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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: February 22, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director

Re: Request for waiver from one-year post-employment restriction

Robert Selna, a former legislative aide with former Supervisor Ross Mirkarimi, has asked the Ethics Commission to grant him a waiver from the one-year post-employment restriction set forth in San Francisco Campaign and Governmental Conduct Code section 3.234(a)(2). Mr. Selna will attend the Commission's February 27, 2012 meeting in order to address any questions the Commission may have.

Relevant Laws

Section 3.234(a)(2), the relevant post-employment restriction here, states:

No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

Section 3.234(b)(1) states that for the Mayor, members of the Board of Supervisors (the "Board") and their senior staff members—including Board members' legislative aides—the one-year ban in section 3.234(a)(2) extends to communications with *any* City agency, officer or employer.

Under section 3.234(c), the Commission may waive the restrictions in section 3.234(a)(2) if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage. A request for a waiver must be in writing and include information describing the former position held by the employee; the particular matter for which the waiver is sought; the individual's prior involvement in the matter, if any; and reasons why granting a waiver would not create the potential for undue influence or unfair advantage. *See* Ethics Commission Reg. 3.234-4(a)(1). The Commission may approve a request for waiver from the one-year ban only if the Commission finds that granting such a waiver would not create the potential for undue

influence or unfair advantage. In making this determination, the Commission may consider: the nature and scope of the anticipated communications, the subject matter of such communications, the former position held by the employee, the type of inside knowledge that the individual may possess, and any other factors the Commission deems relevant. EC Reg. 3.234-4(a)(5).

Discussion


The one-year post-employment communications ban was enacted to protect the integrity of government decision-making by preventing a public employee from using his or her influence or knowledge, gained as a public servant, to advance private interests at the expense of the public. For most officers and employees, the one-year communications ban applies only to communications with the officer or employee's former department. Ethics Regulation 3.234-5(a)(1)(A). But under section 3.234(b)(1), the one-year ban for former Board aides like Mr. Selna extends to *all* City departments, boards, commissions, officers, employees and representatives.

Mr. Selna seeks a waiver in order to enhance his ability to obtain employment in a position that might require him to communicate with City departments, boards or commissions. Mr. Selna served approximately ten months as a legislative aide to the Board. He states that during his tenure, he "worked almost exclusively on legislation that had been originated prior to [his] joining the staff." His role with most legislative matters was to represent Supervisor Mirkarimi's position with other legislative aides, community groups and others who favored or opposed the legislation. He handled the procedural requirements to move legislation through the approval process, including scheduling matters for commissions, Board committees and the Board. He states that he had "limited communication with City department decision-makers," adding that he "occasionally interacted with City department employees in instances where a department's legislation required approval by the full Board of Supervisors. But [he] infrequently had substantive contact with most City departments, commissions, agencies, etc. And, [he] had no contact with several departments and commissions."

Given these facts, it is possible that granting a waiver would not create the potential for undue influence or unfair advantage. In past requests where the Commission has granted a waiver, the requester has provided information that specifically identifies the person or client for whom the communications are made, the nature of such communications and the department, board or commission that is involved. Mr. Selna does not know what his next job will be, how it will require him to lobby City departments (or whether it will at all), what departments and individuals he would be communicating with, what types of decisions he would be seeking to influence, or how his status as a former legislative aide might help him in achieving those lobbying goals. It is possible that Mr. Selna could obtain a job requiring him to lobby City departments where there would be little potential for undue influence. But without specific facts to guide it, staff is unable to make a recommendation for or against this request.

From: robert selna [REDACTED]
To: Mabel.Ng@sfgov.org

Date: Monday, February 13, 2012 02:30PM
Subject: Re: Waiver request for Feb. 27 meeting

History:  This message has been replied to.

Hi Mabel,

Please see my attached waiver request letter.

Please let me know if you have any questions - [REDACTED].

Thanks,

Rob

On Thu, Feb 9, 2012 at 1:45 PM, <Mabel.Ng@sfgov.org> wrote:

Hi Rob:

Here's the link to Regulation 3.234-4, which addresses waiver requests from post-employment restrictions. Let me know if you have further questions.

Mabel

<http://www.sfethics.org/ethics/2011/06/regulations-related-to-conflicts-of-interest.html>

Mabel Ng
Deputy Executive Director
San Francisco Ethics Commission
[415/252-3100](tel:4152523100)

Attachments:

Campaign and Governmental Code waiver request.pdf

ROBERT SELNA

Oakland, CA

February 13, 2012

John St. Croix
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

RE: Waiver request of San Francisco Campaign and Governmental Conduct Code Section 3.234 (a)(2)(b)(1)'s one year restriction on communicating with City departments.

Dear Mr. St. Croix:

The purpose of this letter is to respectfully request that the San Francisco Ethics Commission grant me a waiver of San Francisco Campaign and Governmental Conduct Code Section 3.234 (a)(2)(b)(1). I request the waiver based on section (c)(1), which gives the Commission the discretion to determine that granting a waiver would not create the potential for undue influence or unfair advantage.

I request that the Commission consider my waiver request at its next regularly scheduled meeting on February 27, 2012.

Prior Employment and Background Information

From February 27, 2011 to January 6, 2012, I served as a legislative aide to District 5 Supervisor Ross Mirkarimi -- a period of approximately ten months. Prior to working for Supervisor Mirkarimi, I was a journalist for 17 years, most recently with the San Francisco Chronicle.

I accepted the position with Supervisor Mirkarimi with the goal of making a transition from a career in journalism to one in government service as an employee of a City agency. I had no previous employment or personal relationship with Supervisor Mirkarimi, nor did I have relationships with any community advocates, other influential individuals in District 5, powerful political organizations, or fundraisers.

My Legislative Aide Duties

As part of my legislative duties as Supervisor Mirkarimi's legislative aide, I worked almost exclusively on legislation that had been originated prior to my

joining the staff. I also handled the day-to-day operations of the office, including answering constituent concerns, communicating with the media, and hiring and managing interns and volunteers.

With respect to legislation, Supervisor Mirkarimi wanted to move his existing ordinances through the approval process due to the possibility that he would be elected Sheriff. If he were not elected, he would only have one year remaining on his supervisor term. Examples of legislation for which I attempted to gain approval were a planning code amendment prohibiting ground-floor business office use on a commercial section of Fillmore Street, and a plastic bag ban.

My role in the legislative examples listed above, as with most other legislation, was to represent Supervisor Mirkarimi's position with other legislative aides, community groups and others who favored or opposed to the legislation. I provided information for stakeholders, detailing the reasons the Supervisor had proposed the legislation, including the problems it was intended to solve, and its perceived benefits. Simply put, I was a messenger for the supervisor, and I handled the procedural requirements to move legislation through the approval process, including scheduling matters for commissions, committees and the Board of Supervisors.

During my brief tenure, the Board of Supervisors approved some, and disapproved other legislation that Sup. Mirkarimi proposed. But every piece of legislation I worked on was completed one way or the other, and I was not involved in any matters that are still pending. The only ordinance that was pending approval at the date of my departure was the plastic bag ban ordinance, but the Board approved that legislation in February.

As I will discuss below, waiver requests often include a particular matter for which the waiver is sought and the individual's prior involvement with the matter, if any. I am not seeking a waiver related to a particular matter, in part, because all the matters I worked on as a legislative aide have been completed and there are no other matters for which I might be in a position to have undue influence or an unfair advantage. Instead, I am requesting a broad waiver.

Limited Role and Contacts

In my role, I had limited communication with City department decision-makers. I occasionally interacted with City department employees in instances where a department's proposed legislation intersected with Sup. Mirkarimi's priorities, or when a department's legislation required approval by the full Board of Supervisors. But I infrequently had substantive contact with most City departments, commissions, agencies, etc. And, I had no contact with several departments and commissions.

Additionally, I came to my position with far less involvement in City politics than most of my legislative aide colleagues, the Supervisors, the Mayor and his senior staff (the positions subject to the one-year communication ban). I had not, and have not, worked in any substantive or sustained way on any supervisors' or mayors' campaigns or for any ballot measure; I have never been a member of a political committee, I have never been a member of an influential labor union and I have not worked in any industries that tend to contribute to political campaigns in San Francisco – such as unions, developers and the medical industry. I have never contributed financially to a political campaign. In short, I was not, and I am not, politically well connected.

Future Employment

I have sought employment with San Francisco agencies where I believed I might meet the qualifications for a legislative and/or communications job. The agencies with which I have sought employment include the SFPUC, MTA, Planning Department, DPW, The Mayor's Office of Economic and Workforce Development, Capital Planning, the Department of the Environment, and the Mayor's Office. I have not been able to land a job with a City department largely due to current limitations on hiring, but I am continuing to pursue any possibility of short or long-term work with the City that meets my qualifications. In the meantime, I am unemployed and looking for contract work in hopes of tiding myself over until a more permanent job becomes available.

My qualifications for contract work include communications skills and knowledge of City Hall procedures, policies and rules that I developed during my time as a reporter, and in my short legislative aide tenure. The expertise I developed falls generally into a category that includes land use, planning, development and the environment, because it is the area to which I had the most exposure as a reporter and as a legislative aide. In seeking contract work to utilize my background, I can imagine being hired as a consultant to help a company, non-profit, or individual navigate City Hall's procedures, policies, and rules to gain approval for a project or plan.

As briefly mentioned above, I am seeking a broad waiver under section 3.234(c)(1), rather than a waiver related to particular matter, because I do not believe there are any matters for which there would be potential for me to have undue influence or an unfair advantage and because I am actively looking for contract consulting work. I believe my chances of gaining such employment would be severely diminished were I forced to approach potential clients with a clear limitation on my ability to communicate with the City.

One example of a short-term contract job I'm pursuing is a part-time position with the Fort Mason Center. The Center wants to gain support from the community and from the San Francisco Municipal Transportation Agency (MTA) to extend the F-line historic train from Fisherman's Wharf to the Fort Mason Center.

While I do not know the full details of that consulting position, I imagine that it would include some communication with the MTA on behalf of the Fort Mason Center with the intent of gaining the MTA's support for the F-line extension.

Absent a waiver from the Campaign and Government Conduct Code Section 3.234 (a)(2)(b)(1), I would be prevented from communicating with the MTA on the project for one year -- meaning that I likely would not be able to work as a consultant on the project. That would be true despite the fact that in my capacity as a legislative aide, I never worked on a substantive piece of legislation with the MTA, I have no unique ties, contacts or relationships with the MTA, and I have no third-party relationships -- with the Mayor, or anyone else -- that would position me to have undue influence or create an unfair advantage when I communicated with the MTA.

The F-Line project is currently my only concrete work prospect, but because of my background, I presume and hope that others like it would become available in the coming weeks. I am seeking a broad waiver from Section 3.234 (a)(2)(b)(1) - as opposed to one related to a particular matter -- because, as stated above, potential contractors would reasonably expect me to be able to communicate with departments on their behalf, given that my experience and background features communication and an understanding of the procedures, policies and rules unique to City Hall.

Why a Waiver is Appropriate

The one-year, post-employment communications ban was enacted to protect the integrity of government decision-making by preventing a public employee from using his or her influence or knowledge, gained as a public servant, to advance private interests at the expense of the public. Until 2007, the ban only applied to City employees communicating with their former department. That was changed related to the Mayor's senior staff and legislative aides and the code now prohibits individuals in those positions from communicating with any City department. As it stands, the ban assumes that aides would have the potential for undue influence or unfair advantage over the Board of Supervisors and *EVERY* City department, commission, agency, officer, appointee, and representative of the City, regardless of whether the legislative aide in question had any contact with members of any of the relevant departments, commissions, agencies, officers, appointees, or representatives.

Given the short duration of my work as a legislative aide and my low-level contacts with City departments, the ban is not necessary and a waiver is especially appropriate.

To impose a ban on me also would be inconsistent with other City policies related to employees who work for short periods. For instance, employees who serve the

City for less than a year are not paid out for their accrued vacation time, despite the fact they earned the compensation during their employment. City employees also must serve a minimum of five years in order to be vested in the City's pension plan.

The Ethics Commission may grant waivers from Section (a)(2)(b)(1), in instances in which the Commission determines that granting the waiver would not create the potential for undue influence or unfair advantage. A waiver, in my case, would create no such potential.

I also respectfully request that the Ethics Commission consider the extreme economic hardship the ban would cause me.

Under section 3.234(c) (1), A request for a waiver must be in writing, and include information describing the former position held by the employee; the particular matter for which the waiver is sought; the individual's prior involvement in the matter, if any; and reasons why granting a waiver would not create the potential for undue influence or unfair advantage.

In making its determination, the Commission may consider, the nature and scope of the communications the individual will have with his or her former department, the subject matter of such communications, the former position held by the employee, the type of inside knowledge the individual may possess, and any other factors the Commission deems relevant.

For reasons stated above, I am seeking a broad waiver of Section 3.234 (a) (2)(b)(1), not related to a particular matter, but because I am generally seeking contract work which may require me to communicate on behalf of a person or entity with a City department or the Board of Supervisors related to a government decision. Were I prohibited from offering to communicate on behalf of a client with the Board of Supervisors and every City department and commission, I have little doubt that I would lose potential clients. Some prospective clients might have a clear need for such communication. Others might not know for certain, but would prefer the option down the road if an issue arose that necessitated such communication. As a result, the communication ban would place me at a disadvantage when competing with others offering similar services.

Granting the Waiver Would Not Create the Potential for Undue Influence or Unfair Advantage

- I was not in my position as a legislative aide long enough to gain any influence or special knowledge about the Board of Supervisors or City departments and commissions that would place me in a position of undue influence or an unfair advantage when communicating with the intent to influence a governmental decision. No Supervisor, department head, agency

employee, commissioner, or anyone else involved in government decisions, would have any reason to be unduly influenced by my communication.

- In my 10 months as a legislative aide, I primarily worked with a relative handful of other legislative aides, departmental employees, constituents, and with a few exceptions, not decision-makers. I had little or no contact with many departments.
- None of the legislative matters that Supervisor Mirkarimi sponsored and that I worked on as an aide are active. They have been approved, disapproved, or permanently discontinued because of inactivity.
- Unlike legislative aides who come to their jobs by way of working on a Supervisor's campaign or being connected to influential political organizations, fundraisers, corporations, lobbying groups, or other politicians, I have no ties to such organizations or people and have never worked on a campaign in San Francisco, other than two days placing door hangers during Supervisor Mirkarmi's run for Sheriff. I have never contributed financially to San Francisco political campaign.
- My former boss, Ross Mirkarimi, has been elected Sheriff, one of the more narrowly-focused political posts in the City, which has little influence over broad political and policy considerations at the Board of Supervisors and with departments unrelated to law enforcement. In contrast, had I worked for a supervisor, who had then been elected Mayor or been elected to a top post in the Democratic Central Committee, and I wanted to communicate with the City to influence a governmental decision, a concern about my potential for undue influence and unfair advantage would be more reasonable. A similar conflict would have existed had I discontinued working in a supervisor's office in the middle of a supervisor's term, and then attempted to communicate with him on behalf of a private client.
- During my ten-month tenure in Supervisor Mirkarimi's office, he did not hold a powerful position on the Board of Supervisors, such as Board President, or Chair of the Budget Committee, where the power and influence of that position might have a lasting reach even after he was out of office.
- To summarize, my future communications with the Board of Supervisors, or any City department or agency, with the intent to influence a government decision, would have no more -- and likely less -- influence than most individuals who attempt to influence government decision makers, such as former, knowledgeable departmental employees, concerned constituents, members of powerful neighborhood associations, campaign donors, fundraisers, political appointees, and long-time lobbyists, who also often are major fundraisers. None of the categories of people just listed would be

banned from City Hall communication for one year. Yet, with just ten-months of work as a legislative, I would.

Imposing the Restriction Would Cause Me Extreme Hardship

- I am currently unemployed and seeking work with City departments or contract work with private entities, where my communication skills and my knowledge of City Hall's procedures, policies, and rules would be useful. My goal is eventually to land a job with a City department, such as the Mayor's Office of Economic Development, The Port, or the SFPUC, but as mentioned above, those departments are currently not hiring for the kinds of policy and communications positions I am seeking. Contract work in some capacity in and around City Hall would increase my chances of landing such a position in the long run.
- Given my career history in journalism, and recently in government, my work options have some inherent limitations. My biggest assets are my communications skills and my familiarity with local government.
- I am not interested in returning to journalism, and as mentioned above, I made a deliberate choice to take the job with Supervisor Mirkarimi as a career transition. Even if I wanted to return to journalism, jobs that would allow me to pay my bills and mortgage are few and far between. Before I voluntarily left the Chronicle, more than half the staff had been laid off in the past two years.

Conclusion

I am not politically connected and have less influence than most people or entities that often communicate with the City in an effort to influence government decisions.

- I worked as a legislative aide for ten months for a supervisor at the end of his tenure and without a powerful position, who has moved on to a narrowly-focused elected role without general political influence.
- As a legislative aide, I mostly interacted with other legislative aides and lower-level staff, and rarely with decision-makers.
- All the legislative matters I worked on in Supervisor Mirkarimi's office are completed or permanently discontinued.
- I have no previous or outside political contacts and I am not associated with any politically influential group or individual.
- I was never a political fundraiser, donor, or member of a political advocacy organization, community group, merchant association, or any entity organized to gain influence or advantage over governmental decisions.
- I have never worked on a campaign in any substantive way, and I have never made a financial contribution to a campaign.

- A one-year restriction on my communication with City Hall will severely restrict my employment options while I wait for an opening with a City department.
- I have been unemployed for more than one month and will have a challenge finding contract consulting work if the one-year ban is imposed on me.

When I accepted the position and started my work in the Supervisor's office, neither the Clerk of the Board of Supervisors nor the Ethics Commission provided me with information about the one-year restriction on communicating with City departments. While the Clerk of the Board of Supervisors and other City departments did give me several new employee documents and required that I attend orientations on health care, retirement, Board of Supervisors rules and procedures, not a single document, orientation, or person mentioned the one-year restriction.

As stated above, I have sought employment with San Francisco agencies where I believed I might meet the qualifications for a legislative and/or communications job. In talking with City employees, I have learned that many departments will not be able to fill positions, unless they are absolutely necessary, until after the 2012-2013 budget process is completed in July 2012. As a result, it is very unlikely that I will find a job with a City agency until after July 2012.

Thank you for considering this matter. I am available by phone or email to answer any questions prior to the February 27 meeting.

Sincerely,

Robert Selna

ROBERT SELNA
Oakland, CA

February 22, 2012

John St. Croix
Executive Director
San Francisco Ethics Commission

RE: Addendum to waiver request – meaning of “undue influence” and “unfair advantage.”

Dear Mr. St. Croix:

I am writing this letter as an addendum to the document I sent you on February 13, 2012, in which I requested that the San Francisco Ethics Commission grant me a waiver of San Francisco Campaign and Governmental Conduct Code Section 3.234 (a)(2)(b)(1). I request the waiver based on section (c)(1), which allows the Commission to waive any restrictions if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage.

The purpose of this addendum is to provide context for the Commission in interpreting the terms **undue influence** and **unfair advantage**, which are pivotal to their decisions on waiver requests, yet are not defined in the Code.

When legal terms are not defined, those applying them use common sense definitions, but, for common sense definitions to have any meaning, they must be applied in context.

As you know, for the purposes of my waiver request, the relevant context is City Hall and the city’s departments, commissions, officers, appointees and representatives.

In the context of governmental environments such as City Hall, efforts to guide and influence governmental decisions are a central and encouraged component of the democratic process. As a result, undue influence and unfair advantage in the governmental environment must be evaluated in the context of the numerous individual advocates, businesses, non-profits, campaign volunteers, fundraisers and others who have contact with the Board of Supervisors, a city department or representative on any given day in an effort to influence a governmental decision on behalf of others.

Thus, the Commission must analyze whether a waiver would create a potential for **undue** influence or **unfair** advantage in this context, not whether the possibility exists for **any** influence or advantage.

Anyone approaching supervisors, department heads, or commissioners will inherently have some potential level of influence or advantage. For example, community advocates often approach supervisors they have supported politically with well-designed legislative proposals to solve a problem on behalf of others in the community. Such community advocates have significant influence with supervisors, particularly if they have brought them successful pieces of legislation in the past or have volunteered on their campaigns.

As I stated in my waiver request letter dated February 13, there is a long list of those who seek to influence governmental decisions in San Francisco on behalf of others, including but not limited to, former veteran city employees, merchant and neighborhood association leaders, campaign donors and fundraisers, persistent constituents, and organized advocates – many of whom have longstanding and close relationships with city departments, supervisors and/or other city representatives.

As a former legislative aide, who worked for an out-going Supervisor for 10 months, my potential level of influence must be measured against all those described above and all others who might seek to influence governmental decisions on behalf of others.

In my waiver request letter, I stated that I believed a waiver is appropriate in my instance for several reasons, including my brief tenure as a legislative aide, my low-level contacts, the matters I worked on, and my general lack of political connections in the past and potential for them in the future.

Again, the question is not whether I might have **any** influence or **some** advantage in a given instance. It is clear that many different parties seeking contact with the Board of Supervisors and other departments might be influential or be equipped with some advantage. But that is not the test that the Commission must apply.

The Commission's analysis is whether, specifically due to my short duration as a legislative aide, I am distinguishable from all of the people, businesses and institutions and their various levels of influence and advantage, so as to create the potential for **undue** influence or an **unfair** advantage.

I look forward to discussing my request for a waiver with the Commission on February 27.

Sincerely,

Robert Selna