THE CITY OF SAN DIEGO

December 12, 2008

VIA ELECTRONIC MAIL & U.S. MAIL

Howard Wayne
Howard Wayne for City Attorney (ID #1256355)
c/o Jon Lynn, Treasurer
1241 Essex Street #6
San Diego, CA 92103

Re: Ethics Commission Audit of Howard Wayne for City Attorney (ID #1256355)

Dear Mr. Lynn:

The Ethics Commission audit of the above-referenced committee is now concluded, and the Final Audit Report is enclosed. This report was delivered to the Ethics Commission at its regularly-scheduled meeting held on December 11, 2008.

Thank you for your assistance and cooperation during the course of the audit.

Sincerely,

Rosalba Gomez
Ethics Commission Auditor

Enclosure

cc: Howard Wayne
1448 Elevation Road
San Diego, CA 92110

THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

December 11, 2008

Mr. Howard Wayne
Howard Wayne for City Attorney (ID #1256355)
1448 Elevation Road
San Diego, CA 92110

Treasurer: Jon Lynn, Treasurer
1241 Essex Street #6
San Diego, CA 92103

SAN DIEGO ETHICS COMMISSION AUDIT REPORT:
Howard Wayne for City Attorney

I. Introduction

This Audit Report contains information pertaining to the audit of the committee Howard Wayne for City Attorney, Identification Number 1256355 (the "Committee") for the period from July 14, 2003, through February 26, 2004. The Committee was selected for audit by a designee of the City Clerk in a random drawing conducted at a public meeting of the Ethics Commission (the "Commission") held on April 25, 2005. The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the City of San Diego's Election Campaign Control Ordinance (San Diego Municipal Code Chapter 2, Article 7, Division 29). The Election Campaign Control Ordinance (ECCO) was amended on January 5, 2005. This Committee operated under the previous ECCO, and therefore all Code references in this report relate to the provisions of ECCO that were in effect prior to January 5, 2005.

During the period covered by the audit, the Committee reported total contributions of $82,931.73 (including non-monetary contributions of $899.99 and forgiven candidate loans of $2,678.74) and total expenditures of $82,031.74. The contributions accepted by the Committee included $37,907.00 transferred from the Howard Wayne for Senate Committee (these contributions were attributed to individuals in accordance with the City's contribution limit.) **The audit revealed eighteen material findings: (1) the Committee violated San Diego Municipal Code section 27.2947 by accepting six contributions from persons other than individuals; and (2) the Committee violated San Diego Municipal Code section 27.2925 by failing to maintain supporting documentation corresponding to twelve campaign disbursements.**

II. Committee Information

The Committee was formed to support the election of Howard Wayne for City Attorney in the March 2, 2004, primary election. On July 3, 2003, Mr. Wayne filed a Candidate Intention Statement with the San Diego City Clerk. On August 14, 2003, the Committee filed a Statement of Organization with the San Diego City Clerk. The Committee ceased receiving contributions from individuals on November 25, 2003, and Mr. Wayne withdrew from of the race on December 4, 2003. The Committee was terminated on February 25, 2004. The Committee's treasurer is Jon Lynn.

III. Audit Authority

The Commission is mandated by San Diego Municipal Code section 26.0414 to audit campaign statements and other relevant documents to determine whether campaign committees have complied with applicable requirements and prohibitions imposed by local law.

IV. Audit Scope and Procedures

This audit was performed in accordance with generally accepted auditing standards. The audit involved a thorough review of the Committee's records for the time period covered by the audit. This review was conducted to determine:

1. Compliance with all disclosure requirements pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
2. Compliance with applicable filing deadlines;
3. Compliance with restrictions on contributions, loans, and expenditures;
4. Accuracy of total reported receipts, disbursements, and cash balances as compared to bank records; and
5. Compliance with all record-keeping requirements.

V. Summary of Applicable Law

San Diego Municipal Code section 27.2947(a) [prior to January 5, 2005] - Prohibition and Limits on Contributions from Organizations

It is unlawful for a candidate, committee, committee treasurer or other person acting on behalf of a candidate or committee to accept a contribution from any person other than an individual.

San Diego Municipal Code section 27.2925 [prior to January 5, 2005] – Accounting

(b) The records required by Section 27.2925(a) shall include, but not be limited to, all of the following:

. . .

(8) for each disbursement made from or check drawn on the campaign contribution checking account, the canceled check (if requested), the bank statement showing the disbursement, the name of the payee of each check, an itemized record of the goods or services for which each check is issued or disbursement made, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

(c) The records required by Section 27.2925 (a) and (b) shall be kept by the candidate or committee treasurer for a period of four years following the date that the campaign statement to which they relate is filed.

(d) Each candidate and committee shall deliver, on demand, to any public officer having authority to enforce this division, a written authorization permitting the officer to have access to all records pertaining to the campaign contribution checking account.

(e) Each candidate and committee shall, on demand, make available to any public officer having authority to enforce this division all records required by this division to be maintained by the candidate or committee.

VI. Material Finding

A. San Diego Municipal Code section 27.2947(a) - Prohibition on Contributions from Organizations.

The Committee accepted and deposited six contributions from persons other than individuals. The audit revealed that the contributions were drawn on business checking accounts as listed in the following table:

	Date	Contributor	Amount	Refund
1	09/30/03	Donald L. Galine, Attorney at Law, General Account	$ 250.00	
2	09/30/03	Nadine L. Scott, Legal Account	$ 25.00	
3	09/30/03	Vera A. Livingstone, Esq., Law Office of Vera A. Herbst	$ 50.00	
4	10/19/03	Loch David Crane, Magician "Baffling" Bill Cody	$ 30.00	RFD
5	10/30/03	Judge Victor E. Bianchini (Ret.), Private Dispute Resolution	$ 250.00	RFD
6	11/06/03	Craig Alan Klein, Attorney at Law, General Account	$ 100.00	RFD
		TOTAL	$ 705.00	

The Form 460 termination statement filed with the City Clerk on February 25, 2004, reported that three of the six contributions were ultimately refunded to the contributors prior to the termination of the Committee.

In its written response to the draft audit findings, the Committee pointed out that the six contributions totaling $705.00 from business checking accounts represent only 1% of the total contributions accepted by the Committee, and that $380.00 of these contributions were ultimately refunded. The Committee also reported that it contacted five of the six contributors during the course of the Commission audit and learned that the owners of the accounts had co-mingled personal funds and business funds in the same account. Therefore, the Committee asserted that the funds used to make the contributions were in fact personal funds.

It is relevant to note that the Ethics Commission issued an advice letter on June 17, 2003, which clarified that contributions to a committee (other than a ballot measure committee) from a sole proprietorship's checking account are prohibited under ECCO, even in instances where the account contains both personal and business funds. This advice letter was issued before the formation of this Committee and before the Committee accepted the above-referenced contributions.

B. San Diego Municipal Code section 27.2925 - Accounting

The Committee did not maintain complete records for a period of four years as required by San Diego Municipal Code section 27.2925(c). In particular, the Committee did not maintain contracts, invoices, or receipts corresponding to twelve expenditures made by the campaign as required by San Diego Municipal Code section 27.2925(b)(8). Due to the absence of any supporting contracts, invoices, or receipts corresponding to expenditures made by the Committee, the accuracy of information reported on the Committee's campaign statements could not be verified. These expenditures accounted for 61% of the total disbursements (exclusive of contribution refunds) made by the Committee. The following table details the expenditures that did not have documentary support:

	Date	Name	Amount
1	07/31/03	Paul Worlie	$ 3,000.00
2	08/28/03	Dominique Cano	$ 2,100.00
3	08/28/03	Paul Worlie	$ 3,000.00
4	10/01/03	Paul Worlie	$ 18.50
5	10/01/03	Paul Worlie	$ 3,000.00
6	10/01/03	Dominique Cano	$ 3,045.00
7	10/30/03	Paul Worlie	$ 3,000.00
8	10/30/03	Dominique Cano	$ 3,000.00
9	11/30/03	Paul Worlie	$ 3,000.00
10	11/30/03	Dominique Cano	$ 3,000.00
11	12/27/03	Dominique Cano	$ 3,000.00
12	12/27/03	Paul Worlie	$ 3,000.00
		TOTAL	$ 32,163.50

In the Committee's written response dated August 21, 2008, they provided declarations from Mr. Worlie and Ms. Cano stating that they were compensated for work they performed for the committee. The declaration from Mr. Worlie dated August 8, 2008, and the declaration from Ms. Cano dated August 20, 2008, state that they both provided fundraising services to the Committee in the latter part of 2003. The declarations also state that neither Mr. Worlie nor Ms. Cano have been able to locate a copy of their respective contracts. The Committee contends that the declarations support the reported expenditures and that the absence of other supporting documentation should not be considered a material finding.

VII. Conclusion

Through the examination of the Committee's records and campaign disclosure statements, the Auditor verified that the Committee timely filed all campaign statements and maintained the necessary documentation regarding contributions. **However, the audit revealed eighteen material findings: (1) the Committee violated San Diego Municipal Code section 27.2947(a) by accepting and depositing six contributions from persons other than individuals; and (2) the Committee violated San Diego Municipal Code section 27.2925 by failing to maintain supporting documentation corresponding to twelve campaign disbursements.**

_____ _____

Rosalba Gomez — Date
Ethics Commission Auditor

_____ _____

Lauri Davis — Date
Ethics Commission Senior Investigator