

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

May 28, 1997

Isolina Ricci, Ph.D.  
Box Seven One One  
Tiburon, California 94920-0711

**Re: Your Request for Advice  
Our File No. A-97-225**

Dear Dr. Ricci:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Please bear in mind that this letter is based on the facts you have presented to us. The Commission does not act as finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTIONS

You are the manager of the Family Court Services unit in the Judicial Council's Administrative Office of the Courts ("AOC"). You also own a business, formed in 1980, that provides consulting, educational, and counseling services on family law issues. The second edition of a book you wrote before you joined the AOC will be published this fall. The topic of the book is custody and divorce. You anticipate that the publication will present opportunities for teaching, speaking, and presentations. You have asked the following questions:

1. Is it lawful for you, as a designated employee, to receive compensation, as well as travel and lodging expenses, for making presentations to groups or individuals on the issues addressed in your book?
2. Can you accept teaching positions sponsored by a private center or clinic?

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

## CONCLUSIONS

You may accept compensation, including reimbursement for travel and lodging expenses, in return for instructional presentations to groups and/or individuals on the subjects discussed in your book, if you can meet regulatory requirements for recordkeeping consistent with the operation of a business. Such compensation will be characterized and reportable as earned income, and is not a prohibited honorarium, so long the presentations made by you are a continuation of the bona fide business in which you have been engaged for many years prior to your employment with AOC.

If any of the provisions of regulation 18932.2 are met, payments to you for "teaching" would be deemed income earned, not prohibited honoraria.

## FACTS

You are the manager of the Family Court Services unit in the AOC of the California Judicial Council. You have been employed by AOC since 1986. Your office deals with trial court services to family law litigants, primarily in the areas of divorce, custody, and visitation. Your office generates training programs for trial court staff, analyzes legislation, implements legislation, evaluates programs in the trial courts, and has a small grant program. The grant awards are governed by the Judicial Council's Family Subcommittee.

The disclosure category that applies to your position at AOC is Category 12. It requires disclosure of "[i]nvestments and positions<sup>2</sup> in and income from business entities that are providers<sup>3</sup> of family court services (including consulting and training) and related equipment and supplies."

Before joining AOC, you had extensive experience, working as a mediator, educator and researcher in the areas of divorce, custody and mediation. You have been a licensed family psychotherapist since 1975. After working with a community agency in the family law area, you went into private practice from 1976 to 1986. In 1980 you formed your private business, a sole proprietorship called "The New Family Center." Since that time, you have received your doctorate from Stanford University.

"The Family Law Center" provides consulting, educational and counseling services on family law topics. The services can include providing written materials, along with some appearances on panels or as a speaker for professional associations. Speechmaking is not the

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<sup>2</sup> Positions include employee and partner, officer, director, trustee, and any other management position.

<sup>3</sup> Providers include business entities and individuals that are manufacturers, distributors, vendors, sellers, lessors, suppliers, contractors, subcontractors, and other providers of the supplies, equipment, real property, and services indicated in this category.

principle nature of the business. The business is treated as a separate business entity for tax purposes. Your business clients do not do business with the Administrative Office of the Courts.

In 1980, you published a book on custody and divorce titled "Mom's House, Dad's House." You deposit proceeds from the book into an account set up for "The Family Law Center." Over the years, the book has sold approximately 180,000 copies. A second edition of the book will be published this fall. You expect a number of opportunities for teaching, speaking, presentations, and appearances as a result of the publication.

## ANALYSIS

### Question #1

Section 89502(c) provides that no designated employee of a governmental agency shall accept any honorarium if the employee would be required to report the receipt of income on his or her statement of economic interests. The term "honorarium" is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501(a).) "Speech given," as used in Section 89501, means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. (Regulation 18931.1.) As a designated employee required to disclose all income from business entities that are providers of family court services, you are prohibited from receiving honoraria from these businesses, unless the activity falls within a specific statutory or regulatory exception to the definition of "honorarium." An exception potentially applicable to your circumstances is given at Section 89501(b)(1), which provides in pertinent part:

"(b) The term "honorarium" does not include:  
(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business or profession is making speeches."

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Regulation 18932.1 (copy enclosed) explains the statutory language quoted above, providing in subsections (a) through (c) that a business, trade, or profession is presumed to be "bona fide" when certain recordkeeping criteria are met, professional licensure is held, or when an individual is employed by a college or university. However, subsection (d) provides that "[a] business whose predominant activity is making speeches is not "bona fide" for purposes of Government Code Sections 89501 through 89506." "Predominant activity" is itself defined at Regulation 18932.3. As pertinent to a business like yours, the regulation states:

“For purposes of Government Code Sections 89501 through 89506, speechmaking is presumed to be the “predominant activity” of an individual’s business, trade, or profession in the following circumstances:

(A) For a business, trade, or profession in existence for one year or more:

(1) During the 12-month period prior to and including the date of the speech, more than 50 percent of the hours spent on an individual’s business, trade, or profession is devoted to the preparation and/or delivery of speeches; or

(2) During the 12-month period prior to and including the date of the speech, more than 50 percent of the gross income of the individual’s business, trade, or profession is derived from the preparation and/or delivery of speeches.”

Under the statute and regulations examined thus far, your business might qualify as “bona fide” for purposes of Sections 89501 - 89506 if you have kept for two years books and records consistent with the operation of a business, and tax returns reflecting the operation of a business. (Regulation 18932.1(a).) The only apparent problem, assuming that you can satisfy the documentary prerequisites, is subdivision (d) of Regulation 18932.1, which recapitulates the restriction stated at Section 89501(b)(1), denying “bona fide” status to any business whose “predominant activity” is preparation and delivery of “speeches.” However, while the definition of “speech” at Regulation 18931.1 is certainly broad, not all public speaking is governed by that definition. (*Tribe* Advice Letter, No. 95-310.)

In the *Tribe* Advice Letter we determined that a public official hosting a radio talk show program, a “bona fide business trade or profession” offering instruction on subject matter unconnected to his state employment, was not paid *honoraria* for any “speeches” he gave on the air, but received earned *income* as consideration for the information he passed on to the listeners. (See, also, *White-Brown* Advice Letter, No. A-95-290.) “Earned income” is defined at Section 82030.5 to include “income from wages, salaries, professional fees and other amounts received or promised to be received as compensation for personal services rendered.” Earned income differs from an honorarium because a payment characterized as “earned income” is based on the market value of *services* rendered, while an honorarium reflects values associated with the *status* of the speaker.

Similarly, in the *Leach* Advice Letter, No. 97-160, we found that an Assembly Member may accept compensation in return for instructional presentations because the compensation was not prohibited honoraria but income earned in connection with the official’s bona fide business. In that case, the Assembly Member’s presentations were a continuation of a bona fide business in which she had been engaged for many years prior to her election to the state Assembly. We said that “[t]his income presumably reflects the value of the training you provided, and cannot be attributed to your status as a member of the Assembly.” As we concluded in the *Tribe* Advice Letter, *supra*, payments in such cases are properly characterized as income earned as

compensation *for services of commensurate value*, not for a “speech” within the meaning of Regulation 18931.1.

Under these circumstances, your longstanding business is “bona fide” within the meaning of Sections 89501 through 89506 so long as you are able to meet the recordkeeping criteria of Regulation 18932.1.<sup>4</sup> If you have the required documentation, you may make instructional presentations before groups of clients on issues related to “The Family Law Center” and the second edition of your book. The customary compensation for such presentations, including travel and lodging expenses, will be regarded (and reportable) as earned income, but not as honoraria,<sup>5</sup> so long as your services reflect the market value of *services* rendered by a family law specialist with your extensive background. However, the honorarium ban still applies to you for any public speaking on subjects *other* than those customarily offered by your business<sup>6</sup> or, more generally, for speeches you may be asked to give primarily by reason of your status as the manager of Family Court Services at AOL.

## **Question #2**

Regulation 18932.2 provides:

“An individual is presumed to be engaged in the bona fide profession of teaching in any of the following circumstances:

(a) The individual is under contract or employed to teach at a school, college, or university accredited approved or authorized as an educational institution by an agency of the State of California; or by an agency of any other state in the United States; or by an agency of the Federal government; or by a bona fide independent accrediting organization.

(b) The individual receives payment for teaching a course, presented to assist in maintenance or improvement of professional skills or knowledge where the course provides credit toward continuing education requirements of the pertinent profession.

(c) The individual receives payment for teaching students enrolled in an examination preparation program, such as a State Bar examination review course.”

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<sup>4</sup> This conclusion assumes that making speeches is not the predominate activity of the business, as described herein.

<sup>5</sup> “Gifts” of travel and lodging are treated separately from honoraria under the Act. The foregoing analysis treats any reimbursement for travel and lodging not as a “gift” but as “income,” a benefit to you for which you provide full consideration in the form of instructional services.

<sup>6</sup> Whether or not a particular speech is a type that is “customarily provided” in connection with a bona fide business, trade or profession is determined on a case-by-case basis. (*Greenwald* Advice No. 95-290a.)

If any of the provisions of the regulation are met, payments to you for "teaching" would be deemed income earned, not prohibited honoraria. However, other payments received for personal services rendered in connection with your teaching profession must be customarily provided in connection with that bona fide profession as required by Regulation 18932.

This advice is limited to the provisions of the Act. You should contact your agency for assistance on any possible incompatible activities issues, including the use of your employer's address. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in cursive script, appearing to read "D Allison", is written over the typed name of Deborah Allison.

By: Deborah Allison  
Staff Counsel, Legal Division

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