

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.: 2008-57  
11 HOWARD WAYNE, )  
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 provisions of the City's Election Campaign  
20 Control Ordinance [ECCO].

21 2. At all times mentioned herein, Howard Wayne [Respondent] was a candidate for  
22 City Attorney in the City of San Diego. The Howard Wayne for City Attorney committee  
23 [Committee] was a campaign committee registered with the State of California (Identification  
24 No. 1256355). At all relevant times herein, the Committee was controlled by Respondent within  
25 the meaning of the California Political Reform Act, California Government Code section 82016.

26 3. This Stipulation will be submitted for consideration by the Ethics Commission at  
27 its next scheduled meeting, and the agreements contained herein are contingent upon the

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1 approval of the Stipulation and the accompanying Decision and Order by the Ethics  
2 Commission.

3 4. This Stipulation resolves all factual and legal issues raised in this matter and arising  
4 out of the audit of the Committee by the Ethics Commission without the necessity of holding an  
5 administrative hearing to determine Respondent's liability.

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

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

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

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1 **Summary of Law and Facts**

2 8. The Committee was selected for audit by the Ethics Commission at a random  
3 drawing conducted on April 25, 2005. An audit was performed for the period from July 14,  
4 2003, through February 26, 2004 (the date the committee was terminated).

5 9. By letter dated April 26, 2005, Respondent was notified that the  
6 Committee was selected for audit. On August 2, 2007, the Commission's auditor  
7 provided Respondent with a list of all of the records to be produced at the time of the  
8 audit, scheduled to begin August 20, 2007. Included on the list were disbursement  
9 records, including vendor invoices and vendor contracts.

10 10. Because the Committee was formed for the purpose of supporting a  
11 candidate in a City of San Diego election, Respondent is required to comply with the  
12 provisions of ECCO. ECCO requires committees to maintain a record of any  
13 contribution received and disbursement made from the committee's checking account. In  
14 particular, SDMC section 27.2925(b)(8) states that records maintained by a committee  
15 must include the following:

16 For each disbursement made from a check drawn on the campaign  
17 contribution checking account, the canceled check, the bank statement  
18 showing the disbursement, the name of the payee of each check, an  
19 itemized record of the goods or services for which each check is issued or  
20 disbursement made, and legible photocopies or originals of any invoices,  
21 bills, or other supporting documents for which funds were disbursed.

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

25 12. The Commission's audit revealed that the Respondent did not comply with the  
26 requirements of SDMC section 27.2925. In particular, Respondent did not maintain contracts,  
27 invoices, or receipts corresponding to expenditures totaling \$32,163.50 to two vendors. These  
28 expenditures accounted for 61% of the total disbursements (exclusive of contribution refunds)  
made by the Committee. Due to the absence of any supporting contracts, invoices, or receipts

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1 corresponding to expenditures made by the Committee, the accuracy of information reported on  
2 the Committee's campaign statements could not be verified.

3 **Counts**

4 **Count 1 - Violation of SDMC section 27.2925**

5 13. Respondent did not maintain adequate accounting records as required by SDMC  
6 section 27.2925. In particular, Respondent did not retain copies of supportive documentation for  
7 payments made to two vendors.

8 **Factors in Mitigation**

9 14. Respondent fully cooperated with the Commission's investigation.

10 15. Respondent provided voluminous records reflecting the fundraising activities  
11 performed by the two vendors on behalf of his campaign committee.

12 **Conclusion**

13 16. Respondent agrees to take necessary and prudent precautions to comply with all  
14 provisions of the Election Campaign Control Ordinance in the future.

15 17. Respondent agrees to pay a fine in the amount of \$1,000 for violating SDMC  
16 sections 27.2925. This amount must be paid no later than December 10, 2008, by check or  
17 money order made payable to the City Treasurer. The submitted payment will be held pending  
18 Commission approval of this Stipulation and execution of the Decision and Order portion set  
19 forth below.

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21 DATED: \_\_\_\_\_

\_\_\_\_\_  
STACEY FULHORST, Executive Director  
ETHICS COMMISSION

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23  
24 DATED: \_\_\_\_\_

\_\_\_\_\_  
HOWARD WAYNE, Respondent

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**DECISION AND ORDER**

The Ethics Commission considered the above Stipulation at its meeting on December 11, 2008. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$1,000.

DATED: \_\_\_\_\_

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Guillermo Cabrera, Chair  
SAN DIEGO ETHICS COMMISSION