

State of California



Fair Political Practices Commission

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Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

July 20, 1984

Robert B. Treister
10929 South Street, Suite 109B
Cerritos, CA 90701

Re: Your Request for Advice
Our File No. A-84-167

Dear Mr. Treister:

Thank you for your letter requesting advice concerning your financial disclosure obligations under the Political Reform Act^{1/} as a member of the California Council on Criminal Justice ("Council").

Pursuant to the Conflict of Interest code for the Office of Criminal Justice Planning,^{2/} the members of the Council are required to disclose all investments, interests in real property, and sources of income. In the case of a professional like yourself, reporting sources of income includes reporting the names of clients whose fee to you exceeded \$10,000. Section 87207(b). The disclosure of clients' names was upheld by the California Supreme Court after it was challenged on constitutional grounds. Hays v. Wood, 25 Cal. 3d 772, 160 Cal. Rptr. 102 (9179). The court specifically discussed the attorney-client privilege and concluded as follows:

It is well established that the attorney-client privilege, designed to protect communications between the, does not ordinarily protect the client's identity. (Brunner v. Superior Court (1959) 51 Cal.2d 616, 618 [335 P.2d 474]; Satterlee v. Bliss (1869) 36 Cal. 489, 507.) A limited exception to this rule has

^{1/} Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise noted.

^{2/} This code was adopted and approved in accordance with the Act and Commission regulations. Sections 87300, et seq.

been recognized, however, in cases wherein known facts concerning an attorney's representation of an anonymous client implicate the client in unlawful activities and disclosure of the client's name might serve to make the client the subject of official investigation or expose him to criminal or civil liability. (See Ex parte McDonough (1915) 170 Cal. 230, 236-237 [149 P. 566]; People v. Sullivan (9169) 271 Cal.App,2d 431, 545-546 [77 Cal.Rptr. 25]; Baird v. Koerner (9th Cir. 1960) 270 F.2d 263, 630; In re Grand Jury Proceedings (5th Cir. 1975) 517 F.2d 666, 670-671, and cases there collected.) (4c) These principles, in our view, remain wholly applicable in cases such as that before us.

We note that the Fair Political Practices Commission (Commission), charged with enforcing the Act, has reached a similar conclusion. A recently adopted regulation (Cal. Admin. Code, tit. 2, Section 18740) sets up a procedure by which an attorney-official (or any other official asserting that full compliance with the requirements of section 87207, subdivision (b) would result in the infringement of a recognized privilege) may seek an appropriate determination from the Commission. The Commission's order in such a proceeding is subject to judicial review. (Section 83120.) Insofar as here appears, this regulation provides ample protection against unwarranted infringement of the attorney-client privilege in matters of this kind. The Commission has stipulated that the defendant may presently seek relief under the regulation even though it was adopted after the period of his incumbency.

We conclude from the foregoing that the subject provisions of the Act do not operate to infringe upon the attorney-client privilege or the attorney's duty to maintain and preserve the confidence of his clients.

25 Cal. 3d at 785.

The Commission regulation, which the court refers to, sets forth the standards and procedure for the granting of an exception to the disclosure of a client's identity. 2 Cal. Adm. Code Section 18740 (copy enclosed). Based upon the facts you gave in your letter, it is unlikely an exception to disclosure would be granted for this particular client. However, if after reviewing the regulation, you would like to apply for an

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exception, please use the procedure outlined in 2 Cal. Adm. Code
Section 18740.

Please feel free to contact me at (916) 322-5901, if I can
be of further assistance.

Sincerely,
Diane M. Fishburn
by B.M.
Diane Maura Fishburn
Counsel
Legal Division

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Enclosure

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LAW OFFICES
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June 19, 1984

John Keplinger
Executive Director
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Statement of Economic Interests

Dear Mr. Keplinger:

I had one client in 1983 who paid me a fee in excess of \$10,000.00. However, this was not a business client or someone who has me on retainer. Rather, he was a college student injured in a car v. motorcycle accident, and I represented him in his claim for damages for personal injuries. We settled his claim, and my fee was a percentage of the recovery.

Personal injury claims, once settled, do not require further legal service, and in fact I have not rendered any services to this client since his settlement in early 1983.

I would like to protect my client's privacy in such cases, if you agree an exception is appropriate. Personal injury claims are relatively random events, and I don't see any potential conflict of interest from such cases with the performance of my duties on the California Council on Criminal Justice.

Please advise at your earliest convenience.

Thank you for your attention and consideration.

Very truly yours,


ROBERT B. TREISTER