



FAIR POLITICAL PRACTICES COMMISSION

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This advice letter SUPERSEDES the following letters to the extent those letters address the one-year ban:

Harris Advice Letter, No. A-10-183; *Reid* Advice Letter, No. I-05-187 and I-05-178; *Weil* Advice Letter, No. A-97-247; *Monagan* Advice Letter, No. A-93-473; and *Albino* Advice Letter, No. A-92-470.

January 11, 2011

Scott J. Harris
8383 Wilshire Boulevard, Suite 830
Beverly Hills, California 90211

**Re: Your Request for Advice
Our File No. A-10-183a**

Dear Mr. Harris:

This letter is in response to your request for advice regarding the “revolving door” provisions of the Political Reform Act (the “Act”).¹ Please note that this letter supersedes that portion of our letter dated November 17, 2010, addressing the one-year ban.

In your request for advice dated October 26, 2010, you asked what restrictions the Act’s post-governmental provisions impose on your representation of clients in licensing matters pending before agencies you represented while employed by the Department of Justice (“DOJ”) as a Deputy Attorney General. After receiving our advice letter, you requested additional advice.² This gave us occasion to revisit our previous advice. We have concluded that the one-year ban does not prohibit you from making an appearance, or a communication, before a state agency you represented while employed by DOJ for the purpose of representing a client in a quasi-judicial proceeding subject to the Administrative Procedure Act or in a court of law.

¹ 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.

² You asked whether you may represent clients before agencies that you did not represent while employed at DOJ.

However, such representation is restricted by the permanent ban, as stated in our prior advice.

FACTS

In September 2010, you retired from DOJ where you had served as a Deputy Attorney General in the Civil Division, Licensing Section. As a DOJ attorney, you represented many state agencies, including licensing agencies within the Department of Consumer Affairs. There are many agencies in the Department of Consumer Affairs that are involved in licensing and regulation of professionals in the state of California. You also served as an advisory attorney to the California Board of Accountancy and the Court Reporters Board of California. DOJ serves as legal counsel for many state agencies.

You state that a licensing agency's action to amend, suspend or revoke a professional license begins with the serving of a formal accusation against the individual. If the matter is not settled, it is referred to an administrative law judge ("ALJ"). The ALJ conducts a quasi-judicial administrative hearing pursuant to the Administrative Procedure Act in which the agency is represented by an attorney from DOJ and the individual may be represented by private counsel. The ALJ makes findings of fact and conclusions of law and issues a proposed decision. The agency then decides whether to adopt the proposed decision.

You are now engaged in private practice and wish to represent clients in proceedings involving issuance, revocation, or suspension of licenses by state agencies within the Department of Consumer of Affairs.

ANALYSIS

Section 87406(d)(1) of the Act provides, in pertinent part, that no officer or designated employee of a state administrative agency:

“[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. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an

administrative law judge, or before the Workers' Compensation Appeals Board. . . .”

In prior advice, we have advised that the limited exception for appearances before an ALJ does not apply to communications with the agency's staff or attorneys prior to the hearing. This included discovery requests, answers responding to the agency's discovery requests, preparation of written testimony that will be later presented before an ALJ, procedural discussions or settlement negotiations. (*Reid* Advice Letter No. I-05-187 and I-05-178; *Weil* Advice Letter, No. A-97-247; *Monagan* Advice Letter No. A-93-473; *Albino* Advice Letter, No. A-92-470.)

However, as you stated in our telephone conversation of October 28, 2010, a licensing proceeding begins with the filing of an accusation. At this point, the parties and their attorneys typically engage in discovery and in settlement discussions. At the conclusion of discovery, if the parties have not settled, the matter proceeds to a hearing before an ALJ. In light of this interconnected procedure, we see no reason to distinguish between an appearance before an ALJ and pre-hearing communications relating to a matter that, if not settled, will be heard by an ALJ. Interpreting the extension in this manner raises the question: at what point is the exception applicable to pre-hearing communications? Because all prehearing communications are interconnected with an appearance before an ALJ, the exception applies once a person reasonably concludes that a government agency has commenced an investigation.

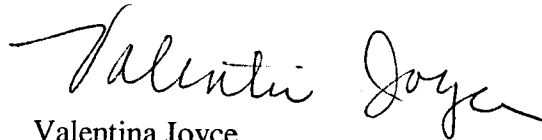
That portion of our prior advice to you, as well as the authority upon which our advice was based, *Reid, supra*; *Weil, supra*; *Monagan, supra*; and *Albino, supra* in which we advised that pre-hearing communications are barred by the one-year ban, is superseded.³ Accordingly, in disciplinary actions against a licensee, you may appear before or communicate with a licensing agency that you represented while employed by DOJ for the purpose of representing your client as soon as the client reasonably concludes that the agency has commenced an investigation. This includes communications with the agency's employees and attorneys.

³ In addition, to the extent that the *Weil* letter, *supra*, concluded that a quasi-judicial proceeding before the California Public Utilities Commission is an “administrative action,” that part of the advice is also superseded. Under the *Ordos* Advice Letter (No. A-95-052) enforcement and other quasi-judicial actions are not “administrative actions.”

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script that reads "Valentina Joyce". The signature is written in black ink and is positioned to the right of the typed name.

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl