

1 PAULA CANNY, ESQ., SBN 96339
2 Law Offices of Paula Canny
3 840 Hinckley Road, Suite 101
4 Burlingame, CA 94010
5 Telephone: ((650) 652-7862
6 Facsimile: (650) 652-7835

7 Attorneys for Ms. L.

8 **BOARD OF SUPERVISORS**
9 **ETHICS COMMISSION**
10 **CITY AND COUNTY OF SAN FRANCISCO**

11 In Re) **MS. L.'S REQUEST FOR**
12 OFFICIAL MISCONDUCT PROCEEDINGS) **PROTECTIVE ORDER PROHIBITING**
13 AGAINST SHERIFF ROSS MIRKARIMI) **PUBLIC DISSEMINATION OF VIDEO**
14)
15)

16 **INTRODUCTION**

17 On April 23, 2012, the City Attorney of San Francisco (hereafter City) filed a Motion
18 asking the San Francisco Superior Court to provide the City with a copy of a videotape of Ms. L.
19 Ms. L., through her attorney, opposed the Motion. The Plaintiff, the People of the State of
20 California, through their attorney, the San Francisco District Attorney's Office, did not file
21 anything regarding the Motion. On May 15, 2012, the Honorable Garrett L. Wong heard the
22 matter and ruled in favor of the City. Ms. L. filed a writ which was subsequently denied.
23 Subsequent to Judge Wong's ruling, but before the Appeals Court denied Ms. L.'s writ, Sheriff
24 Mirkarimi, through his attorneys, filed a REQUEST FOR PROTECTIVE ORDER with the San
25 Francisco Ethics Commission. The Commission denied the REQUEST without prejudice in an
26 Order dated May 16, 2012. Ms. L. now files this REQUEST FOR PROTECTIVE ORDER
27 PROHIBITING PUBLIC DISSEMINATION OF THE VIDEO.
28

1 **I. THE ETHICS COMMISSION HAS JURISDICTION TO DETERMINE WHAT**
2 **EVIDENCE MAY BE CONSIDERED IN ANY OFFICIAL MISCONDUCT**
3 **PROCEEDING, AND BY EXTENSION, WHAT EVIDENCE MAY BE**
4 **PUBLICLY DISSEMINATED**

5 Pursuant to San Francisco Charter section 15.105(a), the Ethics Commission has sole
6 jurisdiction to hold a hearing regarding allegations of official misconduct. Implicit in that
7 authority is the ability to determine what rules of evidence, procedure and due process apply.
8 The Ethics Commission has jurisdiction to determine what evidence will be admitted, whether
9 that evidence will be public, and what weight to afford that evidence. Here, the City seeks to use
10 the video of Ms. L. in its prosecution of Sheriff Mirkarimi. The Ethics Commission accordingly
11 has jurisdiction to decide whether the video should be publicly disseminated, admitted into
12 evidence, viewed only in closed session, or otherwise used at all in these proceedings.

13 Additionally, pursuant to Sunshine Ordinance section 67.35(d) , the Ethics Commission
14 has enforcement authority over alleged violations of the Sunshine Ordinance. It follows, then,
15 that the Ethics Commission may determine whether the Sunshine Ordinance is applicable in any
16 given situation, as here.

17 **II. THE ETHICS COMMISSION SHOULD EXERCISE ITS JURISDICTION HERE**
18 **TO PROHIBIT PUBLIC DISSEMINATION OF THE VIDEO**

19 Ms. L. made this video – only after significant encouragement of the videographer and
20 assurances of the videographer that the video would be absolutely confidential – with the
21 expectation that she would have absolute authority over who might ever view it and when. Ms.
22 L. never, ever, contemplated the public dissemination of the video. It is essentially the complete
23 opposite of a document normally subject to the Sunshine Ordinance. It is not a record of any
24 official act of a public official, It does not relate to the official acts of any public official. It is
25 not a reflection or recording of any public act. It has nothing to do with the normal workings of
26 local government. Rather, the video was made by a private citizen, with full expectation of
27 privacy, regarding her husband, who happened to be a Supervisor and Sheriff-elect. **The**
28 **Sunshine Ordinance was never meant to apply to the confidential and highly sensitive**
documents or media created by the family members of public officials. Sunshine Ordinance
section 67.1 states unequivocally that the purpose of the Sunshine Ordinance is to allow the

1 public to access the “people’s business” without impediment. This video is absolutely not the
2 people’s business.

3 This video is not simply prejudicial to Sheriff Mirkarimi. It is extremely prejudicial to
4 Ms. L. and her son. Neither Ms. L. nor Ms. L.’s three-year old child should have to deal with the
5 fallout of the public release of this video for the rest of their lives. Moreover, the transcript and
6 still images of the video are already in the public domain. The City has absolutely no interest in
7 the public release of this video beyond further humiliating Ms. L. and her family. Even the
8 videographer, Ivory Madison, through her attorney, confirmed the video was “of a very private
9 nature” (see Exhibit A, Statement of Todd A. Roberts).

10 The Ethics Commission is charged with holding a hearing regarding the Mayor’s
11 allegations of official misconduct as to Sheriff Mirkarimi. There is absolutely nothing in the
12 Charter or any other law that requires the public dissemination of this video. Public
13 dissemination of the video, after Sheriff Mirkarimi was already convicted, and the District
14 Attorney declined to make the video public, opens Ms. L. to experience even more trauma, both
15 for her and her son. If the Ethics Commission believes it must see the video in order to make a
16 recommendation as to the removal of the Sheriff to the Board of Supervisors, it should do so
17 only in closed session. It would be a manifest injustice to permit this process to further victimize
18 Ms. L. Accordingly, Ms. L. respectfully asks the Ethics Commission to issue a Protective Order
19 prohibiting the City Attorney from disseminating or publicizing the video.

20 CONCLUSION

21 For all the reasons stated herein, as well as those not stated, the Ethics Commission
22 should grant this REQUEST FOR PROTECTIVE ORDER.

23
24 Dated: May 29, 2012

By: /s/ Paula Canny
PAULA CANNY

25
26 Attorneys for
27 MS. L.
28