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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

9
10 **STATE OF CALIFORNIA**

11 In the Matter of) FPPC No.: 11/933
12)
13 Michael Morgan ,) **DEFAULT DECISION AND**
14) **ORDER**
15 Respondent.) (Government Code Sections 11506
16) and 11520)
17)

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, hereby
18 submits this Default Decision and Order for consideration by the Fair Political Practices Commission at
19 its next regularly scheduled meeting.

20 Pursuant to the California Administrative Procedure Act,¹ Respondent Michael Morgan has been
21 served with all of the documents necessary to conduct an administrative hearing regarding the above-
22 captioned matter, including the following:

- 23 1. An Order Finding Probable Cause;
- 24 2. An Accusation;
- 25 3. A Notice of Defense (Two Copies);
- 26 4. A Statement to Respondent; and,
- 27 5. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

28 ¹ The California Administrative Procedure Act, which governs administrative adjudications, is contained in sections 11370 through 11529 of the Government Code.

1 Government Code section 11506 provides that failure of a respondent to file a Notice of Defense
2 within fifteen days after being served with an Accusation shall constitute a waiver of respondent's right
3 to a hearing on the merits of the Accusation. The Statement to Respondent, served on Respondent,
4 explicitly stated that a Notice of Defense must be filed in order to request a hearing. Respondent failed
5 to file a Notice of Defense within fifteen days of being served with an Accusation.

6 Government Code Section 11520 provides that, if the respondent fails to file a Notice of
7 Defense, the Commission may take action, by way of a default, based upon the respondent's express
8 admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the
9 respondent.

10 Respondent Michael Morgan violated the Political Reform Act as described in Exhibit 1, which
11 are attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
12 accurate summary of the law and evidence in this matter. This Default Decision and Order is submitted
13 to the Commission to obtain a final disposition of this matter.

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15 Dated: _____

16 Gary S. Winuk
17 Chief of Enforcement
18 Fair Political Practices Commission
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ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of One Thousand Five Hundred Dollars (\$1,500) on Respondent Michael Morgan, payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices Commission at Sacramento, California.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Michael Morgan (“Respondent Morgan”) was a member of the City Council in the City of Trinidad. This case resulted from a referral from the Fair Political Practices Commission Technical Assistance Division, which alleged that Respondent failed to file an Annual Statement of Economic Interest for the 2010 year as required under the Political Reform Act (the “Act”).¹

The Act requires that members of city councils file an annual Statement of Economic Interests for the years that they held such office. (Sections 87200 and 87203).

Respondent Morgan failed to timely file a Statement of Economic Interests for the year 2010, after written notifications were given to him. Additionally, Respondent Morgan was given notifications by the Commission Enforcement Division about his filing obligations and still failed to file until February 24, 2012, approximately eleven months after his statement was due.

For purposes of this Default, Decision and Order, Respondent violated the Act as follows:

COUNT 1: Respondent failed to timely file a 2010 Annual Statement of Economic Interests, which was due by April 1, 2011, in violation of sections 87200 and 87203 of the Government Code.

PROCEDURAL HISTORY

When the Fair Political Practices Commission (the “Commission”) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).² (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which

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.

² The Administrative Procedure Act is contained in Government Code Sections 11370 through 11529.

the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

A. Initiation of the Administrative Action

Section 91000.5 provides that "[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action." (Section 91000.5, subd. (a).) Section 83115.5 provides in pertinent part:

No finding of probable cause to believe this title has been violated shall be made by the Commission unless, at least 21 days prior to the Commission's consideration of the alleged violation, the person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of the Act, shall be commenced more than five years after the date on which the violation occurred. In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent in this matter by serving Respondent with a Report in Support of a Finding of Probable Cause (the "Probable Cause Report"). Respondent was served on June 26, 2012. (See Certification of Records ("Certification") filed herewith, Exhibit A, and incorporated herein by reference.) The Probable Cause Report was served on Respondent by certified mail. (See Certification, Exhibit A - 1.) Therefore, the administrative action commenced on June 26, 2012, the date Respondent was served the Probable Cause Report, and the five year statute of limitations was effectively tolled on this date. (Sections 83115.5; 91000.5.)

As required by Section 83115.5, the packet served on Respondent contained the cover letter to the Probable Cause Report, advising Respondent he had 21 days in which to request a probable cause conference and/or to file a written response to the Probable Cause Report. (See Certification, Exhibit A - 2.) Respondent neither requested a probable cause conference nor submitted a written response to the Report.

B. Ex-Parte Request for a Finding of Probable Cause

Since Respondent failed to request a Probable Cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex-Parte Request for a Finding of Probable Cause and an Order the an Accusation be Prepared and Served to Zackery Morazzini, the General Counsel of the Fair Political Practices Commission (See Certification, Exhibit A - 3.) Respondent was sent copies of this document via U.S. Mail.

On October 2, 2012, an Order Finding Probable Cause and an Order to Prepare and Serve an Accusation was issued. (See Certification, Exhibit A-4.) Respondent was sent a copy of this document via U.S. Mail.

C. The Issuance and Service of the Accusation

Under the Act, if the General Counsel makes a finding of probable cause, an accusation must be prepared pursuant to Section 11503 of the APA, and shall be served on the subject of the probable cause finding. (Regulation 18361.4, subd. (e).) Section 11503 provides:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall: 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On October 14, 2012, an Accusation was issued against the Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, and copies of Government Code Sections 11506 through 11508, were personally served on Respondent on November 14, 2012. (See Certification, Exhibit A - 5.)

Along with the Accusation, the Enforcement Division personally served Respondent with a "Statement to Respondent" which notified him that he could request a hearing on the merits and warned that, unless a Notice of Defense was filed within fifteen days of service of the Accusation, the right to a hearing would be deemed to have been waived. Respondent did not file a Notice of Defense within the statutory time period.

As a result, on December 26, 2012, Commission Counsel Bridgette Castillo sent a letter to Respondent advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for January 24, 2013. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (See Certification, Exhibit A - 6.)

SUMMARY OF THE LAW

Duty to File an Annual Statement of Economic Interests

Section 81002, subdivision (c) of the Act expressly provides that one of the purposes of the Act is to ensure that the assets and income of public officials which may materially affect their official actions be disclosed in order to avoid conflicts of interest. In furtherance of this purpose, Section 87203 requires that office holders defined in section 87200 file an annual statement disclosing their investments, interests in real property, and income held during the statement period. Section 87200 specifies members of city councils as office holders who are required to file such statements under section 87203.

Regulation 18723, subdivision (b)(2) sets the deadline for filing annual statements of economic interests at April 1 for the period ending the preceding December 31.

SUMMARY OF THE EVIDENCE

According to the records maintained by the City of Trinidad City Clerk, Respondent Morgan was a member of the City Council for the City of Trinidad during the year 2010. As such, Respondent Morgan was obligated to file a 2010 Annual Statement of Economic Interests no later than April 1, 2011. Respondent Morgan did not file his statement for the 2010 year by this deadline. According to records maintained by the Commission's Technical Assistance Division, Respondent Morgan was notified of his filing duties multiple times after

the deadline and Respondent Morgan did not file the 2010 Annual Statement of Economic Interests until February 24, 2012, approximately eleven months late

COUNT 1

Failure to Timely File Annual Statement of Economic Interests

Respondent Morgan was a member of the City of Trinidad City Council during the 2010 calendar year. As such, he had an obligation to file a 2010 Annual Statement of Economic Interests no later than April 1, 2011. Respondent Morgan did not file his 2010 Annual Statement of Economic Interests by this deadline.

On or about July 22, 2011, staff of the Commission's Technical Assistance Division gave written notice to Respondent Morgan about his obligation to file a Statement of Economic Interests and that the statement was past due. On or about August 30, 2011, staff of the Commission's Technical Assistance Division again gave notice to Respondent Morgan regarding his obligation to file a Statement of Economic Interests. Respondent Morgan did not respond to either of these notices.

On or about November 8, 2011, because Respondent Morgan had not filed his 2010 Annual Statement of Economic Interests, staff of the Enforcement Division again provided written notification to Respondent Morgan regarding his obligation to file, and was required to respond no later than November 29, 2011. After Respondent Morgan failed to respond, on December 2, 2011, staff of the Commission's Enforcement Division again provided written notice to Respondent Morgan regarding his filing obligations, and was required to respond no later than December 23, 2011. Respondent Morgan failed to respond by this deadline.

On or about January 30, 2012, Respondent Morgan spoke with the Commission Enforcement Division Staff via telephone who informed the Commission that he was sick with pneumonia, had personal financial issues and was therefore unable to timely file his 2010 Annual Statement of Economic Interests. Review of the minutes from the Trinidad City Council meetings for 2011 reveals that Respondent Morgan was present at every monthly meeting during the 2011 year.

Respondent Morgan's 2010 Annual Statement of Economic Interests was filed on February 24, 2012.

Therefore, Respondent Morgan violated the Act by failing to timely file his 2010 Annual Statement of Economic Interests, by the April 1, 2011 deadline, in violation of Sections 87200 and 87203.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum 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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: 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 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 an amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

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 they make in their official capacity.

Similar default decisions recently approved by the Commission include:

In the Matter of Doreen Cease, FPPC No. 10/910. This case involved two counts of failing to file annual Statement of Economic Interests. Respondent failed to file the Statements of Economic Interests even after multiple contacts from the Enforcement Division. For each of these two counts, the Commission approved a \$2,000 administrative penalty on August 16, 2012.

In the Matter of James Corsaut, FPPC No. 09/599. This case involved three counts, two of which concerned the failure to file annual Statements of Economic Interests. Respondent never filed the missing statements and there were no factors in mitigation. For each of these two counts, the Commission approved a \$2,000 administrative penalty on September 17, 2010.

In this matter, Respondent Morgan filed his 2010 Annual Statement of Economic Interests almost one year late, after numerous written notifications. Though Respondent Morgan stated he had personal issues that prevented him from completing his 2010 Annual Statement of Economic Interests, he was present at every City Council meeting during the 2011 year and had access to the City Clerk that would enable him to complete and file his 2010 Statement of Economic Interests.

In mitigation, Respondent Morgan filed his 2010 Annual Statement of Economic Interests on February 24, 2012, in response to contact from Enforcement Division staff.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the presence or absence of good faith, as well as consideration of the penalties in prior similar enforcement actions, the imposition of a penalty of Fifteen Hundred Dollars (\$1,500) is recommended.