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9  
10 ETHICS COMMISSION  
11 CITY AND COUNTY OF SAN FRANCISCO

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

**MAYOR LEE'S BRIEF IN CLOSING**

Hearing Date: August 16, 2012  
Hearing Time: 9:00 a.m.  
Location: City Hall Room 263

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## INTRODUCTION

As these proceedings come to a close, the Commission faces one difficult task—interpreting the current Charter definition of “official misconduct” as a matter of first impression—and one easy one: finding by a preponderance of the evidence that Sheriff Mirkarimi has committed official misconduct by any measure.

The Commission has asked for the parties’ assistance in determining how best to interpret Section 15.105(e) in light of its legislative history, the rules of statutory construction, and its relationship to the *Mazzola* decision. Chairperson Hur has presented the parties with two potential interpretations of Section 15.105(e): one interpretation (Option 2) expressly requires that any kind of official misconduct be “in relation to the duties of office,” and the other interpretation (Option 1) does not.

Option 2 is the better interpretation, primarily for reasons of statutory construction. The legislative history of Section 15.105(e) can be generously described as sparse, and *Mazzola* offers little direct guidance on this question. Ultimately, however, the choice between the two competing interpretations does not affect the Commission’s task of determining whether the Sheriff’s misconduct relates to the duties of his office. Even under Option One, in which the “decency, good faith and right action” clause provides a stand-alone definition of official misconduct that is not subject to the express relationship requirement, principles of due process and Supreme Court precedent require the Commission to imply one. *See Morrison v. State Bd. of Educ.* (1969) 1 Cal.3d 214, 220.

That said, the real dispute between the Mayor and the Sheriff concerns the meaning of “in relation to the duties of his or her office.” If the Sheriff’s past arguments are any guide, the Sheriff will contend that the relationship test is satisfied only when an official is “on duty” and he violates a specific duty imposed by law. That position is wrong in every way: it is contradicted by the case law, the language of the Charter, and the legislative history of the official misconduct provision.

“In relation to the duties of his or her office” has a simple, non-legal, everyday meaning: what a person who holds that office is expected to do. That relationship test is not difficult to satisfy under the governing law. The issue of whether misconduct has a relationship with a position

1 or office arises frequently in cases dealing with public employment and professional licenses.  
2 Those cases state simply: “[T]here must be a logical connection or ‘nexus’ between a licensee’s  
3 conduct and the qualifications, functions, or duties of the profession.” *Sulla v. Board of Registered*  
4 *Nursing*, 205 Cal.App.4th 1195 (2012), *review denied* (Aug. 8, 2012). Thus, a police officer who  
5 engages in illegal reckless driving while off-duty can properly be terminated because there is a  
6 sufficient relationship between his wrongful conduct (breaking the law and reckless driving) and his  
7 job duties (enforcing the law and writing traffic tickets) – even without a criminal conviction.  
8 *Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 767-68..

9 Official misconduct does not require a breach of a mandatory duty imposed by statute. That  
10 is because the Charter prohibits “wrongful conduct,” not “unlawful conduct.” When *Mazzola* was  
11 decided, the Charter prohibited only “official misconduct.” In the absence of a Charter definition,  
12 the *Mazzola* decision looked to Black’s Law Dictionary and interpreted official misconduct to  
13 forbid “unlawful conduct.” After *Mazzola*, however, the voters amended the Charter in 1995 and  
14 added a definition of “official misconduct.” The Charter defined “official misconduct” as  
15 “wrongful conduct,” not “unlawful conduct.” Although the “official misconduct” definition has  
16 since been amended, that phrase has not changed. Therefore, to the extent that *Mazzola* indicated  
17 that official misconduct had to be based on “unlawful conduct” or conduct related to some duty  
18 imposed by law, it is no longer good law. The Sheriff cannot rely on *Mazzola* to support his  
19 incorrect view that official misconduct is limited to statutory duties.

20 Therefore, the test for whether Sheriff Mirkarimi’s wrongful conduct is “in relation to the  
21 duties of his ... office” is simply whether it has a logical relationship to the qualifications,  
22 functions, or duties of the Sheriff (or member of the Board of Supervisors). Nothing more need be  
23 shown.

24 The evidence presented to the Commission amply establishes that Sheriff Mirkarimi  
25 engaged in wrongful conduct. And there is no question that his wrongful conduct was related to the  
26 duties of his office. There is a logical relationship between the duties and functions of a Sheriff,  
27 and the misconduct here: committing a crime, threatening to use public office for private  
28 advantage, dissuading a witness, permitting a police investigation to be compromised, failing to





1 **II. THE MAZZOLA DECISION**

2 The 1932 removal provision remained substantively unchanged when the Board of  
3 Supervisors removed Airports Commissioner Joseph Mazzola for official misconduct in 1976. At  
4 the time of his removal, Mazzola had been a business official of the local plumber's union for 23  
5 years. A few months before he was removed, Mazzola had recommended that members of his  
6 union join 16 other unions in what became a six-week strike against the City. The union did so, and  
7 Mazzola served as his union's representative on the strike strategy committee. *See Mazzola v. City*  
8 *and County of San Francisco* (1980) 112 Cal.App.3d 141, 146-47. At the same time, Mazzola  
9 served on the Airports Commission, a position he had already held for six years. The evidentiary  
10 record before the *Mazzola* court established that the Airports Commission was solely a policy body.  
11 The airport director and his staff handled labor matters independently of the Commission, which  
12 accordingly had no role in the wage negotiations or any other labor issues that prompted the strike.  
13 The strike never appeared on the Commission's agenda, and even so, Commissioner Mazzola did  
14 not attend Commission meetings or otherwise conduct any airport business in his official capacity  
15 during the strike. Nonetheless, the Board of Supervisors removed Mazzola from the Commission,  
16 sustaining charges that Mazzola had committed official misconduct as an Airports Commissioner  
17 when he recommended and played a professional role in a strike against the City. *See id.* at 147,  
18 156-57. Mazzola sued, arguing that the undefined term "official misconduct" in Charter section  
19 8.107 was unconstitutionally vague. *Id.* at 148.

20 Analyzing this question, the Court of Appeal used a two-part test that had developed in a  
21 line of cases resolving similar due process vagueness challenges to misconduct standards governing  
22 civil service employees and professional licensees. Under this test, the Charter's "official  
23 misconduct" prohibition would survive constitutional challenge if (1) it was "sufficiently specific to  
24 provide fair warning of which conduct is prohibited and which permitted," and (2) "there exists a  
25 relationship or nexus between the prohibited conduct and the employee's fitness to perform the  
26 duties required by the position." *Id.* at 149 (quoting *California Sch. Employees Ass'n v. Foothill*  
27 *Community College Dist.* (1975) 52 Cal.App.3d 150, 154 (1975)).  
28

1           Because the Charter did not further define "official misconduct," the court surveyed Black's  
2 Law Dictionary and other secondary sources. The court concluded that the term "official  
3 misconduct" gave fair warning of prohibited conduct. *Id.* at 149-50. The court also concluded that  
4 "official misconduct" required a relationship or nexus between the misconduct and the office. *Id.* at  
5 151.

6           Although the court upheld the Charter prohibition, it found that Mazzola had not in fact  
7 committed official misconduct. . Under the definition of "official misconduct" adopted by the  
8 Court in the absence of any Charter definition, the court held that official misconduct must normally  
9 be unlawful, rising to the level of an independent statutory violation; but nothing was unlawful  
10 about Mazzola's participation in the strike. *Id.* at 151. The court also held that official misconduct  
11 requires "a direct relationship of the alleged wrongdoing to the office held," but Commissioner  
12 Mazzola's participation in the strike had "nothing to do with his official capacity as airports  
13 commissioner nor to the performance of his duties." *Id.*

### 14 **III. THE CHARTER DEFINITION OF OFFICIAL MISCONDUCT**

15           In 1995, the City undertook a comprehensive Charter revision, which included adding a  
16 definition of "official misconduct" for the first time. That definition provided:

17           "Official misconduct" shall mean any wrongful behavior by a public officer in  
18 relation to the duties of his or her office, willful in its character, including any willful  
19 or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on  
him or her by law, or conduct that falls below the standard of decency, good faith  
and right action impliedly required of all public officers.

20           *See* Nov. 7, 1995 Voter Information Pamphlet at 182. This definition of "official misconduct" was  
21 (and still is) unique; San Francisco is the only jurisdiction in which it appears. And although some  
22 of its language is drawn from the *Mazzola* opinion, the definition does not codify the court's  
23 holding. Rather, the 1995 definition combines a modified version of the Black's Law Dictionary  
24 definition of official misconduct (modified to substitute the phrase "wrongful behavior" for Black's  
25 phrase "unlawful behavior"), with language adapted from an Am.Jur.2d annotation. *See Mazzola*,  
26 112 Cal.App.3d at 149-150 (quoting Black's and Am.Jur.2d). The 1995 definition does not  
27 incorporate any other language from *Mazzola*. Notably, the Charter does not include any  
28 requirement that the misconduct occur "in office," even though that phrase appears in *dicta* in

1 *Mazzola*. If the drafters had intended to incorporate an “in office” requirement from *Mazzola*, they  
2 would have included that language—but they did not. *Chisom v. Roemer* (1991) 501 U.S. 380, 396;  
3 *Lubner v. City of Los Angeles* (1996) 45 Cal.App.4th 525, 529 (“As a rule, courts should not  
4 presume an intent to legislate by implication.”). The ballot materials accompanying the 1995  
5 Charter revision did not discuss the new definition and simply stated that Section 15.105 allowed  
6 removal “for cause.” *See id.* at 59.

7 In November 2003, another Charter amendment re-numbered the definition and made three  
8 changes: (1) removing the words “willful or corrupt” before “failure, refusal or neglect”; (2) adding  
9 the term “and including any violation of a specific conflict of interest or governmental ethics law”;  
10 and (3) adding the final sentence regarding City laws that specify that violations of those laws are  
11 official misconduct. Nov. 4, 2003 Voter Information Pamphlet at 89, 90. The 2003 measure also  
12 provided that removal from office would result in a five-year ban on City employment, not a  
13 lifetime ban. *See id.* at 83, 89. The ballot materials did not discuss the amended definition.<sup>1</sup>

## 14 ARGUMENT

### 15 I. “OPTION TWO” IS THE BETTER INTERPRETATION OF SECTION 15.105(E).

16 As the Commission is already well aware, the first sentence of Section 15.105(e) is  
17 ambiguous on its face. It does not consistently use commas to separate clauses, and it uses the term  
18 “including” twice, making it susceptible to being read in the two different ways that Chairperson  
19 Hur presented at the July 19 hearing as Option One and Option Two.

20 Under the accepted rules of statutory construction, Option Two is the better interpretation.

21 The fulcrum of section 15.105(e) is the word “including” following the first clause. “In both  
22 legal and common usage, the word ‘including’ is ordinarily defined as a term of illustration,  
23 signifying that what follows is an example of the preceding principle.” *Arizona State Bd. For*  
24 *Charter Schools v. U.S. Dept. of Educ.* (9<sup>th</sup> Cir. 2006) 464 F.3d 1003, 1008; *see also Shell Oil Co. v.*  
25 *National Union Fire Ins. Co.* (1996) 44 Cal.App.4th 1633, 1641 (the word “including” is

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26 <sup>1</sup> In the background section of the Mayor’s Opening Brief, we mistakenly stated that the  
27 voters adopted the current definition in 1995, and that the 2003 amendment made no substantive  
28 change. A thorough review of the legislative history for this brief revealed the error.

1 "illustrative"). Under this principle, consistent with Option Two, everything in Section 15.105(e)  
2 that follows the first use of the word "including" is an illustrative example of the main definition,  
3 like this:

4 *Official misconduct means any wrongful behavior by a public officer in relation to*  
5 *the duties of his or her office, willful in its character, including*

- 6 • *any failure, refusal or neglect of an officer to perform any duty enjoined on*  
7 *him or her by law, or*
- 8 • *conduct that falls below the standard of decency, good faith and right action*  
9 *impliedly required of all public officers*
- 10 • *and including any violation of a specific conflict of interest or governmental*  
11 *ethics law.<sup>2</sup>*

12 Accordingly, under the Charter, any finding of official misconduct must satisfy the four elements of  
13 the Main Clause: (1) the conduct must be "wrongful"; (2) it must be committed "by a public  
14 officer"; (3) it must be "in relation to the duties of office"; and (4) it must be "willful." This makes  
15 sense, since these are all variations of the familiar elements common to the general conception of  
16 official misconduct discussed in *Mazzola* and the authorities it reviews. The Inaction Clause, the  
17 Conduct Clause and the Conflicts Clause, as illustrations of various applications of the Main  
18 Clause, are non-exclusive examples of wrongful behavior that a public officer can commit in  
19 relation to the duties of office. If these violations are willful, they will constitute official  
20 misconduct under Section 15.105(e) as a matter of law.

21 The comma between the Inaction Clause and the Conduct Clause merely separates those two  
22 clauses; it does not cut off that illustrative list and divide Section 15.105(e) into two stand-alone  
23 definitions, as Option One posits. While punctuation "should be considered in [statutory]  
24 interpretation in attempting to give the statute the construction intended by the drafter," it is also "a  
25 frequent source of ambiguity" and "not of controlling importance." *Iverson v. Muroc Unified*  
26 *School Dist.* (1995) 32 Cal.App.4th 218, 224-225. Here, because the punctuation in Section  
27 15.105(e) is inconsistent, the Commission should not ascribe any special significance to the  
28 presence of a comma before the Conduct Clause, just as the Commission should not give meaning

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<sup>2</sup> For simplicity's sake, we subsequently refer to these four parts of Section 15.105(e) as the Main Clause, the Inaction Clause, the Conduct Clause and the Conflicts Clause.

1 to the *absence* of a comma before the Conflicts Clause. Without the punctuation separating the  
2 examples, the meaning of the sentence is clear from its structure: "Official misconduct means X,  
3 including A or B and also including C."

4 **II. THE FOUR REQUIRED ELEMENTS OF OFFICIAL MISCONDUCT UNDER THE  
5 CHARTER HAVE SPECIFIC MEANINGS.**

6 **A. The Charged Conduct Must Be "Wrongful" But Not Necessarily Unlawful.**

7 Under the Charter, the wrongful acts or omissions charged as official misconduct need not  
8 also be a separate violation of law. As discussed above, the Charter rejected restricting official  
9 misconduct to "unlawful behavior," and instead banned "wrongful behavior." Substituting  
10 "unlawful" with "wrongful" is significant because there are many "wrongful" acts that do not rise to  
11 the level of unlawfulness. It also moots *Mazzola's* statements that limited "official misconduct" to  
12 "a violation or omission of a proscribed act." *Mazzola*, supra, at 150.

13 The Sheriff may be tempted to argue that his conviction does not constitute official  
14 misconduct because there is nothing "wrongful" about entering a guilty plea. The Commission  
15 should reject this argument. Admitting to wrongful behavior does not negate its wrongfulness. To  
16 the contrary: it conclusively establishes it, likely for the first time.<sup>3</sup>

17 **B. An Elected Official Becomes A "Public Officer" Subject To Removal For  
18 Official Misconduct As Soon As He Or She Is Elected To Office.**

19 For elected officers, there is an approximately two-month period between the officer's  
20 election and taking the oath of office. An officer-elect is a "public officer" who can commit and be  
21 removed for wrongful behavior during this post-election period. While Section 15.105(e) does not  
22 explicitly address this point, nothing in the Charter's suspension and removal provisions is to the  
23 contrary, and exempting elected public officers from removal for official misconduct until after they

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24  
25 <sup>3</sup> For this reason, courts in jurisdictions where removal is not available for misconduct  
26 committed in a prior term of office refuse to dismiss misconduct charges on that basis where the  
27 official's prior-term misconduct is first admitted or otherwise conclusively established during the  
28 current term. Instead, they effectively relate the wrongful conduct forward to the date it was  
established. *See, e.g., State v. McInnis* (Tex.Ct.App. 1979) 586 S.W.2d 890, 896.

1 take the oath of office would be absurd. They could rob banks, steal cars, or mug old ladies on the  
2 way to their swearing-in ceremony with impunity—and immunity.<sup>4</sup>

3 **C. The "Willfulness" Element Is Satisfied If The Public Officer Intended To Do**  
4 **The Act Regardless Of Whether He Or She Also Intended It To Be Wrongful.**

5 A long line of California cases has interpreted the “willful” element of the state’s official  
6 misconduct law to require that the public officer committed the charged act or engaged in the  
7 charged omission purposefully or willingly. At the same time, “[willfulness] does not require any  
8 intent to violate the law, or to injure another, or to acquire any advantage.” *People v. Elliott* (1953)  
9 115 Cal.App.2d 410, 419; *see also Steiner v. Superior Court* (1996) 50 Cal.App.4<sup>th</sup> 1771, 1777-81  
10 (collecting cases). The state law willfulness requirement and its interpretation were discussed in  
11 *Mazzola* (*see* 112 Cal.App.3d at 150), and there is no indication in the language of the Charter  
12 definition or its legislative history that the voters intended their invocation of the same term to mean  
13 anything different.

14 **D. The Relationship Requirement Is A Common-Sense Test.**

15 The Main Clause also requires that the wrongful behavior be “in relation to the duties of [the  
16 public officer’s] office.” This relationship requirement is the test the Charter employs to distinguish  
17 between personal misconduct and *official* misconduct, to ensure that a public officer will not be  
18 removed from office for a purely private misdeed. But where the wrongful behavior touches on the  
19 duties of office, misconduct that the officer might wish to treat solely as a “private matter” rightly  
20 becomes a matter of public concern that may lead to removal.

21 The language and structure of Section 15.105(e) indicate that the phrase “duties of ...  
22 office,” as it appears in the Main Clause, is not limited to the express statutory responsibilities of the  
23 public officer. The drafters are presumed to have been aware of the existing misconduct case law  
24 that interprets the duties of office in a common-sense, everyday way, rather than in a narrow  
25 technical sense. *See, e.g., Parker v. State Pers. Bd.* (1981) 120 Cal.App.3d 84, 87 (the duties of a  
26 group supervisor in a vocational setting at the California Youth Authority “included ‘on the spot’

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27 <sup>4</sup> At the Commission’s request, the Mayor briefed this issue in his Opening Brief and  
28 respectfully refers the Commission to that discussion. *See* Mayor’s Op. Br. at 21-24.

1 advice and counseling based on a ‘respect relationship’” and maintaining “credibility with the  
2 wards”). The drafters gave no indication of a desire to deviate from that standard, common-sense  
3 approach in the Main Clause, even though they were well aware of how to impose such a limitation.  
4 In fact, they did just that in the Inaction Clause, under which a failure to act only constitutes  
5 misconduct when the act is a “duty *enjoined on him or her by law*” (emphasis added).<sup>5</sup>

6 The courts also take a practical, common-sense approach to determining whether the  
7 misconduct relates to the duties of the position. In *Parker*, for example, the court easily found a  
8 relationship between a CYA officer's admission to off-duty possession of marijuana and his duty to  
9 maintain credibility with wards who have narcotics backgrounds. As the court put it, “common  
10 sense would support the judgment.” *Id.* at 88. That well established, common-sense approach in the  
11 case law is presumed to have been known to the drafters. In the absence of any indication that they  
12 harbored a contrary intent—and here there is none—the Commission should interpret and apply the  
13 Charter’s relationship test in the same way.

14 **E. The Standard of “Decency, Good Faith And Right Action Impliedly Required**  
15 **Of All Public Officers” Refers To The Professional And Ethical Standard**  
16 **Associated With Each Public Officer’s Particular Office.**

17 On its face, the “standard of decency, good faith and right action impliedly required of all  
18 public officers” is subject to two very different interpretations. Interpreting “all” in the sense of  
19 “each,” it could refer to the office-specific standard of conduct associated with each public office.  
20 Interpreting “all” in the sense of “any,” it could instead refer to least standard of conduct associated  
21 with any public office. The voters are “presumed to be aware of existing laws and judicial  
22 construction thereof and to have intended that [their] enactments be constitutionally valid.” *In re*  
23 *Lance W.* (1985) 37 Cal.3d 873, 891 n.11. Because, under established case law, only the first  
24 interpretation comports with the Constitution, it is the required interpretation of the Conduct Clause.

25  
26 <sup>5</sup> Such a limitation makes sense in the context of official inaction: officials necessarily make  
27 discretionary decisions where to focus their official attention, and it is not misconduct to focus on  
28 one worthy policy goal at the expense of another. In contrast, it may be misconduct for an officer  
to purposefully ignore a mandatory duty imposed by law.

1 A conduct standard is unconstitutionally vague under the Due Process Clause unless it is  
2 "sufficiently specific to provide fair warning of which conduct is prohibited and which permitted."  
3 *Mazzola, supra*, 112 Cal.App.3d at 149. Accordingly, to preserve their constitutionality, laws  
4 penalizing "immoral" or "unprofessional" or "unbecoming" conduct, such as the Conduct Clause,  
5 must be interpreted against the backdrop of the common knowledge and experience among others in  
6 the challenger's position or occupation. *Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 769;  
7 *see also, e.g., Morrison v. State Bd. Of Educ.* (1969) 1 Cal.3d 214, 233 ("Teachers, particularly in  
8 light of their professional expertise, will normally be able to determine what kind of conduct  
9 indicated unfitness to teach."); *Perea v. Fales* (1974) 39 Cal.App.3d 939, 942 ("[P]olice officers  
10 'will normally be able to determine indicates unfitness' to work in law enforcement.") And where,  
11 as here, the conduct standard applies to "all" City officers or all City or state employees, groups that  
12 encompass widely varying positions and duties, the conduct standard that must be applied in each  
13 case is the one that applies to the particular position at issue. *See Cranston, supra*, 40 Cal.3d 755 at  
14 768-659. Accordingly, in this case, Sheriff Mirkarimi's conduct must be measured against the  
15 standard of conduct for a chief law enforcement officer. Against this standard—and indeed, even  
16 against the standard of conduct San Franciscans are entitled to expect from the least of their public  
17 officers—Sheriff Mirkarimi's conduct falls far short.

18 **III. THE COMMISSION SHOULD RECOMMEND SUSTAINING THE OFFICIAL**  
19 **MISCONDUCT CHARGES AGAINST SHERIFF MIRKARIMI.**

20 In the following numbered paragraphs, we offer our view of how the Commission should  
21 apply the above principles to the undisputed and disputed facts in this case.

22 **A. Counts I & IV: The Sheriff's Domestic Violence, Conviction, and Sentence**

23 1. Sheriff Mirkarimi's domestic violence and his ultimate conviction and sentence are  
24 closely related and should be analyzed together, for at least three reasons. First, Sheriff Mirkarimi's  
25 conviction and sentence are consequences of his domestic violence. Second, in evaluating the  
26 significance of criminal conduct, the abstract category of a conviction for some offense is not the  
27 only relevant fact: the underlying facts and circumstances are relevant. *See Cranston*, 440 Cal.3d at  
28 770 (conduct was criminal even though it was never prosecuted); *Padilla v. State Personnel Bd.*



1 (1992) 8 Cal.App.4th 1136, 1141 (facts showed officer’s battery conviction involved acts of moral  
2 turpitude). Third, Sheriff Mirkarimi’s guilty plea and conviction in March 2012 are compelling  
3 evidence that he in fact committed a crime on December 31, 2011.

4         2. Sheriff Mirkarimi engaged in acts of domestic violence on December 31, 2011. This  
5 behavior was wrongful and willful. Sheriff Mirkarimi’s own testimony and his criminal conviction  
6 conclusively establish that he falsely imprisoned his wife, Ms. Lopez, and thereby restricted her  
7 liberty by the use of force. *People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1356-57 (“Force is  
8 an element of both felony and misdemeanor false imprisonment.”). Sherriff Mirkarimi admitted, in  
9 the face of overwhelming evidence, that on December 31, 2011, he willfully inflicted an injury on  
10 his wife. Sheriff Mirkarimi received a sentence for domestic violence: 52 weeks of mandatory  
11 counseling in a batterers’ program and three years of probation under Penal Code section 1203.097.  
12 Regardless of what other conduct occurred on December 31, 2011, those facts alone are sufficient to  
13 establish that Sheriff Mirkarimi acted wrongfully and willfully.

14         3. However, the evidence showed that Sheriff Mirkarimi’s wrongful behavior was even  
15 more severe than what he admitted.

16             a. The Mayor’s evidence consisted primarily of three statements that Ms. Lopez  
17 gave very close in time to December 31, 2011: Ms. Lopez’s statements to her neighbors Ivory  
18 Madison and Callie Williams on January 1 and 4 respectively, and a video statement by Ms. Lopez  
19 recorded on January 1. According to those accounts from Ms. Lopez, on December 31, 2011, there  
20 was a prolonged domestic violence incident between Sheriff Mirkarimi and Ms. Lopez. The  
21 incident began in the family car and continued into the family home. Sheriff Mirkarimi yelled at  
22 Ms. Lopez, used profanity, and physically grabbed, pushed, and pulled Ms. Lopez multiple times.  
23 This incident was traumatic for Ms. Lopez and the couple’s child.

24             b. The Sheriff’s evidence consisted of the Sheriff’s and Ms. Lopez’s testimony  
25 at the hearing. According to that more recent testimony, the December 31 domestic violence  
26 incident was short: it began and ended in the family van, concluding with Sheriff Mirkarimi  
27 willfully grabbing his wife’s arm once and causing a bruise, whereupon she said “stop,” and he did.  
28

1 c. Ms. Lopez’s three accounts given close in time to the December 31, 2011  
2 domestic violence incident – on video, and to Ms. Madison and Ms. Williams – are more persuasive  
3 than the hearing testimony of Ms. Lopez and Sheriff Mirkarimi. Those three early accounts were  
4 consistent and close in time to the original December 31 incident. The similarity and consistency of  
5 these three accounts is significant: it shows that the two witnesses accurately recounted what Ms.  
6 Lopez told them. The video is also credible: Ms. Lopez is obviously emotional and her delivery is  
7 unscripted. At the hearing, Ms. Lopez denied exaggerating or lying in any of these three accounts.  
8 The Sheriff declined to call either Ms. Madison or Ms. Williams for cross-examination and  
9 otherwise presented no meaningful challenge to the credibility of those early accounts.

10 d. The credibility of Ms. Lopez’s three earlier accounts, compared with Ms.  
11 Lopez’s later accounts, is further supported by un rebutted and credible expert testimony from  
12 Nancy Lemon, an expert in domestic violence and its effects. Ms. Lemon testified that  
13 approximately 80% of domestic violence victims later recant their initial accounts of domestic  
14 abuse. Victims recant due to a variety of motives. Several of those motives exist here: concerns  
15 about the consequences of ending the relationship with the abuser (such as losing a custody  
16 dispute), concerns about losing economic support for oneself and any children, and a desire to keep  
17 the family together despite negative personal consequences. Ms. Lemon also testified that when  
18 domestic violence victims recant, they tend to blame themselves for their injuries. Consistent with  
19 that expert testimony, Ms. Lopez testified that her insensitivity to her husband caused the fight, and  
20 she even testified that she was to blame for her bruise, because she pulled her arm away quickly.

21 e. In addition, Ms. Lopez’s testimony at the hearing was generally not credible.  
22 Ms. Lopez gave different and conflicting answers to the same questions. Her demeanor was  
23 defensive and not forthcoming. Ms. Lopez frequently evaded the questions asked of her, and the  
24 Commission had to direct her to answer several times. Ms. Lopez’s testimony on several specific  
25 issues was not credible. For example, Ms. Lopez repeatedly claimed (both in her written  
26 declaration and at the hearing) that Ms. Madison was acting as Ms. Lopez’s lawyer between January  
27 1 and January 4. But the evidence shows that Ms. Lopez went to Ms. Madison as a friend and  
28 neighbor. Then, weeks later, Ms. Lopez put forth the “lawyer” theory in an attempt to prevent the

1 video and her statements to Ms. Madison from being used in the criminal case against the Sheriff.

2 In another example, Ms. Lopez testified that even when she had already decided that Ms. Madison  
3 had betrayed her, she nevertheless decided talked to Ms. Williams on Ms. Madison’s advice.

4 f. Sheriff Mirkarimi’s testimony at the hearing about the December 31 domestic  
5 violence incident was also less credible than Ms. Lopez’s three early statements. Sheriff Mirkarimi  
6 has a great interest in the outcome of these proceedings and that interest likely affected his  
7 testimony about the severity of his own conduct. Sheriff Mirkarimi was evasive when asked  
8 whether he actually committed the crime to which he pled, but finally admitted it. Sheriff  
9 Mirkarimi also denied that he committed any domestic violence in the past, but the evidence  
10 showed otherwise: Ms. Lopez told both Ms. Madison and Ms. Williams that Sheriff Mirkarimi had  
11 physically abused her before December 31; and in her video, Ms. Lopez points to the bruise on her  
12 arm and states “this is the second time this is happening.” In addition, a former girlfriend of Sheriff  
13 Mirkarimi, Christine Flores, testified in Superior Court that in a different incident in 2008, Sheriff  
14 Mirkarimi grabbed and bruised her arm and committed a similar false imprisonment.

15 g. In addition, Sheriff Mirkarimi’s testimony at the hearing was generally not  
16 credible. Sheriff Mirkarimi’s testimony appeared to be motivated by concerns about strategy, not  
17 by a concern for honesty and integrity. For example, Sheriff Mirkarimi was asked about statements  
18 he made when charges were pending and he met with the Deputy Sheriffs’ Association (DSA), the  
19 union representing line deputy sheriffs in his department. Sheriff Mirkarimi stated that he told the  
20 DSA that he would fight the charges. But he became evasive when asked whether he told the DSA  
21 that he didn’t commit a crime. He asked to see a transcript of the meeting. When no transcript was  
22 forthcoming, the Sheriff ultimately testified that he could not remember what he told his deputies.  
23 A sheriff should be able to remember whether he lied to the deputies under his command about  
24 committing a crime.

25 4. The Sheriff’s crime of domestic violence is wrongful behavior in relation to the  
26 duties of his office. At the most basic level, committing a crime is related to the duties of Sheriff  
27 because the Sheriff’s job is to enforce the law and manage the custody of arrestees and convicts –  
28 not to break the law and become an arrestee or convict himself. *See* Gov. Code § 26601 (“The

1 sheriff shall arrest and take before the nearest magistrate for examination all persons who attempt to  
2 commit or who have committed a public offense.”); Penal Code § 13701(a) (requiring every law  
3 enforcement agency in California to adopt and implement policy requiring the arrest of domestic  
4 violence offenders where probable cause exists). It is well established under the law and in the  
5 record that “off duty” criminal conduct has a relationship with the duties of law enforcement  
6 officers. *Cranston*, 40 Cal.3d at 770 n.13 ( “The public has a right to expect police officers to obey  
7 the laws whether they are on duty or off duty. ... When police officers violate the laws which they  
8 were hired to enforce they do so at their own peril.”). The Sheriff admitted that the Sheriff’s  
9 Department recognizes that this is misconduct, and that he violated this departmental standard. And  
10 there are many other reasons why this crime is related to the duties of office. Among them: the  
11 Sheriff’s crime of false imprisonment is related to his duty to lawfully imprison jail inmates. S.F.  
12 Charter § 6.105; Penal Code § 4000. The Sheriff’s domestic violence, as a crime involving the  
13 abuse of power and the betrayal of trust, is related to his official power over more than a thousand  
14 Sheriff’s Department employees and over the inmates that come into the custody of the County Jail.

15         5.         The Sheriff’s conviction and sentence are closely related to the duties of his office.  
16 The Sheriff’s conviction decisively demonstrates to the public and to his Department that the  
17 Sheriff himself is a criminal. That obviously bears on his duty to lead a criminal justice agency and  
18 uphold the criminal justice system, and to maintain the highest standards in doing so. The Sheriff’s  
19 conviction brought disrepute on his office and the Sheriff’s Department, as the Sheriff admitted, and  
20 it generally impugns law enforcement in the eyes of the public. Cases likewise recognize that  
21 bringing disrepute is misconduct. *See Melkonians v. Los Angeles County Civil Service Com’n*  
22 (2009) 174 Cal.App.4th 1159, 1165 (deputy sheriff’s domestic violence brought discredit on  
23 department). And the sentence following from the Sheriff’s conviction – three years of probation  
24 and 52 weeks of batterer counseling – is also related to the office of Sheriff. For three years, the  
25 Sheriff will be under the supervision of his peer agencies in the criminal justice system: the Adult  
26 Probation Department, the District Attorney, and the Superior Court. The Sheriff is at the same  
27 time obligated to work closely in managing offender rehabilitation and the challenges of  
28 realignment. *See, e.g.,* A.B. 109; Penal Code § 1230; S.F. Admin. Code §§ 5.1-1 et seq. By

1 remaining in his position, Sheriff Mirkarimi denies these agencies an equal partner in the Sheriff's  
2 Department. Sheriff Mirkarimi also creates a conflict of interest for himself: he is charged with  
3 making policy decisions concerning domestic violence offenders that will directly affect individuals  
4 like himself, who are currently subject to the criminal justice system.

5 **B. Count II: Sheriff Mirkarimi's Abuse of Office**

6 6. Sheriff Mirkarimi threatened Ms. Lopez that he was very powerful and could gain  
7 custody of their son if Ms. Lopez tried to get a divorce. In her January 1, 2012 video, Ms. Lopez  
8 tearfully states, "And I tell Ross I want to work on the marriage, we need help – I have been telling  
9 him we need help and I am going to use this just in case he wants to take Theo away from me,  
10 because he did – he said that, that he's very powerful and he can – he can do it." Ms. Lopez told  
11 Ms. Madison and Ms. Williams consistent accounts of this threat on January 1 and January 4. Ms.  
12 Lopez also sent a text message to Sheriff Mirkarimi on January 4, in which she urged her husband  
13 to "use your power" to stop the police investigation. At the hearing, Ms. Lopez testified that this  
14 text message referred to her husband's power as Sheriff-elect and Supervisor.

15 7. The Sheriff contends that he did not use the power of his elected position to threaten  
16 Ms. Lopez. But the evidence to support that position is thin and ultimately unconvincing. Sheriff  
17 Mirkarimi testified that he never threatened Ms. Lopez or said he was powerful, and that he simply  
18 told Ms. Lopez that the custody laws were powerful. But a person would not normally refer to laws  
19 in this way. And Sheriff Mirkarimi's statements made a strong impression on Ms. Lopez; if she had  
20 actually misunderstood him, it would have been obvious from her reaction and he would have tried  
21 to correct it. Ms. Lopez also testified that she misunderstood Sheriff Mirkarimi's statements, and  
22 instead blamed Ms. Madison for her misunderstanding. Ms. Lopez's recantation was not  
23 persuasive, for the same reasons that her other recantations were not convincing.

24 8. Threatening to use the power of public office to gain an advantage in a marital or  
25 custody dispute is willful and wrongful behavior in relation to the duties of office. A public official  
26 cannot invoke the power of his public office for private advantage. The Charter provides that  
27 "Public office is a public trust and all officers and employees of the City and County shall exercise  
28 their public duties in a manner consistent with this trust." S.F. Charter § 15.103. Moreover, those

1 actions violate a specific governmental ethics law. The City’s Government Ethics Ordinance states  
2 that “[t]he proper operation of the government of the City and County of San Francisco requires that  
3 . . . public office and employment not be used for personal gain.” Camp. & Governmental Conduct  
4 (“C&GC”) Code § 3.200(b). Under that law, each Statement of Incompatible Activities (“SIA”)  
5 must prohibit “activities that involve . . . use of the . . . prestige[] or influence of the City and  
6 County officer or employee’s position for private gain or advantage.” C&GC Code § 3.218(c). The  
7 Sheriff’s Department’s SIA, like the SIAs for every other City agency, provides in part: “No officer  
8 or employee may use his or her City title or designation in any communication for any private gain  
9 or advantage.” Exh. 20, at § IV(C). Sheriff Mirkarimi’s threat violated this law.

10 **C. Count III: Sheriff Mirkarimi’s Dissuasion of Witnesses**

11 9. Between December 31, 2011 and January 4, 2012, Sheriff Mirkarimi made efforts to  
12 dissuade Ms. Lopez from reporting his domestic violence to police. This was willful and wrongful  
13 behavior in relation to the duties of his office.

14 10. Beginning immediately after his December 31, 2011 domestic violence incident,  
15 Sheriff Mirkarimi told Ms. Lopez not to tell anyone about this incident and not to go to police.  
16 Sheriff Mirkarimi then took Ms. Lopez to Monterey on January 2 and 3. Ms. Lopez recognized her  
17 husband’s purpose in taking her to Monterey, as shown in her contemporaneous January 2 and 3  
18 emails and her statements to Ms. Madison and Ms. Williams on January 4: Sheriff Mirkarimi was  
19 attempting to isolate her from others and to keep her quiet about his violence. Ms. Lopez also  
20 described her husband as being on his “best behavior” since December 31. According to Ms.  
21 Lemon, this is typical behavior for a batterer in a post-violence “honeymoon” phase of a domestic  
22 abuse cycle, as the abuser works to shore up the relationship.

23 11. The circumstantial evidence indicates that on January 4, Sheriff Mirkarimi instigated  
24 contact between Ms. Lopez and his campaign manager, Linnette Peralta Haynes, for the purpose of  
25 enlisting Ms. Peralta Haynes in his ongoing efforts to convince Ms. Lopez not to call the police.

26 a. Since December 31, Sheriff Mirkarimi had been working to dissuade Ms.  
27 Lopez from calling police.  
28

1           b.       On January 4, Sheriff Mirkarimi called Ms. Lopez at 9:33 am. At that time,  
2 Ms. Lopez was at Ms. Madison’s home in the midst of an hour-long conversation, and Ms. Lopez  
3 did not answer. Sheriff Mirkarimi left a voicemail message that appears to have prompted Ms.  
4 Lopez to call Ms. Peralta Haynes later that morning. At the hearing, both Sheriff Mirkarimi and  
5 Ms. Lopez were evasive about what Sheriff Mirkarimi said in his voicemail. Sheriff Mirkarimi  
6 initially testified that he was responding to a voicemail that Ms. Lopez had left for him earlier that  
7 morning that he did not understand; but when Sheriff Mirkarimi was confronted by telephone  
8 records that showed no calls from Ms. Lopez to him that morning, he backed off from that  
9 testimony and stated instead that he had no recollection of the message he left. Ms. Lopez testified  
10 differently, stating that Sheriff Mirkarimi left a message saying “Hi, sweetheart. Where are you?”  
11 But the evidence indicates that it is unlikely that the message was so innocuous: Sheriff Mirkarimi  
12 followed up on that voicemail with a text message to Ms. Lopez at 12:08 pm, which stated, “Left  
13 you a voicemail but didn’t hear back. What happened?” Thus, the voicemail message was  
14 important enough for Sheriff Mirkarimi to follow up with a text message asking “What happened?”  
15 – and to send that message during a Board of Supervisors Budget & Finance Committee meeting.

16           c.       Instead, the Sheriff’s voicemail most likely requested that Ms. Lopez contact  
17 Ms. Peralta Haynes. After Ms. Lopez’s hour-long conversation with Ms. Madison ended, there was  
18 enough time for Ms. Lopez to return home, check her voicemail, and then send three text messages  
19 to Ms. Peralta Haynes at 10:55 and 10:56 am. Neither Ms. Lopez nor Ms. Peralta Haynes retained  
20 those text messages. Ms. Peralta Haynes testified, however, that in the text messages Ms. Lopez  
21 informed Ms. Peralta Haynes that she had an argument with Sheriff Mirkarimi and wanted to talk to  
22 Ms. Peralta Haynes about it. Ms. Peralta Haynes testified she was surprised by this contact. Ms.  
23 Lopez had never before confided in Ms. Peralta Haynes about her personal affairs. They were not  
24 friends and did not see each other socially. Rather, they met through Sheriff Mirkarimi’s campaign.  
25 (In contrast, Sheriff Mirkarimi testified that Ms. Lopez and Ms. Peralta Haynes had previously gone  
26 out together socially. That testimony was not credible. Sheriff Mirkarimi appears to have  
27 exaggerated their relationship in order to make it seem more plausible that Ms. Lopez would  
28 independently decide to contact Ms. Peralta Haynes to discuss such a sensitive topic.)

1           d.       Beginning at 11:18 am, Ms. Lopez and Ms. Peralta Haynes spoke by  
2 telephone for 40 minutes. Ms. Peralta Haynes testified that she found out that Ms. Lopez had an  
3 argument with Sheriff Mirkarimi about Ms. Lopez going to Venezuela, and Ms. Lopez had a bruise  
4 on her arm from the argument. Ms. Peralta Haynes testified that Ms. Lopez did not give her details  
5 about the physical contact that led to the bruise. They discussed Ms. Lopez’s concern about  
6 custody of Theo. Ms. Lopez’s testimony about this call was somewhat different. Ms. Lopez was  
7 evasive, but ultimately settled on the following: she told Ms. Peralta Haynes that her lawyer was  
8 advising her to call the police to accuse Sheriff Mirkarimi of domestic violence, and she wanted to  
9 find out from Ms. Peralta Haynes whether she considered the events of December 31 to be domestic  
10 violence. According to Ms. Lopez, Ms. Peralta Haynes had no response at all regarding the advice  
11 to call the police. According to Ms. Peralta Haynes, Ms. Lopez never said anything about calling  
12 the police. Both witnesses agreed, however, that during the call, Ms. Peralta Haynes asked Ms.  
13 Lopez a series of questions that ultimately led both of them to conclude that Ms. Lopez was not in  
14 an abusive relationship with Sheriff Mirkarimi, notwithstanding the physical abuse that he inflicted  
15 on December 31. According to Ms. Lopez, they decided together that a large domestic violence  
16 organization like Casa de las Madres would not be private enough given her husband’s position as  
17 Sheriff, and Ms. Lopez should look for counseling elsewhere. After that call, Ms. Lopez received  
18 her husband’s 12:08 pm “what happened” text message, and then at 12:24 pm she informed Ms.  
19 Madison that she was not going to call the police.

20           e.       It is logical that Sheriff Mirkarimi would use Ms. Peralta Haynes in his  
21 efforts. It was inherent in Ms. Peralta Haynes’ role as Sheriff Mirkarimi’s campaign manager that  
22 she would be loyal to him. Sheriff Mirkarimi could trust that Ms. Peralta Haynes would want to  
23 protect Sheriff Mirkarimi’s interests. Ms. Peralta Haynes’ text messages confirm this: right after  
24 she learned about the police investigation, she sent a message to Sheriff Mirkarimi at 3:53 pm: “I  
25 need to talk to you to protect you. Call me.” Her loyalty to Sheriff Mirkarimi is also evident from  
26 her intense involvement in communications and strategic discussions on January 4 and thereafter.

27           12.       Sheriff Mirkarimi later condoned attempts by Ms. Lopez and Ms. Peralta Haynes to  
28 dissuade Ms. Madison and Ms. Williams from cooperating with police. The evidence shows that on



1 January 4, Ms. Lopez had a series of communications with Ms. Madison and Ms. Madison's  
2 husband, Abraham Mertens, in which she urged them not to cooperate with the police. In one of  
3 those conversations, Mr. Mertens heard Sheriff Mirkarimi's distinctive voice in the background.  
4 These communications occurred before, during, and after Ms. Lopez met her husband at 4:30 pm  
5 that afternoon, and amid a flurry of telephone calls and text messages between Ms. Lopez, Sheriff  
6 Mirkarimi, and Ms. Peralta Haynes. Given the frequency and nature of their communications, it is  
7 inconceivable that Sheriff Mirkarimi would not have been aware of Ms. Lopez's efforts to stop her  
8 neighbors from cooperating with police, and of his campaign manager's earlier conversation with  
9 Ms. Madison. Sheriff Mirkarimi did nothing to address these issues. To the contrary, he  
10 encouraged Ms. Lopez's efforts. For example, at 5:51 pm, Ms. Lopez sent Sheriff Mirkarimi a text  
11 message telling him that "Ivory is giving the investigators everything," urging him to "use your  
12 power," and urging him to contact Sheriff Michael Hennessey to stop the investigation. Sheriff  
13 Mirkarimi responded by rejecting Ms. Lopez's suggestion to contact Sheriff Hennessey; he surely  
14 recognized that Sheriff Hennessey would never agree to help him cover up his crime. Instead,  
15 Sheriff Mirkarimi told his wife, "You have to reject Ivory's actions. We both do."

16 13. The Sheriff's attempt to dissuade witnesses to his own crime from contacting or  
17 cooperating with the police is willful and wrongful behavior in relation to the duties of his office.  
18 Investigating crimes is obviously related to the responsibilities of any law enforcement official,  
19 including the Sheriff. *See* Gov. Code § 26602 (Sheriff's duties include "investigat[ing] public  
20 offenses which have been committed"). It is official misconduct for a sheriff not to investigate an  
21 offense of which he is aware – or, through inaction, to permit an offense to remain concealed from  
22 other criminal justice authorities. *People v. Mullin* (1961) 197 Cal.App.2d 479, 487 (Sheriff's  
23 inaction regarding investigation was official misconduct under Gov. Code § 3060). The Sheriff's  
24 Department requires all personnel to cooperate and assist with other agencies' investigations.

25 **D. Counts V and VI: Sheriff Mirkarimi's Course of Conduct**

26 14. Each of the major acts referenced in Counts I-IV were official misconduct. These  
27 acts were also part of a course of conduct by Sheriff Mirkarimi that continued through the Mayor's  
28

1 suspension of the Sheriff on March 21, 2012. That course of conduct constituted official  
2 misconduct, and it also included the following additional wrongful behavior:

3 15. Sheriff Mirkarimi was deceitful in regard to turning over his firearms when San  
4 Francisco Police Department inspectors served him with an Emergency Protective Order on January  
5 13, 2012.

6 a. SFPD Inspector Richard Daniele testified that Sheriff Mirkarimi told him and  
7 SFPD Inspector Michael Becker that he no longer owned one of the three firearms registered to  
8 him, a Smith & Wesson revolver. Sheriff Mirkarimi told the inspectors that he had sold the firearm  
9 to a fellow police academy recruit in 1996. That was not true; Sheriff Mirkarimi in fact still owned  
10 all three firearms. At the hearing, Sheriff Mirkarimi's explanation of his statements was evasive  
11 and not credible. Sheriff Mirkarimi testified that he was "thinking out loud," because he was not  
12 sure where his revolver was stored. But an honest person who is obligated to turn over his firearms  
13 but is unsure where he stored one of them would say just that. An honest person would not say that  
14 he sold the firearm and supply details about the alleged purchaser and date of sale.

15 b. Inspector Daniele also testified that Sheriff Mirkarimi agreed that his attorney  
16 would turn over the firearms to Inspector Daniele and Inspector Becker on January 14. However,  
17 Sheriff Mirkarimi's attorney turned over the weapons to Sheriff's Department personnel instead. At  
18 the hearing, Sheriff Mirkarimi testified that the agreement was different: that his attorney would  
19 turn over the weapons to Sheriff's Department personnel first, and then Sheriff's Department  
20 personnel would turn the weapons over to the SFPD. Sheriff Mirkarimi's testimony on this issue  
21 was evasive and not credible. Moreover, the actions of Sheriff's Department personnel and of  
22 Sheriff Mirkarimi's attorney were inconsistent with the arrangement described by Sheriff  
23 Mirkarimi. The SFSD officer who picked up the weapons from Sheriff Mirkarimi's attorney was  
24 apparently unaware of any such arrangement, because when Inspector Daniele asked to come over  
25 to pick up the weapons, she told him that the Sheriff's Department would keep custody of the  
26 weapons. Moreover, when the District Attorney requested the Superior Court to order the Sheriff's  
27 Department to turn over the Sheriff's weapons to the police department, Sheriff Mirkarimi's  
28

1 attorney objected. Sheriff Mirkarimi’s attorney would not have made an objection – and no court  
2 order would have been necessary – if the arrangement was as Sheriff Mirkarimi claimed.

3 c. Sheriff Mirkarimi’s deceit in connection with his firearms was wrongful and  
4 willful. His deceit was also related to the duties of his office. The deceit related to compliance with  
5 a court order – and Sheriff Mirkarimi is charged by statute to enforce such orders. *See* Family Code  
6 § 6272(a) (“A law enforcement officer shall use every reasonable means to enforce an emergency  
7 protective order.”). And a law enforcement officer cannot be deceitful. *See Talmo v. Civil Service*  
8 *Comm’n* (1991) 231 Cal.App.3d 210, 231 (affirming dismissal of deputy sheriff and stating: “A  
9 deputy sheriff’s job is a position of trust and the public has a right to the highest standard of  
10 behavior from those they invest with the power and authority of a law enforcement officer.  
11 Honesty, credibility and temperament are crucial to the proper performance of an officer’s duties.  
12 Dishonesty is incompatible with the public trust.”). Sheriff Mirkarimi exploited the trust of his  
13 staff. And he should never have kept his weapons under the control of his own agency: the Superior  
14 Court recognized this and ordered the Sheriff’s Department to turn over the weapons accordingly –  
15 over Sheriff Mirkarimi’s objection.

16 16. While charges were pending against him, Sheriff Mirkarimi engaged in behavior that  
17 undermined law enforcement regarding domestic violence. Sheriff Mirkarimi made public  
18 statements that minimized the crime of domestic violence, including joking about his crime at his  
19 inauguration speech and stating that his crime was a “private, family matter.” Those public  
20 statements sent a message to victims and witnesses that law enforcement would not take domestic  
21 violence seriously. Sheriff Mirkarimi also stood by and did nothing while his supporters attacked  
22 the witness who reported his crime, thereby reinforcing the message that a person who reports the  
23 crime of a high-ranking official will suffer negative consequences. This behavior was wrongful,  
24 willful, and related to the duties of his office. Effective law enforcement requires the cooperation  
25 and trust of victims and witnesses. That cooperation and trust is even more important when  
26 domestic violence is involved, because domestic violence is underreported crime and victims have  
27 historically lacked confidence in the willingness and ability of law enforcement to protect them.  
28

1           17. Sheriff Mirkarimi failed to put the needs of the Sheriff’s Department ahead of his  
2 own needs, as a law enforcement chief should do. In his hearing testimony, Sheriff Mirkarimi  
3 dwelled on the great negative personal consequences that followed from his criminal acts. But  
4 Sheriff Mirkarimi was not as affected by the negative consequences of his acts on the office of  
5 Sheriff, on the Department, on law enforcement, and on the enforcement of domestic violence laws.  
6 The Sheriff pursued a strategy of treating the events of December 31 as a political problem for him,  
7 rather than a crime against his wife and a stain on the Sheriff’s Department.

8           **E. Sheriff Mirkarimi’s Conduct Also Fell Below The Minimum Standard Of**  
9           **Decency, Good Faith And Right Action Required Of Any And Every Public**  
10           **Officer In San Francisco**

11           18. Sheriff Mirkarimi’s wrongful conduct not only fell below the exacting standard of  
12 professional conduct expected of a law enforcement chief; it also fell below the minimum “standard  
13 of decency, good faith and right action” required of all San Francisco public officers.

14           19. Committing domestic violence resulting in an injury to one’s partner is not excusable  
15 for a Sheriff, and it is not excusable for a member of the Board of Supervisors or for any other  
16 public officer in the City and County of San Francisco. Domestic violence resulting in an injury to a  
17 spouse is an act of moral turpitude. *See Donley v. Davi* (2009) 180 Cal.App.4th 447, 459. Spousal  
18 violence violates “a special relationship for which society rationally demands, and the victim may  
19 reasonably expect, stability and safety, and in which the victim, for these reasons among others,  
20 may be especially vulnerable.” *Id.* (quoting *People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402).  
21 Engaging in domestic violence signifies a “readiness to do evil.” *Id.* The people of San Francisco  
22 are entitled to – and expect – better from any officer in whom they have placed their trust.

23           20. Sheriff Mirkarimi’s threat to use the power of his office in a custody dispute likewise  
24 fell below the Charter minimum standard applicable to all public officers. No officer may use his  
25 public office for private advantage. And even if Sheriff Mirkarimi’s threat was not based on his  
26 political power and was based instead on his position as an American citizen, threatening to  
27 capitalize on his citizenship to Ms. Lopez’s disadvantage in a custody dispute is deplorable. Ms.  
28 Lopez is not a U.S. citizen, and as of December 31, 2011, she did not even have permanent resident

1 status. Exploiting a spouse's tenuous immigration status falls beneath the minimum standard of  
2 decency San Franciscans expect from their City officers.

3 21. Sheriff Mirkarimi's other conduct likewise falls below this standard. No public  
4 officer should interfere with an investigation, be untruthful to the police, or engage in deceit in  
5 response to a court order. And Sheriff Mirkarimi's entire course of conduct reflects failures of  
6 judgment and integrity that fall below the Charter standard for any public officer.

7 **CONCLUSION**

8 The Ethics Commission should recommend to the Board of Supervisors that it sustain each  
9 of the charges of official misconduct against Sheriff Mirkarimi.

10  
11 Dated: August 11, 2012

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