

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5

6 Attorneys for Complainant
7
8

9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA
11

12 In the Matter of) FPPC No. 11/838
13)
14) STIPULATION, DECISION and
JILL SHERMAN-WARNE,) ORDER
15)
16 Respondent.)

17
18 Complainant, the Fair Political Practices Commission, and Respondent Jill Sherman-Warne,
19 hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices
20 Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter, and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in sections 83115.5, 11503, and 11523 of the Government Code, and in section 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by (1)
4 failing to timely file a 2010 Annual Statement of Economic Interests, which was due by April 1, 2011,
5 in violation of sections 87300 and 87302, subd. (b), of the Government Code (1 count), as described in
6 Exhibit 1, which is attached hereto and incorporated by reference, as though fully set forth herein.
7 Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon her an administrative penalty in the amount
10 of One Thousand Dollars (\$1, 000). A cashier's check from Respondent in said amount, made payable
11 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty, and shall be held by the State of California until the Commission issues its
13 decision and order regarding this matter. The parties agree that in the event the Commission refuses to
14 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
15 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
16 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
17 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
18 Commission becomes necessary, neither any member of the Commission, nor the Executive
19 Director, shall be disqualified because of prior consideration of this Stipulation.
20
21

22 Dated: _____

23 Gary Winuk, Enforcement Chief,
24 on behalf of the
Fair Political Practices Commission

25 Dated: _____

26 Jill Sherman-Warne, Respondent
27
28

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Jill Sherman-Warne, FPPC No.
3 11/838,” including all attached exhibits, is hereby accepted as the final Decision and Order of the Fair
4 Political Practices Commission, effective upon execution below by the Chairman.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Jill Sherman-Warne (“Respondent Sherman-Warne”) served as a commissioner with the Native American Heritage Commission since May of 2000. As a commissioner with the Native American Heritage Commission, Respondent Sherman-Warne is a “designated employee” as defined in section 82019, subdivision (a), of the Political Reform Act (the “Act”)¹ and in the Conflict of Interest Code for the Native American Heritage Commission. As required by Section 87302 of the Act and the Native American Heritage Commission’s conflict of interest code, each designated employee is required to file an annual statement of economic interests (“SEI”), disclosing the economic interests that he or she held during the preceding calendar year.

This matter arose out of referrals from the Fair Political Practices Commission’s (“FPPC”) Technical Assistance Division (“TAD”), who had previously issued written notices to Respondent Sherman-Warne informing her that she had failed to file her 2010 Annual SEI which was due by April 1, 2011.

In this matter, Respondent failed to file an annual SEI which was due April 1, 2011. For the purposes of this Stipulation, Respondent’s violation is stated as follows:

COUNT 1: As a member of the Native American Heritage Commission, Respondent Jill Sherman-Warne failed to file a 2010 annual statement of economic interests, in violation of Sections 87300 and 87302, subdivision (b) of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in section 81002, subdivision (c), is to ensure that the assets and income of public officials that may be materially affected by their official actions be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, section 87300 requires every state and local agency to adopt and promulgate a conflict of interest code. Under section 87300, the requirements of an agency’s conflict of interest code have the force of law, and any violation of those requirements is deemed a violation of the Act.

Section 87302, subdivision (a), provides that an agency’s conflict of interest code must specifically designate the positions within the agency that are required to file statements of

¹ The Political Reform 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.

economic interests, disclosing reportable investments, business positions, interests in real property, and sources of income. Under section 82019, subdivision (a), and section 87302, the persons who are to be designated in an agency's conflict of interest code are the officers, employees, members, and consultants of the agency whose position with the agency entails making, or participating in making, governmental decisions that may foreseeably have a material effect on one or more of the person's economic interests.

Under Section 87302, subdivision (b), an agency's conflict of interest code must require, among other things, every designated employee of the agency to file an annual SEI, at a time specified in the agency's conflict of interest code, for each year that the employee remains in office, disclosing his or her reportable economic interests during the preceding calendar year.

The applicable Conflict of Interest Code for the Native American Heritage Commission ("Conflict of Interest Code") requires that each designated employee file annual SEIs disclosing the person's reportable economic interests including investments, interests in real property, and sources of income. Pursuant to the applicable Conflict of Interest Code, a commissioner was a designated position.

SUMMARY OF THE FACTS

In 2010, Respondent Jill Sherman-Warne was a Commissioner with the Native American Heritage Commission. The position of commissioner is a designated position under the Conflict of Interest Code for the Native American Heritage Commission. As a designated employee under the Conflict of Interest Code for the Native American Heritage Commission, Respondent Jill Sherman-Warne is required to file an annual SEI with the Native American Heritage Commission disclosing reportable economic interests that she held in the preceding calendar year. Respondent Sherman-Warne was required to file her 2010 Annual SEI on or before April 1, 2011.

On or about June 17, 2011, TAD sent a letter to Respondent Sherman-Warne, stating that her 2010 Annual SEI was past due and requesting that it be filed. This letter advised that if her SEI was not received within fifteen days, the matter would be referred to the FPPC's Enforcement Division. Respondent Sherman-Warne failed to file the 2010 Annual SEI.

On or about July 5, 2011, TAD sent a second letter to Respondent Sherman-Warne, again stating that her 2010 Annual SEI was past due. Respondent Sherman-Warne failed to file the 2010 Annual SEI.

On or about August 24, 2011, after receiving no reply from the Respondent, TAD referred this matter to Enforcement.

COUNT 1

Failure to File an Annual Statement of Economic Interests

As a Commissioner with the Native American Heritage Commission, Respondent Jill Sherman-Warne failed to file an annual SEI by the April 1, 2011 due date or at all, in violation of Sections 87300 and 87302, subdivision (b) of the Government Code.

As part of this Stipulation, Decision and Order, Respondent filed her delinquent SEI.

CONCLUSION

This matter consists of one count of violating sections 87300 and 87302, subdivision (b), which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Failure to file a statement of economic interests is a serious violation of the Act because it deprives the public of important information about a public official's economic interests which could lead to potential conflicts of interests regarding decisions he/she may make in his/her official capacity.

Failure to file statements of economic interests which are not included in the Expedited Procedures of the SEI Streamlined Program have historically received substantial penalties varying in range up to the maximum penalty of Five Thousand Dollars (\$5,000), per count.

Other similar cases regarding failure to file SEIs that have recently been approved by the Commission include:

In the Matter of Carlos Baker, FPPC Nos. 07/324 and 08/452. Respondent Baker, while serving as a retired judge who served 30 days or more in a calendar year, failed to timely file annual Statements of Economic Interests for years 2006, 2007, and 2008. A penalty of \$1,000 per count was approved by the commission on May 13, 2010.

In the Matter of Gregory Fox, FPPC No. 10/798. Respondent Fox, while serving as a member of the Saratoga Cemetery District Board of Trustees, failed to disclose his ownership interest properties on SIEs filed over a four year period, in violation of Government Code Sections

87300 and 87302. A penalty of \$1,000 per count was approved by the commission on November 10, 2011.

In this case, Respondent's actions were similar to the cases above in that none of these cases appear to include anything more than negligent behavior. Due to previous enforcement action against Respondent for failure to file an SEI, Respondent should have been aware of her duties and requirements under the Act.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's patten of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of One Thousand Dollars (\$1,000) is recommended.