



# ETHICS COMMISSION

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Date: November 10, 2016

To: Members of the Ethics Commission

Copy: Ann Treboux, Barbara Sklar

From: Jessica Blome, Deputy Director, Enforcement & Legal Affairs

Subject: **Agenda Item 8: Staff's Report and Recommendation**  
for handling Ethics Commission Complaint No. 1617-06  
*Ann Treboux v. Barbara Sklar*

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**Summary** This memorandum serves as Staff's Report and Recommendation for how the Ethics Commission should handle a complaint alleging violations of the Sunshine Ordinance.

**Action Requested** Staff recommends that the Commission dismiss Ms. Treboux's complaint for lack of jurisdiction due to the statute of limitations imposed by California Civil Code section 338.

### Introduction

Anne Treboux filed a complaint with the Ethics Commission on August 4, 2016, alleging that Arts Commissioner Barbara Sklar violated the Sunshine Ordinance by failing to file certain disclosure and training forms with the Ethics Commission. The Ethics Commission has jurisdiction to handle complaints alleging willful violations of the Sunshine Law by a department head under section 67.34 of the Sunshine Ordinance. Ms. Sklar is neither a department head nor elected official, so the Ethics Commission is not required to handle Ms. Treboux's complaint. Staff, may, however initiate its own investigation of Ms. Treboux's complaint under Chapter Three(I)(A)(3) of the Sunshine Regulations. Because Ms. Treboux's complaint alleges violations uniquely within the subject matter jurisdiction of the Ethics Commission, Staff initiated its own investigation into Ms. Treboux's complaint.

### Background

On August 4, 2016, Ms. Treboux filed a complaint with the Ethics Commission alleging that Arts Commissioner Barbara Sklar violated the San Francisco Campaign & Governmental Conduct Code (SF C&GCC) or the Sunshine Ordinance as follows:

1. In 2009 and 2010, Ms. Sklar violated SF C&GCC § 3.1-102 by failing to file her Form 700 Statements of Economic Interest with the Ethics Commission;
2. In 2009, 2010, and 2011, Ms. Sklar violated Ethics Commission Regulation 15.102-1 by failing to file her Certificate of Ethics Training with the Ethics Commission;
3. In 2009, 2010, and 2012, Ms. Sklar violated section 67.33 of the Sunshine Ordinance and by failing to file her Sunshine Ordinance Declaration with the Ethics Commission;
4. In 2014 and 2015, Ms. Sklar violated section 67.33 of the Sunshine Ordinance by failing to file her Sunshine Ordinance Declarations before the April 1 deadline.

Ms. Treboux supplemented her complaint more than twenty times, alleging that documents she received from the Arts Commission had been altered, advising that she had filed complaints against the Arts Commission with the Sunshine Ordinance Task Force, and alleging that Ms. Sklar could not serve as Arts Commissioner because she was never sworn into office. On October 20, 2016, Ms. Treboux submitted two large binders of court records for a case Ms. Treboux filed against Ms. Sklar. The Ethics Commission does not have jurisdiction over these allegations, so Staff did not investigate them.

### **Analysis**

California Civil Code section 338 assigns a three-year statute of limitations for any violation of law where the law does not otherwise provide for a statute of limitations. The Sunshine Ordinance does not contain its own statute of limitations, so the three-year statute of limitations applies. Therefore, the Commission does not have jurisdiction to issue orders enforcing the Sunshine Ordinance if the alleged violations are more than three years old.

**A. Ms. Sklar did not violate SF C&GCC § 3.1-102 because she timely filed her Form 700s for the years 2009 and 2010 with the Ethics Commission.**

Elected officials and public employees who make or influence governmental decisions are required to prepare a Statement of Economic Interest to disclose their financial interests on the Federal Political Practices Commission's Form 700. SF C&GCC § 3.1-102, incorporating Political Reform Act (PRA) § 87200 et seq. The Ethics Commission serves as the filing officer for Form 700s in the City and County of San Francisco, so Staff searched its own files for proof that Ms. Sklar timely filed her Form 700s for the years 2009 and 2010. Accordingly, Staff concludes Ms. Sklar did not violate SF C&GCC § 3.1-102.

**B. Ms. Sklar violated Ethics Commission Regulation 15.102-1 by failing to certify she had completed ethics training in 2010 and 2011.**

Ethics Commission Regulation 15.102-1 directs city employees who are required to file annual Form 700s to also complete ethics training pursuant to California Government Code section 53225 within one year of assuming office and again two years later. City employees must then file a declaration with the Ethics Commission certifying that they have complied with the ethics training requirement. Because the Ethics Commission serves as the receiving agency for ethics training certifications, Staff searched its own files for proof Ms. Sklar timely filed her Certificate of Ethics Training in 2009, 2010, and 2011. According to the Commission's records, Ms. Sklar did not need to complete ethics training in 2009 because she had not been in office for more than one year. Ms. Sklar should have submitted her ethics training form in 2010, but she did not. Ms. Sklar did not submit certification of ethics training in 2011. Therefore, Staff

concludes that Ms. Sklar violated Ethics Commission Regulation 15.102-1 by failing to certify she had completed ethics training in 2010 and 2011.

**C. Ms. Sklar violated section 67.33 of the Sunshine Ordinance by failing to file a Sunshine Ordinance Declaration in 2010.**

Sunshine Ordinance, section 67.33, requires that certain City employees complete annual training on the Sunshine Ordinance. Those City officers must file a declaration with the Ethics Commission certifying compliance with this training requirement by April 1 of each year. Ms. Sklar timely filed her first Sunshine Ordinance Declaration on April 1, 2009. She failed to file a Sunshine Ordinance Declaration for 2010, but she timely filed her Declaration in 2011. Ms. Sklar filed her Sunshine Ordinance Declarations for 2013 and 2015 on time, but she filed her 2014 Declaration late. The Ethics Commission assessed—and Ms. Sklar paid—late filing fees for Ms. Sklar’s late-filed Declaration in 2014. Ms. Sklar does not owe any outstanding fees to the Commission for late filings as of the date of this memorandum.

**Staff’s Recommendation**

Staff concludes that Ms. Sklar violated Ethics Commission Regulation 15.102-1 by failing to certify she had completed ethics training in 2010 and 2011, and Ms. Sklar violated section 67.33 of the Sunshine Ordinance by failing to file a Sunshine Ordinance Declaration in 2010. However, because each of these violations occurred more than three years ago, the Ethics Commission does not have jurisdiction to issue any orders enforcing the Sunshine Ordinance against Ms. Sklar. Therefore, Staff recommends that the Commission dismiss Ms. Treboux’s complaint due to a lack of jurisdiction at this time.