



## FAIR POLITICAL PRACTICES COMMISSION

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December 28, 2007

Allen Benitez  
PO Box 6313  
Folsom, CA 95763-6313

Re: Your Request for Informal Assistance  
**Our File No. I-07-192**

Dear Mr. Benitez:

This letter responds to your request for advice 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).) 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>

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other post government employment laws such as Public Contract Code Section 10411. You may wish to consult your agency's counsel or the Attorney General's office regarding these provisions.

### QUESTION

Does the term of the Act's one-year ban for state officials commence on the date you were placed on extended medical leave or on the date of your retirement if you did not resume the duties of your position subsequent to being placed on medical leave?

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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), copy enclosed.)

## CONCLUSION

For your purposes the one-year ban has expired, and it will no longer restrict your appearances before or communications with the DOJ. Note, however, that as a former employee of the DOJ your post-employment activities are still restricted under the permanent ban of Sections 87401-87402.

## FACTS

You are a former employee of the California Department of Justice (the "DOJ"). You were employed as an Assistant Bureau Chief in the Law Enforcement Division. This position was a designated position under the DOJ's conflict-of-interest code. You retired from this position on October 2, 2007. Prior to your retirement, you were placed on an extended medical leave on December 6, 2006. Subsequent to your placement on medical leave, you did not return to work or perform any of the duties of your position prior to your retirement.

## ANALYSIS

Public officials who leave state service are subject to two types of post-governmental employment provisions under the Act,<sup>3</sup> colloquially known as the "revolving door" prohibitions. We discuss your question under each of these provisions.

- **One-Year Ban:** The "one-year ban" prohibits a state employee from appearing before or communicating with, for compensation, his or her former agency for the purpose of influencing certain administrative or legislative actions or influencing certain proceedings. (See Section 87406; Regulation 18746.1.)<sup>4</sup>

The one year ban applies only to appearances or communications made within 12 months of leaving state office or employment and made before or with an agency the official worked for or represented (or an agency under the budgetary or appointive control of the agency the official worked for or represented) during the 12 months before leaving state office or employment. (Regulation 18746.1(b)(2) and (b)(6).)<sup>5</sup>

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<sup>3</sup> In addition, Section 87407 prohibits certain state and local officials from making, participating in making, or using their official position to influence decisions affecting persons with whom they are negotiating employment, or has any arrangement concerning employment. (Also see Regulation 18747.)

<sup>4</sup> An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding in writing or by electronic transmission, attending a meeting, and delivering or sending any communication. (Regulation 18746.2.)

<sup>5</sup> The one-year ban applies to any employee of a state administrative agency who holds a position that is designated or should be designated in the agency's conflict-of-interest code. (Section 87406(d)(1); Regulation 18746.1(a)(2).) You have provided the fact that you were a designated employee of the DOJ to whom the one-year ban applies.

Under the facts you have provided, we must now determine whether the one-year ban commenced on December 6, 2006, the date you were placed on medical leave or October 2, 2007, the date of your retirement. Regulation 18746.1 states that the one-year ban applies when the official “has left his or her state office or employment, which means he or she has either permanently left state service or is on a leave of absence.” As previously interpreted, the post-governmental employment provisions apply “once an employee is no longer engaged in the duties of his or her office.” (*Coler* Advice Letter, No. I-07-089.)

Based on the facts you have provided, you were on a medical leave of absence and did not perform any of the duties of your position while on medical leave. Moreover, you did not return to work from the time you were placed on medical leave until your eventual retirement. Under these circumstances, we find that the post-employment provisions applied on the date you were placed on medical leave and, because you did not resume the duties of your position prior to your retirement, the one-year ban expired one year from the date you were placed on medical leave.

While the one-year ban has expired for your purposes, your actions are still restricted under the permanent ban. Accordingly, we detail the general provisions of the permanent ban for your review.

- **Permanent Ban:** The “permanent ban” prohibits a former state employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state (see Sections 87401-87402; Regulation 18741.1).

The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official. “‘Judicial, quasi-judicial or other proceeding’ means any proceeding, application, request for a 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).) Additionally, an official is considered to have “participated” in a proceeding if he or she took part in the proceeding “personally, and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information....” (Section 87400(d).)

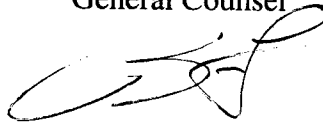
“The permanent ban does not apply to a ‘new’ proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A ‘new’ proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings.” (*Rist* Advice Letter, No. A-04-187; also see *Donovan* Advice Letter, No. I-03-119.) New contracts with the employee’s former

agency in which the former employee did not participate are considered new proceedings. (*Leslie* Advice Letter, No. I-89-649.) A new contract is one that is based on new consideration and new terms, even if it involves the same parties. (*Ferber* Advice Letter, No. I-99-104; *Anderson* Advice Letter, No. A-98-159.) In addition, the application, drafting, and awarding of a contract, license, or approval is considered to be a proceeding separate from the monitoring and performance of the contract, license, or approval. (*Anderson, supra*; *Blonien* Advice Letter, No. A-89-463.)

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

Sincerely,

Scott Hallabrin  
General Counsel

A handwritten signature in black ink, appearing to read "Brian G. Lau", written over the printed name below.

By: Brian G. Lau  
Counsel, Legal Division

BGL:jgl