In addition to the permanent ban, the Act prohibits for a year a former officer of a state administrative agency from being paid to communicate with or appear before his or her former agency to influence specified actions. Section 87406 specifically provides that no officer or consultant of a state administrative agency who holds a position which entails the making, or participation in the making, of governmental decisions:

“[F]or 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 ....” (Section 87406(d)(1).)

As a former consultant to the DRE and DOC, you are subject to the one-year ban. For one year after leaving state service, you may not represent any person by appearing before or communicating with any DRE officer or employee to influence the issuance,


amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. The same rule applies to appearances before the DOC. However, because you indicated that you ended your service to the DRE in August of 2000 and to the DOC in the mid-nineties, the one-year ban is no longer in effect with regard to your appearance before these agencies. I have enclosed Regulation 18746.1 which provides additional clarification of section 87406 for your reference.

You have also asked about the disclosure rules governing lobbying activity reports. As such, I have enclosed for your convenience the Commission's *Lobbying Disclosure Information Manual* regarding the reporting procedures applicable to your situation.<sup>4</sup> Additionally, to offer you further guidance, I have included a fact sheet summarizing the Act's post-governmental employment laws.

If you have any other questions regarding this matter, please contact me at (916) 322-5660 or you may access our web site at [www.fppc.ca.gov](http://www.fppc.ca.gov).

Sincerely,

Luisa Menchaca  
General Counsel

By:   
Natalie Bocanegra  
Staff Counsel, Legal Division

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Enclosures

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<sup>4</sup> Forms referenced in this manual are available on our website: [www.fppc.ca.gov](http://www.fppc.ca.gov).