

Fair Political Practices Commission (“Commission”)

MEMORANDUM

To: Chairman Ravel, Commissioners Eskovitz, Garrett, Montgomery, and Wasserman

From: Gary S. Winuk, Chief of Enforcement
Bridgette Castillo, Commission Counsel

Date: February 15, 2013

Re: Assignment of Hearing to Administrative Law Judge (“ALJ”)

Case Name: In the Matter of Luis Artiga (FPPC Case No. 11/113)

I. INTRODUCTION

Respondent Luis Artiga (“Respondent”) in the above-referenced case has requested an administrative hearing on the accusation attached hereto as Exhibit 1. The accusation alleges two violations of the Political Reform Act (the “Act”).¹

This memorandum is submitted to each member of the Commission pursuant to Regulation 18361.5, subdivision (b), which provides: “If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.”

II. PROCEDURAL HISTORY

This case arose from a proactive investigation initiated by the Enforcement Division.

Respondent failed to timely request a probable cause conference. The matter was submitted on the Probable Cause Report. On February 24, 2012, the Commission’s Executive Director issued an Order Finding Probable Cause and to Prepare and Serve an Accusation (“Order”). The Order included a finding that there is probable cause to believe that Respondent violated the Act, as set forth in the attached accusation.

On August 3, 2012, the accusation was served personally on Respondent. On or about August 17, 2012, the Enforcement Division received Respondent’s notice of defense whereby Respondent requested a hearing.

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

III. PROCEDURAL ISSUES

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ. (See Section 11512, subd. (a).)

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ's proposed decision in the proceeding. (See Section 11512, subd. (b).)

IV. SUMMARY OF THE ACCUSATION

In this matter, in his position as councilmember for the City of Bell, Respondent Artiga accepted a gift over the applicable gift limit, then impermissibly made, participated in the making, or influenced a governmental decision concerning the donor which had a reasonably foreseeable material financial effect on the source of the gift.

The accusation consists of the following two counts:

Count 1: On or about May 24, 2010, as a City Councilmember for the City of Bell, Respondent accepted a gift of travel valued at approximately \$737.12, which exceeded the applicable \$420 annual gift limit, from Robert Rizzo, in violation of Government Code Section 89503, subdivision (a).

Count 2: On or about July 22, 2010, as a City Councilmember for the City of Bell, Respondent made a governmental decision concerning the employment status of then Chief Administrative Officer Robert Rizzo, who was the source of a gift of travel which equaled or exceeded the annual gift limit applicable to Respondent, in which he knew or should have known was in violation of Government Code Section 87100.

The accusation requests a monetary penalty pursuant to Section 83116, subdivision (c), of up to \$5,000 per count, for a total monetary penalty in an amount not to exceed \$10,000.

V. CONCLUSION

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available. (Regulation 18361.5, subd. (b).) Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).