

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
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5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**

9
10 In re the Matter of:) Case No.: 2006-25
11 MICHAEL WITKIN,)
12 Respondent.) **STIPULATION, DECISION, AND**
13) **ORDER**
_____)

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
17 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
18 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
19 Code [SDMC] relating to, among other things, the filing of Statements of Economic Interests
20 [SEIs] as required by the City's Ethics Ordinance.

21 2. At all times mentioned herein, Michael Witkin was a member of the Centre City
22 Advisory Committee [CCAC]. Witkin is referred to herein as "Respondent."

23 3. This Stipulation will be submitted for consideration by the Ethics Commission at its
24 next scheduled meeting, and the agreements contained herein are contingent upon the approval
25 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

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1 4. This Stipulation resolves all factual and legal issues raised in this matter by the
2 Ethics Commission without the necessity of holding an administrative hearing to determine
3 Respondent’s liability.

4 5. Respondent understands and knowingly and voluntarily waives any and all
5 procedural rights under the SDMC, including, but not limited to, a determination of probable
6 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
7 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
8 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
9 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
10 to hold the City of San Diego harmless from any and all claims or damages resulting from the
11 Commission’s investigation or this stipulated agreement, or any matter reasonably related
12 thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with
13 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
14 reference to each violation, and an order.

15 6. Respondent acknowledges that this Stipulation is not binding upon any other law
16 enforcement or government agency and does not preclude the Ethics Commission from referring
17 this matter to, cooperating with, or assisting any other law enforcement or government agency
18 with regard to this or any other related matter.

19 7. The parties agree that in the event the Ethics Commission refuses to accept this
20 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
21 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
22 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
23 because of prior consideration of this Stipulation.

24 Summary of Law and Facts

25 8. As member of the CCAC, Respondent is a “Local Code Filer” as that term is
26 defined by SDMC section 27.3503, and is required to file SEIs in the time and manner set forth
27 in SDMC section 27.3510.

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1 9. In accordance with SDMC section 27.3510, Respondent is required to file an
2 annual SEI on or before April 1 of each year, covering the period from January 1 through
3 December 31 of the previous calendar year, pursuant to the Conflict of Interest Code adopted by
4 the City Council for the CCAC.

5 10. Respondent filed his annual SEI for calendar year 2005 on August 7, 2006,
6 approximately four months late. In addition, although the Conflict of Interest Code for the
7 CCAC requires Respondent to disclose investments in business entities located in or doing
8 business in the Centre City redevelopment project area, Respondent instead disclosed the names
9 of two brokerage companies that provide services related to his investments. Petitioner recently
10 advised Respondent that this mistake will necessitate the filing of an amended SEI, and
11 Respondent has agreed to do so.

12 Counts

13 **Count 1 – Violation of SDMC section 27.3510**

14 11. Respondent failed to timely file an SEI disclosing his economic interests for the
15 2005 calendar year as required by SDMC section 27.3510(c). Respondent filed this SEI on
16 August 7, 2006, approximately four months after the due date codified in the Ethics Ordinance.

17 Factors in Aggravation

18 12. The City Clerk sent Respondent a letter on February 28, 2006, reminding him to
19 file an annual SEI for the 2005 calendar year on or before April 3, 2006 (because April 1, 2006
20 fell on a Saturday, the SEI was due until the following Monday). The City Clerk sent
21 Respondent another letter on May 10, 2006, informing Respondent that his 2005 annual SEI had
22 not been received, and asking him to file it on or before June 9, 2006. Despite these efforts by
23 the City Clerk, Respondent did not file his SEI until August 7, 2006, after he was contacted by
24 Ethics Commission staff.

25 13. Despite repeated requests from the Ethics Commission staff, Respondent declined
26 to participate in settlement negotiations until the Commission authorized a Probable Cause
27 Hearing, and the Commission staff served Respondent with a Probable Cause Report and Draft
28 Administrative Complaint.

1 14. Respondent has a prior history of not timely filing SEIs. In particular,
2 Respondent filed his 2002 annual SEI on January 7, 2004, approximately nine months after it
3 was originally due.

4 **Conclusion**

5 15. Respondent agrees to amend his SEI for calendar year 2005 no later than
6 November 30, 2006, in order to properly disclose his investments in stocks and bonds.

7 16. Respondent agrees to pay a fine in the amount of \$800 for violating SDMC
8 section 27.3510(c). This amount must be paid no later than February 28, 2007, by check or
9 money order made payable to the City Treasurer. Respondent acknowledges that if the fine is
10 not timely paid in full, the Commission may refer the collection of the fine to the City
11 Treasurer's Collection Division, which may pursue any or all available legal remedies to recover
12 late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

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14 DATED: _____
15 STACEY FULHORST, Executive Director
16 ETHICS COMMISSION, Petitioner

17 DATED: _____
18 MICHAEL WITKIN, Respondent

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20 **DECISION AND ORDER**

21 The Ethics Commission considered the above Stipulation at its meeting on _____,
22 2006. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
23 with the Stipulation, Respondent pay a fine in the amount of \$800.

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25 DATED: _____
26 Dorothy Leonard, Chair
27 SAN DIEGO ETHICS COMMISSION
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