



## Fair Political Practices Commission

### Memorandum

**To:** Chair Remke, Commissioners Casher, Eskovitz, Wasserman and Wynne

**From:** John W. Wallace, Assistant General Counsel  
Hyla P. Wagner, Senior Commission Counsel

**Subject:** Amendment to Legal Defense Fund Regulations 18530.4 and 18530.45

**Date:** February 2, 2015

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**Proposed Commission Action and Staff Recommendation:** Adopt the proposed amendments to state and local legal defense fund Regulations 18530.4 and 18530.45. The amendments conform the definition of “attorney’s fees and other related legal costs” in those regulations to statutory changes made by AB 1692 to legal defense fund provisions contained in Sections 85304 and 85304.5 of the Political Reform Act (the “Act”).<sup>1</sup>

**1. New Legislation.** [AB 1692](#) (Garcia), amended the Act to prohibit the use of campaign funds and legal defense funds to pay for fines, penalties, judgments or settlements (including FPPC administrative fines) arising from an improper personal use of campaign funds. Prior to this legislation, administrative fines that the FPPC assesses for misuse of campaign funds were eligible to be paid out of campaign accounts. A related bill, [AB 1666](#) (Garcia), amended the Act to prohibit the use of campaign funds and legal defense funds to pay restitution fines imposed under Section 86 of the Penal Code, addressing bribery.<sup>2</sup> Both bills became effective January 1, 2015.

**2. Legal Defense Funds.** Under the Act’s legal defense fund provisions a candidate or elected state officer may establish a separate account to cover attorney’s fees and other related legal costs incurred for the candidate’s or officer’s legal defense. These funds may only be used to defray “attorney fees and other related legal costs.”

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<sup>1</sup> 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.

<sup>2</sup> Under Section 86 of the Penal Code, it is a felony for a legislator to ask, receive, or agree to receive something of value with a corrupt intent to influence the legislator’s vote in an official matter. Penal Code Section 86 covers state legislators and members of city, county, and school district legislative bodies.

AB 1692 added a definition of “attorney’s fees and other related legal costs” to the state and local legal defense fund provisions in Sections 85304 and 85304.5. The bill codified the definition of the phrase “attorney’s fees and other related legal costs” contained in the state and local legal defense fund regulations, with the addition of the language italicized below. Section 85304 provides, in part:

“(d) (1) For purposes of this section [85304] and Section 85304.5, ‘attorney’s fees and other related legal costs’ includes only the following:

(A) Attorney’s fees and other legal costs related to the defense of the candidate or officer.

(B) Administrative costs directly related to compliance with the requirements of this title.

(2) ‘Attorney’s fees and other related legal costs’ does not include expenses for fundraising, media or political consulting fees, mass mailing or other advertising, *or, except as expressly authorized by subdivision (c) of Section 89513*, a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer.” (Section 85304, as amended; emphasis added.)

The new statutory language refers to Section 89513(c), a use of campaign funds provision stating that campaign funds may not be used to pay fines penalties or settlements, except in certain specified circumstances. Section 89513(c) provides:

“(c) (1) Campaign funds shall not be used to pay or reimburse fines, penalties, judgments, or settlements, except those resulting from either of the following:

(A) Parking citations incurred in the performance of an activity that was directly related to a political, legislative, or governmental purpose.

(B) Any other action for which payment of attorney’s fees from contributions would be permitted pursuant to this title. However, campaign funds shall not be used to pay a fine, penalty, judgment, or settlement relating to an expenditure of campaign funds that resulted in either of the following:

(i) A personal benefit to the candidate or officer if it is determined that the expenditure was not reasonably related to a political, legislative, or governmental purpose.

(ii) A substantial personal benefit to the candidate or officer if it is determined that the expenditure was not directly related to a political, legislative, or governmental purpose.

(2) Campaign funds shall not be used to pay a restitution fine imposed under Section 86 of the Penal Code. (Section 89513(c), as amended by both AB 1692 and AB 1666.)

The proposed amendments will conform the definition of “attorney’s fees and other related legal costs” contained in the state and local legal defense fund regulations to the statutory changes

made by AB 1692 to Sections 85304 (Legal Defense Funds) and 85304.5 (Legal Defense Funds; Local Candidates and Elected Officers).

Attachments:

Proposed Regulation 18530.4

Proposed Regulation 18530.45