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10 ETHICS COMMISSION  
11 CITY AND COUNTY OF SAN FRANCISCO

12 In the Matter of Charges Against  
13 ROSS MIRKARIMI,  
14 Sheriff, City and County of San Francisco.

**[PROPOSED] ORDER REGARDING  
PROCEDURES FOR DISCOVERY  
AND EVIDENTIARY HEARING**  
[San Francisco Charter Section 15.105]

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20 On April 23, 2012, the Commission requested that the Mayor and the Sheriff brief several  
21 procedural issues related to these official removal proceedings. On May 29, 2012, the Commission  
22 held a hearing. Having considered the written submissions of the parties, statements at the hearing,  
23 and public comment, the Commission hereby orders as follows:

24 1. **Discovery.** The Mayor and the Sheriff shall be entitled to pre-hearing discovery in  
25 accordance with the provisions of California Administrative Procedure Act, Government Code,  
26 Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq. For purposes of the timing of discovery  
27 requests authorized under Government Code section 11507.6, the date of this order shall substitute  
28 for the date of service of the initial pleading.

1           2.       **Burden of Proof.** The Mayor has the burden of proof to establish that Sheriff  
2 Mirkarimi committed official misconduct.

3           3.       **Standard of Proof.** The Commission may recommend sustaining the charges of  
4 official misconduct only if a person of ordinary caution and prudence would conclude, based on a  
5 preponderance of the evidence, that the Sheriff committed official misconduct.

6           4.       **Voting Requirement.** The Commission shall adopt its recommendation under  
7 Charter section 15.105(a) by a simple majority vote.

8           5.       **Rules of Evidence.** All evidence admissible in an administrative proceeding  
9 governed by the California Administrative Procedure Act shall be admissible at the hearing; except  
10 that a declaration submitted by a witness who fails to appear for cross-examination as requested  
11 under Government Code § 11514 shall not be admitted or considered at all (a stricter rule than Gov.  
12 Code § 11514). The Mayor and the Sheriff shall have the right to call and examine witnesses under  
13 oath or affirmation, to introduce exhibits, to cross-examine and impeach witnesses, and to rebut any  
14 evidence presented.

15          6.       **Witness Declarations.** For his case in chief, the Mayor shall submit his own direct  
16 testimony, the direct testimony of any witness currently employed by the City and County of San  
17 Francisco, and the testimony of his designated expert witnesses in the form of a sworn declaration.  
18 For his case in chief, the Sheriff shall submit his own direct testimony and the direct testimony of  
19 his designated expert witnesses in the form of a sworn declaration. The parties are encouraged but  
20 not required to submit the direct testimony of independent fact witnesses in the form of a sworn  
21 declaration.

22           The declarations of fact witnesses shall be served on the other party and the Commission by  
23 \_\_\_\_\_. A party requesting cross-examination of any such declarant under  
24 Government Code § 11514 shall give notice to the other party and the Commission no later than  
25 \_\_\_\_\_ [seven days later under § 11514].

26           The declarations of expert witnesses shall be served on the other party and the Commission  
27 by \_\_\_\_\_. A party requesting cross-examination of any such declarant under  
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1 Government Code § 11514 shall give notice to the other party and the Commission no later than  
2 \_\_\_\_\_ [seven days later under § 11514].

3 A party's request for cross-examination shall constitute good cause for issuance of a  
4 subpoena to compel the witness' attendance at hearing.

5 7. **Trial Briefs.** The Mayor's trial brief shall be served and filed on \_\_\_\_\_. The  
6 Sheriff's trial brief shall be served and filed on \_\_\_\_\_.

7 8. **Subpoenas to compel attendance at hearing.** The parties may request the issuance  
8 of subpoenas for the attendance of witnesses and for the production of documents at the hearing on  
9 the merits. Requests for the issuance of subpoenas should be delivered no later than  
10 \_\_\_\_\_. The request shall be accompanied by a declaration specifying the name and  
11 address of the witnesses and setting forth the materiality of their testimony. If the request is for a  
12 document subpoena, it shall be accompanied by a declaration which includes the following  
13 information: a specific description of the documents sought; an explanation of why the documents  
14 are necessary for the resolution of the complaint; and the name and address of the witness who has  
15 possession or control of the documents. Subpoenas may be issued upon approval of the  
16 Commission or a designated hearing officer.

17 9. **Exhibits.** Where both parties stipulate to the admissibility of an exhibit, the parties  
18 shall so advise the Commission in advance of the hearing. For all other exhibits, each party may  
19 move to admit a particular exhibit at the hearing, and the other party shall have an opportunity to  
20 object prior to the ruling on the admission.

21 10. **Order of Presentation at Hearing.** The Mayor shall present his case first, then the  
22 Sheriff shall present his case, then the Mayor shall present any rebuttal. Witnesses shall be  
23 examined by the parties as follows: declaration or direct examination, cross-examination, re-direct.  
24 After the parties have concluded their examination of a witness, Commissioners shall have an  
25 opportunity to pose questions to the witness.

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11. **Hearing dates.** The Commission hereby sets the following dates and times for hearing on the merits: \_\_\_\_\_.

IT IS SO ORDERED.

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

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SAN FRANCISCO ETHICS COMMISSION