

## **Statement of Activities Incompatible with the Duties as an Officer or Employee of the Fair Political Practices Commission**

### **(a) Introduction.**

This statement of incompatible activities for officers and employees of the Fair Political Practices Commission (the "Commission") is made pursuant to Government Code Section 19990.<sup>1</sup> This statement is intended to provide guidance to officers and employees about what types of activities are incompatible with their duties to the Commission and the State of California.

Nothing in this statement shall exempt any person from applicable provisions of any other laws. For example, the standards of conduct set forth in this policy are in addition to those prescribed in the Political Reform Act (the "Act") and the Commission's Conflict of Interest Code.

### **(b) Definitions.**

The following definitions control interpretation of this policy. Where terms used in this policy are not defined in this section, the definitions in the Act control the interpretation of this policy.

(1) **Agency Official.** "Agency Official" has the same meaning as set forth in Section 82004 of the Act.

(2) **Employee.** "Employee" refers to all civil service employees of the Commission.

(3) **Gift.** "Gift" has the same meaning as set forth in Section 82028 of the Act and Commission Regulations 18940 - 18950.4.

(4) **Officer.** "Officer" means the Executive Director and the chiefs of each division of the Commission.

(5) **Outside Employer.** "Outside Employer" means any person who provides compensation for outside employment.

(6) **Outside Employment.** "Outside employment" means any employment or business activity undertaken by an officer or employee for which he or she receives, or expects to receive, any form of income from a source other than the Commission for services performed.

(7) **Person.** "Person" has the same meaning as set forth in Section 82047

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<sup>1</sup> All statutory references are to the Government Code, unless otherwise indicated. All regulatory references are to the Commission's regulations at Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

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of the Act.

**(8) Private Gain or Advantage.** “Private gain or advantage” means the private gain or advantage for the officer, employee, or another person.

**(9) Privileged Work Product.** “Privileged Work Product” means any data, confidential information, or other Commission work product which is gathered, prepared, or held for internal agency use and not available to the public either pursuant to the Public Records Act (Sections §§ 6250 - 6276.48) or the Information Practices Act (Civil Code Sections 1798-1798), or other laws.

**(c) General Prohibitions.**

The following activities are deemed to be incompatible with the duties of Commission officers or employees pursuant to Section 19990. Commission officers and employees are prohibited from knowingly:

(1) Using the prestige or influence of the state or Commission for the purpose of acquiring private gain or advantage.

(2) Using state time, funds, facilities, equipment, supplies, or privileged work product for the purpose of acquiring private gain or advantage.

(3) Using, or having access to, confidential information available by virtue of state employment for the purpose of acquiring private gain or advantage.

(4) Providing access to confidential information to persons to whom issuance of this information has not been authorized.

(5) Receiving or accepting money or any other consideration (including but not limited to entertainment, lodging, travel expenses, services or other items) from any person other than the state for the performance of his or her job duties as an officer or employee, except as provided by this statement.

(6) Performing an act in other than his or her capacity as an officer or employee knowing that the act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the officer or employee.

(7) Receiving or accepting, directly or indirectly, any payment, including a gift, money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from any person who is doing or is seeking to do business of any kind with the Commission or whose activities are regulated or controlled by the Commission under circumstances from which it reasonably could be substantiated that the payment was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official action performed by the officer or employee.

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(8) Not devoting his or her full time, attention, and efforts to his or her office or employment during his or her hours of duty as an officer or employee, subject to any other laws, rules, or regulations as pertains thereto.

### **(d) Specific Prohibitions.**

Consistent with this policy, Commission officers and employees shall comply with the following:

#### **(1) Travel**

(A) An employee may only accept a payment for Commission travel expenses (including travel, lodging, and meals) from a local, state, or federal agency with the prior approval of the employee's division chief. With respect to a payment for Commission travel expenses (including travel, lodging, and meals) from any other person, the employee may only accept the payments after the division chief has obtained approval from the Executive Director.

(B) An officer may accept a payment for Commission travel expenses (including travel, lodging, and meals) only with the prior approval of the Executive Director.

#### **(2)(A) Authorized Comments**

Except as otherwise provided by law, an officer or employee shall not communicate with any person (including any state or local government agency, or members of the press) and purport to be speaking for the Commission regarding the Commission's official policy or position on legislation or amendments thereto or initiative or referendum petitions, unless such act is a part of the officer's or employee's official duties.

**(B) Publishing Opinions:** Unless otherwise provided by law, when publishing any writing or making a media statement or public speech in which any connection with the Commission is apparent, an officer or employee must provide an appropriate disclaimer expressly stating that the views expressed are those solely of the officer or employee and do not necessarily reflect the views of the Commission, unless such act is a part of the officer's or employee's official duties.

#### **(3) Outside employment**

No officer or employee may engage in the following outside employment:

(A) Employment that will result in either of the following:

(i) The officer or employee failing to devote his or her full time, attention, and efforts to his or her state office or employment

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during his or her hours of duty as a officer or employee, or

(ii) Violation of the impartial, effective administration and implementation of the Act as mandated by Section 83111 of the Act.

(B) Employment with any person that contracts with the Commission for any purpose, or that has financial dealings of any kind with the Commission.

(C) Employment with any person who is a state candidate, an elected state officer, a legislative official, a lobbyist, a lobbying firm, a committee or any person listed in Section 87200 of the Act.

(D) (i) **Paid Lobbying Activity:** Employment as a lobbyist, or otherwise for the purpose of attempting to influence legislative or administrative action.

(ii) **Unpaid Lobbying Activity:** In addition, an officer or employee may not attempt to influence legislative or administration action if he or she is representing a state candidate, an elected state officer, a legislative official, a lobbyist, a lobbying firm, a lobbyist employer, a committee or any person listed in Section 87200, or any person that makes contributions or expenditures for political purposes, whether the representation is with or without compensation.

(E) Employment with a candidate or committee in connection with any primary, general, special or recall election held in this state including the campaign of any candidate for President and any other candidate for federal office when the election to federal office is held in California. Reimbursement for expenses incurred while performing volunteer political activities shall not be considered employment so long as the same reimbursement is provided to others volunteers.

(F) In all other cases of outside employment, the officer or employee must notify the Executive Director and obtain written approval prior to taking outside employment or attempting to influence legislative or administration action on behalf of any other person.

(G) If anything in subdivision (d)(3) is in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling.

**(4) Gifts, loans, or other financial gains**

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(A) Except as otherwise permitted by law, an officer or employee shall not accept or solicit any gift, loan, or other financial gain totaling more than \$10 in any calendar month from any state candidate, lobbyist, or agency official.

(B) In case of doubt as to the propriety of accepting a gift, loan, or other financial gain, the doubt should be resolved against acceptance.

### **(5) Political activities**

Unless otherwise prescribed by law, officers and employees may engage in political activities subject to the following limitations:

(A) **Commission identification.** Each officer or employee will assure that the Commission is not identified with his or her political activities, either in fact or by perception.

(B) **Political activities in Commission offices or while representing the Commission.** No officer or employee shall engage in any political activities in Commission offices, on Commission time, using Commission resources, or while representing the Commission.

(C) **Notice and disqualification.** It is the duty of each officer or employee to administer and implement the Act in an impartial and effective way, as mandated by Section 83111 of the Act. Further, in any circumstance where when his or her impartiality may be questioned, it is the affirmative duty of each officer or employee to notify his or her supervisor in writing. Division chiefs must notify the Executive Director of the Commission in writing; the Executive Director must notify the Chair. For example, notice is required in connection with any Commission matter that may affect a candidate or committee to which the officer or employee has made a contribution or provided volunteer services. The officer or employee may be required to abstain from that matter.

### **(e) Interpretation and exemption.**

Any questions about the interpretation of this statement should be directed to the employee's division chief, or in the case of division chiefs, to the Executive Director.

(1) Employees may appeal the determination of the division chief to the Executive Director.

(2) Division chiefs may appeal the determination of the Executive Director to the Chair of the Commission.

### **(f) Penalties for Violations of this Statement.**

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If an officer or employee violates any provision of this statement, the Commission may take any action authorized by law, including but not limited to, Section 19572 or Section 19590.

### Attachments

1. Current Section 82004, 82028, and 82047
2. Current Regulation 18942

## **Statutes Referenced in the Statement**

82004. "Agency official" means any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any administrative action in other than a purely clerical, secretarial or ministerial capacity. (Added June 4, 1974, by initiative Proposition 9.)

82028. (a) "Gift" means, except as provided in subdivision (b), any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(b) The term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

(2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 of this title.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

(Amended by Stats. 1997, Ch. 450, Sec. 2. Effective September 24, 1997. Note: This section was added on June 4, 1974, by initiative Prop. 9.)

82047. "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

(Amended by Stats. 1994, Ch. 1010, Sec. 144. Effective January 1, 1995. Note: This section was added on June 4, 1974, by initiative Prop. 9.)

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

**§ 18942. Exceptions to Gift and Exceptions to Gift Limits.**

(a) For purposes of Sections 82028, 82030, and the gift regulations, except as otherwise indicated, the following payments that otherwise meet the definition of gift as provided in Section 82028, subdivision (a) are neither gifts nor income:

- (1) Informational material as defined by Regulation 18942.1. (Section 82028(b)(1).)
- (2) A payment that is not used and that, pursuant to Regulation 18941 is returned, donated, or for which reimbursement is paid. (Section 82028(b)(2).)
- (3) A payment from: the official's spouse or former spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt or uncle; including grand nephew, grand niece, grand aunt, or grand uncle, or first cousin including first cousin once removed or the spouse, or former spouse, of any such person other than a former in-law, unless the donor is acting as an agent or intermediary for any person not identified in this paragraph. (Section 82028(b)(3).)
- (4) A campaign contribution required to be reported under Chapter 4 of the Act (commencing with Section 84100). (Section 82028(b)(4).)
- (5) Any devise or inheritance. (Section 82028(b)(5).)
- (6) A personalized plaque or trophy valued at less than \$250. (Section 82028(b)(6).)



(7)(A) The cost of home hospitality, as defined in Regulation 18942.2, provided to an official by an individual in the individual's home when the individual is present, unless one of the following provisions applies:

(i) Any part of the cost of the hospitality provided by the host is paid directly or reimbursed by another person.

(ii) Any person deducts any part of the cost of such hospitality as a business expense on any government tax return.

(iii) There is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person includes a portion to be utilized to provide gifts of hospitality in the individual's home.

(B) In determining the applicability of subparagraph (A), the following apply:

(i) The cost of providing hospitality does not include any part of the value or rental cost of the home nor does it include any depreciation value on the home where the hospitality is extended.

(ii) An official may presume that the cost of home hospitality is paid by the host unless the host discloses to the official, or it is clear from the surrounding circumstances at the time the hospitality is provided, that a person, other than the host, paid the cost of the hospitality.

(8)(A) Benefits commonly exchanged between an official and an individual who is not a lobbyist who is registered to lobby the official's agency, on a holiday, birthday, or other occasions, including reciprocal exchanges as identified in subparagraph (B) below where benefits are commonly exchanged, to the extent that the value of the benefits exchanged is not

substantially disproportionate and includes food, entertainment, and nominal benefits provided to guests at an event, by an honoree or another individual, other than a lobbyist, hosting the event.

(B) Reciprocal Exchanges made in a social relationship between an official and another individual, who is not a lobbyist who is registered to lobby the official's agency, with whom the official participates in repeated social events or activities such as lunches, dinners, rounds of golf, attendance at entertainment or sporting events, where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities, so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official. If the official receives a disproportionate amount relative to what the official paid, the official has received a gift for the excess amount. This reciprocal exchange payment provision does not apply to any single payment that is equal to or greater than the amount specified in Regulation 18940.2.

(9) Leave credits, including vacation, sick leave, or compensatory time off, donated to the official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position except for donations of cash.

(10) Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if the payments are available to members of the public without regard to official status.

(11) Payments for campaign activities as specified in Regulation 18950.4.

(12) A ticket provided to an official and one guest of the official for his or her admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose at which the official performs a ceremonial role on behalf of his or her agency, as defined in Regulation 18942.3, so long as the official's agency complies with the posting provisions set forth in Regulation 18944.1, subdivision (d). Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event.

(13) A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery.

(14) Benefits received as a guest attending a wedding or civil union so long as the benefits are substantially the same as the benefits received by the other guests attending the event.

(15) Bereavement offerings typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling or other relative of the official.

(16) Acts of Neighborliness. A service performed, such as a loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away, and other similar acts of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances.

(17)(A) Bona Fide Date or Dating Relationship. Personal benefits commonly exchanged between people on a date or in a dating relationship, unless the individual providing the benefit to the official is listed under (D)(i-iii) below. If the benefit is from an individual listed under (D)(i-iii) the benefit is a gift that is not reportable or subject to limits but the aggregate value is subject to the Act's conflict of interest provisions if the value meets the amount specified in Regulation 18940.2.

(B) Acts of Human Compassion. Payments provided to an official, or an official's family member, by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(C) A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(D) The limitations placed on the exceptions contained within this paragraph (17) apply to the following persons:

(i) A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.

(ii) A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.

(iii) A person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.

(18) Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.

(b) The following gifts are exempt from the limitations on gifts described in Section 89503:

(1) Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by Section 89506.

(2) Wedding gifts.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 86113, 86203, 87100, 87103, 87207, 87302 and 89503, Government Code.

### HISTORY

1. New section filed 1-12-94; operative 1-12-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 2).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of subsections (b)-(b)(2) and amendment of Note filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
4. New subsections (a)(9) and (a)(10), subsection renumbering and amendment of subsection (b)(2) filed 4-15-98; operative 4-15-98 pursuant to 2CCR section 18312(e) (Register 98, No. 16).
5. Amendment filed 5-25-2006; operative 6-24-2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 21).

6. Amendment of section and Note filed 3-19-2010; operative 4-18-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 12).

7. Amendment of subsection (a)(6) and new subsection (a)(13) filed 9-27-2010; operative 10-27-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2010, No. 40).

8. Amendment filed 1-23-2012. Pursuant to California Code of Regulations, title 2, section 18313(e), FPPC has designated an effective date of 1-1-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2012, No.4).