

Admin.

March 26, 2002

Memorandum 2003-9

Conflict of Interest Code

Every agency subject to the Political Reform Act must adopt a Conflict of Interest Code designating the positions within the agency that involve making, or participating in the making of, decisions that may foreseeably have a material effect on a financial interest. For each designated position, the Conflict of Interest Code must identify the specific types of economic interests that are reportable. An economic interest is "reportable" if it "may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position." See Gov't Code Section 87302(a). The Commission's existing Conflict of Interest Code is set out in the Exhibit, at page 1.

Each odd-numbered year, agencies must file a report with the Fair Political Practices Commission ("FPPC") that identifies any changes to its Conflict of Interest Code. See Gov't Code § 87306. Ordinarily, the staff would simply submit a report indicating that no changes had been made. However, in light of the substantial turnover in the Commission's membership in the last two years, it is worth reviewing the approach taken in the current Conflict of Interest Code and considering whether any changes should be made.

FULL DISCLOSURE

Our existing Conflict of Interest Code requires "full disclosure" of all economic interests that are required to be disclosed under the Political Reform Act. Full disclosure can be justified by the fact that the Commission's mandate is open-ended. Any subject could eventually come under Commission review.

There are two advantages to full disclosure: (1) It avoids any question as to whether the scope of required disclosure is sufficiently broad, and (2) it is easy to understand and implement. Under a rule of full disclosure, filers simply follow the instructions provided by the FPPC on its Form 700. No other considerations come into play.

One disadvantage of full disclosure is the possibility of overbreadth. Filers may be required to disclose economic interests that bear little relationship to the Commission's current studies.

LIST APPROACH

The Commission adopted the full disclosure approach in 2001. Prior to 2001, the Commission's Conflict of Interest Code limited disclosure of investments, sources of income, and business positions. A copy of the prior Conflict of Interest Code is attached at Exhibit page 3. Disclosure was limited to a list of persons and entities that were identified as constituting "financial interests of a type that foreseeably may be materially affected by a Law Revision Commission decision concerning a topic on the Commission's Calendar of Topics Authorized for Study." See Exhibit p. 4.

That list defined the outer boundaries of required disclosure. The actual scope of disclosure varied with the Commission's calendar of active topics. Each year the Executive Secretary would prepare a letter indicating which of the listed interests related to active topics. The letter, which was filed with the FPPC, defined the actual scope of required disclosure. An example is attached at Exhibit page 6.

That approach helped to avoid overbroad disclosure. However, it did present other problems:

- (1) As the Commission's calendar of topics changes over time, new types of persons and entities would need to be added to the list. For example, the Commission's current study of common interest development law might affect common interest development management companies. They would need to be added to the list. Because the Conflict of Interest Code is embodied in a state regulation, amendment would involve a slow and cumbersome administrative process.
- (2) The resulting disclosure process was more complex for filers, who would need to read the Form 700 together with the Conflict of Interest Code and the Executive Secretary's most recent letter.

GENERAL STANDARD

The staff spoke informally with FPPC to discuss whether there might be some other approach worth considering.

FPPC recommends against returning to our previous approach. FPPC feels that it would be inappropriate for decisions about disclosure of interests to be made by anyone other than the person who signs and submits a statement of economic interest. Ultimately, responsibility to make a correct and complete statement rests with the filer.

Instead, FPPC suggests an approach that is apparently in use by many agencies. Rather than requiring full disclosure or specifying by rule which specific types of interests are subject to disclosure, many agencies use a general standard to describe the interests that must be disclosed. For example, our Conflict of Interest Code could be amended to require disclosure of economic interests “of a type that foreseeably may be materially affected by a Law Revision Commission decision concerning a topic on the Commission’s Calendar of Topics Authorized for Study.” The onus would then be on individual filers to determine which of their economic interests must be disclosed.

An improvement to that approach would be to have the Executive Secretary provide filers annually with a list of persons and entities that might be affected by the Commission’s current studies. That would provide guidance to filers, though it could not be relied on as exhaustive. Such a practice need not be incorporated into the Conflict of Interest Code itself.

CONCLUSION

The principal issues involved in deciding how to proceed are privacy and convenience. The existing full disclosure approach is administratively simple but intrusive, requiring disclosure of interests that have little to do with the Commission’s current studies.

The general standard approach suggested by FPPC is less intrusive, as it only requires disclosure of interests that might foreseeably be affected by the Commission’s decisions. However, it requires more care and deliberation in preparing a statement of economic interests.

The list approach was also less intrusive, but it required periodic tinkering with the Commission’s Conflict of Interest Code, under the procedures for amendment of an administrative regulation. In addition, the staff believes that FPPC might oppose any return to the list approach. Their approval of any change to our Conflict of Interest Code is required. See Gov’t Code § 87303.

If the Commission is satisfied with the current system, the staff will report to FPPC that no changes will be made to our Conflict of Interest Code at this time. If the Commission would like to adopt a different approach the staff will prepare the necessary amendments to our regulation and begin the rulemaking process.

Respectfully submitted,

Brian Hebert
Staff Counsel

Exhibit

CONFLICT OF INTEREST CODE
FOR THE
CALIFORNIA LAW REVISION COMMISSION
[as revised February 2001]

The Political Reform Act, Government Code Sections 81000, *et seq.*, requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the California Law Revision Commission.

Designated employees shall file statements of economic interests with their agency. Upon receipt of the statements of Commissioners and the Executive Secretary, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. The agency will make all statements available for public inspection and reproduction. (Gov't Code § 81008.)

APPENDIX
DESIGNATED EMPLOYEES

<i>Designated Employees</i>	<i>Disclosure Categories</i>
Commission Member (appointed by Governor)	1
Legislative Counsel	1
Executive Secretary	1
Assistant Executive Secretary	1
Staff attorneys	1
Administrative Assistant	2

DISCLOSURE CATEGORIES

CATEGORY 1

A designated employee in this category must disclose the following:

1. Interests in real property.
2. Investments.
3. Personal income.
4. Business entity income.
5. Business positions.

CATEGORY 2

A designated employee in this category must disclose business entities in which he or she has an investment or holds a business position 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 Law Revision Commission to provide leased space, equipment, materials, supplies, or services to or on behalf of the Law Revision Commission.

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Assistant Executive Secretary	1, 2, 3
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Administrative Assistant	2, 3

DISCLOSURE CATEGORIES

CATEGORY 1

A designated employee in this category must disclose the following:

1. Interests in real property.
2. Investments in business entities listed below.
3. Personal income from entities or persons listed below.
4. Business entity income from entities or persons listed below.
5. Business positions in entities listed below.

The entities and persons listed below, in the jurisdiction of California, constitute financial interests of a type that foreseeably may be materially affected by a Law Revision Commission decision concerning a topic on the Commission's Calendar of Topics Authorized for Study:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.
2. Mortgage brokers.
3. Collection agencies.
4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.
5. Any entities or persons whose primary activity in California is the sale, leasing, or development of real estate.
6. Any entities or persons whose primary activity in California is the leasing of personal property.
7. Insurance companies.
8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).
9. Title insurance companies.
10. Newspaper companies.
11. Corporate sureties.
12. Adoption agencies.
13. Persons engaging in private placing for adoption of more than one child per year.
14. Privately owned public utilities.
15. Law firms.
16. Any entities or persons engaged in the business of tracing heirs.
17. Any entities or persons engaged in the business of appraising property.
18. Any entity or person that is a party in unfair competition litigation in California or has been within the past two years.
19. A director of a California corporation.
20. An officer or director of a California unincorporated nonprofit association.

Financial interest on this list are reportable if they relate to active topics on the Commission's Calendar of Topics. Active topics are topics the Commission has considered during the 12 months preceding, or to be considered during the 12 months following, the end of the applicable filing period, and are determined from the Commission's Annual Report, as specified by the Executive Secretary in a letter filed at least annually with the Fair Political Practices Commission.

CATEGORY 2

A designated employee in this category must disclose business entities in which he or she has an investment or holds a business position 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 Law Revision Commission to provide leased space or consulting services to or on behalf of the Law Revision Commission.

CATEGORY 3

A designated employee in this category must disclose business entities in which he or she has an investment or holds a business position 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 Law Revision Commission to provide equipment, materials, supplies, or services (other than consulting services) to or on behalf of the Law Revision Commission.

January 28, 1998

Fair Political Practices Commission
PO Box 807
Sacramento, CA 95812

Re: Reportable financial interests for current filing period

This letter is filed with the Fair Political Practices Commission pursuant to the Conflict of Interest Code of the California Law Revision Commission, as revised February 1996. It supersedes my letter of February 13, 1997.

I have reviewed the Conflict of Interest Code list of entities and persons in the jurisdiction of California of a type that foreseeably may be materially affected by a Law Revision Commission decision concerning a topic on the Commission's Calendar of Topics Authorized for Study. I have also reviewed the list of active topics on the Law Revision Commission's Calendar of Topics that the Commission has considered during the twelve months preceding, and to be considered during the twelve months following, the end of the current filing period as determined from the Commission's *1997-1998 Annual Report*, 27 Cal. L. Revision Comm'n Reports 531 (1997).

From that review I specify the following entities and persons as reportable financial interests for the current filing period:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.
2. Collection agencies.
3. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.
4. Any entities or persons whose primary activity in California is the sale, leasing, or development of real estate.
5. Insurance companies.
6. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).
7. Title insurance companies.
8. Newspaper companies.
9. Corporate sureties.
10. Privately owned public utilities.
11. Law firms.
12. Any entities or persons engaged in the business of tracing heirs.
13. Any entities or persons engaged in the business of appraising property.

14. A director of a California corporation.

15. An officer or director of a California unincorporated nonprofit association.

Sincerely,

Nathaniel Sterling
Executive Secretary

File: 3.7.3