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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.: 2013-10
11 MYRTLE COLE,)
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, Myrtle Cole was a candidate for City Council
22 District 4 in the March 26, 2013, special election. The Myrtle Cole for City Council 2013
23 committee (Identification No. 1354342) [Committee] was a campaign committee registered with
24 the State of California established to support Ms. Cole's candidacy for Council District 4. At all
25 relevant times herein, the Committee was controlled by Ms. Cole within the meaning of the
26 California Political Reform Act, California Government Code section 82016. Ms. Cole is
27 referred to herein as "Respondent."

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

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

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

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

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

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1 **Summary of Law and Facts**

2 8. Because the Committee was formed for the purpose of supporting a candidate in a
3 City of San Diego election, Respondent is required to comply with the provisions of ECCO.

4 9. ECCO prohibits City candidates from directly or indirectly soliciting campaign
5 contributions from persons they know to be City employees. SDMC §27.2946. In order to avoid
6 violations of this law, candidates are advised to comb their e-mail lists and remove those that end
7 with a domain name associated with the City of San Diego or any of its agencies (e.g.,
8 sandiego.gov). This advice was provided during a January 24, 2013, candidate training for the
9 District 4 special election, which the Respondent attended.

10 10. Respondent's campaign fundraiser used the Committee's e-mail account to send
11 several different e-mails to more than 3,000 recipients. Three of these emails, which included
12 solicitations for campaign contributions, were sent to City employees at their sandiego.gov email
13 addresses, as follows:

- 14 • an e-mail dated February 7, 2013, was sent to the main office email accounts for
15 Councilmembers David Alvarez, Marti Emerald, Bob Filner, and Todd Gloria;
- 16 • an e-mail dated February 15, 2013, was sent to Lynn Sharpe-Underwood, the
17 Executive Director of the City's Gang Commission, and Nathan Slegers, a Deputy
18 City Attorney; and
- 19 • an e-mail dated February 25, 2013, was sent to Lynn Sharpe-Underwood.

20 **Counts**

21 **Count 1 - Violation of SDMC section 27.2946**

22 11. Respondent violated SDMC section 27.2946 when her campaign fundraiser sent
23 three e-mails to the City employees identified above in Paragraph 10 that included solicitations
24 for campaign contributions.

25 **Factors in Aggravation**

26 12. The prohibition on soliciting campaign contributions from City employees was
27 adopted by the City in order to ensure that City employees do not feel pressured or obligated to
28 make monetary contributions to candidates who have or could have some influence over the

1 terms of their employment. In this case, Respondent repeatedly solicited contributions from the
2 Executive Director of the Gang Commission, a position that has historically worked very closely
3 with the office of Council District 4, even after Respondent was notified of the Commission's
4 investigation.

5 **Factors in Mitigation**

6 13. Respondent has fully cooperated with the Ethics Commission's investigation.

7 **Conclusion**

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

10 15. Respondents acknowledge that the Ethics Commission may impose increased fines
11 in connection with any future violations of the City's campaign laws.

12 16. Respondent agrees to pay a fine in the amount of \$500 for violating SDMC section
13 27.2946. This amount must be paid no later than May 10, 2013, by check or money order made
14 payable to the City Treasurer. The submitted payment will be held pending Commission
15 approval of this Stipulation and execution of the Decision and Order portion set forth below.

16 [REDACTED]

17 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

19 [REDACTED]

20 DATED: _____

MYRTLE COLE, Respondent

21 **DECISION AND ORDER**

22 The Ethics Commission considered the above Stipulation at its meeting on _____,
23 2013. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
24 with the Stipulation, Respondent pay a fine in the amount of \$500.

26 [REDACTED]

27 DATED: _____

CLYDE FULLER, Chair
SAN DIEGO ETHICS COMMISSION