



The State Bar *of California*

OPEN SESSION AGENDA ITEM 50-4 MAY 2019

DATE: May 17, 2019

TO: Members, Board of Trustees

FROM: Leah Wilson, Executive Director
Destie Overpeck, Assistant General Counsel, Office of General Counsel

SUBJECT: Form 700 Reporting Requirements for Rule 2201 Administrator and Special Deputy Trial Counsel: Request for Approval

EXECUTIVE SUMMARY

This item requests that the Board of Trustees revise the conflict of interest disclosure categories for the Rule 2201 Administrator and Special Deputy Trial Counsel (SDTC). At the March 15, 2019 Board of Trustees meeting, the Board approved, for the first time, conflict of interest disclosure categories for the Rule 2201 Administrator and SDTC. Effective April 1, 2019, the SDTC are required to disclose sources of income described in the State Bar Conflict of Interest for Designated Employees for categories 2 and 13, which are the same categories that an OCTC Assistant Chief Trial Counsel and Senior Attorney are required to disclose. The disclosures required by category 2 unintentionally create an issue for the SDTC who primarily represent attorneys either in legal malpractice cases or by providing ethics advice, and are now required to disclose the names of their clients when filing the Form 700. Three SDTC have stated that they will not be able to continue to work as an SDTC because listing the names of their clients will breach the confidentiality agreements with their clients and be too burdensome. This agenda item seeks to remedy this issue by removing the requirement to disclose the category 2 sources, and limit the disclosures to category 13 (which is the same disclosure category that applies to Board of Trustee members). Although the category 2 disclosure requirement is required of OCTC attorneys, the OCTC attorneys do not have private clients, and therefore are not faced with this same reporting issue.

BACKGROUND

The Political Reform Act, Government Code § 81000 et seq. ("PRA"), requires that the State Bar, like other state and local government agencies, adopt a conflict of interest code for officers,

employees and consultants who, during the course of their work for the agency, make or participate in making decisions that may have a material impact on the interests defined in the code. Pursuant to the PRA, the State Bar has adopted a Conflict of Interest for Designated Employees of the State Bar of California ("Code"). (Attachment A.)

The Code includes a list of "Designated Employee Positions" (which includes consultants, contractor and volunteer positions) that are subject to the Code. (Attachment B.) These designated individuals must report particular financial interests on their Statements of Economic Interests - Form 700 ("Form 700") because they make or participate in making decisions that are likely to have an impact on those financial interests. The Code also indicates a list of disclosure categories. (Attachment C.) These categories reflect the subject matter areas in which the designated individuals may participate in decisions that could potentially be influenced by their own financial interests.

Rules of Procedure of the State Bar, Rule 2201, requires the recusal of the Chief Trial Counsel ("CTC") in any case involving individuals with close ties to the State Bar. Pursuant to Rule 2201, when the CTC determines that recusal is appropriate, "the inquiry or complaint shall be referred to the Deputy Trial Counsel Administrator" ("SDTC Administrator"). (Rule 2201(c)(1).) The SDTC Administrator and SDTC are independent contractors who perform an important function in the discipline system by investigating and prosecuting attorney misconduct where there may be a conflict or perceived conflict with the State Bar. The SDTC Administrator conducts a preliminary review to determine whether to close the matter or appoint a Special Deputy Trial Counsel ("SDTC") to investigate the matter further.

There are approximately fifteen to twenty SDTC who investigate and prosecute the cases assigned by the SDTC Administrator. The SDTC Administrator and SDTC have the same duties as the CTC and act in the place of the CTC with regard to an inquiry or complaint and any resulting investigation or prosecution. The SDTC Administrator and SDTC must comply with the policies of the State Bar of California and Office of Chief Trial Counsel ("OCTC"), and may be removed by the Chairperson of RAD only for good cause. (Rule 2201(e)(5).) The SDTC Administrator and SDTC may receive compensation for services and reimbursement of reasonable expenses for investigation, administrative and legal support. (Rule 2201(e).) The State Bar contracts with the SDTC Administrator and the SDTC on an annual basis.

At the March 15, 2019 Board of Trustees meeting, the Board approved, for the first time, conflict of interest disclosure categories for the Rule 2201 Administrator and SDTC. The SDTC were advised that effective April 1, 2019, they were required to comply with the Form 700 filing requirements and disclose sources of income described in the State Bar Conflict of Interest for Designated Employees for categories 2 and 13, which are the same categories that an OCTC Assistant Chief Trial Counsel and Senior Attorney are required to disclose.

Under Category 2, Designated Employees are required to disclose all reportable investments in, business positions held in, and sources of income including gifts, loans, and other payments received from sources that are subject to the regulatory, permit or licensing authority of the State Bar of California or have an application for a license, permit or other certification pending

before the State Bar. Under Category 13, the Designated Employees must disclose financial interests if, during a reporting period, the individual was required to make a disclosure under the provisions of Business and Professions Code sections 6038 and 6036. Section 6036 requires a Board of Trustees member to disqualify himself or herself from making, participating or attempting to influence any decisions of the board in which he or she has a financial interest. Section 6038 provides that “attorney members of the Judicial Counsel, members of the Commission on Judicial Performance who are not judges, and employees designated in the Conflict of Interest Code of the State Bar of California are subject to provisions of this article with respect to making, participating in the making, or attempting to influence, governmental decisions of their respective state agencies other than decisions of a judicial or quasi-judicial nature.”

As set forth in Section IX of the Code’s Designated Employee Positions (Attachment B), consultants and contractors fall within Disclosure Category 14. Disclosure Category 14 provides: “The disclosure category for Designated Employees in this category shall be determined by the Executive Director in consultation with the Board of Governors.” (Attachment C.) The Board is therefore requested to approve the modification to the required disclosures for SDTC as set forth below.

DISCUSSION

Following the March 15, 2019 Board of Trustees meeting, the SDTC were advised that effective April 1, 2019, there were required to comply with the Form 700 filing requirements and disclose sources of income described in the State Bar Conflict of Interest for Designated Employees for categories 2 and 13.

However, the disclosures required by category 2 create an issue for the SDTC who primarily represent attorneys either in legal malpractice cases or by providing ethics advice. (Please note, we do not allow attorneys who represent attorneys in State Bar discipline cases to serve as SDTC.) Specifically, SDTC who receive income of \$500 or more from an attorney client are required to list the name of the client on the Form 700. SDTC who own more than 10 percent interest in their firm are also required to list the attorney sources of income. Three SDTC have stated that they will not be able to continue to work as an SDTC because listing the names of their clients will breach their confidentiality agreements with their clients and be too burdensome. The category 2 disclosure requirement may also make it more difficult to recruit new SDTC who represent attorneys in private practice.

Board of Trustee members are currently required to comply only with category 13. The rationale is that the Board of Trustee members are volunteers and have private practices. Category 13 provides for disclosure of conflicts that resulted in a Board member disqualifying himself or herself in participating in a Board of Trustees’ decision. Category 13 follows the disqualification requirements of Business and Professions Code sections 6036 and 6038, but is not as burdensome as category 2, which would potentially require the disclosure of all of a Board member’s clients who are attorneys. Therefore, unlike category 2, category 13 does not serve as a deterrent to serving as a Board member.

To remedy the problem that has arisen, it is recommended that the Board eliminate the requirement to disclose the category 2 sources, and limit the disclosures to category 13. Although the category 2 disclosure requirement is required of OCTC attorneys, the OCTC attorneys do not have private clients, and therefore are not faced with this same reporting issue.

In practice, prior to assigning a case to a SDTC, the Administrator would make sure that the SDTC does not have a conflict with the complaining witness or responding attorney. Any potential conflicts will be identified prior to assignment to a SDTC. The SDTC should thus not have to recuse himself or herself from any decisions or complaints, and will not need to disclose any clients on the Form 700. If the SDTC discovers that they have a conflict during the investigation of the Rule 2201, they will have to recuse themselves from the case and would be required to disclose the name of the client that was the reason for the conflict. (Business and Professions Code section 6038.)

If this recommendation is adopted, it is anticipated that one or two of the current SDTC who have stated that they cannot comply with the category 2 disclosures will be able to remain serving as SDTC. Therefore, it is further recommended that the resolution be effective immediately.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - compliance

RECOMMENDATIONS

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees revise the Special Deputy Trial Counsel Administrator and Special Deputy Trial Counsel disclosure categories adopted on March 15, 2019 and require the Special Deputy Trial Counsel Administrator and Special Deputy

Trial Counsel to be subject only to disclosure category 13 of the Conflict of Interest Code for Designated Employees of the State Bar of California, and that the Special Deputy Trial Counsel Administrator and Special Deputy Trial Counsel make disclosures pursuant to category 13 as if their positions were specifically enumerated in Business and Professions Code section 6038, effective May 17, 2019.

ATTACHMENT(S) LIST

- A.** Conflict of Interest Code for Designated Employees of the State Bar of California
- B.** Appendix A of the Conflict of Interest Code for Designated Employees of the State Bar of California, Designated Employee Positions
- C.** Appendix B of the Conflict of Interest Code for Designated Employees of the State Bar of California, Disclosure Categories

ATTACHMENT A-1

**CONFLICT OF INTEREST CODE FOR DESIGNATED EMPLOYEES OF THE STATE
OF CALIFORNIA**

(Approved by the Board of Trustees on November 16, 2018)

The Board of Trustees of the State Bar of California has incorporated the terms of Regulation 18730 of the Regulations of the Fair Political Practices Commission Title 2, Division 6, California Code of Regulations to constitute the adoption and amendment of the Conflict of Interest Code for Designated Employees of the State Bar of California. The provisions of Regulation 18730, which appear below, along with Appendix A, the list of the State Bar's Designated Employees, and Appendix B, the Disclosure Categories for Designated Employees, constitute the complete Conflict of Interest Code for Designated Employees of the State Bar of California.

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

ATTACHMENT A-2

§ 18730. Provisions of Conflict of Interest Codes.

(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 Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 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, 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 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 (Regulations 18110, 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 economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in 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 economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.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 the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic 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 economic interests set forth in a designated employee's disclosure categories

are the kinds of economic 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 within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(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 30 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 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(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 and income received during the 12 months prior to 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, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(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, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(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 property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. 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;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

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

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. 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 \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;
3. A description of the consideration, if any, for which the income was received;
4. 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;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of 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:

1. The name, address, and a general description of the business activity of the business entity;

2. 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 \$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. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

(D) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

Section 8.1. Prohibition on Receipt of Gifts in Excess of \$470.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$470 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected

officer has been elected or over which that elected officer's agency has direction and control.

This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official'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 persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed \$500 at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her 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 the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

- a. The date the loan was made.
- b. The date the last payment of \$100 or more was made on the loan.
- c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

- 1. A loan made to the campaign committee of an elected officer or a candidate for elective office.
- 2. A loan that would otherwise not be a gift as defined in this title.
- 3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
- 4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
- 5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and 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 \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

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

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$470 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

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.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. 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 Section 83114 and Regulations 18329 and 18329.5 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.

(12) Section 12. 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, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

¹Designated 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 Section 81004.

²See Section 81010 and Regulation 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.

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

⁴Investments and interests in real property which have a fair market value of less than \$2,000 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.

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.

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.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300- 87302, 89501, 89502 and 89503, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14).
Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).

9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment

of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d)

(Register 98, No. 35).

19. Editorial correction of subsection (a) (Register 98, No. 47).

20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).

22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001.

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 2001, No. 2).

23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. 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 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003.

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. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004,

No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL 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 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. 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 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. 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. 47).

32. Amendment of section heading and subsections (a)-(b)(1), (b)(3)-(4), (b)(5)(C), (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) and amendment of footnote 1 filed 1-8-2013; operative 2-7-2013. 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 2013, No. 2).

33. Amendment of subsections (b)(8.1)-(b)(8.1)(A), (b)(8.2)(E)3. and (b)(9)(E) filed 12-15-2014; operative 1-1-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing and printing 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 2014, No. 51).

34. Redesignation of portions of subsection (b)(8)(A) as a new subsections (b)(8)(B)-(D), amendment of subsections (b)(8.1)-(b)(8.2)(A), redesignation of portions of subsection (b)(8.1)(A) as new subsections (b)(8.1)(B)-(C) and amendment of subsection (b)(9)(E) filed 12-1-2016; operative 12-31-2016 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 2016, No. 49).

APPENDIX A
DESIGNATED EMPLOYEE POSITIONS

OFFICE AND POSITIONS	DISCLOSURE CATEGORIES
I. Executive Director	
Executive Director/Chief Executive Officer	1, 2
Program Coordinator	2, 13
II. General Counsel	
General Counsel	1, 2
Deputy General Counsel	1, 2
Administrative Supervisor	2, 3, 5, 13
Attorney I, II, III , IV	2, 13
III. Chief Trial Counsel	
Chief Trial Counsel	1, 2
Deputy Chief Trial Counsel	1, 2
Special Assistant Chief Trial Counsel	2, 13
Assistant Chief Trial Counsel	2, 13
Administrative Supervisor	2, 3, 5, 13
Supervising Attorney	2, 3, 5, 13
Senior Attorney	2, 13
Attorney	2, 13
Investigator I, II, III	2, 13
IV. Chief Administrative Officer	
Chief Administrative Officer	1, 2
Senior Program Analyst	2, 3, 5, 8
Human Resources	
Director, Human Resources & Labor Relations	1, 2
Senior Human Resources Analyst	2, 6, 9, 13
Human Resources Analyst	2, 6, 9, 13
General Services	
Director, General Services	1, 2
Administrative Supervisor	2, 3, 5
Senior Program Analyst	2, 3, 5
Program Analyst	2, 3, 5
General Services Specialist III	2, 3, 5
Information Technology	
IT Director	1, 2
IT Manager III	2, 8, 13
IT Manager I	2, 8, 13
Senior Administrative Assistant	2,13

OFFICE AND POSITIONS	DISCLOSURE CATEGORIES
V. Chief Financial Officer	
Chief Financial Officer	1, 2
Program Director	1, 2
Finance Manager	2, 7, 13
Senior Financial Analyst	2, 7, 13
VI. Chief of Programs	
Chief of Programs	1, 2
<i>Access & Inclusion</i>	
Program Director II	1, 2
Program Supervisor	2, 3, 4, 5, 7, 13
Senior Program Analyst	2, 4, 5, 7, 13
Program Analyst	2, 4, 5, 7, 13
Senior Financial Analyst	2, 7, 13
<i>Admissions</i>	
Program Director III	1, 2
Program Director I	1, 2
Program Manager III	2, 4, 13
Program Manager II	2, 4, 13
Program Manager I	2, 4, 13
Administrative Supervisor	2, 4, 5, 13
Program Supervisor	2, 4, 5, 13
Program Coordinator	2, 4, 5, 13
Program Specialist	2, 4, 5, 13
<i>Attorney Regulation & Consumer Resources</i>	
Program Director II	1, 2
Program Manager II	2, 13
Program Supervisor	2, 13
Attorney (Fee Arbitration)	2, 13
Senior Program Analyst (Fee Arbitration)	2, 13
<i>Client Security Fund</i>	
Program Manager III	1, 2
Senior Attorney	2, 13
Attorney	2, 13
Program Supervisor	2, 3, 5, 13
<i>LAP</i>	
Program Supervisor	2, 3, 5, 11, 13
Senior Program Analyst	2, 11, 13
Clinical Rehabilitation Coordinator	2, 11, 13
<i>Probation</i>	
Supervising Attorney	2, 3, 5, 13
Probation Case Specialist	2, 13
<i>Professional Competence</i>	
Program Manager III	1, 2
Attorney	2, 13
Program Supervisor	2, 4, 5, 13

OFFICE AND POSITIONS	DISCLOSURE CATEGORIES
VII. Chief Court Counsel/Administrator	
Chief Court Counsel	1, 2
Assistant Chief Court Counsel	1, 2
State Bar Court Judge	2, 13
Program Manager II	1, 2
Supervising Attorney	2, 13
Senior Attorney	2, 13
Court Specialist	2, 13
VIII. Chief of Mission Advancement & Accountability	
Chief of Mission Advancement & Accountability	1, 2
<i>Strategic Communications & Stakeholder Engagement</i>	
Program Director II	1, 2
Program Supervisor	2, 8, 12, 13
Public Information Officer	2, 8, 12, 13
<i>Director, Research & Institutional Accountability</i>	
Program Director II	1, 2
Principal Program Analyst	1, 2
Program Analyst	2, 8, 12, 13
Paralegal	2, 8, 12, 13
<i>Board Support, JNE Commission, Appointments, Legislative Affairs</i>	
Attorney II, IV	2, 13
IX. Committees and Other	
Lawyer Assistance Program Oversight Committee	13
Board of Legal Specialization	13
Advisory Commission, Legal Specialization	13
Committee of Bar Examiners	13
Client Security Fund Commission	13
Legal Services Trust Fund Commission	13
Consultants/Contractors	14

APPENDIX B**DISCLOSURE CATEGORIES**

(Amended by the Board of Trustees on November 16, 2018)

<u>Category 1.</u>	Designated Employees in this category shall disclose, as required by Government Code sections 87206 and 87207 and this Code sections 6 and 7, all reportable investments, business positions in business entities, interests in real property, and sources of income including gifts, loans, and other payments.

Designated Employees in the following categories shall disclose, as required by Government Code sections 87206 and 87207 and the State Bar's Conflict of Interest Code, all reportable investments in, business positions held in, and sources of income including gifts, loans, and other payments received from sources described below:

<u>Category 2.</u>	Sources that are subject to the regulatory, permit or licensing authority of the State Bar of California or have an application for a license, permit or other certification pending before the State Bar of California
<u>Category 3.</u>	Vendors of office supplies, office equipment, office furniture or business maintenance supplies or services, typesetting, printing or duplicating services or equipment, messenger services, mass mailing services or security services.
<u>Category 4.</u>	Accredited and unaccredited law schools, admissions related consultants and sources that provide education, training or education and training products used to qualify for or maintain a license to practice law in California including providers of continuing legal education, legal publications, and online legal research.
<u>Category 5.</u>	Travel agencies, hotels, meeting planning services, airlines, car rental agencies, ground transport entities, vendors of meeting space, food services, and entertainment.
<u>Category 6.</u>	Insurance companies, brokerage firms, carriers, holding companies, underwriters, brokers, solicitors, agents, adjusters, claims managers, actuaries, and third-party administrators.
<u>Category 7.</u>	Banks and other financial institutions.

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<u>Category 8.</u>	Vendors of computers, computer hardware, maintenance, software, data processing, web hosting, web design, computer consulting services, video or telecom supplies, services, consulting or equipment and providers of audio-visual production services.
<u>Category 9.</u>	Employee benefit providers and administrators of employee benefits, personnel consulting services and employment agencies.
<u>Category 10.</u>	Real estate brokerage firms, real estate agents, real estate brokers and companies that engage in property management, land development, construction or the acquisition or sale or leasing or subleasing of real property.
<u>Category 11.</u>	Providers of consulting, rehabilitative, educational treatment or other services concerning the prevention, treatment or rehabilitation of persons suffering from chemical dependency.
<u>Category 12.</u>	Public relations and / or media management consultants.
<u>Category 13.</u>	An individual required to report for this category must disclose financial interests if, during a reporting period, the individual was required to make a disclosure under the provisions of Business and Professions Code sections 6038 and 6036. Volunteer members of State Bar bodies who are required to report for this category, although not specifically enumerated in Business and Professions Code section 2038, shall make disclosures as if they were specifically enumerated therein.
<u>Category 14.</u>	The disclosure category for Designated Employees in this category shall be determined by the Executive Director in consultation with the Board of Governors.