BEFORE THE CITY OF SAN DIEGO

ETHICS COMMISSION

In re the Matter of:	)	Case No.: 2006-59
	)	
	)	**ADMINISTRATIVE ENFORCEMENT ORDER**
LUIS ACLE,	)	
	)	
Respondent.	)	[SDMC § 26.0439]
	)	
	)	**Date**: July 11, 2008
	)	**Time**: 9:00 a.m.
	)	**Location**: 202 C Street, 12th Floor San Diego, CA 92101
	)	

Pursuant to San Diego Municipal Code section 26.0436 *et seq.*, the City of San Diego Ethics Commission (composed of Commissioners Lee Biddle, Guillermo Cabrera, Clyde Fuller, Krishna Haney, Dorothy Leonard, Richard Valdez, and Larry Westfall), sitting as the Presiding Authority at a public Administrative Hearing held on the 11th day of July, 2008, heard testimony and reviewed evidence relating to the allegations in the First Amended Final Administrative Complaint [Administrative Complaint] brought by Petitioner Stacey Fulhorst against Respondent Luis Acle [Respondent].

The Administrative Complaint alleges that Respondent violated the Election Campaign Control Ordinance [ECCO] of the San Diego Municipal Code [SDMC] (SDMC 27.2901 *et seq.*) in connection with Respondent's candidacy for the Eighth District City Council seat in the City of San Diego in the November 2005 special election and the January 2006 special run-off election. After deliberating pursuant to SDMC section 26.0438 with regard to each violation

alleged by Petitioner in the Administrative Complaint, and based on findings of fact, conclusions of law, and the entire record of the proceedings, the Ethics Commission found by the concurring votes of at least four Commissioners as set forth in the Ethics Commission Resolution dated July 16, 2008, that Petitioner established by a preponderance of the evidence that Respondent violated ECCO as set forth below.

Further, for each finding of a violation of ECCO, the Ethics Commission voted on the penalty to be imposed in consideration of all of the relevant circumstances, including, but not limited to: (1) the severity of the violation; and (2) the presence or absence of any intention to conceal, deceive, or mislead; and (3) whether the violation was deliberate, negligent, or inadvertent; and (4) whether the Respondent demonstrated good faith by consulting the Commission staff for written advice that does not constitute a complete defense; and (5) whether the violation was an isolated incident or part of a pattern, and (6) whether the violator has a prior record of violations of Governmental Ethics Laws; and (7) the existence of any Mitigating Information; and (8) the degree to which the Respondent cooperated with Commission staff by providing full disclosure, remedying a violation, or assisting with the investigation. SDMC §26.0438(f). Based on the concurring votes of at least five Commissioners as set forth in the Ethics Commission Resolution dated July 16, 2008, the Ethics Commission imposed the penalties on Respondent set forth below for his violations of ECCO.

Counts 1 through 10 - Violations of SDMC section 27.2960(b)

SDMC section 27.2960(b) requires a candidate or committee that accepts goods or services for political purposes to pay for those goods or services in full no later than 180 calendar days after the receipt of a bill or invoice and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute.

The Ethics Commission finds that Respondent committed 10 violations of SDMC section 27.2960(b) by failing to pay 10 campaign debts within 180 days. Further, for each and every violation of section 27.2960(b), the Ethics Commission imposes on Respondent a penalty in the

amount of the debt that Respondent either untimely paid to a vendor or failed to pay a vendor for a total penalty for Counts 1 through 10 of $13,993.00. The Ethics Commission's specific findings and imposition of penalties on Counts 1 through 10 are as follows:

Count 1 - Respondent failed to timely pay Marketing Support Systems on its invoice for $2,500.00 dated November 8, 2005, until April 5, 2007, and is ordered to pay a penalty in the amount of $2,500.00 for Count 1.

Count 2 - Respondent failed to timely pay Marketing Support Systems on its invoice for $1,342.00 submitted in November of 2005, until June 30, 2006, and is ordered to pay a penalty in the amount of $1,342.00 for Count 2.

Count 3 - Respondent failed to timely pay Marketing Support Systems on its invoice for $5,000.00 dated December 15, 2005, until April 5, 2007, and is ordered to pay a penalty in the amount of $5,000.00 for Count 3.

Count 4 - Respondent failed to timely pay Marketing Support Services the amount of $2,500.00 accrued at the time of contract termination in approximately December of 2005, pursuant to the termination provision of the contract between Marketing Support Services and Respondent, and is ordered to pay a penalty in the amount of $2,500.00 for Count 4.

Count 5 - Respondent failed to timely pay PAC Management & Consulting, Inc. the amount of $1,000.00 on its invoice dated December 28, 2005, and is ordered to pay a penalty in the amount of $1,000.00 for Count 5.

Count 6 - Respondent failed to timely pay PAC Management & Consulting, Inc. the amount of $1,000.00 due on January 4, 2006, and is ordered to pay a penalty in the amount of $1,000.00 for Count 6.

Count 7 - Respondent failed to timely pay Ann Kelsey the amount of $250.00 due on her invoice of January 10, 2006, and is ordered to pay a penalty in the amount of $250.00 for Count 7.

Count 8 - Respondent failed to timely pay Rusanne Anthony the amount of $87.47 due on her invoice of March 31, 2006, until March 13, 2007, and is ordered to pay a penalty in the amount of $87.47 for Count 8.

Count 9 - Respondent failed to timely pay Rusanne Anthony the amount of $45.55 due on her invoice of June 30, 2006, until March 13, 2007, and is ordered to pay a penalty in the amount of $45.55 for Count 9.

Count 10 - Respondent failed to timely pay Rusanne Anthony the amount of $267.98 due on her invoice of July 31, 2006, until March 13, 2007, and is ordered to pay a penalty in the amount of $267.98 for Count 10.

Counts 11 through 35 –Violations of SDMC section 27.2930

SDMC section 27.2930 requires candidates and committees to file campaign statements in the time and manner required by state law. California Government Code section 84211 requires the itemized disclosure of all contributions and expenditures over $100.00, including accrued expenses.

The Ethics Commission finds that Respondent committed 22 violations of SDMC section 27.2930 by not properly disclosing campaign expenditures. In particular, Respondent failed to disclose 10 accrued expenses, most of them on multiple occasions. The Ethics Commission notes that as to Counts 11, 12, 13, 14, 18, 19, and 20, Respondent had previously reported the expenditures and subsequently removed the expenditures from later-filed statements. The Ethics Commission's specific findings and imposition of penalties on Counts 11 through 35 are as follows:

Counts 11 & 12 - Respondent failed to disclose the November 8, 2005 invoice of Marketing Support Systems in the amount of $2,500.00 as an accrued expense on two campaign statements covering the periods ending on June 30, 2006, and December 31, 2006, and is ordered to pay a penalty in the amount of $3,500.00 per each count for a total penalty of $7,000.00 for Counts 11 and 12.

Counts 13 & 14 - Respondent failed to disclose the December 15, 2005 invoice of Marketing Support Systems in the amount of $5,000.00 as an accrued expense on two campaign statements covering the periods ending on June 30, 2006, and December 31, 2006, and is ordered to pay a penalty in the amount of $3,500.00 per each count for a total penalty of $7,000.00 for Counts 13 and 14.

Counts 15, 16 & 17 - Respondent failed to disclose an expense accruing in or about December of 2005, in the amount of $2,500.00 for Marketing Support Services on three campaign statements covering the periods ending on June 30, 2006, December 31, 2006, and June 30, 2007, and is ordered to pay a penalty in the amount of $1,000.00 per count for a total penalty of $3,000.00 for Counts 15, 16 and 17.

Counts 18, 19 & 20 - Respondent failed to disclose the December 28, 2005, invoice of PAC Management & Consulting, Inc. in the amount of $1,000.00 as an accrued expense on three campaign statements covering the periods ending on June 30, 2006, December 31, 2006, and June 30, 2007, and is ordered to pay a penalty in the amount of $3,500.00 per count for a total penalty of $10,500.00 for Counts 18, 19 and 20.

Counts 21, 22, & 23 - Respondent failed to disclose an expense accruing on January 4, 2006, in the amount of $1,000.00 for PAC Management & Consulting, Inc. on three campaign statements covering the periods ending on June 30, 2006, December 31, 2006, and June 30, 2007, and is ordered to pay a penalty in the amount of $1,000.00 per count for a total penalty of $3,000.00 for Counts 21, 22 and 23.

Counts 24, 25 & 26 - Respondent failed to disclose the January 10, 2006, invoice of Ann Kelsey in the amount of $250.00 as an accrued expense on three campaign statements covering the periods ending on June 30, 2006, December 31, 2006, and June 30, 2007, and is ordered to pay a penalty in the amount of $1,000.00 per count for a total penalty of $3,000.00 for Counts 24, 25 and 26.

Counts 27 & 28 - Respondent failed to disclose the March 31, 2006, and June 30, 2006, invoices of Rusanne Anthony totaling $133.02 as an aggregated accrued expense on the campaign statement covering the period ending on June 30, 2006, and is ordered to pay a penalty in the amount of $1,000.00 per count for a total penalty of $2,000.00 for Counts 27 and 28.

Counts 29, 30, 31 & 32 - Respondent failed to disclose the March 31, 2006, June 30, 2006, July 31, 2006, and October 31, 2006, invoices of Rusanne Anthony totaling $467.50 as an aggregated accrued expense on the campaign statement covering the period ending on December

/ / /

31, 2006, and is ordered to pay a penalty in the amount of $1,000.00 per count for a total penalty of $4,000.00 for Counts 29, 30, 31 and 32.

The Ethics Commission further finds that Respondent committed 3 violations of SDMC section 27.2930 by not disclosing campaign contributions, as follows:

Count 33 - Respondent failed to disclose the contribution received from Kenneth Williams on or about January 5, 2006, in the amount of $250.00, and is ordered to pay a penalty in the amount of $250.00 for Count 33.

Count 34 - Respondent failed to disclose the contribution received from Doreen Williams on or about January 5, 2006, in the amount of $250.00, and is ordered to pay a penalty in the amount of $250.00 for Count 34.

Count 35 - Respondent failed to disclose the non-monetary contribution received from John Gordon in June of 2006, in the amount of $146.00, and is ordered to pay a penalty in the amount of $250.00 for Count 35.

Violations of SDMC sections 27.2930 and 27.2931

SDMC section 27.2930 requires candidates and committees to file campaign statements in the time and manner required by state law. California Government Code section 84200(a) provides that candidates and committees shall file semiannual statements no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. In addition, SDMC section 27.2931 requires candidates and committees to file campaign statements electronically if they have received contributions or made expenditures of $10,000.00 or more in connection with a City election.

The Ethics Commission finds that Respondent committed 4 violations of SDMC sections 27.2930 and 27.2931 by not properly filing campaign statements, and imposes penalties for the violations of Counts 36 through 39, as follows:

Count 36 - Respondent failed to timely electronically file a campaign statement for the period ending December 31, 2006, and is ordered to pay a penalty in the amount of $500.00 for Count 36.

///

Count 37 - Respondent failed to timely file an original campaign statement for the period ending December 31, 2006, and is ordered to pay a penalty in the amount of $500.00 for Count 37.

Count 38 - Respondent failed to timely electronically file a campaign statement for the period ending June 30, 2007, and is ordered to pay a penalty in the amount of $500.00 for Count 38.

Count 39 - Respondent has failed to file an original campaign statement for the period ending June 30, 2007, and is ordered to pay a penalty in the amount of $2,500.00 for Count 39.

Violations of SDMC section 27.2941

SDMC section 27.2941 prohibits any person from making or accepting cash contributions in the amount of $100.00 or more. By definition, the term "contribution" includes loans. SDMC § 27.2903.

The Ethics Commission finds that Respondent violated SDMC section 27.2941 by receiving cash contributions in the amount of $100 or more, and imposes penalties for the violations of Counts 40 and 41, as follows:

Count 40 - Respondent made a cash contribution in the form of a loan to his committee in the amount of $500.00 on or about January 3, 2006, and is ordered to pay a penalty in the amount of $2,500.00 for Count 40.

Count 41 - Respondent made a cash contribution in the form of a loan to his committee in the amount of $500.00 on March 15, 2007, and is ordered to pay a penalty in the amount of $2,500.00 for Count 41.

Violation of SDMC section 27.2925

SDMC section 27.2925 requires candidates and committees to maintain records associated with contributions and expenditures, including bank records and vendor invoices.

The Ethics Commission finds that Respondent violated SDMC section 27.2925 by failing to maintain copies of various campaign-related records, and imposes a penalty for the violation of section 27.2925, as follows:

///

Count 42 - Respondent failed to retain copies of campaign-related records, in violation of SDMC section 27.2925. Specifically, Respondent failed to maintain copies of bank statements or supportive documentation for payments to numerous vendors. Respondent is ordered to pay a penalty in the amount of $5,000 for Count 42.

Based on the findings set forth above and pursuant to SDMC section 26.0438, the Ethics Commission orders that Respondent:

(1) Cease and desist the continuing violations of SDMC section 27.2960 by remitting payment within 60 days of the date of service of this Order, as follows :

a. $2,000 to PAC Management & Consulting; and

b. $250 to Ann Kelsey.

(2) Cease and desist the violations of SDMC section 27.2930 and 27.2931 by filing an original campaign statement for the period ending June 20, 2007, and amending any previously filed campaign statements so that they are true and accurate, within 30 days of the date of service of this Order; and

(3) Pay a monetary penalty in the amount of $68,243.00 to the General Fund of the City of San Diego in accordance with the provisions of SDMC sections 26.0439(b)(3) and 26.0440, within 180 days of the date this Order is served on Respondent.

IT IS SO ORDERED,

Dated: July 16, 2008

CITY OF SAN DIEGO ETHICS COMMISSION

By _____
Guillermo Cabrera, Chair