

ITEM 7
ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING
CONFLICT OF INTEREST CODE

PROPOSED AMENDMENTS TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5

Article 9. Conflict of Interest Code

EXECUTIVE SUMMARY

The Political Reform Act¹ requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Conflict of Interest Code includes an Appendix that identifies the officials and employees who are required to file statements of economic interest with the Fair Political Practices Commission (FPPC), and designates disclosure categories for each official and employee. The FPPC's regulations² contain a standard Conflict of Interest Code, which state agencies can incorporate by reference into their own regulations. Therefore, the Commission adopts the FPPC's standard Conflict of Interest Code as its own under section 1189.10 of the Commission's regulations, along with the Appendix in which officials and employees are designated disclosure categories.

Under the FPPC's regulations, nonsubstantive amendments to the Conflict of Interest Code and Appendix may be submitted directly to the FPPC. However, substantive amendments require initiation of a rulemaking package. Commission staff is proposing substantive amendments to the Commission's Conflict of Interest Code Appendix. In 2009, the Commission submitted amendments to the Appendix as nonsubstantive amendments. The FPPC rejected those amendments as nonsubstantive. Therefore, initiation of rulemaking is required.

Section 1189.2 of the Commission's regulations authorizes the Commission to adopt an order to initiate rulemaking. Following adoption of the order, staff will publish a notice of hearing and mail the notice and rulemaking package to all interested persons for public comment.

The purpose of the proposed regulations is to update the Commission's Conflict of Interest Code Appendix to accurately reflect the Commission employees who are designated to file economic interest statements with the Fair Political Practices Commission and their disclosure categories.

¹ Government Code sections 81000, et seq.

² California Code of Regulations, Title 2, section 18730

Proposed Order Number 10-03 (Exhibit A)

The proposed rulemaking includes the following amendments:

Section 1181.10. General Provisions

The proposed changes to the Commission’s Conflict of Interest Code Appendix add new classifications and revise classifications to accurately reflect the Commission employees designated to file economic interest statements with the Fair Political Practices Commission. The proposed amendments:

1. Add the position Staff Counsel III, or Attorney II, or other successor title designated by the State Personnel Board.
2. Revise the position Staff Counsel to include Attorney I, or other successor title designated by the State Personnel Board.

The State Personnel Board is considering reclassifying Staff Counsel and Staff Counsel III positions to Attorneys I and II. The proposed amendment to the Commission’s Appendix would include both titles.

3. Delete the position Staff Services Manager III.

The Commission no longer uses the position of Staff Services Manager III. Therefore, this position is deleted.

4. Delete the positions Information Services Technician and Assistant Information Systems Analyst.

This revision will properly reflect the level of IT staff used by the Commission.

5. Add the position Senior Information Systems Analyst

This revision will properly reflect the level of IT staff used by the Commission.

Text of Proposed Amendments (Exhibit B)

Staff’s draft of the proposed text is attached as Exhibit B. Before filing with the Office of Administrative Law, staff may make technical corrections, as may be required.

Timetable

If the order is adopted, staff will proceed pursuant to the following timetable:

Date	Action
November 9, 2010	Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication.
November 19, 2010	Notice of Proposed Regulatory Action will be issued and published.
January 13, 2011	Last day to request public hearing.

January 27, 2011	Public Hearing will be held, if requested.
January 28, 2011	End of public comment period.
February 28, 2011	Issue and post proposed modifications to original rulemaking package, if any.
March 15, 2011	Issue and post final proposed rulemaking package.
March 24, 2011	Adopt proposed rulemaking package.
March 28, 2011	File Adopted Regulations with the Office of Administrative Law.
May1, 2011	Approximate effective date of adopted regulations (Note: regulations are effective 30-days after the Office of Administrative Law files them with the Secretary of State).

Staff Recommendation

Staff recommends the Commission adopt Proposed Order 10-03.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

In the Matter of:

Amendments to California Code of
Regulations, Title 2, Division 2, Chapter 2.5,
Article 9

No. 10-03

ORDER TO INITIATE RULEMAKING
PROCEEDINGS

*Conflict of Interest Code: Appendix
Section 1189.10*

Pursuant to California Code of Regulations, title 2, section 1189.2, the Commission on State Mandates (“Commission”) hereby adopts this order to institute rulemaking proceedings in accordance with the procedures of Government Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

PROPOSED REGULATORY ACTION. The Commission proposes to amend section 1189.10 to update its Conflict of Interest Code Appendix to accurately reflect the Commission employees who are designated to file economic interest statements with the Fair Political Practices Commission and their disclosure categories.

AUTHORITY AND REFERENCE. Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to update the Commission’s Conflict of Interest Code Appendix to accurately reflect the Commission employees who are designated to file economic interest statements with the Fair Political Practices Commission and their disclosure categories.

WRITTEN COMMENT PERIOD. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The Commission will only consider written comments received at the Commission’s office by 5:00 p.m. on January 28, 2011. Submit comments to:

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Commission on State Mandates
980 Ninth Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562 FAX: (916) 445-0278
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PUBLIC HEARING. The Commission will hold a hearing on January 27, 2011, if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than January 13, 2011.

Paula Higashi, Executive Director

Dated: November 9, 2010

1 CALIFORNIA CODE OF REGULATIONS
2 TITLE 2. ADMINISTRATION
3 DIVISION 2. FINANCIAL OPERATIONS
4 CHAPTER 2.5. COMMISSION ON STATE MANDATES

5 Text of Proposed Regulations

6 Changes are illustrated by double underline for proposed additions and by double strikeout for
7 proposed deletions.

8 ARTICLE 9. CONFLICT OF INTEREST CODE

9 1189.10. General Provisions

10 The Political Reform Act, Government Code sections 81000, et seq., requires state and local
11 government agencies to adopt and promulgate conflict of interest codes. The Fair Political
12 Practices Commission has adopted a regulation (Cal. Code of Regs., tit. 2, § 18730) which
13 contains the terms of a standard conflict of interest code, which can be incorporated by reference,
14 and which may be amended by the Fair Political Practices Commission to conform to
15 amendments to the Political Reform Act after public notice and hearings. Therefore, the terms of
16 California Code of Regulations, title 2, section 18730 and any amendments to it duly adopted by
17 the Fair Political Practices Commission, along with the attached Appendix in which officials and
18 employees are designated disclosure categories are set forth, are hereby incorporated by
19 reference and constitute the conflict of interest code of the commission.

20 Designated employees shall file statements of economic interests with their agency. Upon
21 receipt of the statements of the commission members, their alternates and the executive director,
22 the commission shall make and retain a copy and forward the originals to the Fair Political
23 Practices Commission. Statements for all other designated employees shall be retained with the
24 commission and made available for public inspection and reproduction. (Gov. Code, § 81008).

25 Note: Authority cited: Sections 17527(g), 87300 Government Code. Reference: Sections
26 82014, 87302, 87306 Government Code.
27

28 Appendix

<i>Designated Employees</i>	<i>Disclosure Categories</i>
Members and alternates of the Commission on	
State Mandates	1
Executive Director	1

1	Chief Legal Counsel (Career Executive Assignment)	1
2	<u>Staff Counsel III, or Attorney II or other successor title</u>	
3	<u>designated by the State Personnel Board</u>	1
4	<u>Staff Counsel or Attorney I or other successor title</u>	
5	<u>designated by the State Personnel Board</u>	1
6	Staff Services Manager I, II	2, 3
7	Staff Services Manager III	1
8	Staff Services Analyst	2, 3
9	Associate Governmental Program Analyst	2, 3
10	Graduate Legal Assistant	1
11	Information Services Technician	2
12	Senior Assistant Information Systems Analyst	2
13	Staff Information Systems Analyst	2
14	Consultants *	1

15

16 *Disclosure Category*

17 Category 1 designated employees must disclose all investments, and business positions in
 18 business entities, interests in real property, income and gifts from any source.

19 Category 2 designated employees shall report all investments, business positions in any
 20 business entity, interests in real property, income and gifts from any source of the type which has
 21 contracted, or in the future may contract with the commission to provide services, supplies,
 22 materials, machinery or equipment.

23 Category 3 designated employees shall report all business positions and income from any
 24 school district, local governmental agency or special district which has received, or in the future
 25 may receive, state reimbursement under [article XIII B, section 6 of the California Constitution](#).

26 *The disclosure by consultants is subject to the following limitation:

27 The executive director may determine in writing that a particular consultant, although a
 28 "designated employee," is hired to perform a range of duties that is limited in scope and thus is
 29 not required to fully comply with the disclosure requirements in this section. Such written
 30 determination shall include a description of the consultant's duties and, based upon that

Exhibit B

- 1 description, a statement of the extent of disclosure requirements. The executive director's
- 2 determination is a public record and shall be retained for public inspection in the same manner
- 3 and location as this conflict of interest code.

INITIAL STATEMENT OF REASONS
CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 2.5. COMMISSION ON STATE MANDATES

AMEND SECTION 1189.10

SPECIFIC PURPOSE OF THE REGULATIONS

The Commission on State Mandates (Commission) is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6).

The Political Reform Act¹ requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Conflict of Interest Code includes an Appendix that identifies the officials and employees who are required to file statements of economic interest with the Fair Political Practices Commission (FPPC), and designates disclosure categories for each official and employee. The FPPC's regulations² contain a standard Conflict of Interest Code, which state agencies can incorporate by reference into their own regulations. Therefore, the Commission adopts the FPPC's standard Conflict of Interest Code as its own under section 1189.10 of the Commission's regulations, along with the Appendix in which officials and employees are designated disclosure categories.

Under the FPPC's regulations, substantive amendments to the Conflict of Interest Code and Appendix require initiation of a rulemaking package.

Section 1189.2 of the Commission's regulations authorizes the Commission to adopt an order to initiate rulemaking. Following adoption of the order, staff will publish a notice of hearing and mail the notice and rulemaking package to all interested persons for public comment.

The purpose of the proposed regulation is to update the Commission's Conflict of Interest Code Appendix to accurately reflect the Commission employees who are designated to file economic interest statements with the Fair Political Practices Commission and their disclosure categories.

I. Revision of the Conflict of Interest Code Appendix

The existing Appendix contains positions that are no longer used by the Commission. And, there are two positions (staff counsel III and Senior Information Systems Analyst), that should be included in the Appendix. In addition, the State Personnel Board is reconsidering staff counsel and staff counsel III positions to attorneys I and II, and those titles should be reflected in the Appendix.

¹ Government Code sections 81000, et seq.

² California Code of Regulations, Title 2, section 18730

Section 1189.10. General Provisions

Specific Purpose of the Regulation

This section contains the Commission’s Conflict of Interest Code and the Appendix that specifies which Commission employees are designated to file statements of economic interest with the Fair Political Practices Commission, and their disclosure categories.

Proposed Changes

The proposed changes add new classifications, amend existing classifications, and delete classifications as follows:

- Add Staff Counsel III
- Add Attorney I and II (pending new classifications for Staff Counsel and Staff Counsel III)
- Add Senior Information Systems Analyst
- Delete Staff Services Manager III
- Delete Information Services Technician
- Delete Assistant Information Systems Analyst

MATERIAL RELIED UPON TO DEVELOP REGULATIONS

Commission staff relied on a July 16, 2010 letter from Department of Personnel Administration to California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment (CASE), the bargaining representative for state attorneys, to clarify the pending reclassification of attorney titles.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives have been presented to or considered by the Commission.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL OR OTHER BUSINESSES

The Commission has no jurisdiction over small or any other businesses. Therefore there is no adverse impact on small or other businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

There are no businesses that are parties or interested parties in matters before the Commission.