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2016 MAY 20 PM 3: 25

SAN FRANCISCO
ETHICS COMMISSION

1 LeeAnn Pelham
2 Executive Director
3 San Francisco Ethics Commission
4 25 Van Ness Avenue, Suite 220
5 San Francisco, CA 94102
6 (415) 252-3100 Telephone
7 (415) 252-3112 Facsimile

BY _____

8 BEFORE THE SAN FRANCISCO
9 ETHICS COMMISSION

10 In the Matter of)
11 MICHAEL SWART,)
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Respondent.)
STIPULATION, DECISION
AND ORDER

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision and Order ("Stipulation") is made and entered into by and between Michael Swart, ("Respondent"), and the San Francisco Ethics Commission ("the Commission").
2. Respondent and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative hearing. Upon approval of this Stipulation and full performance by Respondent on the terms outlined in this Stipulation, the Commission will take no future action against Respondent and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondent related to the violations described in Exhibit A. Respondent understands and knowingly and voluntarily waives all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

1 Conduct Code, section 3.200 *et seq.*, and does not preclude the Commission or its staff from cooperating
2 with or assisting any other government agency with regard to the complaint, or any other matter
3 related to it.

4 9. This Stipulation is subject to the Commission's approval. In the event the Commission
5 declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 10,
6 which shall survive.

7 10. In the event the Commission rejects the Stipulation and further administrative
8 proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all
9 references to it are inadmissible, and that Respondent agrees not to challenge, dispute, or object to the
10 participation of any member of the Commission or its staff because of his or her prior consideration of
11 this Stipulation.
12

13 11. This Stipulation, along with the attached Exhibit A, reflects the entire agreement
14 between the parties hereto and supersedes any and all prior negotiations, understandings, and
15 agreements with respect to the transactions contemplated herein. This Stipulation may not be
16 amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by
17 all parties and approved by the Commission at a regular or special meeting.
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19 12. This Stipulation shall be construed under, and interpreted in accordance with, the laws
20 of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining
21 provisions shall remain valid and enforceable.

22 13. For the reasons set forth in Exhibit A, the parties agree that One Thousand Five Hundred
23 Dollars (\$1,500) is the agreed upon settlement amount for Respondent's violations of the provisions
24 listed in Paragraph 4 of this Stipulation.

25 14. The parties hereto may sign different copies of this Stipulation, which will be deemed to
26 have the same effect as though all parties had signed the same document.
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Dated: 5/23/2016



LEEANN PELHAM, EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION
COMPLAINANT

Dated: 5-20-16



RESPONDENT

DECISION AND ORDER

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The foregoing Stipulation of the parties in the matter of "Michael Swart; San Francisco Ethics Commission Complaint Number 14-141202," including the attached exhibit, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: May 23 2016



PAUL A. RENNE, CHAIRPERSON
SAN FRANCISCO ETHICS COMMISSION

EXHIBIT A

INTRODUCTION

Michael Swart is an Assistant District Attorney ("ADA") with the San Francisco Office of the District Attorney's Homicide unit. Mr. Swart has been an ADA for over 10 years.

In late September or early October of 2014, the District Attorney's Chief of Staff, Christine Soto DeBerry, approached Mr. Swart and proposed the idea of hosting a fundraising event. The event was to be attended by employees of the District Attorney's office who may want to contribute money to District Attorney Gascón's re-election campaign. Ms. Soto DeBerry had the idea to hold an office fundraiser because she had heard several District Attorney employees express a desire to contribute to the District Attorney's re-election:

Ms. Soto DeBerry asked Mr. Swart to organize the fundraising event for the District Attorney and to ask other members of the Homicide Team to co-host the event. In a second conversation, Ms. Soto DeBerry suggested the date of the event and the venue. Mr. Swart understood from Ms. DeBerry that the invitees to the fundraising event were to be employees of the District Attorney's Office. Mr. Swart was unaware of the prohibition against soliciting contributions from City employees and stated he agreed to organize the fundraiser because he was asked to do so by the District Attorney's Chief of Staff. Mr. Swart also believed that a fundraiser in which the invitees were City employees was allowed because District Attorneys prior to Mr. Gascón had held similar office fundraisers.

Mr. Swart subsequently asked several other Assistant District Attorneys to co-host the event, and ultimately 16 other ADAs were identified on the event announcement as co-hosts along with Mr. Swart. Mr. Swart and one other co-host each paid \$150 for the cost of food for the event, but otherwise made no other contribution to District Attorney Gascón's re-election campaign. The remaining 15 co-hosts had no role in organizing the event, and their names were identified as co-hosts only to indicate their support for Mr. Gascón's re-election.

The fundraising event was held at Ted's Sports Bar & Grill on November 13, 2014. Approximately 50-75 employees from the District Attorney's Office attended the fundraising event.

Mr. Swart arrived at the start of the fundraising event and stayed for approximately one hour. During the fundraising event, Mr. Swart addressed the attendees, introduced the District Attorney, and asked that the attendees either make a monetary contribution to the District Attorney's re-election committee if they can afford to do so, or if they did not want to contribute money that they could volunteer their time. The District Attorney then spoke to the attendees, his comments thanked attendees for their service and for welcoming him into the office.

Approximately 56 employees of the District Attorney's Office ultimately contributed roughly \$8,800 to Mr. Gascón's re-election committee in connection with this event.

Mr. Swart admits to having knowingly and directly asked other City employees to make a political contribution and agrees to pay a penalty for the following violation:

COUNT 1: The knowing, direct solicitation of political contributions from other City employees in violation of SF C&GCC, section 3.230(a).

SUMMARY OF APPLICABLE LAW

SAN FRANCISCO CAMPAIGN & GOVERNMENTAL CONDUCT CODE

SF C&GCC, section 3.230(a), states: "No City officer or employee shall knowingly, directly or indirectly, solicit political contributions from other City officers or employees or from persons on employment lists of the City. Nothing in this Section shall prohibit a City officer or employee from communicating through the mail or by other means requests for political contributions to a significant segment of the public which may include City officers or employees."

SF C&GCC, section 3.202, requires that the conflict of interest laws contained in SF C&GCC, section 3.200 et seq. shall be liberally construed.

VIOLATIONS OF LAW

COUNT 1

SOLICITATION OF POLITICAL CONTRIBUTIONS FROM OTHER CITY EMPLOYEES

SF C&GCC, section 3.230(a), prohibits any City officer or employee from knowingly soliciting political contributions from any other City officer or employee, either directly or indirectly, unless the solicitation occurs as a result of a communication targeted to a significant segment of the public which may include City officers or employees.

Mr. Swart organized and promoted a fundraising event held on November 13, 2014, for District Attorney Gascón's re-election campaign. He invited employees of the District Attorney's Office to attend, and the fundraising event was attended primarily by employees of the District Attorney's Office. In comments to the assembled group at the event, Mr. Swart made a direct solicitation to attendees for political contributions to support Mr. Gascón's re-election campaign.

As a city employee, Mr. Swart is prohibited from knowingly and directly soliciting contributions from other City officers and employees. Mr. Swart admits to knowingly asking other District Attorney's Office employees to attend an employee fundraising event and to directly asking employees in attendance to make a political contribution to the District Attorney's re-election campaign. Because the knowing, direct or indirect solicitation of campaign contributions from other city employees is not permitted under City law, Mr. Swart is responsible for having committed one violation of SF C&GCC, section 3.230(a).

PENALTY DISCUSSION

This matter consists of one count carrying a maximum administrative penalty of \$5,000. (See SF City Charter, § C3.699-13(c).) The Commission has no history with regard to levying penalties for violations of SF C&GCC, section 3.230(a).

Framing appropriate penalties requires all relevant circumstances surrounding the case to be considered, including but not limited to: (a) the severity of the violation; (b) the presence or absence of any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was an isolated incident or part of a pattern; (e) whether the respondent has a prior record of violations of law; and (f) the degree to which the respondent

cooperated with the investigation and demonstrated a willingness to remedy any violations. (SFEC Enforcement Regs. § XII.C.2.)

In proposing the penalty in this case, the Commission notes the following factors.

A violation of section 3.230 is severe. That law is based on a fundamental public service principle that governmental actions and decisions should be based only on the performance of public duties and not based on political performance. It is designed to advance the integrity of governmental actions and decisions by protecting City employees from being or feeling pressured into making political contributions to City candidates or officials, or from pressure to seek contributions from their colleagues. By eliminating these pressures, the law helps ensure that employment and advancement in government service, are, and are perceived to be, based only on performance of public duties and not on political fundraising acumen or on one's participation or non-participation in political campaigns.

While Mr. Swart did not initiate the employee fundraising event, he followed through on that request and organized a fundraiser at which the over 55 employees of the District Attorney's Office who attended were asked to contribute, and did contribute, to the re-election campaign of their department head.

Mr. Swart's actions to organize the event occurred as a result of being asked to do so by the Chief of Staff to the District Attorney, the head of his department. Mr. Swart did not believe he was committing a violation of SF C&GCC, section 3.230(a), and stated he had no reason to believe that the Chief of Staff would ask him to commit a violation of law and was aware that several previous District Attorneys had held similar events.

In mitigation, Commission Investigators found no evidence of any intention to conceal, deceive, or mislead. Mr. Swart has no enforcement history of prior violations of any laws within the Commission's jurisdiction, took responsibility for his actions, and cooperated fully and willingly with Commission Investigators. He readily admitted to having organized the event and making a solicitation for contributions at the fundraiser, and expressed remorse at having done so.

CONCLUSION

After considering the facts of this case, the seriousness of the violation, and the factors described above, the Executive Director of the Ethics Commission recommends the imposition of the agreed upon penalty of \$1,500.