

5/2/80

First Supplement to Memorandum 80-45

Subject: Conflict of Interest Code

Memorandum 80-45 (sent 5/1/80) presents the staff's proposal for a limited disclosure standard to be included in the Commission's Conflict of Interest Code. As stated in Memorandum 80-45, the standard conflict of interest code provisions will be incorporated by reference to newly issued Fair Political Practices Commission regulations. An example of the probable structure of our code is attached to this memorandum as Exhibit 1 (Conflict of Interest Code for the State Council on Developmental Disabilities). This code consists of an incorporation provision and an appendix listing designated employees and setting forth disclosure categories.

Exhibit 2 is a copy of the newly adopted FPPC regulation that provides the boilerplate code language to be incorporated by reference in the Commission's conflict of interest code.

Respectfully submitted,

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EXHIBIT 1

CONFLICT OF INTEREST CODE FOR THE
STATE COUNCIL ON DEVELOPMENTAL DISABILITIES
AND AREA BOARDS ON DEVELOPMENTAL DISABILITIES I-XIII

The terms of 2 Cal. Adm. Code Section 18730 and any amendments to it are hereby incorporated into this Conflict of Interest Code by reference. Pursuant to Section 4(b) of this Conflict of Interest Code, all designated employees shall file statements of economic interests with their individual agencies, which shall make and retain a copy and forward the originals to the Fair Political Practices Commission, which shall be the filing officer for these statements.

Those persons who are designated employees and the disclosure categories describing the kinds of financial interests they must report are set forth in the attached Appendix.

APPENDIX

<u>Designated Employees</u>	<u>Applicable Disclosure Categories</u>
Member, State Council on Developmental Disabilities	1, 2
Executive Director, State Council on Developmental Disabilities	1, 2
Member, Area Boards on Developmental Disabilities I - XIII	1
Executive Secretary, Area Boards on Developmental Disabilities I - XIII	1
Consultants ^{1/}	

DISCLOSURE CATEGORIES

Category 1

A designated employee in this category must disclose business entities in which he or she has an investment and sources of income if the business entities or sources of income receive public funding and have as at least ten percent (10%) of their clientele, developmentally disabled persons.

Category 2

A designated employee in this category must disclose business entities in which he or she has an investment and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the agency to provide equipment, leased space, materials, supplies or services, including consulting services, to or on behalf of the agency.

^{1/} With respect to Consultants the Executive Director or Executive Secretary, however, may determine in writing that a particular consultant, although a "designated person", is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this Section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director or Executive Secretary shall forward a copy of this determination to the Fair Political Practices Commission. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

EXHIBIT 2

Regulations of the Fair Political Practices Commission
(Title 2, Division 6 of the California Administrative Code)

18730. Provisions of Conflict of Interest Codes
(Gov. Code Sections 87300 - 87302)

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a Conflict of Interest Code within the meaning of Government Code Section 87300 or the amendment of a Conflict of Interest Code within the meaning of Government Code Section 87307 if the terms of this regulation are substituted for terms of a Conflict of Interest Code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 81000, et seq. The requirements of a Conflict of Interest Code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a Conflict of Interest Code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices

Commission (2 Cal. Adm. Code Sections 18100 et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

(3) Section 3. Disclosure Categories.

This Code does not establish any disclosure obligation for those designated employees who are also specified in Government Code Section 87200 if they are designated in this Code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 87200, et seq.^{1/} Such persons are covered by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in

^{1/} Designated employees who are required to file statements of economic interests under any other agency's Conflict of Interest Code, or under Article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code Section 81004.

the Appendix specify which kinds of financial interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests:
Place of Filing.

The code reviewing body shall instruct all designated employees required to file statements of economic interests pursuant to this Conflict of Interest Code to file in accordance with one of the following procedures:^{2/}

(A) All designated employees shall file statements of economic interests with the agency. Upon receipt of the statements of economic interests of the head of the agency and members of boards or commissions not under a department of state or local government, the agency shall make and retain a copy of each and forward the originals of these statements to the code reviewing body, which shall be the

^{2/} See Government Code Section 81010 and 2 Cal. Adm. Code Section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

filing officer with respect to these statements. Such statements shall be forwarded to the code reviewing body within five days after the filing deadline or five days after receipt in the case of statements filed late.

(B) All designated employees shall file statements of economic interests with the agency, which shall make and retain a copy and forward the originals to the code reviewing body, which shall be the filing officer.

(C) All designated employees shall file statements of economic interests with the code reviewing body.

(5) Section 5. Statements of Economic Interests:
Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this Code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within thirty days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within thirty days after the effective date of the amendment.

(B) Assuming Office Statements.

(i) All persons assuming designated positions after the effective date of this Code which are civil service or merit system positions shall file statements within thirty days after assuming the designated positions.

(ii) All other persons appointed, promoted or transferred to designated positions after the effective date of the Code shall file statements within ten days after assuming office, or if subject to State Senate confirmation, ten days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within thirty days after leaving office.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code.

(B) Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement

shall begin on the effective date of the Code or the date of assuming office whichever is later.

(D) Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property^{3/} is required to be reported,^{4/} the statement shall contain the following:

- (i) A statement of the nature of the investment or interest;

^{3/} For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

^{4/} Investments and interests in real property which have a fair market value of less than \$1,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

(ii) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

(iii) The address or other precise location of the real property;

(iv) A statement whether the fair market value of the investment or interest in real property exceeds one thousand dollars (\$1,000), exceeds ten thousand dollars (\$10,000), or exceeds one hundred thousand dollars (\$100,000).

(B) Personal Income Disclosure. When personal income is required to be reported,^{5/} the statement shall contain:

(i) The name and address of each source of income aggregating two hundred fifty dollars (\$250) or more in value, or twenty-five dollars (\$25) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

^{5/} A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

(ii) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), or greater than ten thousand dollars (\$10,000);

(iii) A description of the consideration, if any, for which the income was received;

(iv) In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received.

(v) In the case of a loan, the annual interest rate and the security, if any, given for the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,^{6/} the statement shall contain:

(i) The name, address, and a general description of the business activity of the business entity;

^{6/} Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

(ii) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Disqualification.

No designated employee shall make, participate in making, or use his or her official positions to influence the making of any governmental decision which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(B) Any real property in which the designated employee has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(C) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the designated employee within twelve months prior to the time when the decision is made; or

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9) Section 9. Manner of Disqualification.

When a designated employee determines that he or she should not make a governmental decision because he or she has a financial interest in it, the determination not to act must be accompanied by disclosure of the financial interest. In the case of a voting body, this determination and disclosure shall be made part of the agency's official record; in the case of a designated employee who is the head of an agency,

this determination and disclosure shall be made in writing to his or her appointing authority; and in the case of other designated employees, this determination and disclosure shall be made in writing to the designated employee's supervisor.

(10) Section 10. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this Code may request assistance from the Fair Political Practices Commission pursuant to Government Code Section 83114 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(11) Section 11. Violations.

This Code has the force and effect of law. Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code Sections 81000 - 91014. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code Section 87100 has occurred may be set aside as void pursuant to Government Code Section 91003.