



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

Date: August 12, 2019

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement & Legal Affairs

Subject: **AGENDA ITEM 4: Proposed Stipulation, Decision and Order**  
• ***In the Matter of Richard Matthews***  
***(SFEC Complaint No. 09-150331)***

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### Summary

This memorandum provides information regarding the Proposed Stipulation appearing in this agenda item and what the Commission may do next regarding this Proposed Stipulation.

### Action Requested

The Commission may approve the Proposed Stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation.

Pursuant to the Enforcement Regulations the Commission adopted on January 19, 2018, and which became effective on March 20, 2018, the Executive Director may enter negotiations with a respondent at any time to resolve the factual and legal allegations in a complaint by way of a stipulated order (i.e. a negotiated settlement). Enf. Reg. § 12(A). The Regulations require that the stipulated order set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13. *Id.*

Immediately after the Executive Director enters a stipulated order with a respondent, the Executive Director must inform the Commission of the proposed stipulation. Enf. Reg. § 12(E). Thereafter, any member of the Commission may request that the stipulated order be reviewed in public session by the full panel of the Commission during its next meeting. *Id.*

As of today, no Commissioner had requested review of the attached stipulated order in public session by the full panel of the Commission. It therefore appears on the Consent Calendar. The Commission may approve the stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation. Enf. Reg. § 12(F).

Members of the public may comment on the Proposed Stipulation.

LeeAnn Pelham  
Executive Director  
Jeffrey Pierce, Cal. Bar No. 293085  
Director of Enforcement

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102  
(415) 252-3100 Telephone  
(415) 252-3112 Facsimile

BEFORE THE SAN FRANCISCO  
ETHICS COMMISSION

In the Matter of	)	SFEC Complaint No. 09-150331
	)	
RICHARD MATTHEWS	)	
	)	
	)	
Respondent.	)	<b>STIPULATION, DECISION</b>
	)	<b>AND ORDER</b>

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Richard Matthews ("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 of 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 of law 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.

3. Respondent acknowledges responsibility for and agrees to pay an administrative penalty in the amount of \$9,000 for three violations of San Francisco Campaign & Governmental Conduct Code ("SF C&GCC") section 3.210(a) as set forth in Exhibit A. Respondent agrees that \$9,000 is a reasonable administrative penalty.

4. Within ten business days of the Commission's approval of this Stipulation, Respondent shall either pay the penalty through the City's online payment portal or otherwise deliver to the following address the sum of \$9,000 in the form of a check or money order made payable to the "City and County of San Francisco":

San Francisco Ethics Commission  
Attn: Enforcement & Legal Affairs Division  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

5. If Respondent fails to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondent under Section C3.699-13 of the San Francisco Charter for any available relief.

6. Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondent understands and acknowledges that this Stipulation is not binding on any other government agency with the authority to enforce the San Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating

1 with or assisting any other government agency in its prosecution of Respondent for any allegations set  
2 forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

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

6 9. In the event the Commission rejects this Stipulation, and further administrative  
7 proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all  
8 references to it are inadmissible. Respondent moreover agrees not to challenge, dispute, or object to  
9 the participation of any member of the Commission or its staff in any necessary administrative  
10 proceeding for reasons stemming from his or her prior consideration of this Stipulation.

11 10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement  
12 between the parties hereto and supersedes any and all prior negotiations, understandings, and  
13 agreements with respect to the transactions contemplated herein. This Stipulation may not be amended  
14 orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties  
15 and approved by the Commission at a regular or special meeting.

16 11. This Stipulation shall be construed under, and interpreted in accordance with, the laws  
17 of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining  
18 provisions shall remain valid and enforceable.  
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1           12.     The parties hereto may sign different copies of this Stipulation, which will be deemed to  
2 have the same effect as though all parties had signed the same document.

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4  
5 Dated: \_\_\_\_\_

7/12/2019

\_\_\_\_\_  
LEEANN PELHAM, EXECUTIVE DIRECTOR  
SAN FRANCISCO ETHICS COMMISSION

6  
7  
8  
9 Dated: \_\_\_\_\_

7/3/19

\_\_\_\_\_  
RICHARD MATTHEWS

**DECISION AND ORDER**

The foregoing Stipulation of the parties in the matter of "Richard Matthews, SFEC Complaint No. 09-150331," including the attached Exhibit A, 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: \_\_\_\_\_

\_\_\_\_\_  
DAINA CHIU, CHAIRPERSON  
SAN FRANCISCO ETHICS COMMISSION

# Exhibit A

## I. Applicable Law

San Francisco Campaign and Governmental Conduct Code section 3.200(a) states that “The people of the City and County of San Francisco declare that public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust,” and declares that among the purposes of the Government Ethics Ordinance is “to assure that the governmental processes of the City and County promote fairness and equity for all residents and to maintain public trust in governmental institutions.”

San Francisco Campaign and Governmental Conduct Code section 3.200(b) provides that “The proper operation of the government of the City and County of San Francisco requires that . . . public office and employment not be used for personal gain.”

San Francisco Campaign and Governmental Conduct Code section 3.210(a) states that “No officer or employee of the City and County shall knowingly vote on or attempt to influence a governmental decision involving his or her own character or conduct, or his or her appointment to any office, position, or employment.”

Charter Section 13.103.5(b) provides that “No member of the Elections Commission may hold any employment with the City and County.”

## II. Summary of Material Facts

In 2004, City Attorney Dennis Herrera appointed Respondent Richard Matthews to fill a vacancy on the Elections Commission. He subsequently reappointed Respondent Matthews to two full terms. Respondent Matthews served as the Elections Commission’s President in calendar year 2014.

Respondent Matthews’s term as Elections Commissioner was set to expire on January 1, 2015. Under the Charter, if his seat remained unfilled, he was entitled to continue serving for up to two months, through March 1, 2015.

The Commission hired approximately three secretaries during the time of Respondent Matthews’s service as a commissioner. Based on records retained by the Department of Human Resources, the second of these served for approximately nine months, while the third served for approximately a year and a half. Each was hired at salary Step 1, the lowest starting salary for the job classification.

Following the vacancy that the third secretary’s departure created in January 2014, the Elections Commission held a special meeting in April 2014 to interview candidates for the opening. The Commission hired a new secretary as a result of that process. Based on her qualifications, this new secretary began at salary Step 2, one step above the lowest starting salary for the job classification. The new secretary began work in early May 2014, but resigned the position effective mid-July 2014.

According to Respondent Matthews, in the absence of a Commission secretary, the Commission President and the Deputy City Attorney advising the Commission shouldered additional burdens, such as drafting and distributing meeting announcements and meeting minutes. Respondent Matthews

indicated that he would cover these duties more often than anyone else during his tenure as Commission President.

At its regular meeting in August 2014, the Commission authorized Respondent Matthews, in his capacity as Commission President, to contact and hire either of the second or third place finalists from the April 2014 recruitment process, instead of reopening a new recruitment process. The Commission further authorized Respondent Matthews to post the opening for secretary if both finalists from the prior recruitment process declined a job offer.

At the Commission's regular meeting in September 2014, Respondent Matthews implied that he had contacted both the second and third place finalists from the prior recruitment process and stated that neither had responded. Respondent Matthews further stated at the September 2014 meeting that a new process would be opened with the Department of Human Resources (DHR). In response to a question from a fellow Commissioner about how long DHR would leave the position posted, Respondent Matthews stated that DHR recommends a minimum of one week, but the Commission normally posts recruitment announcements for two weeks.

In mid-December 2014, Respondent Matthews wrote to a fellow Commissioner about the Commission's agenda and packet ahead of its next meeting. Respondent Matthews added to that communication, "Thank you so much, [Commissioner]. I look forward to taking this burden off your hands soon!"

In mid- to late December 2014, four months after the Commission initially authorized him to post the vacancy with DHR, Respondent Matthews corresponded with a Human Resources consultant at DHR about the secretary position. Respondent Matthews stated his preference to reclassify the position to a higher job classification, and asked the HR consultant how long it would take to accomplish the reclassification. The HR consultant responded that a change in the collective bargaining agreement would enable them without union permission to hire a candidate into the existing job classification at salary Step 5, the highest starting salary. Respondent Matthews agreed that instead of reclassifying the position it would suffice if the new hire began at the top step, the salary for which amounted to more than \$10,000 more per year than the bottom step.

Based on the Memorandum of Understanding that would have governed the secretary position, the reasons that a candidate might be hired at "any step in the salary grade," including the top step, include that "a severe, easily demonstrated and documented recruiting and retention problem exists, such that all city appointments in the particular class should be above the normal step," and that "the appointee possesses special experience, qualifications and/or skills which, in the Appointing Officer's opinion, warrants appointment above the entrance rate."

Based on Respondent Matthews's communications with the HR consultant in December 2014, DHR obtained approval from the Mayor's Office to post the secretary position on January 7, 2015. That same day, Respondent Matthews instructed DHR to post the vacancy for one week only.

On January 8, 2015, Respondent Matthews applied for the position.

At its regular meeting in late January 2015, the Commission elected a new Commission President. Respondent Matthews became a non-officeholding Commissioner for the remainder of the



60-day extension he served. The new Commission President was to be involved in the hiring process to fill the vacancy of Commission secretary.

In February 2015, Respondent Matthews left a voicemail for the Commission President asking about the status of the secretary hiring process, and encouraging the Commission President to move the process along more quickly.

In early March 2015, the day after his extended term expired, Respondent Matthews sent a text message to the Commission President saying, "Thanks for the email [Commission President]. I still owe you a report & correspondence, of course. Any idea when the secretary position will move forward?"

Also in early March 2015, the Commission President wrote to inform Respondent Matthews that he, Respondent Matthews, could now file his Leaving Office Statement of Economic Interests through the Ethics Commission's e-filing system. In reply ten minutes later, Respondent Matthews wrote, "Many thanks, [Commission President]. I appreciate your making that so easy. What's going on with the secretary position? I was surprised it wasn't on last agenda to discuss process. I hope I still have your support for the job!"

In mid-March 2015, Respondent Matthews left the Commission President two more voicemails asking about the status of the hiring process, and wanting to know if he still had the latter's "support."

After the March meeting, the Commission President personally contacted both runners up from the prior recruitment process. Each confirmed that no one had contacted them about the vacancy. One expressed interest in the position.

Respondent Matthews maintains that he called both prior finalists and that, when neither answered his call, he did not leave a voicemail for either, nor attempt to contact them again.

The selection of the Commission secretary requires a vote of the full Commission, and would require four "Yes" votes to approve the motion to hire the successful candidate. Although Respondent Matthews communicated directly outside of Commission meetings with the Commission President to influence him to hire Respondent Matthews for the secretary position, Staff lacks evidence that Respondent Matthews directly approached other Commissioners outside of Commission meetings to attempt to influence them to hire him for the secretary position.

Ultimately, the Elections Commission declined to consider Respondent Matthews's application. At the Commission's regular meeting in April 2015, the Commission President announced that the Commission would be hiring one of the finalists from the prior recruitment process.

### **III. Conclusions of Law**

Based on the material facts described above, Respondent Matthews violated SF C&GCC section 3.210(a), the City's prohibition against knowingly attempting to influence a governmental decision involving his appointment to any office, position, or employment, in the following ways:

**Count 1:** Respondent Matthews knowingly attempted to influence a governmental decision involving his own appointment for employment in his handling of the secretary vacancy, including by failing to communicate the vacancy for the position of Commission secretary to the

prior finalists while maintaining with his fellow Commissioners that he had, by delaying posting the opening until after his regular term as Elections Commissioner would expire until such time that he might apply for the vacancy while still complying with the Charter's provision that no Elections Commissioner could hold employment with the City and County, and by directing the Department of Human Resources to post the opening for a single week instead of the two weeks that he acknowledged was customary when the Elections Commission sought to fill a vacancy.

**Count 2:** Respondent Matthews knowingly attempted to influence a governmental decision involving his own appointment for employment by seeking to ensure that the incumbent would receive as high a salary as possible.

**Count 3:** Respondent Matthews knowingly attempted to influence a governmental decision involving his own appointment for employment by actively attempting to persuade the Commission President to select him for the position of Commission secretary and to advance the hiring process more quickly.

#### **IV. Penalty Assessment**

This matter consists of three counts carrying a maximum administrative penalty of \$5,000 each. SF Charter § C3.699-13(c).

Pursuant to San Francisco Ethics Commission Enforcement Regulations, section 9(D), when determining penalties, the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was deliberate, negligent or inadvertent; (4) whether the violation was an isolated incident or part of a pattern; (5) whether the respondent has a prior record of violations of law; (6) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and (7) the respondent's inability to pay, if the respondent provides documentation to the Director of Enforcement of such inability, which must include three years' worth of income tax returns and six months' worth of bank records or accounting statements, at a minimum.

Taken as a whole, Respondent Matthews's pattern of conduct exhibits an ambition to influence City hiring processes in his own favor. The several courses of conduct described in Counts 1 through 3 reflect an overall pattern of behavior designed to increase the likelihood that Respondent Matthews would secure an employment position over which he held initial power as Commission President and for which he intended to apply and did in fact apply. That pattern would (1) preserve the vacancy, (2) delay the opening until he was lawfully qualified, (3) limit competition, (4) ensure the highest starting salary, and (5) accelerate the process and increase support with an individual who held power over the hiring decision. This pattern is severe because the use of public office to advance private gain directly contravenes a fundamental public service principle codified in section 3.200 of the Campaign & Governmental Conduct Code, namely that public officers are to exercise their public duties in a manner consistent with the public trust, and that public service is not to be used for personal gain. As the Ethics Commission has remarked in prior matters regarding the improper use of public office to secure private

gain or advantage, governmental decisions by City officers and employees should be made, and should appear to be made, on a fair and impartial basis. Because the attempts to influence the decisions at issue here do not meet these criteria, these violations threaten public trust in governmental institutions and constitute serious violations of the Campaign & Governmental Conduct Code.

In mitigation, Respondent Matthews cooperated with Staff's investigation and has no prior enforcement matters before the Commission. Respondent Matthews maintains that he has not sought to benefit from public service either before or since this course of conduct. Moreover, in improperly leveraging his public office, Respondent Matthews specifically sought (and ultimately failed) to secure an employment position, and Staff acknowledges that an officer's attempt to secure the salary and benefits of such a position it is less severe, for example, than when an officer directs a large contract toward his own financial interest, or other forms of financial conflicts of interest that exceed in scope the intended outcome of this conduct.

Therefore, after considering the penalty factors above and prior analogous cases, the total proposed penalty for Counts 1 through 3 is \$9,000, or \$3,000 per count. The parties have agreed upon the \$9,000 administrative penalty for the violations listed in Counts 1 through 3.