

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP21-06

Title

Judicial Council Administration: Amendment to Judicial Council Conflict of Interest Code

Action Requested

Review and submit comments by October 18, 2021

Proposed Rules, Forms, Standards, or Statutes

Amend *Conflict of Interest Code for the Judicial Council of California*

Proposed Effective Date

December 1, 2021

Proposed by

Judicial Council staff
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Human Resources

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Executive Summary and Origin

This proposal would adopt an amendment to the *Conflict of Interest Code for the Judicial Council of California* (Code) and amend the Code to include the classification of Construction Inspector. The Construction Inspector classification performs the same duties as the Engineering Specialist and should therefore be included on the Code as a classification required to disclose its statement of economic interest.

In accordance with Government Code sections 87303 and 87306, the Code must be updated “when change is necessitated by changed circumstances, including the creation of new positions”. The council must review the proposed amendment to the Code and approve the Code as amended or direct that it be further revised and resubmitted for approval.

Background

Political Reform Act

The Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) requires public agencies to adopt conflict of interest codes. (Gov. Code, § 87300.) In 1984, the Legislature amended the Political Reform Act to require agencies and employees of the judicial branch to comply with the act. (Stats. 1984, ch. 717, amending Gov. Code, §§ 82011, 82041, 82048, 82049, 87200, and adding § 87311.5.) Every conflict of interest code, including amended codes, must be submitted to and approved by a “code reviewing body.” (Gov. Code, §§ 87303, 87306.)

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

The Judicial Council is the code reviewing body for “any state agency within the judicial branch of government” where no other code reviewing body has been specified (Gov. Code, § 82011(h)), which includes the Judicial Council and its staff. In 1985, the Judicial Council first approved a conflict of interest code for Judicial Council employees. An agency’s conflict of interest code must be amended when new positions and duties are created or eliminated. (Gov. Code, § 87306.) Since 1985, the Judicial Council Conflict of Interest Code has been periodically amended.

A conflict of interest code is a document that states the rules and procedures by which designated officers and employees of a public agency must disclose certain personal financial interests. The financial interests required to be disclosed are those that foreseeably could be materially affected by decisions that these officers or employees are authorized to make or influence. In brief, Government Code section 87302 specifies that a conflict of interest code must:

- Designate the classifications of officers or employees who make or influence financial decisions (“designated employees”);
- Identify the categories of interest that foreseeably may be affected by such decisions (“disclosure categories”);
- Require officers and employees to file periodic reports of their financial interests (“disclosure statements”); and
- Require officers and employees to disqualify themselves from decisions affecting matters in which they have financial interest.

A conflict of interest code must designate the officers and employees who make or participate in the making of government decisions that foreseeably can have a material effect on their personal financial interests. (Gov. Code, § 87302(a).) The disclosure categories for each job classification must correspond to those interests that employees foreseeably can affect. (Gov. Code, § 87302(c).) Thus, disclosure categories reflect the powers and responsibilities assigned to employees within each job classification.

Prior changes to the Code

On December 1, 2018, the *Conflict of Interest Code for the Judicial Council of California* was amended to (1) remove office names from the list of designated classifications and consolidate the Leadership Division, Operations & Programs Division, and Administrative Division into an All Divisions category for the designated classifications; and (2) add classifications to the list of designated classifications. The changes provided flexibility in the event of an organizational restructuring—which may require the transfer of positions between offices—and will ensure that classifications required to report their economic interests will continue to do so regardless of office or organizational changes.

Conflict of interest code for members of the Judicial Council

The current Code requires council members who are justices, judges, legislators, court executive officers, and court clerks and administrators to disclose their financial interests whether they are

voting or nonvoting members, and disclose “[a]ll investments, sources of income, interests in real property, and positions in business entities.” While justices, judges, legislators, court executive officers, and court clerks and administrators perform unique duties in their capacity as council members, they are only required to indicate on the cover sheet of *Statement of Economic Interests* (Form 700) that their statements are being filed for both their primary and their Judicial Council positions. All attorneys, voting or nonvoting, must turn in form FPPC-2 that discloses whether or not they were required to disqualify themselves from making, participating in making, or attempting to influence a decision of the Judicial Council during the reporting period because of a conflict of interest.

Conflict of interest code for Judicial Council staff

The current Code for staff contains seven disclosure categories. The broadest category, Category 1, provides for disclosure of “[a]ll investments, sources of income, interests in real property, and positions in business entities.” Those who fall within this category include certain classification designations with foreseeable decisionmaking authority that could be affected by personal financial interests. Other employees must disclose a narrower range of financial interests that could be affected by their specific job duties.

The Proposal

The proposed Code (Attachment A) amends the current Code (Attachment B) and includes the classification of Construction Inspector. The Fair Political Practice Commission indicates that per Government Code sections 87303 and 87306, the Code must be updated “when change is necessitated by changed circumstances, including the creation of new positions”.

The proposed *Conflict of Interest Code for the Judicial Council of California* would (1) change the effective date from 2018 to 2021; and (2) add Construction Inspector in section 3-f, with a reporting requirement category of 7.

Alternatives Considered

Per Government Code section 87306, periodic reviews of the *Conflict of Interest Code for the Judicial Council of California* are required to ensure it reflects the current structure of the agency and properly identifies all officials and employees who should file a Statement of Economic Interests (Form 700). The current Code does not accurately reflect the current structure of the agency. The Political Reform Act of 1974 does not provide for any alternative actions other than those presented in this report.

Fiscal and Operational Impacts

To implement the amended Code, the Judicial Council will need to ensure that its members and employees in the designated classifications timely submit the Statement of Economic Interests (Form 700) required under the Code and the Political Reform Act. Upon review of the comments received, the Code will be revised and presented to the council for review and approval. Once approved, the amended Code will take effect on December 1, 2021.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

1. Attachment A: Proposed *Conflict of Interest Code for the Judicial Council of California*
2. Attachment B: Current *Conflict of Interest Code for the Judicial Council of California*

**CONFLICT OF INTEREST CODE
FOR THE
JUDICIAL COUNCIL OF CALIFORNIA
(Revised effective December 1, ~~2018~~2021)**

The Political Reform Act (Gov. Code, § 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, California Code of Regulations, title 2, section 18730, which contains the terms of a standard conflict of interest code, and can be incorporated by reference into an agency's code. After public notice and hearing, the code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of [the code](#) (Cal. Code Regs., tit. 2, § 18730), and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached appendices shall constitute the Conflict of Interest Code for the Judicial Council of California.

Designated employees and contractors shall file statements of economic interests with the Administrative Director as prescribed by the Fair Political Practices Commission.

Appendix A. Judicial Council Members

Under [Article VI](#), section 6, of the California Constitution, Judicial Council voting membership is limited to justices, judges, legislators, and attorneys. Two nonvoting court administrators and such other nonvoting members are determined by the voting membership of the council. Council members, voting or nonvoting, who are justices, judges, state legislators, court executive officers, and court administrators and clerks are required to file disclosure statements at their primary position because they are subject to comprehensive disclosure requirements arising out of their primary offices, pursuant to Government Code sections 87200 and 87300. When filing their annual statement of economic interests, council members, voting or non-voting, should indicate on the cover sheet of the Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

Designation of Positions

1. Voting Council Members

a. Justices, Judges, Legislators

- i. **Disclosure of Financial Interests:** Council members must disclose all investments, sources of income, interests in real property, and positions in business entities, including those of their spouses, registered domestic partners, and/or dependent children.
- ii. **Manner of Reporting:** When filing their annual statement of economic interests, council members should indicate on the cover sheet of Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

b. Attorneys

- i. **Disclosure of Financial Interests:** The disclosure requirements under this code for the designated attorney members are limited to those in Business and Professions Code section 6036, subdivision (d). Under this provision, a member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. Consistent with section 6036, subdivision (d), it is sufficient that the member indicate only that he or she has a disqualifying financial or personal interest, without disclosing the specific interest.
- ii. **Manner of Reporting:** Attorney members of the Judicial Council of California shall file the Statement of Economic Interests (form FPPC-2). This form requires

members to (1) disclose whether or not they were required to disqualify themselves from making, participating in making, or attempting to influence a decision of the Judicial Council during the reporting period because of a conflict of interest under Business and Professions Code section 6036, and (2) identify each decision requiring disqualification.

2. Nonvoting Council Members

- a. Justices, Judges, Court Executive Officers, Court Administrators, and Clerks, and such other nonvoting members as determined by the voting membership of the council**
 - i. Disclosure of Financial Interests:** Council members must disclose all investments, sources of income, interests in real property, and positions in business entities, including those of their spouses, including registered domestic partners, and/or dependent children.
 - ii. Manner of Reporting:** When filing their annual statement of economic interests, council members should indicate on the cover sheet of Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

Appendix B.

Judicial Council Member and Staff List of Designated Classifications and Assigned Disclosure Categories

1. **Judicial Council Members**
 - a. **Voting and Nonvoting Members** 1a
 - b. **Voting and Nonvoting Attorney Members** 2a

2. **Executive Level**
 - a. **Supervisory and Management-Level Classifications** 1b
 - b. **All Attorney and Supervising Attorney Classifications** 2b
 - c. **Legislative Advocate** 3, 4
 - d. **Principal Advisor** 3, 4

3. **All Divisions***
 - a. **Supervisory and Management-Level Classifications** 1b
 - b. **All Attorney and Supervising Attorney Classifications** 2b
 - c. **Facilities Management Administrator** 7
 - d. **Senior Facilities Analyst and Facilities Analyst** 7
 - e. **Senior Project Manager and Project Manager** 7
 - f. **Engineering Specialist, Engineer, and Engineer/Construction Inspector** 7
 - g. **All Classifications in Procurement & Contracts** 3, 4
 - h. **All Classifications in Phoenix Purchasing Support Services** 3, 4
 - i. **Information Technology Architect** 5
 - j. **Education Developer and Senior Education Developer** 6
 - k. **Administrative Coordinators in Conference & Registration Services** 3, 4
 - l. **Special Consultant** 1b
 - m. **Contractor** 1b

*Consultants (contractors) shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Administrative Director may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The consultant must comply with all other provisions of this code. The Administrative Director’s determination is a matter of public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

Per Policy 8.3(B) of the *Judicial Council Personnel Policies and Procedures Manual*, “[i]f an employee determines that he or she must not be involved in a decision on a particular matter because of a financial interest, then the employee must immediately withdraw from participating in the decision, refrain from influencing others, and disclose the financial interest in writing to his or her supervisor.”

Appendix C.

Judicial Council Staff Disclosure Categories

An employee need only disclose a financial interest, or a spouse's financial interest, in a business entity included in an assigned category if the employee's duties involve making recommendations and/or decisions concerning that type of business entity. In this appendix, "positions" includes employee, partner, officer, director, trustee, and any other management position. "Providers" includes business entities and individuals that are manufacturers, distributors, vendors, sellers, lessors, suppliers, contractors, subcontractors, and other providers of the supplies, equipment, real property, and services indicated in the category.

1. Executive authority

All investments, sources of income, interests in real property, and positions in business entities

- a. Council members who are justices, judges, legislators, court executive officers, court administrators, and clerks are required to file disclosure statements at their primary position because they are subject to comprehensive disclosure requirements arising out of their primary offices, pursuant to Government Code sections 87200 and 87300. When filing their annual statement of economic interests, council members, voting or nonvoting, should indicate on the cover sheet of Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.
- b. Designated Judicial Council staff are required to file all investments, sources of income (including gifts, loans, and travel payments), interests in real property, and positions in business entities.

2. Attorneys

Attorneys are required to (1) disclose whether or not they were required to disqualify themselves from making, participating in making, or attempting to influence a decision of the Judicial Council during the reporting period because of a conflict of interest under Business and Professions Code section 6036^{1/2}; and (2) identify each decision requiring disqualification.

- a. Attorneys who are Judicial Council members shall file the Statement of Economic Interests for the Judicial Council on form FPPC-2.
- b. Attorneys who are Judicial Council staff shall file the Statement of Economic Interests for the Judicial Council on form FPPC-1.

3. Decisionmaking authority affecting the purchasing of office equipment, materials, and supplies

Investments, sources of income, and business positions in entities that are providers of office equipment, materials, and supplies including, but not limited to, commercial and noncommercial furniture, fixtures, publication materials, printing, graphics, publishing services, audiovisual equipment, and/or any other non-IT electronic devices of the type used by the Judicial Council.

4. Decisionmaking authority affecting external consultants and contracts

Investments, sources of income, and business positions in business entities that are providers of services used by any office in the Judicial Council for the purposes of, ~~including~~, but not limited to, personnel and employment services, editing, publications, data gathering, data management, researching and surveying, policy analysis, real estate management, fleet management, conference and travel services, financial services, external legal counsel, and court security.

5. Decisionmaking authority affecting information technology

Investments, sources of income, and business positions in business entities that are providers of information technology, data management systems, computer software, computer equipment, and hardware of the type used by the Judicial Council.

6. Decisionmaking authority affecting judicial education

Investments, sources of income, and business positions in business entities that are providers of training and educational development services of the type used by the Judicial Council.

7. Decisionmaking authority affecting real property and management

Investments, sources of income, and business positions in business entities that are providers of real estate purchasing, maintenance, construction, and development.

Appendix D. Reporting Instructions

1. Time of filing statements and reporting period

- a. **Annual Statement:** The statement shall disclose the information required in section 3 for the previous 12-month period.
 - i. Each Judicial Council member and each designated Judicial Council employee and contingent worker shall file a statement of economic interest in accordance with the Fair Political Practices Commission's regulations (Cal. Code Regs., tit. 2, § 18723.)
 - Judicial Council Members who are not attorneys shall file an annual statement by March 1.

All others, including but not limited to:

 - Judicial Council members who are Attorneys, shall file by April 1.
- b. **Statements when assuming office:** Under Government Code sections 87200 and 87300, every Judicial Council member or designated staff incumbent shall file a statement within 30 days after assuming office.
- c. **Statements after leaving offices:** Under Government Code sections 87200 and 87300, each former council member or designated staff incumbent shall file a statement within 30 days after leaving office. The statement shall disclose the information required by section 3 for the period between the closing date of the last statement required to be filed and the date of leaving office.

2. Place of filing statements

- a. Judicial Council members and designated staff incumbents shall file the required statements with the Secretary of the Judicial Council (Administrative Director) on the Statement of Economic Interests for Judicial Council Members Conflict of Interest-Form 700, FPPC-1, or FPPC-2.

3. Assistance to members

- a. A member may request assistance concerning duties under this code from the Fair Political Practices Commission under section 83114 of the Government Code.

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