



## FAIR POLITICAL PRACTICES COMMISSION

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June 3, 2003

The Honorable Janet Kintner  
San Diego Superior Court  
Post Office Box 122724  
San Diego, CA 92112

**Re: Your Request for Informal Assistance  
Our File No. I-03-101**

Dear Judge Kintner:

This letter is in response to your request for advice regarding the honoraria provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note this letter is limited solely to the provisions of the Act and should not be taken as advice or an opinion regarding any other area of the law potentially raised by your letter. Moreover, since your questions are general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTION

1. May you, in your capacity as a judge of the superior court, teach a one-day class on judicial education to other judges at the request of a foreign government?
2. May you accept a stipend for this activity?
3. May you receive free travel and two days lodging from the sponsor?

### CONCLUSION

1. No provision of the Act prohibits you from teaching the class.

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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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice (Government Code § 83114; 2 Cal. Code of Regs. § 18329(c)(3), copy enclosed.)

2. A stipend for teaching is considered an honorarium. However, the provisions of the Act which prohibit honoraria do not apply to judges. Please note that the Code of Civil Procedure does set forth gift and honoraria rules for judges. Since this is not in the Act, the Commission does not advise on these sections.

3. The provisions of the Act which limit gifts do not apply to judges. However, gifts and income must be reported on your statement of economic interests as discussed below. As noted above, the Code of Civil Procedure does set forth additional gift rules for judges. Since this is not in the Act, the Commission does not advise on these sections.

### FACTS

As a member of the judiciary, you plan to teach a class on judicial education to judges at the request of a governmental entity in another county, such as a province in Canada, and wish to accept an honorarium. You also plan to travel on your vacation time and would like to stay an additional few days to reduce the price of a roundtrip plane ticket paid on your behalf.

On May 12, 2003, you provided the following additional facts:

- The class is a one day class.
- The “honorarium” is described as a “stipend” for teaching the class.
- The sponsor has also offered transportation and lodging for two nights.

### ANALYSIS

**Limits and Conflicts of Interest:** The provisions of the Act which limit gifts and prohibit honoraria<sup>3</sup> (sections 89502-89506) do not apply to judges. (Section 89502(d).)<sup>4</sup> Moreover, the conflict-of-interest provisions of the Act apply only to public officials. (Section 87100.) The term “public official” as defined in section 82048 excludes “judges and court commissioners in the judicial branch of government...” However, there are provisions in the Code of Civil Procedure prohibiting judges from accepting certain gifts

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<sup>3</sup> Under the Act an “honorarium” is defined in section 89501 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.” This broad definition appears to apply to the “stipend” in question.

<sup>4</sup> The Act’s gift limits and honoraria ban do apply to candidates for judicial office. (Sections 89502(b) and 89503(b).) Persons are deemed to be a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person is no longer a candidate for purposes of this subdivision once he or she is sworn into the elective office, or, if the person lost the election, after the person has terminated his or her campaign statement filing obligations for that office pursuant to section 84214 or after certification of the election results, whichever is earlier. (Sections 89502(b)(1) and 89503(b)(1).)

and honoraria. The Commission has no authority to interpret or enforce the Code of Civil Procedure.

**Disclosure:** The conflict-of-interest disclosure provisions of the Act require judges to file periodic statements of economic interests (Form 700) disclosing certain personal assets and income, including income and gifts. Judges must report any gifts of \$50 or more, and income of \$500 or more, from a single source in a calendar year. All gifts or income from a single source are aggregated to determine if the threshold has been met.

The term “gift” means “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received.... Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.” (Section 82028.) An official who provides equal or greater consideration for the payment has received income, as opposed to a gift. “‘Income’ means... ‘a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage....’” (Section 82030(a).) When an honorarium is received by an individual who is not subject to the Act’s honoraria ban, the payment is either a gift or income. (Sections 82028 and 82030.)

The stipend may be considered a “gift” or “honorarium” depending on the amount and the value of services you provide. While we have no exact formula to determine whether consideration of equal or greater value has been provided by an official, making the payment income instead of a gift, the following general guidelines may be of assistance. The value of services rendered may be proven by evidence as to the customary rate of compensation for such services, irrespective of official status. (*Tassi v. Tassi* (1958) 160 Cal.App.2d 680, 690-691.) Also relevant in the determination might be the length of time spent rendering the services, or whether the services are of the type not readily available from others. However, the determination of whether equal consideration has been provided is necessarily a factual one and must be made on a case-by-case basis. If an official claims that a payment is income and not a gift, the official has the burden of proving that the consideration provided was of equal or greater value than the payment received. (Section 82028.)

**Exceptions:** However, some payments in connection with a speech are neither income nor gifts *and need not be reported*.<sup>5</sup> For example, regulation 18950.3 provides:

“Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence

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<sup>5</sup> Section 82030(b)(2) specifies that reimbursement received from a state, local, or federal government agency is excepted from the definition of income. This exception does not apply to reimbursement from a foreign government. (*Stirling* Advice Letter, No. A-85-045.)

provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, are not payments and need not be reported by any filer.”

The exclusion for meals and beverages under this regulation is limited to those provided on the day of the speech. What constitutes “necessary accommodations” within this exception is generally limited to the day of the speech, but may include the day before or after, if necessary due to travel arrangements. (*Allen Advice Letter, No. I-94-270.*) Under this regulation, payments for meals and lodging received by you directly in connection with your speeches, are not subject to gift limits and are not reportable on your statement of economic interests. However, your transportation costs will still be reportable (since they were out of state), as well as any payments not directly in connection with any of the speeches. Further, the exception does not apply to the stipend.

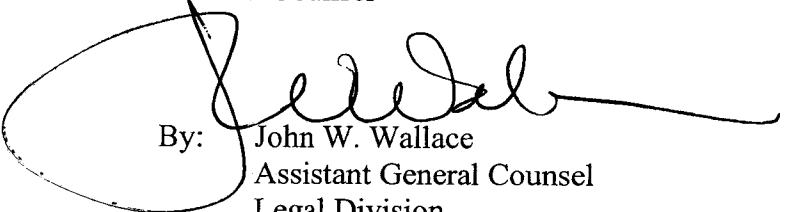
Finally, if any of the payments you receive in connection with the event are “gifts,” to avoid disclosure you may also reimburse the donor for all or a portion of the gift, or you may return the gift, may donate the gift to a charitable organization or to a governmental agency, or may reimburse the donor within 30 days of receiving it. (Regulation 18943.) The value of the gift and the amount which the official must disclose will be reduced by the amount of any reimbursement.

**Summary:** The transportation and stipend, absent an exception, would be reportable income or a gift. The lodging for the day of the event, the day preceding and the day after would not be reportable.<sup>6</sup>

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

Sincerely,

Luisa Menchaca  
General Counsel

By:   
John W. Wallace  
Assistant General Counsel  
Legal Division

Enclosure  
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<sup>6</sup> We have enclosed two fact sheets discussing gift and honoraria rules and travel exceptions for your information (the “Travel Guide for California Officials and Candidates” and “Local Elected Officers, Candidates for Local Elective Offices, Judicial Candidates, Officials and Employees of Local Government Agencies”).