



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

February 27, 2024

Max Kanin  
Political Legal Counsel  
Law Offices of Max D. Kanin  
427 North Canon Drive, Suite 214  
Beverly Hills, CA 90210

Re: Your Request for Advice  
**Our File No. A-24-018**

Dear Mr. Kanin:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that the Commission is not the finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### **FACTS AS PRESENTED BY REQUESTER**

Manuel “Manny” Gonez (“Mr. Gonez”) is a candidate for Los Angeles City Council, having qualified for the ballot in the 2<sup>nd</sup> City Council District for the March 5, 2024 Primary Election. In December of 2023, Mr. Gonez learned that a local resident had filed a writ petition under Election Code Section 13314, challenging Mr. Gonez’s ballot designation—the brief description that candidates provide to election officials to describe themselves on the ballot—of “Housing Advocate/Environmentalist.” Mr. Gonez retained Olson Remcho LLP (“Olson Remcho”) to represent him in the writ petition proceeding, paying the \$7,500 initial retainer from his candidate campaign committee, “Manny Gonez for LA City Council 2024.” The Superior Court ruled in favor of Mr. Gonez, denying the resident’s writ petition, and permitting Mr. Gonez to run under his chosen candidate ballot designation. After the successful defense against the writ petition, Olson Remcho sent Mr. Gonez another legal bill in the amount of \$4,527, bringing Mr. Gonez’s total legal expenses in connection with the writ petition to \$12,027. Mr. Gonez also paid this \$4,527 bill from his campaign committee bank account.

You now seek advice regarding whether Mr. Gonez may raise funds to defray the cost of his legal defense and establish a legal defense committee under the Act. You note that the City of Los Angeles has adopted its own requirements regarding local legal defense committees, including

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

permitting legal defense committees to terminate within one hundred and eighty (180) days of the resolution of the legal dispute for which the committee was opened, and has local contribution limits for city council elections of a \$900.00 maximum contribution per election.

## QUESTIONS AND CONCLUSIONS

The Act and Commission Regulations permit candidates for local elective office to establish legal defense accounts and legal defense committees to pay for attorney's fees and other legal costs related to administrative, civil, or criminal proceedings arising directly out of the conduct of an election campaign or the electoral process. (Section 85304.5(a); Regulation 18530.45(c).) Local jurisdictions may impose their own requirements on local candidates' legal defense accounts and committees, such as contribution limits, but contributions to legal defense committees must still be reported in accordance with the Act and Commission regulations. (Section 85304.5(b).) Likewise, any local requirements must be at least as strict as those provided in subdivisions (c), (e), and (f) of Regulation 18530.45, concerning the establishment of legal defense accounts and legal defense committees, recordkeeping and audit requirements, and reporting requirements. (Regulation 18530.45(b).) If the local government agency does not enact local contribution limits applicable to legal defense funds, the local requirements must also be at least as strict as those provided in 18530.45(i). We do not address the application of Los Angeles's local requirements because they are beyond the purview of the Commission.<sup>2</sup>

In the case of a civil proceeding brought by a private person, a candidate may not raise legal defense funds in connection with the proceeding until after the person has filed the civil action. (Regulation 18530.45(i)(3)(B).) Once the civil action has been filed, a local candidate who raises legal defense funds must deposit the funds in a bank account separate from their campaign account. (Regulation 18530.45(c).) A local candidate may only raise legal defense funds in an amount reasonably calculated to pay, and may only be expended for, attorney's fees and other related legal costs. (Regulation 18530.45(i)(1).)

In addition to depositing the legal defense funds into a separate bank account, the local candidate must establish a controlled committee whose statement of organization must contain a description of the specific legal dispute or disputes for which the account is established. The statement of organization must be amended as legal disputes are either resolved or initiated. In addition, the committee name must include the candidate's last name. (Regulation 18530.45(c).) A local candidate must establish a separate legal defense account and legal defense committee for each local elective office to which the legal proceedings relate. (Regulation 18530.45(d).)

Finally, legal defense committees must file campaign statements and reports under the Act at the same times and in the same places as it would be required to do for any other controlled committee formed by the candidate. (Regulation 18530.45(f).) Because these are minimum requirements, a local jurisdiction may require a local candidate or officer to file more frequent statements or reports. (Regulation 18530.45(b).) A local candidate, their treasurer, and officers of their legal defense committee are subject to recordkeeping requirements under Section 84104, and

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<sup>2</sup> Pursuant to state law, the Commission has no authority to assist you with any questions regarding the applicability of federal or local restrictions. (See, the *Burley* Advice Letter, No. A-20-156.)

are required to keep separate detailed records, bills, and receipts, for each legal proceeding (Regulation 18530.45(e).)

1. ***Establishing and terminating a legal defense account and legal defense committee.*** *May Mr. Gonez open a legal defense committee to pay for legal fees incurred defending against the recent writ petition challenging his candidate ballot designation? If so, is Mr. Gonez required to terminate his legal defense committee within 90 days of the resolution of the legal dispute for which the committee was created, as required by Regulation 18530.45, or within 180 days, as required by local law?*

Here, Mr. Gonez was subject to a writ proceeding, a civil proceeding already brought by a private person in Superior Court. That proceeding arose directly out of the conduct of an election campaign and the electoral process since it concerned a challenge to his candidate ballot designation. We have previously advised that a writ proceeding appealing a local administrative action constitutes a legal defense proceeding for purposes of Section 85304.5. (*Heneghan Advice Letter*, No. A-10-138.) Thus, under the Act, Mr. Gonez may open a legal defense committee to pay for legal fees incurred defending against the recent writ petition challenging his candidate ballot designation, subject to the requirements outlined above. However, you should consult the City of Los Angeles or private counsel in regard to any local requirements regarding the opening of a legal defense committee.

You also ask whether Mr. Gonez is required to terminate his legal defense committee within 90 days of resolution of the writ proceeding, as required under the Act, or within 180 days of resolution of the proceeding, as required under Los Angeles's local ordinance. Regulation 18530.45(k) requires termination of a legal defense account within 90 days of the date all legal disputes for which the account is established are resolved, but also provides that a local ethics agency may, for good cause, extend the termination date or reopen the account. Moreover, under Regulation 18530.45(b), local requirements must be at least as strict as those provided in subdivisions (c), (e), and (f) of Regulation 18530.45. However, those subdivisions concern only the establishment of legal defense accounts and legal defense committees, recordkeeping and audit requirements, and reporting requirements—not the termination of a legal defense account/committee.

Thus, Regulation 18530.45(b) permits the City of Los Angeles to create its own requirements with respect to when a local candidate's legal defense account and committee must be terminated. To the extent the City of Los Angeles has a 180-day termination requirement, the local termination deadline will apply. You should consult the City of Los Angeles or private counsel regarding any questions related to the local termination deadline.

2. ***Paying Olson Remcho in exchange for the firm refunding Mr. Gonez's candidate committee.*** *If Mr. Gonez's principal campaign committee already paid these legal expenses, may Mr. Gonez's legal defense committee pay Olson Remcho, in exchange for Olson Remcho refunding his 2024 City Council campaign committee?*

Section 82015 defines a contribution as “a payment, . . . except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for a political purpose.” A contribution can be either monetary or nonmonetary.

Ordinarily, a discount from a vendor would constitute a non-monetary (in-kind) contribution to the committee. However, where full and adequate consideration is received in return for a payment, the payment is not considered a contribution. (Section 82015(a).) In the *Davidian* Advice Letter, No. I-08-104, we advised that where a vendor refunded a payment due to an error in its service, the committee would report the refund as a miscellaneous increase to cash rather than as a contribution because the refund was in consideration for the vendor's error.

In this case, in exchange for refunding Mr. Gonez's campaign committee, Olson Remcho would receive full and adequate consideration from Mr. Gonez's legal defense fund in the form of full payment for the legal services provided. Therefore, Mr. Gonez's campaign committee may accept the refund, report it as a miscellaneous increase to cash, and Mr. Gonez may instead use his legal defense committee to pay Olson Remcho for legal expenses in connection with the defense against the writ proceeding under the provisions of the Act. However, as noted above, we do not address the local requirements that may be applicable to this refund, and you should consult the City of Los Angeles or private counsel regarding the local requirements prior to accepting such refund.

3. *Directly reimbursing Mr. Gonez's candidate committee. Alternatively, may Mr. Gonez's legal defense committee directly reimburse his 2024 City Council campaign committee for the legal expenses it has already paid?*

In this case, all of Mr. Gonez's legal expenses associated with the writ proceeding have already been paid by Mr. Gonez's campaign committee in December 2023. Your question is whether Mr. Gonez's legal defense fund may transfer funds to reimburse his campaign committee for its legal defense expenditures incurred prior to the establishment of his legal defense fund.

Section 85306(a) of the Act provides:

A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state, county, or city office of the same candidate. Contributions transferred shall be attributed to specific contributors using a 'last in, first out' or 'first in, first out' accounting method, and those attributed contributions when aggregated with all other contributions from the same contributor shall not exceed the limits set forth in Section 85301 or 85302.

However, Section 85306(d) expressly provides, "[t]his section does not apply in a jurisdiction in which the county or city imposes a limit on contributions pursuant to Section 85702.5 [which permits local jurisdictions to adopt alternate contribution limits]."

You state that Los Angeles has adopted a \$900 maximum campaign contribution limit per election. Therefore, the question of whether an intra-candidate transfer from Mr. Gonez's legal defense committee to his City Council campaign committee is permissible falls outside the provisions of the Act and will instead depend on the City of Los Angeles's local ordinances.

We note, in regard to the Act, that the legal expenses paid by his campaign committee were permissible expenditures as they arose directly out of Mr. Gonez's status as a candidate and, therefore, were directly related to a political, legislative, or governmental purpose as required under

Section 89513. (Section 89514.) Regulation 18530.45(i) states that legal defense funds may only be expended for attorney's fees and other related legal costs, and subdivision (j) permits that after the dispute is resolved and so long as the amount raised is not more than \$5,000 above the candidate's legal costs, the funds must be disposed of as prescribed by Section 89519(b)(1) through (5), which specifically permits the use of the funds to pay outstanding campaign debts. (Section 89519(b)(1).) Outside of the five permitted purposes, remaining legal defense funds may not be transferred. (Regulation 18530.45(j).) We conclude that for purposes of the Act and Regulation 18530.45, it is permissible for this type of transfer to occur, so long as the legal defense committee does so in compliance with all relevant requirements in Regulation 18530.45. As noted above, we do not address the local requirements that may be applicable to this type of transfer, and you should consult the City of Los Angeles or private counsel regarding the local requirements prior to making such transfer.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

**Karen Harrison for**

By: Toren Lewis  
Counsel, Legal Division

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