

**California Bureau of State Audits**  
**MEMORANDUM NUMBER 2**

As noted earlier in this memorandum, section 8252 declares that a person can have a disqualifying conflict of interest based on a member of his or her immediate family engaging in any of the activities listed in subdivision (a)(2)(A) of that section or based on having an immediate family relationship with the officials listed in subdivision (a)(2)(B), specifically the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. Section 8252 contains a provision that defines the term “immediate family” as it is used throughout subdivision (a) as anyone with whom the person has a “bona fide relationship established through blood or legal relation,” including parents, children, siblings, and in-laws.

While section 8252 is quite express in naming particular family relationships as being included within the scope of the term “immediate family,” it is silent regarding the meaning of the term “bona fide relationship.” While the term “bona fide” is generally regarded as meaning genuine or sincere,<sup>4</sup> there is no common meaning for the term as applied to family relationships. Yet, as noted earlier, the meaning given to the term “bona fide relationship” has a significant impact on how broadly the disqualification provisions will be applied, and on the number of persons who will be disqualified from serving on the commission.

Looking again to the purposes of the Act, as referenced in the discussion of the previous regulation, the definition of bona fide relationship needs to be broad enough to include family relationships that are so substantial in nature that a panel or commission member having such a relationship is likely to be vulnerable to influence from the other party to the relationship. However, the definition also has to be restrictive enough to exclude family relationships that have no particular qualities about them, aside from their mere existence, suggesting the other party to the relationship would be able to exert influence over a prospective panelist or commission member.

With these principles in mind, we propose a definition for bona fide relationship that contains three key elements. First, the regulation adds spouse and domestic partner to the list of family members who constitute the members of a person’s immediate family, which by the express language of section 8252 already includes parents, children, siblings, and in-laws. We propose this addition because spouses and domestic partners are at least as likely to be able to exert influence over a panelist or commissioner as anyone else on the list.

Second, the regulation requires that for a relationship to be bona fide it must be an existing relationship, rather than one that has been terminated by death or dissolution. The idea behind this element of the regulation is the obvious one that deceased family members can no longer be a source of influence, and family members estranged by dissolution, particularly in-laws, are unlikely to be a significant source of influence.

Third, the regulation requires that, for a relationship to be bona fide, it has to have specific characteristics about it that demonstrate a prospective panelist or commissioner is particularly likely to be influenced by the interests of the other party. The characteristics cited are any of the following occurring within the preceding 12 months:

Cohabitation for a period or periods cumulating 30 days or more;  
Shared ownership of any real or personal property having a cumulative value of \$1,000 or more; or  
Either party to the relationship providing a financial benefit to the other having a cumulative value of \$1,000 or more.

<sup>4</sup> See Merriam-Webster’s Collegiate Dictionary 130 (10<sup>th</sup> ed. 2001).

We propose the first characteristic because cohabitation is a strong indicator of being in a substantial relationship with another person where one party to the relationship has significant influence over the other. This naturally flows from: (1) ample opportunity for one party to try to influence the other, (2) the likelihood that the fortunes of one party generally impact the fortunes of the other, and (3) the strong motivation for cohabitants to do what is necessary to maintain a cordial and cooperative relationship with each other by acquiescing to the other person's wishes.

We propose the second and third characteristics because these types of economic connections also demonstrate that the relationship between the parties is substantial in nature, as it entails a sharing of financial resources. Moreover, in the case of a prospective panel or commission member receiving financial benefits from the other party, the panelist or commission member will, at a minimum, be perceived as beholden to the other party and therefore particularly vulnerable to being influenced. In determining whether a bona fide relationship exists, the regulation only looks to the characteristics of the relationship over the preceding 12 months, as that is most indicative of the nature of the relationship at the time a person will be serving as a panelist or commissioner. It does not include cohabitation for less than 30 cumulative days during a 12 month period, as lesser periods of cohabitation, such as occasional weekend visits, are not as indicative of a substantial relationship as longer periods of cohabitation. Further, the regulation does not include the joint ownership of property valued at less than \$1,000 or the imparting of a financial benefit cumulating less than \$1,000 during 12 months because such lesser financial connections are not as indicative of a substantial relationship between the parties. However, the regulation includes the imparting of financial benefits that are both tangible and intangible, including the rendering of services.

In proposing this definition of bona fide relationship, we are well aware that in trying to prevent the conflict of interest provisions from being overbroad, certain family relationships will not constitute a conflict of interest for a prospective panel or commission member even though the specific facts of the relationship may indicate the prospective member may be susceptible to legislative influence due to the relationship. For example, a prospective commission member having a brother who is a member of the Legislature would not have a disqualifying conflict of interest as a result of that relationship under circumstances in which the relationship has not included the requisite amount of cohabitation, joint property ownership, or exchange of financial benefits required to make the relationship a bona fide relationship. If the brothers are truly estranged, the relationship may have no impact on the ability of the prospective commissioner to perform the duties of a commissioner so it would be fair that the relationship does not constitute a conflict of interest. In contrast, if the brothers are not estranged, and the prospective commissioner is indeed loyal to the interests of the Legislature due to the family connection, the prospective commissioner would not be a good candidate to serve. The fact that the relationship does not constitute a conflict of interest should not be a problem, however, because even when a conflict of interest does not exist, the panel still has the authority and the duty to exclude from the pool of 60 of the most qualified applicants anyone who lacks the ability to be impartial in performing the duties of a commissioner. Regulation 60800 includes in the definition of "ability to be impartial" a requirement that a prospective commissioner has "no personal, family, or financial relationships, commitments, or aspirations that might have a tendency to influence someone making a redistricting decision." Thus the panel, with its ability to evaluate applicants individually to determine whether they have the ability to be impartial, will be well poised to keep from the commission any applicant who is subject to legislative influence due to a family relationship, or any other kind of relationship.