



California Fair Political Practices Commission

February 9, 1988

Robert Kohlhase Hill
Attorney at Law
235 South Lassen St.
Susanville, CA 96130

Re: Your Request for Advice
Our File No. A-87-304

Dear Mr. Hill:

This is in response to your letter requesting advice regarding your disclosure requirements under the Political Reform Act (the "Act").^{1/}

QUESTION

Are you required to file an annual statement of economic interest as a consequence of your contract with the County of Lassen to provide legal representation to indigent minors and adults?

CONCLUSION

No. The position of "co-defender" is not listed in the county's conflict of interest code as a designated employee and does not fall within the definition of "consultant". As a consequence you are not required to file an annual statement of economic interest.

FACTS

You are a sole practitioner who has contracted with Lassen County as a "co-defender". Based on the language in the county contract, the co-defender is to provide indigents with legal services in criminal cases and juvenile proceedings when appointed by the court as counsel. The term of the contract is from December 1, 1987, to June 30, 1988. Compensation is a flat fee of \$2,916 per month plus specified expenses.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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Paragraph 12 of the county contract delineates the relationship of the co-defender to the county:

Defender's professional responsibility toward indigent persons shall be in accordance with the attorney-client relationship. The relationship of Defender to County is that solely of an independent contractor. This agreement does not create an attorney-client relationship between Defender and County, nor that of employer-employee.

Finally, the position of co-defender is not listed as a designated employee in the conflict of interest code for the county.

ANAYSIS

The Act requires that every public agency adopt a conflict of interest code in which the agency must designate those positions that involve the making of, or participation in, decisions which may foreseeably affect any financial interest. (Sections 87300 and 87302.) Both the definitions of "designated employee" and "public official" in the Act include any consultants to an agency who make or participate in agency decisions. (Sections 82019 and 82048.)

A "consultant" within the meaning of the Act, includes "any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency...." (Regulation 18700(a)(2), copy enclosed.) This term does not include, however, a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Regulation 18700(a)(2).

The county contract for indigent legal services specifies that the co-defender is to be responsible only to his or her clients. Under such circumstances, the attorney is to use his or her own judgment and expertise to render professional services, and these decisions are not subject to day-to-day review or direction by the county. Consequently, the position

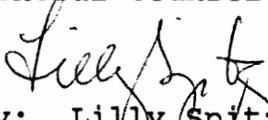
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of co-defender does not fall within the definition of consultant, and you are not required to file statements of economic interest for purposes of compliance with the Act. (See also Gifford Advice Letters, Nos. A-85-133, 134, 135, copies enclosed.)

If you have further questions, please don't hesitate to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh
Enclosures

Robert Kohlhase Hill
Counselor and Attorney at Law

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235 ~~60~~ South Lassen Street, ~~XXXXXXX~~ ^{Lassen Co}
Susanville, California 96130

November 24, 1987

Fair Political Practices Commission
Legal Office
428 J Street, Suite 800
Sacramento, CA 95814

Re: November 1987 Bulletin regarding contract lawyers

Dear Sirs:

I read with great interest the November 1987 bulletin and the chairman's message "contract lawyers should review financial disclosure requirements". I am asking, by this letter, for an opinion from you regarding whether or not I would be required under the act to file an annual statement of economic interest.

I am a sole practitioner who is about to contract with Lassen County, California to provide indigent representation and public defender services. As a public defender the compensation is a flat rate single contract price. I will merely be giving legal advice and representation to indigent juveniles and elderly persons. In these particulars, I will be giving no advice or counsel to the County of Lassen or any other public entity on any ongoing or singular basis. I will be conducting research, arriving at conclusions and representing my clients independently of the control and direction of Lassen County. Again, I am requesting an opinion as to whether or not, under these circumstances, an annual statement of economic interest should be filed.

Thank you for your attention to this matter.

Very truly yours,

Robert K. Hill /EH

Robert K. Hill



California Fair Political Practices Commission

December 4, 1987

Robert K. Hill
Counselor and Attorney at Law
235 South Lassen Street
Susanville, CA 96130

Re: 87-304

Dear Mr. Hill:

Your letter requesting advice under the Political Reform Act was received on November 30, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel *by Ked*

DMG:plh

Robert Kohlhasse Hill
Counselor and Attorney at Law

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Robert K. Hill /RH

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