



**Minutes for Meeting of  
Thursday, February 9, 2012**

**Item 1: Call to Order**

Commission Chair Fuller called the meeting to order at 5:00 p.m.

**Item 2: Roll Call**

Present – Commission Chair Fuller, Vice Chair William Howatt, Commissioners Deborah Cochran, John O’Neill, and Bud Wetzler

(Commissioner Biddle arrived at 5:10 p.m.)

Excused – Commissioner Detsky-Weil

Staff – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Program Manager Steve Ross, and Senior Investigator Lauri Davis.

**Item 3: Approval of Commission Minutes**

**Approval of Ethics Commission Minutes of January 12, 2012**

Motion: Approve  
Moved/Seconded: O’Neill/Cochran  
Vote: Carried Unanimously (Biddle not present)  
Abstained: Fuller  
Excused: Detsky-Weil

**Item 4: Non-Agenda Public Comment**

None

**Item 5: Commissioner Comment**

Commissioner O'Neill asked about the status of political party contribution limits in light of the recent ruling in the *Thalheimer* litigation. Director Fulhorst responded that this issue would be addressed during the General Counsel's comments.

Commissioner Howatt asked about what action the Commission could take in response to the letter received earlier in the day from Respondent Marianne Ostrow Greene. Director Fulhorst explained that this issue would be taken up as agenda item number 8.

**Item 6: Executive Director Comment**

Director Fulhorst reported that the opening for the Administrative Aide position closed on January 27, 2012. To date, the Personnel Department has certified 431 applicants as meeting the minimum qualifications. She estimated that the position will ultimately be filled in April.

With respect to the Commission's Audit Program, Director Fulhorst noted that the Commission's three-year statute of limitations had expired for some of the material findings identified during the audit of one of the ballot measure committees from the 2008 election cycle. In order to avoid this situation in the future, she explained that she had considered asking committees for tolling agreements; however, after conferring with staff she realized that this would not be productive. She explained that the three-year statute of limitations begins to run when a violation is discovered or when the Commission should reasonably have knowledge of a violation. Thus, the statute of limitations for violations that are not apparent during a facial review of campaign statements would not begin to run until the Commission identified them during the course of the audit. Director Fulhorst expressed her view that committees would likely not be amenable to tolling agreements for violations that could reasonably be discovered by reviewing campaign statements. Accordingly, in lieu of tolling agreements, the staff has commenced a facial review of campaign statements for those committees selected for audit from the 2010 election cycle that will not be completed before June of 2012.

Director Fulhorst advised the Commission that staff has posted summaries of campaign financial data on the Commission's website for the June 2012 primary election similar to that which was posted during the 2010 election cycle; however, this year, staff has compiled additional information concerning the top funding sources for committees primarily formed to support candidates and ballot measures.

**Item 7: General Counsel Comment**

Ms. Cameron provided a procedural overview of the *Thalheimer* litigation which commenced in the United States District Court in December 2009. She

explained that the Court ruled on the Plaintiffs' motion for a preliminary injunction, and that this ruling was upheld by the Ninth Circuit Court of Appeals. The case was then returned to the District Court for a decision on the merits. She explained that the only outstanding issue not decided by the Ninth Circuit was the \$1,000 contribution limit for political parties adopted by the City Council during the preliminary injunction phase. In an Order issued on January 20, 2012, the Court struck down the \$1,000 limit. Ms. Cameron explained that the Court determined that the City did not adequately balance the need for political parties to meaningfully participate in the electoral process with the need to prevent corruption.

Director Fulhorst added that although the Court struck down the \$1,000 limit for political parties, the Court expressly upheld the application of the City's attribution rules, which require political parties to demonstrate that they have only used contributions from individuals up to \$500 to make contributions to City candidates.

Director Fulhorst noted that the City's outside attorneys are in the process of conferring with the City Council regarding a variety of litigation-related issues, including whether to adopt a new contribution limit for political parties. Because the balancing test required by the Court will be somewhat time consuming, and because there is some urgency to adopt a new limit well in advance of the June primary election, the Council probably will not ask the Ethics Commission to deliberate and recommend a new limit, and probably will not have the item heard first in committee.

Director Fulhorst reminded the Commission that all appeals need to be resolved before the City can move forward with Municipal Code amendments to reflect the court rulings. She advised the Commission that she has already received a request that the Commission consider additional amendments unrelated to the *Thalheimer* rulings. She indicated that she will keep the Commission apprised of relevant developments.

**Item 8: Request to Remove Stipulation from Ethics Commission Website.**

Director Fulhorst reported that, approximately one year ago, she received a call from Marianne Greene [Ms. Greene] who believed that she was being confused with Marianne Ostrow Greene, a respondent in a 2006 Ethics Commission matter that resulted in a \$200 fine. Ms. Greene believed that the link to the respondent's stipulation on the Commission's website was adversely affecting her employment opportunities. In an effort to address the confusion between the two individuals, the staff updated the link on the website to include Marianne Ostrow Greene's middle name. Ms. Greene recently re-contacted Director Fulhorst to advise that the prior action did not resolve the problem, and to ask the Commission to make an exception to its policy and remove the Marianne Ostrow Greene stipulation from the website.

Director Fulhorst noted that the item on the meeting agenda concerned the specific request from Ms. Greene for an exception to the Commission's policy

in this instance. Although the Commission had received a letter via facsimile from Marianne Ostrow Greene earlier that day asking the Commission to modify its general policy regarding the posting of documents on its website, Director Fulhorst advised the Commissioners that they could not discuss the overall policy at this time as it was not noticed on the agenda in accordance with the Brown Act. She added that, if the Commission would like to revisit the policy, they could docket it for discussion at the March meeting. She also noted that when the Commission considered the policy in February of 2010 it had collectively agreed that all stipulations should remain on the website indefinitely.

Ms. Greene spoke in support of her request. She explained to the Commission that she is a certified public accountant, and that an ethics-related fine is considered a serious issue for someone in her field. She noted that she has been unemployed during the past two years, and that her efforts to secure new employment have been hindered by the mistaken conclusion that she is the respondent in the Marianne Ostrow Greene stipulation posted on the Commission's website. She said that a recruiter advised her that the Commission stipulation resulted in her being blacklisted for employment opportunities by Qualcomm, Sempra, and Care Fusion. She stated that she understood the purpose for the posting of Commission penalties on the website, but asked the Commission to make an exception in this case in order to restore her professional reputation.

Simon Mayeski with Common Cause commented on Ms. Greene's request. He stated that her situation is unfortunate, but noted that he was involved during the 2010 policy discussions and reiterated his view that the public has an interest in all of the information concerning the Commission's enforcement activities. He suggested that the insertion of the respondent's middle name should suffice to remedy the situation.

Commission Chair Fuller expressed his view that it would be a good idea to revisit the website policy in light of the fact that there are new Commissioners who joined the Commission after the last discussion.

Commissioner Howatt asked if there were other options to address Ms. Greene's concerns short of removing the stipulation from the website. He noted that removal would benefit the respondent as well.

Director Fulhorst responded that she has spoken with Ms. Greene on several occasions, and that Ms. Greene does not believe any other remedial efforts will suffice as there will always be the potential for confusion if the document is available on the Internet.

Commissioner O'Neill stated that he was strongly in favor of granting Ms. Greene's request and cited the minor nature of the violation in the stipulation in support of his view.

Commissioner Wetzler commented that he empathized with Ms. Green's situation, and added that the stipulation concerns a matter that is six years old. He questioned whether there should be some type of sunset provision for minor enforcement matters.

Commissioner Cochran noted that any removal of a stipulation from the website could result in a slippery slope leading to additional requests in the future, and she suggested the Commission follow-up with a full policy discussion.

Commissioner Biddle expressed his view that there were compelling circumstances for making an exception in this instance. He added that he thought the Commission should re-affirm its policies in this area.

Motion: Delete record of Marianne Ostrow Greene's violation from Commission's website  
Moved/Seconded: O'Neill/Howatt  
Vote: Carried 6-1 (Cochran voted nay)  
Excused: Detsky-Weil

**Item 9: Adjourn to Closed Session.**

Commission Chair Fuller adjourned the meeting to closed session at approximately 5:45 p.m. He stated the Commission would reconvene into open session following the conclusion of closed session in order to report any action taken during the closed session portion of the meeting.

**Reconvene to Open Session**

Commission Chair Fuller called the meeting back into open session at approximately 6:30 p.m.

**Reporting Results of Closed Session Meeting of February 9, 2012**

Ms. Cameron reported the results of the closed session meeting of February 9, 2012:

**Item-1: Conference with Legal Counsel (1 potential matters)**

**Case Nos. 2012-06- In Re: Alleged Solicitation of Contributions from City Employees**

Motion: Initiate Investigation  
Moved/Seconded: O'Neill/Howatt  
Vote: Carried Unanimously  
Excused: Detsky-Weil

**Item-2: Conference with Legal Counsel (4 potential matters)**

**Case No. 2011-69 - In Re: Linda Bartz - Alleged Failure to Timely File Statement of Economic Interests**

Motion: Approve Stipulation  
Moved/Seconded: Wetzler/Howatt  
Vote: Carried Unanimously  
Excused: Detsky-Weil

**Case No. 2011-70 - Alleged Failure to Timely File Statement of Economic Interests**

Motion: Dismiss  
Moved/Seconded: Howatt/Biddle  
Vote: Carried Unanimously  
Excused: Detsky-Weil

**Case No. 2011-71 - In Re: Bertha Gonzalez - Alleged Failure to Timely File Statement of Economic Interests**

Motion: Approve Stipulation  
Moved/Seconded: Wetzler/Howatt  
Vote: Carried Unanimously  
Excused: Detsky-Weil

**Case No. 2011-72 - Alleged Failure to Timely File Statement of Economic Interests**

Motion: Dismiss  
Moved/Seconded: Howatt/Biddle  
Vote: Carried Unanimously  
Excused: Detsky-Weil

**Item-3: Conference with Legal Counsel (1 potential matter)**

NOTE: Outside Counsel Lisa Foster replaced Christina Cameron as the Commission's legal counsel for Case No. 2008-79

**Case No. 2008-79 - In Re: Dante Dayacap - Alleged Misuse of City Position**

No reportable action

**Item 4: Personnel Matter – Evaluation of Performance**

No reportable action

## **Adjournment**

The meeting adjourned at approximately 6:35 p.m.

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Clyde Fuller, Commission Chair  
Ethics Commission

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Stacey Fulhorst, Executive Director  
Ethics Commission

***THIS INFORMATION WILL BE MADE AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.***