

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

§ 18329.5. Commission Advice Procedure - Government Code Sections 87300-87306.

(a) The Commission shall not render formal written advice or informal assistance regarding the interpretation of an agency's conflict of interest code or the application of that code to a specific individual unless the following criteria are satisfied:

(1) The individual, agency, or authorized representative requesting advice must comply with all the requirements of 2 Cal. Code Regs. section 18329 regarding requests for formal written advice or informal assistance; and

(2) The Commission is the Code Reviewing Body.

Where the Commission is the code reviewing body for the conflict of interest code in question, the individual or the individual's authorized representative requesting the advice or assistance must first request a determination from the agency adopting the conflict of interest code; or

(3) The Commission is not the Code Reviewing Body.

(A) Where the Commission is not the code reviewing body for the conflict of interest code in question, and the requesting party is an individual or the individual's authorized representative, the requesting party must first request a determination from the agency and the code reviewing body for such conflict of interest code.

(B) Where the Commission is not the code reviewing body for the conflict of interest code in question, and the requesting party is an agency, the agency must first request a determination from the code reviewing body for such conflict of interest code.

(b) The Commission may, upon request, provide technical assistance to an individual regarding technical compliance with the reporting requirements under the individual's current conflict of interest code.

(c) The Commission may, upon request, provide advice or technical assistance to a party for the purpose of determining whether that party is an agency as defined in Government Code sections 82041 and 82049, and is therefore required to adopt and promulgate a Conflict of Interest Code pursuant to Government Code Section 87300. The Commission may also, upon request, provide advice or assistance to an agency concerning which positions should be designated in the agency's Conflict of Interest Code through application of 2 Cal. Code Reg. section 18701. However, a request by an agency to be relieved of the duty to adopt a Conflict of Interest Code may only be processed as a request for exemption pursuant to 2 Cal. Code Reg. section 18751.

(d) Section 87200: “Other Public Officials Who Manage Public Investments”

(1) Notwithstanding subdivision (a) above, the Commission may provide advice or assistance to an individual concerning whether he or she is subject to Government Code section 87200 at any time.

(2) When the Commission determines that an individual is not a “public official who manages public investments” pursuant to Government Code section 87200, the individual's agency or code reviewing body must then determine whether that individual has filing obligations pursuant to Chapter 7 of the Act. The agency or code reviewing body may request advice or assistance in making that determination pursuant to the procedures in subdivision (a) above.

(e) Requests.

A requestor may be asked to provide the following information when requesting advice or assistance pursuant to this regulation:

(1) A copy of all pertinent agency determinations regarding an individual's obligations under Chapter 7 of the Act.

(2) A copy of an individual's employment contract;

(3) A copy of an individual's duty statement;

(4) A copy of the applicable conflict of interest code; and

(5) Any other pertinent information.

COMMENT: An individual potentially subject to a conflict of interest code may petition the agency to amend its code. An individual may appeal a denied petition to the code reviewing body and may also seek judicial review of an action taken by the code reviewing body (Government Code sections 87307 and 87308). The code reviewing body has the authority to modify or suspend the disclosure obligations pending resolution of the appeal (2 Cal. Code Regs. section 18737).

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83114(b) and 87300-87306, Government Code.

HISTORY

1. New section filed 6-12-2003; operative 6-12-2003. 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 2003, No. 24).

2. New subsection (c) and subsection relettering filed 12-29-2005; operative 1-28-2006.

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.) (Register 2005, No. 52).

3. Amendment of subsections (a)(2), (a)(3)(A) and (b) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). 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 2021, No. 20)