

Memorandum 91-71

Subject: Conflict of Interest Code (Revision of Disclosure Categories)

At the June meeting, the Commission decided to revise our agency Conflict of Interest Code to add heir-tracing firms to the list of financial interests that must be disclosed in annual statements. The staff also reported that the Family Code project did not appear to entail any new types of reportable financial interests.

Removable Financial Interests

The Commission also directed the staff to review the list of entities in the Commission's Conflict of Interest Code with a view toward eliminating any financial interests that relate only to inactive topics on the Commission's agenda. (The Commission's Conflict of Interest Code is attached as Exhibit 1; the "Calendar of Topics Authorized for Study" is attached as Exhibit 2.)

As a starting point, the staff reviewed the Commission's Calendar of Topics to determine which studies are active and which are not. We conclude that the following topics, stated in terms of their legislative authorization language, are active or potentially active:

1. Creditors' remedies
2. Probate Code
3. Real and personal property
4. Family Law
11. Injunctions
14. Rights and disabilities of minors and incompetent persons
15. Child custody, adoption, guardianship, and related matters
24. Administrative law
25. Attorneys' fees
26. Family Relations Code

Obviously there is some overlap in the topics as they are described in the concurrent resolutions authorizing Commission study. For example, the study on donative transfers of community property falls under the probate, real and personal property, and the family law topics. The

Probate Code project also involves creditors' remedies, real and personal property, and rights and disabilities of minors and incompetent persons. In short, the authorized topics typically do not match up on a one-for-one basis with what the Commission may actually be working on at any given time. Some topics, such as real and personal property, seem to be involved in most Commission projects.

In an effort to determine whether some financial interests could be removed from the list, we considered what interests may foreseeably be affected by a Commission decision in areas under active or potentially active study. If a financial interest is not related to any topic under active or potentially active consideration, it should be removed from the list. The staff concludes that the following interests could be removed from the list of disclosable financial interests:

2. Mortgage brokers

No active studies foreseeably affect mortgage brokers.

4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans

No active studies support singling out this type of financial interest. It was probably included because of the Commission's work on liquidated damages and general creditors' remedies matters. This category would also seem to be effectively covered by category #1 -- financial institutions.

6. Any entities or persons whose primary activity in California is the leasing of personal property

Presumably included in relation to the overall consideration of creditors' remedies, especially claim and delivery, which is now inactive.

8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2)

This presumably was on the list because of the eminent domain study which is no longer active.

14. Privately owned public utilities

This category was concerned with eminent domain and marketable title which are now inactive.

Procedure for Amending Conflict of Interest Code

In order to add or remove listed financial interests, we will have to follow the procedure for amending a conflict of interest code under

the Administrative Procedure Act. The simplest formal amendment procedure is for the Commission to adopt a written comment period following adoption of any proposed amendments. The staff would draft up the appropriate notice for publication in the California Notice Register. At the end of the 45-day comment period, if there are no comments, the revised code would be submitted to the FPPC for approval. After FPPC approval, the amended code would be submitted to the Office of Administrative Law which then files it with the Secretary of State and 30 days later the amended code is effective.

In the unlikely event that written comments are received in response to the published notice, the Commission could consider them and take final action on the amended code at its January 1992 meeting. The rest of the procedure would be the same.

Other Financial Interests

The staff suggests also adding persons and entities engaged in the business of making appraisals to the list of financial interests. This reflects the possible financial effect on probate referees and other appraisers in probate matters the Commission has had under consideration and may consider in the future.

Staff Proposal

Even though the process of amending a Conflict of Interest Code is simpler and less expensive than it once was, there is still a lot of paperwork involved. If some financial interests are removed, we may find that we need to put them back on the list at some future time, necessitating another time-consuming exercise under the Administrative Procedure Act. To avoid this unappetizing prospect, the staff has an alternate proposal to eliminating items from the list of disclosable financial interests.

Discussions with the FPPC staff suggest that we may be able to refine the language of our Code to adopt a more flexible standard and limit the frequency of future Code amendments. The approach would be to leave existing interests on the list and add other potentially relevant interests, but to limit the disclosure duty to a subset of the listed financial interests. The subset would be determined based on

their relation to topics considered during the previous 12 months or likely to be considered during the 12 months following the end of the applicable financial interest reporting period. Specific guidance as to disclosable interests would be determined from the Annual Report and by the Executive Secretary.

It was suggested by an FPPC staff member that this change could be proposed as a non-substantive amendment, adopted by an expeditious letter procedure instead of formal notice and amendment by the regulation procedure. Unfortunately, it is necessary to use the regulation procedure to add heir tracers and appraisers to the list.

The staff proposes to revise Disclosure Category 1 substantially as follows, subject to technical revision to work out language acceptable to the FPPC (insertions and deletions indicated by underscoring and strike-out):

Category 1

A designated employee in this category must disclose the following:

1. Interests in real property.
2. Investments in business entities listed below.
3. Personal income from entities or persons listed below.
4. Business entity income from entities or persons listed below.
5. Business positions in entities listed below.

The following entities and persons listed below, in the jurisdiction of California, constitute the financial interests which of a type that foreseeably may be materially affected by a Law Revision Commission decision concerning a topic on the Commission's Calendar of Topics Authorized for Study:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.
2. Mortgage brokers.
3. Collection agencies.
4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.
5. Any entities or persons whose primary activity in California is the leasing or development of real estate.
6. Any entities or persons whose primary activity in California is the leasing of personal property.
7. Insurance companies.
8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).
9. Title insurance companies.
10. Newspaper companies.
11. Corporate sureties.
12. Adoption agencies.

13. Persons engaging in private placing for adoption of more than one child per year.
14. Privately owned public utilities.
15. Law firms.
16. Any entities or persons engaged in the business of tracing heirs.
17. Any entities or persons engaged in the business of appraising property.

Financial interests on this list are reportable if they relate to active topics on the Commission's calendar of topics, Active topics are topics the Commission has considered during the 12 months preceding, or to be considered during the 12 months following, the end of the applicable filing period, and are determined from the Commission's Annual Report and as specified by the Executive Secretary.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

CONFLICT OF INTEREST CODE

FOR THE

CALIFORNIA LAW REVISION COMMISSION

The Political Reform Act, Government Code Sections 81000, *et seq.*, requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Adm. Code Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Adm. Code Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the California Law Revision Commission.

Pursuant to Section 4(A) of the standard Code, designated employees shall file statements of economic interests with their agencies. Upon receipt of the statements of Commissioners and the Executive Secretary, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.

APPENDIX

DESIGNATED EMPLOYEES

DESIGNATED EMPLOYEES	DISCLOSURE CATEGORIES
Commission Member (appointed by Governor)	1, 2
Legislative Counsel	1, 2
Executive Secretary	1, 2, 3
Assistant Executive Secretary	1, 2, 3
Staff attorneys	1
Administrative Assistant	2, 3

DISCLOSURE CATEGORIES

CATEGORY 1

A designated employee in this category must disclose the following:

1. Interests in real property.
2. Investments in business entities listed below.

3. Personal income from entities or persons listed below.
4. Business entity income from entities or persons listed below.
5. Business positions in entities listed below.

The following entities, in the jurisdiction of California, constitute the financial interests which foreseeably may be materially affected by a Law Revision Commission decision:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.
2. Mortgage brokers.
3. Collection agencies.
4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.
5. Any entities or persons whose primary activity in California is the leasing or development of real estate.
6. Any entities or persons whose primary activity in California is the leasing of personal property.
7. Insurance companies.
8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).
9. Title insurance companies.
10. Newspaper companies.
11. Corporate sureties.
12. Adoption agencies.
13. Persons engaging in private placing for adoption of more than one child per year.
14. Privately owned public utilities.
15. Law firms.

CATEGORY 2

A designated employee in this category must disclose business entities in which he or she has an investment and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the Law Revision Commission to provide leased space or consulting services to or on behalf of the Law Revision Commission.

CATEGORY 3

A designated employee in this category must disclose business entities in which he or she has an investment and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the Law Revision Commission to provide equipment, materials, supplies, or services (other than consulting services) to or on behalf of the Law Revision Commission.

CALENDAR OF TOPICS AUTHORIZED FOR STUDY	Study Categories
1. Creditors' remedies. Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).)	D H
2. Probate Code. Whether the California Probate Code should be revised, including but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stat. res. ch. 37.)	L
3. Real and personal property. Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic; expanded 1988 Cal. Stat. res. ch. 81.)	H J L
4. Family law. Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)	F H
5. Prejudgment interest. Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75.)	J
6. Class actions. Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)	
7. Offers of compromise. Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)	J
8. Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)	J
9. Procedure for removal of invalid liens. Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stat. res. ch. 37.)	D
10. Special assessment liens for public improvements. Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stat. res. ch. 37.)	E
11. Injunctions. Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. res. ch. 42.)	J

	Study Categories
12. Involuntary dismissal for lack of prosecution. Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stat. res. ch. 65. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)	J
13. Statutes of limitation for felonies. Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stat. ch. 909, § 3.)	M
14. Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stat. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)	F L
15. Child custody, adoption, guardianship, and related matters. Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).)	F L
16. Evidence. Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stat. res. ch. 130.)	K
17. Arbitration. Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)	A
18. Modification of contracts. Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stat. res. ch. 45. See also 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).)	B
19. Governmental liability. Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stat. res. ch. 17. See also 1957 Cal. Stat. res. ch. 202.)	G
20. Inverse condemnation. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)	I
21. Liquidated damages. Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stat. res. ch. 39. See also 1969 Cal. Stat. res. ch. 224.)	B
22. Parol evidence rule. Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)	B,K
23. Pleadings in civil actions. Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stat. res. ch. 37.)	J
24. Administrative law. Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)	N
25. Attorneys' fees. Whether there should be changes in the law relating to the payment and the shifting of attorneys' fees between litigants. (Authorized by 1988 Cal. Stat. res. ch. 20.)	J
26. Family Relations Code. Conduct a careful review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and make recommendations to the Legislature regarding the establishment of a Family Relations Code. (Authorized by	F