

1 GARY S. WINUK
Chief of Enforcement
2 GALENA WEST
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

FPPC No. 07/293

12 **STIPULATION, DECISION AND ORDER**

13 **MICHAEL RUBIO,**

14
15 Respondent.

16
17 **STIPULATION**

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondent Michael Rubio hereby agree that this Stipulation will be submitted for consideration by
20 the Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondent.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
27 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
28 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Michael Rubio violated the Political Reform
4 Act by failing to timely report income from his spouse's salary on his 2006 annual Statement of
5 Economic Interests, in violation of Government Code Sections 87200 and 87203 (1 count), and by
6 making a governmental decision in which he had a financial interest, in violation of Government Code
7 Section 87100 (1 counts) and, as described in Exhibit 1, which is attached hereto and incorporated by
8 reference, as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
9 matter.

10 Respondent agrees to the issuance of the Decision and Order, which is attached hereto. Also,
11 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of
12 Three Thousand Five Hundred dollars (\$3,500). A cashier's check from Respondent in said amount,
13 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
14 payment of the administrative penalty and shall be held by the State of California until the Commission
15 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
16 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
17 after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent
18 in connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
19 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
20 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
21 shall be disqualified because of prior consideration of this Stipulation.

22 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

25 Dated: _____

Michael Rubio, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Michael Rubio,” FPPC No. 07/293,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chairman.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

9 Dan Schnur, Chairman
10 Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Michael Rubio (“Respondent”) was elected to the Kern County Board of Supervisors on March 2, 2004, and re-elected in the June 3, 2008 General Election. Respondent Rubio married his wife, Dora Escudero, on December 1, 2005. From May, 2005 through September, 2006, Dora Escudero worked for Clinica Sierra Vista (“CSV”), a non-profit health care and preventative health education services provider.

Under the Political Reform Act¹ (the “Act”), certain public officials, including members of boards of supervisors, must disclose their investments, interests in real property, and income by filing annual statements of economic interests (“SEIs”). As required by the Act, members of the boards of supervisors must file an SEI by April 1 of each year.² On an SEI, the public official must disclose the reportable economic interests that he or she held during the preceding calendar year. Among sources of income that must be disclosed are those resulting from income received by the public official’s spouse equal to, or greater than, \$1,000 during a calendar year.³

Also under the Act, public officials are prohibited from making, participating in making, or attempting to use their official positions to influence any governmental decisions in which they have a financial interest. As a member of the Kern County Board of Supervisors, Respondent is a public official and therefore prohibited by Section 87100 from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In this matter, Respondent impermissibly made a governmental decision in 2006 in which he had a financial interest. He also failed to disclose income from his wife’s salary, which was the source of his conflict of interest, on his 2006 SEI.

For purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: On March 27, 2007, Respondent Michael Rubio filed his annual statement of economic interests for calendar year 2006, but failed to include all required information regarding income, in violation of Sections 87200 and 87203 of the Government Code.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated. The violations discussed below occurred in 2006. All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations in 2006.

² Unless April 1 falls on a Saturday, Sunday, or official holiday, in which case the filing deadline is extended to the next regular business day. (Regulation 18116.)

³ A spouse’s income of \$1,000 or more is disqualifying because half of that income is attributable to the public official. Section 82030 expressly includes a community property interest in a spouse’s income within the Act’s definition of “income.”

COUNT 2: On or about May 2, 2006, as a member of the Kern County Board of Supervisors, Respondent Michael Rubio made a governmental decision in which he had a financial interest by voting to approve a contract between Kern County and Clinica Sierra Vista, in violation of Section 87100 of the Government Code.

SUMMARY OF THE LAW

Statements of Economic Interests

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, which may be materially affected by their official actions, be disclosed so that conflicts of interest may be avoided. In furtherance of this purpose, Section 87203 requires every person who holds an office specified in Section 87200 to file statements of economic interests on an annual basis, disclosing certain investments, interests in real property, and income. Section 87200 lists these public officials and includes “members of the board of supervisors.” For members of the board of supervisors, the filing deadline is April 1 of the year following the reporting period. (Regulation 18723, subd. (b)(2).) Section 87500, subdivision (e), provides that such statements shall be filed with the county clerk, who must make a copy and transmit the original statement to the Fair Political Practices Commission.

When a source of income is required to be disclosed on an SEI, Section 87207, subdivision (a)(1), provides that the statement shall contain the following information regarding the income: “[t]he name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.” Section 87207, subdivision (a), also requires the aggregate value of the income from each source and a description of any consideration received for the income.

Conflicts of Interest

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).) In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.⁴

⁴ The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. (Section 87100 and Regulation 18700.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has a financial interest in any source of income aggregating \$500 or more “in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103, subd. (c).) The Act’s definition of the term “income,” at Section 82030 expressly refers to community property interests in a spouse’s income.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.) A person, including business entities and sources of income, is directly involved in a decision before an official’s agency when that person, is a named party in, or is the subject of, the proceeding. (Regulation 18704.1, subd. (a)(2).)

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103, Regulation 18705.3.) Any reasonably foreseeable financial effect on a directly involved economic interest is deemed material. (Regulation 18705.3, subd. (a).)

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

SUMMARY OF THE FACTS

At all relevant times, Respondent Rubio was a member of the Kern County Board of Supervisors. Respondent Rubio married his wife, Dora Escudero, on December 1, 2005. From May, 2005 through September, 2006, Dora Escudero worked for Clinica Sierra Vista (“CSV”), a non-profit health care and preventative health education services provider, as a dental hygienist.

When Respondent Rubio married his wife on December 1, 2005, her income from CSV became a disclosable economic interest of Respondent’s once that income reached \$1,000. As such, income from CSV should have been disclosed on Respondent’s 2006 SEI. Initially, the income was omitted; however, Respondent Rubio filed an amendment on April 5, 2007, providing the additional disclosure. On or about May 2, 2006, Respondent Rubio, acting as a member of the Kern County Board of Supervisors, voted to approve a contract for CSV to provide healthcare services to Kern County and receive \$134,000 in compensation.

Count 1: Failure to Timely Disclose Spouse's Income on Statement of Economic Interests

On March 27, 2007, Respondent Rubio filed his annual statement of economic interests for calendar year 2006, but failed to include all required information regarding income. The filing deadline was April 2, 2007. On April 5, 2007, Respondent filed an amendment disclosing the over \$12,000 in income received through his wife in 2006 from CSV as well as income she received from another employer. Both statements covered the period January 1, 2006, through December 31, 2006. Respondent Rubio explained the omission by pointing out that his wife is a part-time intermittent employee of CSV and the other employer, so initially he did not think the income qualified for disclosure.

Therefore, by failing to disclose all income for calendar year 2006, Respondent Rubio violated Sections 87200 and 87203 of the Government Code.

Count 2: Making a Governmental Decision in Which the Official has a Financial Interest

As a member of the Kern County Board of Supervisors, Respondent Rubio was a public official as defined in Section 82048, and was therefore subject to the prohibition against making a decision in which he has a financial interest under Section 87100. On or about May 2, 2006, a contract was presented for approval to the Kern County Board of Supervisors. That contract, as presented by the Kern County Department of Human Services for approval, would pay CSV \$134,000 in exchange for CSV providing specific services to support, facilitate and promote better health care services in the County. The contract did not include dental services. The contract was approved by a unanimous vote, including Respondent Rubio, at the May 2, 2006 Kern County Board of Supervisors meeting. Consequently, Respondent made a governmental decision for purposes of Regulation 18702.1, subdivision (a).

At the time of the governmental decision described above, Respondent Rubio had an economic interest in CSV through his wife's income from CSV. His wife, Dora Escudero, had received over \$8,500 in income since their marriage December 1, 2005 through the date of the decision on May 2, 2006. As the income amounted to \$1,000 or more from one source during the 12 months preceding the vote, resulting in Respondent's share being \$500 or more, Respondent had an economic interest in CSV for the purposes of Section 87103, subdivision (c) and Regulation 18703.3.

The governmental decision was the Kern County Board of Supervisors' approval of the awarding of a contract to CSV. That contract, as presented by the Kern County Department of Human Services for approval, would pay CSV \$134,000 in exchange for CSV providing specific services to support, facilitate and promote better health care services in the County. Therefore, the governmental decision made on May 2, 2006, to approve the awarding of the contract, directly involved Respondent Rubio's economic interest under Regulation 18704.1, subdivision (a)(2).

Because Respondent's source of income was directly involved in the governmental decision, the financial effect of the decision on his source of income is deemed to be material. (Regulation 18705.3(a).) Respondent's governmental decision to approve a contract with CSV

for \$134,000 is substantially likely to produce some effect on CSV and, as stated above, materiality is presumed since CSV is directly involved in the decision.

By making a governmental decision in which he had a financial interest, Respondent Rubio violated Section 87100 of the Government Code.

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6) including the seriousness of the violation, the presence or absence of any intention to conceal, deceive or mislead, whether the violation was deliberate, negligent or inadvertent, whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code Section 83114(b), whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws, and whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Count 1: Disclosure

Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

Mitigation

No evidence was found that Respondent Rubio was intentionally concealing his wife's income sources. In addition, Respondent contends that his oversight in disclosing the income was due to the fact that he was married shortly after taking office and was unaware that his wife's income was required to be disclosed. The required information that was missing from Respondent's SEI was ultimately reported in an amendment filed after the deadline, but only a little over a week later.

Aggravation

Respondent failed to disclose his wife's income which was the source of his conflict of interest.

Given the facts of this case, the imposition of an administrative penalty of \$1,000 for Count 1 is appropriate.

Count 2: Conflict of Interest

Attempting to influence a governmental decision in which an official has a financial interest is one of the more serious violations of the Act because it may create the appearance that a governmental decision was made on the basis of a public official's financial interest. Administrative penalties for violations of the Act vary depending upon the specific facts of each case.

Mitigation

Respondent had just obtained his first public office and had limited experience in dealing with the requirements of the Act. The Board of Supervisors' vote was unanimous to grant the contract to CSV for healthcare services and was the last step in the process in which the Kern County Department of Human Services vetted and recommended the provider of the services. Respondent contends that he received advice from the County Counsel regarding potential conflicts of interest and it was not until later, after questions arose, that he was advised not to vote on matters involving CSV. In addition, Respondent cooperated with the Enforcement Division during the investigation and does not have a history of violating the Act.

Aggravation

None.

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of \$2,500 for this count.

Therefore, the facts of this case justify imposition of the agreed upon penalty of \$3,500.