

Request for Reconsideration  
Complaint to FPPC  
Regarding  
Richmond City Council Member Doria Robinson  
Narrative, Evidence and Exhibits

Submitted by Tom Butt  
January 23, 2025

## Introduction

I received an email from Bridgette Castillo dated January 23, 2025, stating:

This letter is in response to the sworn complaint you submitted to the Enforcement Division of the Fair Political Practices Commission regarding the above-named individual, alleging violations of the Political Reform Act. After review of the complaint and evidence provided, the Enforcement Division will not pursue an enforcement action in this matter, as there was insufficient evidence provided to show Doria Robinson failed to comply with FPPC Advice Letter A-24-033. If you have any questions, please contact Bridgette Castillo at 279-237-3764 or [bcastillo@fppc.ca.gov](mailto:bcastillo@fppc.ca.gov).

I phoned Ms. Castillo the same day to discuss the decision. I was disappointed because I felt I had provided more than sufficient evidence to back up my claim, and there was no discussion of how the FPPC considered any of it or how they reached their decision.

I pointed out that the recusal clearly did not conform to FPPC guidelines, omitting, among other things, critical information about the basis for recusal.

I also pointed out that the request for advice by Mr. Atencio was missing critical facts, i.e. Ms. Robinson's relationship with Najari Smith, a co-benefactor of millions of dollars of grant money administered by the organization Ms. Robinson heads.

Ms. Castillo told me that, essentially, since an advice letter had been issued and Ms. Robinson had recused herself, the FPPC considered the case closed.

## Evaluation

### Content of Recusal Announcement

The FPPC advice letter was dated June 6, 2024, and the recusal that is the subject of my complaint was at the City Council meeting of October 3, 2024, nearly four months later. While the advice letter of June 6, 2024, did advise Ms. Robinson's recusal, it did not advise that the content of the recusal announcement could omit critical information required by statute.

However, if Councilmember Robinson discloses her interest to the City Council, the interest is noted in the Council's official records, and Councilmember abstains from the contracting process in both her governmental and professional capacities, the City may still enter contracts with Urban Tilth as Councilmember Robinson's interest would qualify as remote interest under Section 1090(b)(1).<sup>1</sup>

The advice letter was clear that Ms. Robinson should "disclose her interest," which she failed to do. Both the video recording and the official written transcript of the meeting confirm that Ms. Robinson's recusal announcement included only the following:

Now I have a conflict of interest with item v.3, and we'll be removing myself from the room when that's being considered.<sup>2</sup>

Ms. Robinson did not follow the FPPC advice. She did not disclose the nature of her interest as required by GC 87105(a)(1). She simply recused and left it at that..

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<sup>1</sup> FPPC Response Letter of June 6, 2024

<sup>2</sup> Transcript of Dori Robinson statements at the October 3, 2024 City Council meeting

I believe the FPPC erred in essentially waiving the statutory requirement for Ms. Robinson to fully disclose her interest when making her recusal. The FPPC is not a legislative body; it is only an enforcement body, and it does not have the power to waive statutory disclosure of a person's interest in a contract.

GC Section 87105(a) (1) states:

Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.

Ms. Robinson did not “identify the financial interest,” nor did she provide any “detail sufficient to be understood by the public.”

The following is from the FPPC publication, “An Overview of Conflicts of Interest Under the Political Reform Act.” It goes into great detail how a recusal must be announced and what information must be provided. It is clear, from the evidence I provided, which included City Council Minutes and even written transcripts, that Ms. Robinson did not, “identify the potential conflict of interest” or provide any “detail sufficient to be understood by the public.” I fail to understand how an advice letter from the FPPC could supplant this statutory requirement.

Section 87105 governs the recusal of a public official specified in Section 87200 from a decision from which the official has been disqualified. Subdivisions (a)(1)-(3) of that section require the disqualified official to: identify the potential conflict of interest to publicly identify the official's financial interest or interests at issue; recuse from voting, discussing or attempting to influence the matter; and leave the room until after the matter is concluded. Subdivision (a)(4) excludes members of the Legislature from these recusal requirements.

Regulation 18707 provides further direction and guidance on the recusal requirements applicable to a public official specified in Section 87200 who is disqualified from a decision relating to an agenda item noticed for consideration at a public meeting subject to open meeting laws (i.e. the Bagley-Keene Act (Section 11120 et seq.) or the Brown Act (Section 54950 et seq.)).

**Form and Content of Public Identification:** The disqualified official must publicly identify each type of financial interest, identified in Section 87103, held by the official

Perhaps this seems like trivial nit-picking, but it is not. The nature of an elected official's conflict of interest is vital public information that the public has a statutory right to receive.

Moreover, the Government Code mandating FPPC oversight strongly encourages action and liberal construction in favor of enforcement and disclosure under the Political Reform Act – while it seems in this case, the FPPC is trying to make a narrow and limited construction in their response:

### **Failure to Include Relationship with Nakari Smith**

I understand that the FPPC can only respond to the information provided in a query, in this case from Mr. Atencio. But if Mr. Atencio omitted, whether through ignorance or intent, certain facts absolutely critical to the inquiry and of substantial public importance, it is incumbent on the FPPC to reconsider its response.

It is almost certain that the FPPC response letter would have been different if the full complete facts of Ms. Robinson's conflicting relationships had been disclosed in the inquiry by Mr. Atencio.

Clearly, Mr. Atencio did not inform the FPPC about the financial and personal relationship between Ms. Robinson and Mr. Smith, even though Ms. Robinson was the executive director, a board member and the highest paid employee of an organization (Urban Tilth) that had directed millions of dollars of grant money to Mr. Smith, the personification of "Rich City Rides," with whom Ms. Robinson shared ownership of their home as well as a romantic relationship. While it is wildly conceivable that Ms. Robinson's relationship with Mr. Smith had absolutely no connection to a \$3,680,656.75 grant that largely benefitted him and his "Rich City Rides" organization, it is most unlikely and certainly without evidence.

## **City Attorney**

Although not a part of my original complaint, in my conversation with Ms. Castillo, I also questioned the appropriateness of a city attorney acting as a go-between with a city council member and the FPPC.

If this is true, it is a practice that the FPPC may want to review. The League of California Cities (LCC) is a credible source of information about the role of city attorney, and I refer to "Providing Conflict of Interest Advice, A guide for Local Agency Council."

The LCC concludes that a city attorney may provide conflict of interest advice to a council member; however, it is silent on the appropriateness of a city attorney seeking advice from the FPPC or acting as a go-between for a city council member.

In any event, if a city attorney provides advice, either personally or as a go-between, such advice is only as good as the accuracy and completeness of the information provided in the inquiry. "Providing Conflict of Interest Advice, A Guide for Local Agency Council" states:

### **1.7 Duties, Responsibilities, and Liability**

#### **1.7.1 Duty to Provide Conflict Advice — Special Rule for City Attorneys**

Some attorneys have concluded that local agency counsel have no duty to advise individual public officials of their responsibilities under the Political Reform Act because only the city, as an entity, is the city attorney's client. It is certainly true that the Political Reform Act imposes no express obligation on local agency counsel to advise public officials. But Government Code section 41801 may impose such a duty for city attorneys in general law cities. This section provides as follows:

The city attorney shall advise the city officials in all legal matters pertaining to city business.

Since an individual public official's conflict of interest may interfere with, and have a bearing on an action planned by the city, it follows that the effect of an individual conflict of interest falls within the phrase "all legal matters pertaining to city business" in Government Code section 41801. Also, Government Code section 91003 provides courts with authority in some cases to void city actions where a public official was financially interested in the result, a possibility that has potentially serious consequences for the city as an entity. Likewise, contracts made in violation of Government Code section 1090 et seq. are void. In these contexts, the city itself has an interest in its public officials obtaining guidance from the city attorney on conflict of interest questions. This likely gives rise to a duty on the part of the city attorney to advise on conflict of interest matters. Therefore, it appears that conflict of interest questions constitute "legal matters of city business" for purposes of Government Code section 41801 and similar charter provisions, and that city attorneys can properly advise an official of their duties and responsibilities under the Act.

However, if a city attorney chooses to provide advice or act in his official capacity as a go-between seeking advice, a city attorney has an ethical duty to "discover the necessary facts," which Mr. Atencio failed to do. In this case, Mr. Atencio apparently took whatever facts Ms. Robinson provided at face value, even though

there were critical omissions, composed a letter of inquiry to the FPPC and provided the response to Ms. Robinson. Mr. Atencio apparently gave no advice personally. He was only a conduit, but due to his negligence, his inquiry was flawed and incomplete and resulted in bad advice. Garbage in – garbage out.

### **1.7.2 Duties to Obtain the Facts and Research the Law**

None of the conflict of interest laws impose an express duty on the local agency counsel to do any factual investigation or research in response to a conflict question. However, the absence of such a statutory duty does not mean that the local agency counsel is free from an ethical obligation to discover the necessary facts and research the applicable law. In conflict of interest issues, as in all matters, attorneys have a professional responsibility to perform their legal services in a competent manner. See, e.g., Rule 1.1 of the California Rule of Professional Conduct, providing that “a lawyer shall not intentionally, with gross negligence, or repeatedly fail to perform legal services with competence.” In addition to professional responsibilities, attorneys must be mindful of their general liabilities for malpractice in the negligent performance of duties undertaken. Hopefully this Guide will assist the practitioner in fulfilling those obligations.

that gives rise to the disqualifying conflict of interest. (Regulation 18707(a)(1).) The identification must be oral and part of the public record (Regulation 18707(a)(1)(B)), and provide the following information, as applicable:

- For a business interest: the name of the business, a general description of its activities, and any position held by the official. (Regulation 18707(a)(1)(A)(i).)
- For a real property interest: the property's address, assessor's number, or identification that the property is the official's personal residence. (Regulation 18707(a)(1)(A)(ii).)
- For a source of income interest: the name of the source of income. (Regulation 18707(a)(1)(A)(iii).)
- For a source of gift interest: the name of the source of gift. (Regulation 18707(a)(1)(A)(iv).)
- For all interests: the nature of the expense, liability, asset, or income affected. (Regulation 18707(a)(1)(A)(v).)

**Timing:** The public identification required by Regulation 18707(a)(1) must be made immediately prior to consideration of the agenda item. (Regulation 18707(a)(2).)

- Partial absence from a meeting does not excuse the disqualified official's public identification requirement. (*Ibid.*)
- If the official leaves a meeting in advance of an agenda item from which the official is disqualified, the official must provide the public identification required by Regulation 18707(a)(1) prior to leaving the meeting. (Regulation 18707(a)(2).)
- If the official first joins a meeting after consideration of the agenda item, the official must provide the public identification immediately upon joining the meeting. (*Ibid.*)

**Recusal and Leaving the Room:** The disqualified official must recuse, leave the room after the public identification required by Regulation 18707(a)(1), and refrain from participation in the decision. (Regulation 18707(a)(3).) The disqualified official does not count toward achieving a quorum while the item is discussed. (*Ibid.*)

- For an agenda item on a consent calendar (uncontested items), the official may remain in the room during the consent calendar. (Regulation 18707(a)(3)(A).)
- If the official has a "personal interest" in the agenda item, as defined in Regulation 18704(d)(2) and wishes to speak or appear as a member of the general public, the official may leave the dais and speak or observe from the area reserved for members of the public after making the public identification required by Regulation 18707(a)(1) and recusing. (Regulation 18707(a)(3)(B).)

**Special Rules for Closed Session:** The public identification required by Regulation 18707(a)(1) must be made orally during the open session before the body goes into

## Conclusion

The FPPC should reconsider its initial response to my complaint and conclude that the advice letter of June 6, 2024, erred because it did not recognize the improper and illegal recusal announcement by Ms. Robinson and that the initial opinion was based on critical incomplete facts.

The Government Code mandating FPPC oversight strongly encourages action and liberal construction in favor of enforcement and disclosure under the Political Reform Act – while it seems in this case, the FPPC is trying to make a narrow and limited construction in their response:

81002. The people enact this title to accomplish the following purposes:

- (a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- (b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.
- (c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.
- (d) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.
- (e) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.
- (f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.

81003. This title should be liberally construed to accomplish its purposes.