



# COMMISSIONER CODE OF CONDUCT

## Applicable Laws and Policies

This document is a collection and restatement of statutes and regulations applicable to the Commission, as well as interpretations and policies hereby adopted by the Commission.

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## I. Governance

The Commission ensures the proper conduct and governance of the Agency. The Commission strives to achieve a governing style that encourages effective operations, frank and collegial discussions among members of the Commission, the staff and the public, and fairness to persons whose compliance with the Act is called into question. To this end, each Commissioner, including the Chair, shall:

- (1) Comply with the statutory qualification requirements and all regulations and rules of internal governance adopted by the Commission for the purpose of governing Commissioner conduct, including but not limited to the Governance Policy and those policies included in the Commissioner Code of Conduct.
- (2) Prepare for and attend Commission meetings and Committee meetings of which a Commissioner is a member.
- (3) Between meetings, make requests for information from staff through the Executive Director, the Chair, or a Division Chief who shall ensure that all Commissioners receive the benefit of information and non-confidential advice provided to any individual Commissioner, provided, however, that between meetings, Commissioners who serve as advisory committee chairs may make requests for information and provide direction to Division Chiefs concerning matters under consideration by the Commissioner's committee.
- (4) Maintain the confidentiality of all confidential information acquired during the Commission's work.
- (5) Disclose to the General Counsel any relationship or interest that the Commissioner believes is likely to create an appearance of bias or impropriety in connection with the Commission's work. A Commissioner may consult with and receive confidential advice from the General Counsel regarding the same. Confidential advice from the General Counsel to a Commissioner concerning potential conflicts of interest is not subject to third-party disclosure absent prior consent of the Commissioner who received the advice. To the extent a Commissioner determines that an interest creates an appearance of bias or impropriety requiring public disclosure and/or recusal, the Commissioner shall disclose the same to the Chair and Executive Director prior to making the public disclosure and/or recusal.

- (6) Apprise the Chair and Executive Director of all significant activities pertinent to the work of the Commission.
- (7) At all times meet high ethical standards that exceed legal minimums, including refraining from activities that suggest partisanship or other bias by the Commission or individual Commissioners.

Reference: Governance Policy, Section II (“Authority of the Commission”), subd. (c); adopted December 19, 2019 (See [Commission Meeting Agenda](#); [Minutes](#). Subdivision (7) adopted October 15, 2020.

## II. Political Activities

Consistent with Government Code section 83105<sup>1</sup>, while serving on the Commission, a Commissioner **shall not**:

- Hold any other public office;
- Serve as an officer of any political party;
- Serve as an officer of any partisan organization;
- Participate in an election campaign;
- Contribute to an election campaign;
- Employ a lobbyist;
- Be employed as a lobbyist
- Seek election to any other public office (prohibition applies for entire term of appointment).

The prohibition on contributions to and participation in an election campaign apply to any primary, general, special or recall election held in this state. The Commission interprets this to include contributions to the campaign of any candidate for President and contributions to the campaign of any other candidate for federal office when the election is held in California.

References: Section [83105](#).

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<sup>1</sup> All statutory reference are to the Government Code.

***Best Practices as Recommended by the Legal Division***

Section 83105 prohibits Commissioners from participating in or contributing to an election campaign. Section 83105 does not specify whether “election campaign” is intended to include federal campaigns or other campaigns outside the FPPC’s jurisdiction. The Act does clearly define “election” to mean “any primary, general, special or recall election *held in this state*” (italics added), thereby supporting the Commission’s interpretation that Section 83105 prohibits Commissioners from contributing to or participating in federal campaigns held in California, including a presidential campaign.

Additionally, neither Section 83105 nor the Act define the term “participate” in the context of Commissioners participating in an election campaign. Neither case law nor legislative history sheds light on the precise scope of the prohibition. However, in *Pickering v. Board of Education* (1968) 391 U.S. 563, the Supreme Court held that the validity of a regulation limiting public employee speech is to be determined by balancing the interests of the employee “as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” In the context of the Political Reform Act, Section 81003 states that “[t]his title shall be liberally construed to accomplish its purposes,” and Section 83111 provides that “[t]he Commission has primary responsibility for the impartial, effective administration and implementation of this title.”

Given (1) the broad language of Section 83105’s prohibition, (2) the permissibility of restrictions on speech when outweighed by the State’s interest in promoting the efficiency of the services the FPPC performs, (3) the liberal construction of statutes under the Act, and (4) the necessity of impartiality amongst Commissioners, the Legal Division recommends that Commissioners ***err on the side of caution*** and refrain from any activity that could reasonably be interpreted as participating in an election campaign. For example, Section 83105 almost certainly prohibits Commissioners from promoting, endorsing, volunteering for, or soliciting funds for any candidate or measure that may appear on a ballot in California. If Commissioners have questions regarding the permissibility of any specific conduct, they should contact the General Counsel for more advice.

### III. Statement of Economic Interests

Commissioners **must** file a statement of economic interests (“SEI” or “Form 700,” interchangeably) under the following circumstances:

- (1) **Within 30 days of being appointed.** An official filing a Form 700 upon being appointed **must** disclose his or her investments and real property interests held on the date of assuming office, as well as income received during the 12 months before assuming office.
- (2) **On or before March 1 each year.** An official filing an annual Form 700 **must** disclose his or her investments, real property interests, and income during the period since the official’s last Form 700 was filed. The SEI shall include any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.
- (3) **Within 30 days of leaving office.** An official filing a Form 700 within 30 days of leaving office **must** disclose his or her investments, real property interests, and income during the period since the official’s last Form 700 was filed. The SEI shall include any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing. Additionally, if a Commissioner leaves office between January 1 and the filing deadline for his or her annual Statement of Economic Interests, the leaving office Statement of Economic Interests filed pursuant to Section 87204 may serve as that person's annual Statement. Prior to the filing deadline for the annual Statement the Commissioner shall notify the filing officer in writing that he or she intends to follow this procedure.

Additional information regarding Form 700 filing requirements can be found in our [training and outreach webpage for Form 700 filers](#). The FPPC staff is available to assist Commissioners with questions about preparing and filing these required statements. If a Commissioner would like staff to review their statement in advance of the filing deadline, please contact the Commission Assistant.

Reference: Section [87200](#), et seq.; [Regulation 18723](#).<sup>2</sup>

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<sup>2</sup> All regulatory reference are to California Code of Regulations, title 2, division 6.

## IV. Gifts

Commissioners **may not**:

- Receive a gift of ten dollars (\$10) or more per month directly or indirectly from a state candidate, an elected state officer, a legislative official, an agency official, a lobbyist or any other person holding an office listed in Section 87200;
- Accept gifts in excess of \$500 per calendar year from any other persons whose gifts the Commissioner must report on a Form 700.

A Commissioner **must** disclose, on a Form 700, the source of any gift(s) worth \$50 or more in the aggregate received during the year.

Exceptions may apply to the above requirements, such as with respect to gifts received from immediate family members. For additional details on gift requirements, as well as applicable exceptions, Commissioners may refer to the FPPC fact sheet on “[Limitations and Restrictions on Gifts, Honoraria, Travel and Loans.](#)”

Reference: Sections [82028](#), [83117.5](#), [87207](#), [89503](#).

## V. Honoraria and Travel

Commissioners may not accept honoraria or fees for any “speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering,” unless the payment is earned income for personal services provided in connection with the practice of a bona fide business outside the Commission. Payments for actual necessary expenses incurred are permitted.

Reference: Sections [89501-89502](#).

Commission policy requires Commissioners to consult with the Chair, Executive Director, or General Counsel prior to accepting any payments from outside groups for Commission-related expenses, including travel.

Commissioners may refer to the FPPC fact sheet on "[Limitations and Restrictions on Gifts, Honoraria, Travel and Loans](#)" for more detail on honoraria and travel provisions that apply to them as state officials.

## VI. Conflicts of Interest

The Act's conflict of interest provisions apply to Commission members. Section 87100 of the Act provides, "[n]o public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." In general, Commissioners may have a conflict of interest in any governmental decision that would have a reasonably foreseeable, material financial effect on an economic interest of theirs. Such economic interests include:

- Business entities
- Real Property
- Sources of Income
- Sources of Gifts

Reference: Section [87100](#), et seq.

On the Commission's website is a publication titled "[Recognizing Conflicts of Interest](#)," which provides additional information regarding the Act's conflict of interest requirements.

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*Recommendation: Commissioners with a question regarding a potential conflict of interest may wish to consult with the General Counsel and, if a conflict of interest exists, or the Commissioner otherwise decides not to participate in an agenda item, the Commissioner should inform the Chair and Executive Director prior to the meeting.*

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## VII. Ethics Training

Within six months of assuming office, and once every subsequent two years, Commissioners (and other state officials) must complete an ethics training course. An online course is available at <https://oag.ca.gov/ethics/course>. After completing the course, a Commissioner should keep a copy of the training certificate and send a copy to the Commission Assistant.

Reference: Section [11146](#), et seq.

## VIII. Ex Parte Communications in Enforcement Proceedings

The rules regarding ex parte communications in the context of the Commission's enforcement administrative adjudication proceedings are established under California's Administrative Procedures Act.

### General Rule

While an enforcement proceeding is pending, Commissioners are prohibited from receiving any communication, direct or indirect, regarding any issue in the proceeding, without notice and opportunity for all parties to participate in the communication. A proceeding is "pending" from the issuance of the Enforcement Division's pleading, or from an application for an agency decision, whichever is earlier.

Reference: Section [11430.10](#).

### Permissible Ex Parte Communications

A communication that is otherwise prohibited under the general rule is permissible under either of the following circumstances:

- The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.
- The communication is from an FPPC staff member for the purpose of assistance and advice to the Commissioner(s) and the staff member has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. Staff may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.
  - **Example:** Under this provision, an attorney from the Legal Division could prepare a confidential memorandum and discuss an administrative law judge's proposed decision with the Commission, but could not advise the Commission regarding evidence that was not presented at the adjudicative proceeding.
- The communication is for the purpose of advising the Commissioner(s) concerning a settlement proposal advocated by the advisor.

Reference: Section [11430.30](#).

## Disclosure of Impermissible Ex Parte Communications

If a Commissioner receives a communication in violation of the general rule prohibiting ex parte communications while an enforcement proceeding is pending, the Commissioner is required to make all of the following a part of the record in the proceeding:

- If the communication is written, the writing and any written response of the Commissioner to the communication.
- If the communication is oral, a memorandum stating the substance of the communication, any response made by the Commissioner, and the identity of each person from whom the Commissioner received the communication.

The Commission must also notify all parties that a communication, as described above, has been made part of the record. If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

- The party shall be allowed to comment on the communication; and
- The Commission has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

Receipt by a Commissioner of an impermissible ex parte communication may be grounds for disqualification of the Commissioner.

Reference: Section [11430.40](#).

### ***Best Practices as Recommended by the Legal Division***

If it becomes apparent to a Commissioner that a person they are speaking or corresponding with is communicating about an enforcement proceeding or a topic that is an issue in the proceeding, the Commissioner should immediately stop the conversation or refrain from reading the written communication. The Commissioner should then proceed with the disclosure requirements noted above.

When in doubt, the Legal Division recommends that Commissioners ***err on the side of caution*** with respect to their receipt of impermissible or arguably impermissible ex parte communications. For example, if prior to a Commission meeting, an interested person approached a Commissioner in the hallway and said, “I’d like to talk to you briefly about Agenda Item 12,” the Commissioner should

immediately stop the person from speaking about the proceeding. If the Commissioner had heard anything substantive regarding the proceeding, the Commissioner would be required to report the interaction following the steps above. However, even in instances where nothing substantive was heard, it would still be advisable for the Commissioner to disclose that brief interaction for the sake of complete transparency. If a Commissioner has a question regarding an impermissible or potentially impermissible ex parte communication, they should ask the General Counsel for additional advice.

## IX. Additional Commission Policies

### **a. Ex parte communications not concerning Enforcement proceedings.**

A Commissioner who receives a communication regarding an item on a Commission meeting agenda from a source outside the FPPC must disclose, on the record and prior to discussing or voting on the item, the name of the source of the communication. Commissioners are not required to disclose any details regarding the substance of those communications. If a Commissioner receives any such outside communication but will be absent from the meeting or recused from voting on the relevant agenda item, the Commissioner must still disclose the communication to the Chair and Executive Director prior to the meeting. This provision does not apply to ex parte communications concerning pending Enforcement cases subject to Government Code Section [11430.10](#), et seq.

### **b. Cell Phones and Similar Electronics.**

During a Commission meeting, Commissioners may not use, or otherwise display, a cell phone or similar electronic device. Proper decorum at a Commission meeting requires full attention to, and respect for, the proceedings, the agency and the general public.

### **c. Use of Non-FPPC-Issued Electronics and Email Addresses.**

When conducting official business, Commissioners are prohibited from using any computer or email address other than those issued by the FPPC. While Commissioners are not prohibited from using personal cell phones to text or make

phone calls relating to FPPC business, Commissioners should be aware that text and phone records may be subject to California Public Records Act requests.

#### **d. Misuse of Position**

Commissioners **may not** use state time, facilities, equipment or supplies for personal purposes or for the advantages of another person. In addition, commissioners **may not** use information available to them solely because of their status as commissioners for personal gain or for the advantage of another person. Examples of improper activities include:

- (1) Using status with the Commission to solicit, directly or indirectly, business of any kind or to purchase goods or services for private use at discounts from:
  - (A) A person who is or may reasonably be expected to be subject, directly or indirectly, to the regulation or enforcement action of the Commission.
  - (B) A person doing or soliciting business with the Commission.<sup>3</sup>
- (2) Providing, or allowing access to, confidential information available to them solely because of their status as commissioners to persons to whom the issuance of such information has not been authorized.
- (3) Providing services or information to some prospective bidders on contracts with the Commission for supplies or services when such services or information are not available to all such bidders.
- (4) Providing or using names of persons or records of the Commission for a mailing list that has not been authorized.

#### **e. Time Sheets**

Commissioners **must** submit time sheets for reimbursement no later than thirty (30) days after the end of the month for which they are seeking compensation or reimbursement.

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<sup>3</sup> Discounts and other considerations that are offered to all state officers and employees are not prohibited.