



## FAIR POLITICAL PRACTICES COMMISSION

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October 17, 2001

Jennifer Baker  
State Legislature  
State Capitol – Room 2196  
Sacramento, CA 95814

**Re: Your Request for Advice**  
**Our File No. A-01-187**

Dear Ms. Baker:

This letter is in response to your request for advice regarding the gift limit provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

May you, as a designated employee with full disclosure, accept pro bono legal services from an attorney?

### CONCLUSION

No. You may not accept pro bono legal services if the value of these services would exceed \$320, the Act's gift limit amount.

### FACTS

You are a Category A designated employee of the Legislature and have full disclosure. As such, you are subject to the gift limit of the Political Reform Act.

Recently, an attorney offered, on a pro bono basis, to assist you with media and law enforcement inquiries related to a certain high profile case. You do not anticipate being involved in any litigation that may arise from this matter. However, if litigation should arise, the attorney would not represent you in litigation pro bono. The attorney indicates that he has done and continues to do pro bono work without consideration of the

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

client's official status. Specifically, the attorney says that he offers his pro bono services to a particular client based on the following criteria:

- The client's inalienable rights provided by Article I, Section I of the California Constitution have been infringed upon; and
- The professional and financial status of the client is such that the client would not be able to deal with the costs associated with the legal issues of the case; and
- The client was forced into his or her position.

You inquire as to whether the attorney's pro bono services to you would be a gift subject to the gift limit.

### ANALYSIS

A "gift" is defined as "any payment<sup>2</sup> that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." (Section 82028(a).) The Act provides that no designated employee of a state government agency may accept gifts from any single source in any calendar year with a total value of more than \$320<sup>3</sup> if the employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. (Section 89503(c); Regulation 18940.2.) You have indicated that you are a designated employee of the Legislature, a state government agency, and are included in a category with full disclosure. As such, you are prohibited from accepting gifts from a single source aggregating to more than \$320, and are required to report all sources of any gifts totaling \$50 or more. (Section 87207.)

Under Section 82028, anything of value given to a public official without cost, including legal services, may be a reportable gift, unless it is expressly exempted from the definition of "gift." (*Lanzone* Advice Letter, No. I-95-288; *Connor* Advice Letter, No. A-94-247; *Dorsey* Advice Letter, No. I-92-302.) In the *Connor* letter, Commission staff addressed whether pro bono legal services provided by an organization organized under Section 501(c)(3) of the Internal Revenue Code were a "gift" under the Act. These legal services were provided to the developmentally disabled daughter of a designated employee. This letter concluded that the organization was a large, national organization whose goal was to assist in securing the civil rights of disabled persons. If the organization believed that its involvement in particular litigation would further this goal,

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<sup>2</sup> "Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything of value, whether tangible or intangible." (Section 82044.)

<sup>3</sup> Regulation 18940.2(a) specifies that the adjusted annual gift limit amount in effect for the period January 1, 2001 to December 31, 2002, is \$320.

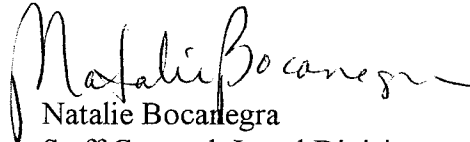
it would become either directly or indirectly involved, regardless of who the individual it assisted was. To that extent, the letter determined, the organization offered its services at a discount to members of the public regardless of their official status. Consequently, the services were not a "gift" as defined by the Act.

The facts of the *Connor* Letter differ from those you have presented. First, the organization there had 501(c)(3) tax-exempt status and the identified mission "to further the civil rights of people with disabilities and establish disability issues as civil rights issues shared by other minorities and women." Additionally, the bylaws of the organization created two standing committees to direct the organization's litigation efforts and fulfill the organization's litigation policy. Unlike the situation described in the *Connor* letter where discretion in a formalized selection process did not reside with one person, your facts do not establish that the attorney's pro-bono legal services would be provided without regard to official status. Therefore, you would be prohibited from accepting the pro bono legal services you have described if their value totals more than \$320 in a calendar year.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By:   
Natalie Bocanegra  
Staff Counsel, Legal Division

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