

Blow dealt to ethics violation prosecutions



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The 4th District Court of Appeal recently dealt a significant blow to criminal prosecutions of ethics violations by government officials in *Hudson v. Superior Court*, 2017 DJDAR 764 (Jan. 26, 2017). The opinion eliminates the ability of prosecutors to charge public officials with felony violations of Penal Code Section 115 (filing a false document) where the public official fails to disclose economic interests on his or her annual Statement of Economic Interests (SEI). Instead, the public official's failure to disclose his or her economic interests must be charged as a misdemeanor under Government Code Section 87203, which is part of the Political Reform Act (PRA). The court cited the *Williamson* doctrine, finding that a violation of the special statute, GC 87203, would necessarily result in a violation of the general statute, PC 115. Thus, the violation may only be charged as a misdemeanor as provided in Section 87203.

This is significant in that any violation of California's main governmental ethics law, the PRA, can only be charged criminally as a misdemeanor. Criminal enforcement of the PRA is in addition to statutory civil and administrative enforcement options. This opinion limits the ability of prosecutors to charge acts that violate the PRA as felonies under the Penal Code. While the opinion applies specifically to PC 115, the court's rationale may apply equally to other statutes.

The PRA was enacted by the people of California via ballot measure in 1974. It was passed in the wake of the Watergate scandals that led to the resignation of President Richard Nixon and led a wave of national governmental and campaign ethics reforms. Over time, it has been amended and enhanced to remain one of the country's leading governmental and campaign ethics laws.

Enforcement of the PRA was provided for in the original 1974 initiative. It allowed for violations to be enforced by criminal prosecution, civil action, or administrative action. Criminal enforcement responsibility was largely placed in the hands of district attorneys, who are responsible for violations that occur within their jurisdictions. In order to sustain a criminal violation of the PRA, the violation must have been made willfully and intentionally.

The PRA regulates several different types of behavior. First, it places limits on campaign fundraising and spending, and requires campaign advertisement disclosure. Second, it regulates ethical behavior by public officials. It requires them to avoid financial conflicts of interest, prohibits honorarium, and limits gift acceptance. There are restrictions on seeking post-government employment, and communicating with your former agency once you leave. Lastly, it requires public disclosure of financial assets. This public disclosure is done through the annual filing of an SEI by any official who makes, participates in or influences a governmental decision. It is the SEI disclosure that was at issue in *Hudson*.

The defendant in *Hudson* was a public official in a health care district. As such, she was subject to the PRA and other government ethics laws. Hudson was alleged to have a financial interest in a contract that was entered into between the healthcare district and a physician

who was renting a house from Hudson's husband, and allegedly failed to disclose the property on her SEI. Hudson was charged with violating Government Code Section 1090, a felony, which prohibits a public official from having a financial interest in a contract entered into by his or her public agency. Note that GC 1090 is outside the PRA, but can frequently overlap with conflicts of interest under the PRA. Hudson was also charged with violating PC 115, another felony, for allegedly filing false SEIs.

Hudson contended in the trial court that she was precluded from being prosecuted for violations of PC 115 for the conduct, as alleged, because PC 115 was a general statute, and GC 87203, which required the filing of the omitted SEI information, was a specific statute. Under *In re Williamson*, 43 Cal. 2d 651 (1954), she argued that she could only be charged with a misdemeanor violation of GC 87203 as the elements of the specific statute, GC 87203, would "inevitably" constitute a violation of the general statute, PC 115.

The 4th District agreed with Hudson and found not only that the elements of Section 87203 constituted a violation of PC 115, and thus precluded PC 115 prosecution, but also that there was no evidence that the Legislature (or the people of California in this case since the statute was enacted via statewide ballot initiative) intended for there to be criminal prosecution under both statutes. This was despite the further argument of the people that Government Code Section 91014 expressed such intent by stating that "Nothing in this chapter shall exempt any person from applicable provisions of any other laws of this state." The court rejected that GC 91014 was specific enough to express this intent.

The ruling in *Hudson* is significant not only for its effect on future PC 115 prosecutions, but also for its applicability to other general statutes that may be covered by the specific provisions of the PRA. It has been common since the PRA was passed for prosecutors to attempt to find felony charges outside of the PRA where the seriousness of the ethical violations warrants a criminal charge more serious than a misdemeanor. For example, Penal Code 118 (perjury) is a felony charge frequently used in conjunction with PRA violations. However, the *Hudson* court cites *People v. Jenkins*, 28 Cal. 3d 494, 505 (1980), as an example where PC 118 general felony perjury charges were permitted when it was found that the statute in question provided for those penalties to apply. In contrast, the PRA in Government Code Section 81004, states that all disclosures filed under the PRA shall be made under penalty of perjury, but does not make specific reference to the penalties in the Penal Code.

There are certainly other areas under the PRA where the *Williamson* doctrine may be tested under the *Hudson* ruling. This may have a significant lasting impact on felony prosecutions of ethics violations under the PRA.