# APPENDIX C

## CONFLICT OF INTEREST CODE FOR DESIGNATED EMPLOYEES OF THE STATE BAR OF CALIFORNIA

(Amended November 2006)

**Section 1. Definitions.**

The definitions contained in chapter 2 of the Political Reform Act of 1974 (Government Code sections 81000 et seq.), regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18100 et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Amended Conflict Of Interest Code (hereinafter "Code").

**Section 2. Designated Employees.**

The persons holding the positions listed in Appendix A (which is attached to this Code and made a part hereof), are **Designated Employees** of The State Bar of California. These persons have been so designated, based on this agency's determination that they make or participate in the making of decisions, which may foreseeably have a material effect on their financial interests.

**Section 3. Statement of Economic Interests. Where to File.**

Each Designated Employee shall file his or her original Statement of Economic Interests, disclosing all reportable financial interests applicable to his or her position, with the Office of the Secretary of the State Bar of California.

The Secretary shall promptly forward all such Statements of Economic Interests to the State Bar's Code Reviewing Body, the Board of Governors of the State Bar of California, within five days after the filing deadlines enumerated in Section 5 of this Code.

**Section 4. Disclosure Categories.**

Appendix B (which is attached to this Code and made a part hereof) contains a description of various enumerated disclosure categories. Adjacent to each Designated Employee position in Appendix A are number(s) that correspond to the various disclosure categories contained in Appendix B. Each Designated Employee shall disclose in his or her Statement of Economic Interests those financial interests he or she has which are of the kind described in his or her assigned disclosure categories. It has been determined by the Board of Governors that the financial interests set forth in a Designated Employee's assigned disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

**Section 5. Time for filing Statement of Economic Interests.**

The time for filing Statements of Economic Interests shall be as follows:

(a) **Initial Statements**: All Designated Employees employed by the State Bar on the effective date of this Code, as originally adopted, promulgated and approved by the Board of Governors, shall file Statements of Economic Interest within thirty (30) days after the effective date of this Code. Thereafter, each person already in a position when it is designated by a future amendment to this Code as a Designated Employee position shall file an initial statement within thirty (30) days after the effective date of the amendment.

(b) **Assuming Office Statements**: All persons assuming Designated Employee positions after the effective date of this Code shall file Statements of Economic Interests within thirty (30) days after assuming the designated positions.

(c) **Annual Statements**: All Designated Employees shall file Statements of Economic Interests no later than April 1st of each year.

(d) **Leaving Office Statements**: All persons who leave Designated Employee positions shall file Statements of Economic Interests within thirty (30) days after leaving office.

(e) **Statements for Persons who Resign Prior to Assuming Position**: 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 that they did not make or participate in the making of, or use their position to influence any decision and did not receive or become entitled to receive any form of payment as a result of their appointment. Such persons shall not file either an assuming or leaving office statement.

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

   - file a written resignation with the appointing power;

- 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.

**Section 6.** **Contents of and Period Covered by Statements of Economic Interests.**

(a) **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 month period prior to the effective date of the Code.

(b) **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 and income received during the 12 months prior to the date of assuming office.

(c) **Annual Statements.** Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during 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.

(d) **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.

**Section 7. Reportable Interests. Manner of Reporting.**

Statements of Economic Interests shall be made on forms prescribed by the Fair Political Practices Commission (hereinafter "FPPC") and supplied by the State Bar, and shall contain the following information:

(a) **Investments and Real Property Disclosure.** When an investment or an interest in real property is required to be reported,[1] 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;

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[1] Reportable Investments and Interests in Real Property. For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

In addition, investments 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 and are therefore not reportable. 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.

4. A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars ($2,000) but does not exceed ten thousand dollars ($10,000), whether it exceeds ten thousand dollars ($10,000) but does not exceed one hundred thousand dollars ($100,000), whether it exceeds one hundred thousand dollars ($100,000) but does not exceed one million dollars ($1,000,000), or whether it exceeds one million dollars ($1,000,000).

(b) **Personal Income Disclosure.** When personal income is required to be reported,[2] the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars ($500) or more in value, or fifty dollars ($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 one thousand dollars ($1,000) or less; greater than one thousand dollars ($1,000); greater than ten thousand dollars ($10,000); or greater than one hundred thousand dollars ($100,000);

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[2] Reportable Income. 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.

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,[3] 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 ten thousand dollars ($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

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[3] Reportable Business Entity Income Disclosure. 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.

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.

**Section 8. Prohibition on Receipt of Honoraria.**

No Designated Employee shall accept any honorarium from any source, if the Designated Employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

Government Code section 89501 (a), (b) and (c) shall apply to the prohibitions in this section. This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

**Section 8.1 Prohibition on Receipt of Gifts In Excess of $390.**

No Designated Employee shall accept gifts with a total value of more than three hundred ninety dollars ($390) in a calendar year from any single source, if the Designated Employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

Government Code section 89503(e), (f), and (g) shall apply to the prohibitions in this section.

**Section 8.2 <u>Personal Loans</u>.**

(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:
   - The date the loan was made.
   - The date the last payment of one hundred dollars ($100) or more was made on the loan.
   - The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars ($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 candidate for elective office.
2. A loan that would otherwise not be a gift as defined in this Code.
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.

**Section 9. <u>Disqualification</u>.**

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 Designated Employee 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 two thousand dollars ($ 2,000) or more;

(b) Any real property in which the Designated Employee has a direct or indirect interest worth two thousand dollars ($2,000) or more;

(c) Any source of income (other than gifts and other than loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status) aggregating five hundred dollars ($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 three hundred ninety dollars ($390) or more provided to, received by, or promised to the Designated Employee within 12 months prior to the time when the decision is made.

**Section 10. <u>Legally Required Participation</u>.**

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.

**Section 11. <u>Disclosure of Disqualifying Interest</u>.**

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 must be accompanied by disclosure of the disqualifying interest. In the case of a voting body, this determination and disclosure shall be made part of the agency's official record; in the case of a Designated Employee who is the head of an agency, this determination and disclosure shall be made in writing to his or her appointing authority; and in the case of other Designated Employees, this determination and disclosure shall be made in writing to the Designated Employee's supervisor.

**Section 12. 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 FPPC pursuant to Government Code section 83114 or from the State Bar Office of General Counsel, provided that nothing in this Section requires the attorneys for the agency to issue any formal or informal opinion.

**Section 13. 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, Government Code sections 81000 - 91014. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

**Section 14. Interpretation With Other Laws.**

The financial disclosure and disqualification requirements of this Code are in addition to the disclosures required under California Business and Professions Code sections 6035, et seq.