



FAIR POLITICAL PRACTICES COMMISSION

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April 6, 2011

The Honorable Maren Nelson
Los Angeles Superior Court, Dept. 60
111 No. Hill Street
Los Angeles, CA 90012
Alameda, California 94501-4477

The Honorable B. Scott Silverman
Los Angeles Superior Court, Dept. 7
111 No. Hill Street
Los Angeles, CA 90012

**RE: Your Request for Advice
Our File No. A-11-039**

Dear Judge Nelson and Judge Silverman:

This letter is in response to your request for advice regarding the statement of economic interest disclosure provisions of the Political Reform Act (the "Act").¹

QUESTION

Are interests in a defined benefit/cash balance plan, or investments held in such a plan, reportable investments?

CONCLUSION

No. Interests in a defined benefit pension plan, including a cash balance plan qualified under Internal Revenue Code Section 401(a) and investments held in the plan are not "investments" for purposes of the Act.

FACTS

You are both judges of the Superior Court who were formerly partners of Morrison & Foerster LLP ("Morrison"). Each of you has an account in a cash balance plan, a defined benefit plan established under ERISA, maintained by Morrison.

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.

A plan participant does not have an individual account balance in the plan even though the participant's benefit is expressed in terms of a notional account balance. A participant's benefit is determined from two components: formula credits and interest credits. Participants' statements show the accrued benefit which is the accumulation of the annual formula and interest credits. When a participant becomes entitled to receive benefits under the plan, the benefits that are received are defined in terms of an account balance. The participant may choose to receive his or her benefit in a lump sum or an annuity.

ANALYSIS

Under Section 87203, certain public officials, including judges, are required to annually file a statement disclosing their investments, interests in real property and income. These reports are referred to as statements of economic interest or Form 700. Certain investments and income are exempt from disclosure. These include interests in a defined benefit pension plan qualified under Section 401(a) of the Internal Revenue Code, both as investments and as sources of income. (*Marshall* Advice Letter, No. A-85-059. See also *Gillan* Advice Letter, No. A-95-304 and *Harris* Advice Letter, No. A-82-207.)

In the *Bogh* Advice Letter (No. A-01-173), we had occasion to consider the application of these rules to a cash balance plan and concluded that an interest in, or future payments from, a cash balance plan do not constitute economic interests under the Act. Accordingly, you are not required to report your interests in Morrison's cash balance plan on your statements of economic interest.

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

Sincerely,

John W. Wallace
Assistant General Counsel



By: Valentina Joyce
Counsel, Legal Division

VJ:jgl