



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

April 22, 2026

Honorable Michael Groch
Presiding Judge
San Diego Superior Court
Central Courthouse
Department 1000
1100 Union Street
San Diego, CA 92101

**Re: Your Request for Advice
Our File No. A-26-036**

Dear Judge Groch:

This letter responds to your request for advice regarding the statement of economic interest disclosure provisions of the Political Reform Act (the “Act”).¹ We express no opinion on any other body of law that may apply, including the application of common law conflict of interest provisions. Our advice is based on the facts presented in your request and related enclosures. Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the underlying facts change, you should contact us for additional advice.

QUESTION

Under the Act, do you have an economic interest as a beneficiary in your parent’s irrevocable spousal trust that must be reported on your Statement of Economic Interests (“SEI”)?

CONCLUSION

No. Although you are a beneficiary of the trust, you do not presently receive income from the trust, and you do not have an “irrevocable future right to receive trust income or principal” because the co-trustees have unlimited power to invade the principal for beneficiaries other than you, and someone else can change the trust beneficiaries. You do not have a reportable economic interest in the trust.

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 18104 through 18998 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.

FACTS AS PRESENTED BY REQUESTER

You are a superior court judge with a duty under the Act to file a SEI. In 2021, your father created an irrevocable spousal trust (“Trust”),² naming your mother and a corporate trustee as co-trustees (collectively, “the Trustee”). You are not currently serving as a co-trustee. Under the terms of the Trust, you are a “beneficiary.” The Trust defines “beneficiary” to mean any person named as a recipient of property, or who, in the future, may be eligible to receive income or principal under any trust created, or has a right to use property owned by any trust created. You do not presently receive income from the Trust, and you note that “[a]ny distributions [to you] are purely discretionary and subject to the Trustees’ determination.

The Trust states that a Trustee (excluding any Interested Trustee)³ may distribute Trust income and principal to your mother, you, and your siblings “at any time ... in such amounts or proportions as the Trustee ... may from time to time select, for any purpose.” A Trustee (excluding any Interested Trustee) must distribute Trust income or principal when the Trustee “consider[s it] advisable for the health, education, maintenance, or support of” your mother, you, or your siblings. In addition, in any tax year, your mother has the right to withdraw up to \$5,000 from the Trust principal. At the end of each year, your mother may exercise her right to withdraw an additional amount from the Trust principal, but not to exceed a total annual amount, noncumulative, equal to 5 percent of the then market value of the net principal.

Upon the death of your mother, the Trust property shall be “distributed to one or more persons” (other than to your parents or their estate or creditors) through a will exercising your mother’s testamentary power of appointment. However, if the remaining Trust property is not distributed by will, it shall be set aside in separate trusts for you and your siblings in specified percentages (with yours exceeding 10 percent) and disposed of in accordance with the Trust. You and your siblings are eligible to serve, alongside a corporate co-trustee, as co-trustees of your separate trusts when you turn 27 years old and neither parent is a trustee.

ANALYSIS

Under the Act, judges must annually file a SEI disclosing their investments, interests in real property, income, and arrangements for prospective employment. (Sections 87200 and 87203.) “Income” includes payments the official directly receives from a trust. (Section 82030.) “Income” also includes a pro rata share of any income of any trust in which the official or their spouse owns, directly, indirectly, or beneficially, a 10 percent interest or greater. (Section 82030.) Income of \$500 or more is reportable. (Section 87207.) “Investments” and “real property,” so long as it has a value of \$2,000 or more, include a pro rata share of investments or real property of any trust in which the individual or their spouse and dependent children own,

² All references to the “Trust” shall refer to the spousal trust, unless otherwise stated.

³ Under the terms of the Trust, an “Interested Trustee” is a Trustee who is also (i) a transferor of property to the trust, (ii) a beneficiary of the trust, or (iii) someone who has a legal obligation to support a beneficiary of the trust.

directly, indirectly, or beneficially, a 10 percent interest or greater. (Sections 82029, 82033, and 82034.) Therefore, unless otherwise exempt from disclosure, real property, sources of income, and investments held by a trust in which you have a beneficial interest of 10 percent or more, and any income you receive from a trust, are reportable.

Regulation 18234 defines when an official has an interest in the real property, sources of income, and investments held by a trust. Specific to your facts, Regulation 18234(c)(2) provides:

(c) For purposes of determining whether an official has an economic interest in interests in real property, sources of income, and investments of a trust, the official has a direct, indirect, or beneficial interest in a trust if the official is:

(2) A beneficiary and:

(A) Presently receives income; or

(B) Has an irrevocable future right to receive income or principal. For purposes of this subsection, an individual has an irrevocable future right to receive income or principal if the trust is irrevocable, unless one of the following applies:

(i) Powers exist to consume, invade, or appoint the principal for the benefit of beneficiaries other than the official and such powers are not limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries; or

(ii) Under the terms of the trust, someone other than the official can designate the persons who shall possess or enjoy the trust property or income.

Based on the facts, you are a trust beneficiary, but do not presently receive income from the Trust. Therefore, at issue is whether you have an irrevocable future right to receive income or principal from the Trust under Regulation 18234(c)(2)(B).

We first consider whether the Trustee has the power to invade the Trust principal and if such powers are not limited by an ascertainable standard relating to health, education, support and maintenance of beneficiaries other than the official. (Regulation 18234(c)(2)(B)(i).)

Here, a Trustee (excluding any Interested Trustee) may distribute Trust principal to your mother, you, and your siblings at any time, in any amounts, and for any purpose; therefore, the Trustee has the power to invade the Trust principal for beneficiaries other than you for any purpose, and this power is not limited by an ascertainable standard. Although the Trust also requires the Trustee to invade the trust principal when the Trustee “consider[s it] advisable for the health, education, maintenance, or support of” your mother, you, or your siblings, this language does not include an “ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries” and it does not restrict the unlimited powers of the Trustee noted above. We have advised that the power to invade trust principal where limited to health, support, and maintenance needs, as deemed necessary in the trustee’s discretion, did not amount to “an ascertainable standard.” (*Van de Kamp* Advice Letter, No. A-88-169.),

We note additionally that under the terms of the Trust “someone other than the official can designate the persons who shall possess or enjoy the trust property or income” and thus meets the standard under Regulation 18234(c)(2)(B)(ii). Here, your mother has a testamentary power of appointment to determine to whom and how the remainder of the Trust property shall be distributed upon her death. Thus, the Trust beneficiaries can be changed by someone other than you.

Based on the facts provided, you have not received any income from the Trust, and you do not have an economic interest in the real property, sources of income, and investments of the Trust that must be reported on your SEI.

If you have other questions on this matter, please contact me at JGin@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Joanna Gin

By: Joanna Gin
Senior Counsel, Legal Division

JG:aja