

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
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5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**

9
10 In re the Matter of:) Case No.: 2010-11
11 BRIAN POLLARD,)
12 Respondent.) **STIPULATION, DECISION, AND**
13) **ORDER**

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
17 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
18 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
19 Code [SDMC] relating to, among other things, the provisions of the City’s Election Campaign
20 Control Ordinance [ECCO].

21 2. At all times mentioned herein, Brian “Barry” Pollard was a candidate for City
22 Council District 4 in the June 8, 2010, primary election. The Brian “Barry” Pollard committee
23 (Identification # 1330949) [Committee] was a campaign committee registered with the State of
24 California established to support Mr. Pollard’s candidacy for Council District 4. At all relevant
25 times herein, the Committee was controlled by Mr. Pollard within the meaning of the California
26 Political Reform Act, California Government Code section 82016. Mr. Pollard is referred to
27 herein as “Respondent.”

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1 3. This Stipulation will be submitted for consideration by the Ethics Commission at its
2 next scheduled meeting, and the agreements contained herein are contingent upon the approval
3 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

4 4. This Stipulation resolves all factual and legal issues raised in this matter by the Ethics
5 Commission without the necessity of holding an administrative hearing to determine
6 Respondent's liability.

7 5. Respondent understands and knowingly and voluntarily waives any and all procedural
8 rights under the SDMC, including, but not limited to, a determination of probable cause, the
9 issuance and receipt of an administrative complaint, the right to appear personally in any
10 administrative hearing held in this matter, the right to confront and cross-examine witnesses
11 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
12 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
13 to hold the City of San Diego harmless from any and all claims or damages resulting from the
14 Commission's investigation or this stipulated agreement, or any matter reasonably related
15 thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with
16 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
17 reference to each violation, and an order.

18 6. Respondent acknowledges that this Stipulation is not binding upon any other law
19 enforcement or government agency and does not preclude the Ethics Commission from referring
20 this matter to, cooperating with, or assisting any other law enforcement or government agency
21 with regard to this or any other related matter.

22 7. The parties agree that in the event the Ethics Commission refuses to accept this
23 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
24 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
25 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
26 because of prior consideration of this Stipulation.

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1 **Summary of Law and Facts**

2 8. Because the Committee was formed for the purpose of supporting a candidate in a
3 City of San Diego election, Respondent is required to comply with the provisions of ECCO.

4 9. SDMC section 27.2930 requires candidates and committees to file campaign
5 statements in the time and manner required by California Government Code sections 81000 *et*
6 *seq.* According to the pre-election filing schedule set forth in California Government Code
7 section 84200.7, candidates in the June primary election were required to file a pre-election
8 statement covering the period from January 1, 2010, through March 17, 2010, on or before
9 March 22, 2010.

10 10. Respondent did not file a campaign statement covering the period from January 1,
11 2010, through March 17, 2010, until April 19, 2010, twenty-eight days late and after he was
12 contacted by Ethics Commission staff. During this reporting period, the Committee received
13 contributions totaling \$820.00, and made expenditures totaling \$919.72.

14 11. ECCO mandates that all committees that pay for mass campaign literature (200
15 substantially similar pieces of campaign literature) for the purpose of supporting or opposing a
16 City candidate include the words “paid for by” followed by the name and address of the
17 committee, in 12 point legible type in a color that contrasts with the background. SDMC §
18 27.2970.

19 12. On February 1, 2010, Respondent distributed 5,000 door hangers for the purpose of
20 supporting his candidacy for Council District 4 in the June 2010 primary election. Respondent
21 failed to include the requisite “paid for by” disclosure on this form of mass campaign literature.

22 **Counts**

23 **Count 1 – Violation of SDMC section 27.2930**

24 13. Respondent failed to timely file a campaign statement covering the period from
25 January 1, 2010, through March 17, 2010, in violation of SDMC 27.2930. Although this
26 statement was due on March 22, 2010, Respondent did not file it until April 19, 2010, twenty-
27 eight days late.

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Count 2 – Violation of SDMC section 27.2970

14. Respondent violated SDMC section 27.2970 by failing to include a “paid for by” disclosure on mass campaign literature in the form of 5,000 door hangers distributed in support of his candidacy for Council District 4 in the June 2010 primary election.

Factors in Aggravation

15. The City Clerk sent Respondent several letters regarding his filing responsibilities, both before and after the filing deadline. Despite these efforts by the City Clerk, Respondent failed to timely file a campaign statement covering the period from January 1, 2010, through March 17, 2010.

16. In addition to the door hangers that are the subject of Count 2, Respondent ordered and distributed post card mailers that did include the requisite “paid for by” disclosure, thereby demonstrating his knowledge of this disclosure rule.

Factors in Mitigation

17. Respondent has fully cooperated with the Ethics Commission’s investigation.

Conclusion

18. Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Election Campaign Control Ordinance in the future.

19. Respondent agrees to pay a fine in the amount of \$1,500 for violating SDMC sections 27.2930 and 27.2970. This amount must be paid by check or money order made payable to the City Treasurer no later than December 1, 2010. Respondent acknowledges that if the fine is not timely paid in full, the Commission may refer the collection of the fine to the City Treasurer’s Collection Division, which may pursue any or all available legal remedies to recover late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: _____

BRIAN POLLARD, Respondent

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DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____,
2010. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
with the Stipulation, Respondent pay a fine in the amount of \$1,500.

DATED: _____

LARRY WESTFALL, Chair
SAN DIEGO ETHICS COMMISSION