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5 Petitioner

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

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10 In re the Matter of:) Case No.: 2004-62
11 DONNA FRYE,)
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, Donna Frye [Frye] was the Councilmember for City
22 Council District 6 in the City of San Diego, and a candidate for Mayor of the City of San Diego
23 in the November 2, 2004, general election. The Donna Frye for Mayor committee is a campaign
24 committee registered with the State of California (Identification No. 1270953) established to
25 support Councilmember Frye's bid for Mayor in the 2004 general election. At all relevant times
26 herein, the committee was controlled by Councilmember Frye within the meaning of the
27 California Political Reform Act, California Government Code section 82016. Councilmember
28 Frye is referred to herein as "Respondent."

1 9. ECCO, at SDMC section 27.2903, defines “mass mailing” as 200 or more
2 substantially similar pieces of campaign literature sent within a single calendar month. SDMC
3 section 27.2970 (formerly SDMC section 27.2955), states in part:

4 (a) It is unlawful for any *candidate* or *committee* to send a *mass mailing* for the
5 purpose of supporting or opposing a *City candidate* or *City measure* unless:

6 (1) the name, street address, and city of the *candidate* or *committee* sending
7 the mailing are shown on the outside of each piece of mail in the *mass*
8 *mailing* in a typeface that is easily legible, contrasts with the background,
9 and is no less than 12 points in size; and

10 (2) each mailing includes the words “paid for by” immediately followed by
11 the name, street address, and city of that *candidate* or *committee* in a
12 typeface that is easily legible, contrasts with the background, and is no less
13 than 12 points in size.

14 10. After the requirements set forth in SDMC section 27.2970 (formerly SDMC
15 section 27.2955) took effect on October 7, 2004, and prior to the November 2, 2004, general
16 election, Respondent sent out three mass mailings supporting her candidacy for Mayor. Each of
17 the mailings included the following statements:

- 18 • "Write in Donna Frye for Mayor" in approximately 40 point type size;
- 19 • "This is an unofficial, marked ballot prepared by the office of Donna Frye for
20 Mayor" in approximately 17 point type size (this statement appeared next to an unofficial
21 marked ballot);
- 22 • “Find out more at www.DonnaFryeforMayor.com or call me at (858) 569-8920”
23 in approximately 15 point type size.

24 In addition, each of the three mailers included the requisite sender identification and
25 "paid for by" disclosure. Although both disclosures appeared in an easily legible typeface and in
26 a color that contrasts with the background, they did not appear in the mandatory 12-point type
27 size. On one mailer, the sender identification appeared in 9-point type size, while the "paid for

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1 by" disclosure appeared in 7-point type size. On the second and third mailers, the sender
2 identification appeared in 9-point type size, and the "paid for by disclosure" appeared in 8-point
3 type size.

4 **Counts 1 through 3**

5 **Violations of SDMC section 27.2970**

6 11. Respondent failed to properly identify the "sender" of three mass mailings in 12-
7 point type size, as required by SDMC section 27.2970. Instead, the Respondent identified the
8 Committee as the "sender" in 9-point type. In addition, Respondent failed to provide the "paid
9 for by" disclosure in 12-point type size, as required by SDMC section 27.2970. One of the
10 mailings distributed by Respondent included the "paid for by" disclosure in 7-point type, while
11 the other two mailings included the "paid for by" disclosure in 8-point type.

12 **Factors in Mitigation**

13 12. Respondent has cooperated fully with the Ethics Commission investigation.

14 **Factors in Aggravation**

15 13. As a Councilmember, Respondent voted to approve a host of amendments to
16 ECCO on August 2, 2004. Respondent was therefore well aware of the new requirements
17 concerning mass mailings, and was also aware that the City Council voted to make this new
18 provision effective on October 7, 2004.

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1 **Conclusion**

2 14. Respondent agrees to pay a fine in the amount of \$3,000 for violating SDMC
3 section 27.2970. Respondent agrees to pay this amount no later than April 14, 2005.

4 15. This Stipulation shall not become effective until Respondent has provided to the
5 Ethics Commission the amount set forth in paragraph 14, by check or money order made payable
6 to the City Treasurer.

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8 DATED: _____
9 STACEY FULHORST, Executive Director
10 ETHICS COMMISSION, Petitioner

11 DATED: _____
12 DONNA FRYE, Respondent

13 **DECISION AND ORDER**

14 The Ethics Commission considered the above Stipulation at its meeting on April 25,
15 2005. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
16 with the Stipulation, Respondent pay a fine in the amount of \$3,000.

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18 DATED: _____
19 Dorothy L.W. Smith, Chair
20 SAN DIEGO ETHICS COMMISSION