



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Casher, Hatch, and Hayward

From: Erin V. Peth, Executive Director
Galena West, Chief of Enforcement
Neal Bucknell, Senior Commission Counsel

Date: April 10, 2017

RE: Assignment of Hearing to Administrative Law Judge

Case Name: In the Matter of Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson (FPPC Case Nos. 14/549 and 14/775)

I. INTRODUCTION

In 2012, Respondent Douglas Hanson (Hanson) was the Mayor of Indian Wells. He was re-elected to the Indian Wells City Council on November 6, 2012. Shortly after the election, a different city council person became the mayor—pursuant to newly approved Measure Q, which called for appointment of a new mayor every December on a rotating basis. Hanson continued to serve as an Indian Wells City Councilman since that time, but when he sought re-election in November 2016, he was unsuccessful.

Respondent Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012 was Hanson's candidate controlled committee. Respondent M. Elena Hanson was the committee treasurer—and she is the wife of Respondent Douglas Hanson.

Following its investigation, the Enforcement Division served Respondents with a Probable Cause Report asserting violations of the Political Reform Act,¹ including failing to follow the disqualification/recusal procedures; failing to comply with campaign reporting requirements; failing to use a single, designated campaign bank account; unlawfully using cash to make campaign expenditures; unlawfully making and accepting cash contributions; and failing to keep required committee records.

On September 14, 2016, the assigned hearing officer issued an order finding that there was probable cause to believe Respondents committed nine violations of the Act.

¹ The Political Reform Act (the Act) is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in California Code of Regulations, title 2, sections 18110 through 18997. Unless otherwise noted, all statutory references are to the Government Code, and all regulatory references are to Title 2, Division 6 of the California Code of Regulations.

The Enforcement Division prepared an Accusation in accordance with the terms of the order and served it on Respondents' attorney on March 14, 2017. A copy of the Accusation is attached as Attachment 1.

On March 24, 2017, the Enforcement Division received Respondents' notice of defense and request for an administrative hearing on the Accusation.

II. RECOMMENDATION TO REFER THE MATTER TO AN ADMINISTRATIVE LAW JUDGE TO CONDUCT A HEARING

The Executive Director and the Chief of Enforcement are recommending that a hearing should be conducted before an Administrative Law Judge (ALJ) pursuant to Section 11512, subdivision (a). The ALJ will make a recommendation to the Commission on the findings of fact, law, and any penalty to be imposed. As set forth below, the Commission will then make the final determination on the case.

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.

No Commission action is required if the Commission agrees with the recommendation that the administrative hearing in this matter should be originally conducted before an ALJ. However, two or more Commissioners may vote to have the matter heard by the Commission, if so desired.

III. PROCEDURE FOR ADMINISTRATIVE HEARINGS

Every hearing in a contested case must be presided over by an ALJ. The agency must determine whether an ALJ should originally hear the case alone and make a proposed decision to the agency, or whether the agency is to hear the case with an ALJ presiding.²

When the agency hears the case, an ALJ must preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law. When the ALJ alone hears a case, he or she exercises all powers relating to the conduct of the hearing. However, all rulings of the ALJ admitting or excluding evidence are subject to review by the Commission.³

² Section 11512, subdivision (a).

³ Section 11512, subdivision (b).

If an ALJ conducts the hearing alone, the ALJ's proposed decision is subject to Commission approval. Within 100 days of the Commission's receipt of the proposed decision, the Commission may do any of the following:⁴

- Adopt the proposed decision in its entirety;
- Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision;
- Make technical or other minor changes (of a clarifying nature) to the proposed decision and adopt it as the decision;
- Reject the proposed decision and refer the case back to the ALJ to take additional evidence and prepare a revised, proposed decision;
- Reject the proposed decision, and decide the case upon the record—with or without taking additional evidence.

IV. SUMMARY OF THE ACCUSATION

The Accusation alleges nine violations of the Act, occurring between 2012-2014.

Count 1 pertains to a closed session meeting of the Indian Wells City Council in 2014. One of the agenda items called for a confidential conference with the city's legal counsel regarding anticipated litigation. The matter involved a claim for damages against the city and certain officials for defamation. Hanson was required to recuse himself and leave the room because he had a landlord-tenant relationship with the claimant—who was a source of income to Hanson. Hence, Hanson had a conflict of interest in the discussion and decision-making process. Although Hanson recused himself from voting, he refused to leave the room—even when he was asked/told to leave and told words to the effect that he should not be there due to his conflict of interest (by the city attorney and the other council members who were present). This was a violation of the Act's disqualification/recusal requirements, and it had a chilling effect on any discussion of the agenda item by the other council members—who were unwilling to discuss the matter in the presence of Hanson due to his conflict of interest and his relationship with the claimant.

Counts 2 through 9 pertain to Hanson's 2012 re-election campaign. These counts involve failure to comply with the Act's campaign reporting requirements; violation of the rule requiring candidates to use a single, designated campaign bank account; unlawful use of cash to make campaign expenditures; unlawful making and acceptance of cash contributions; and failure to keep required committee records.

The Accusation requests a monetary penalty of up to \$5,000 per count—for a total monetary penalty in an amount not to exceed \$45,000.

⁴ See Section 11517, subdivision (c)(2).

V. CONCLUSION

If the Commission agrees with the recommendation in this memorandum, an ALJ will be appointed to hear the case and issue a proposed decision for the Commission's review and approval. If two or more Commissioners elect to hear the case, the matter will be scheduled for a hearing before the Commission when an ALJ is available.

City of
Council
Meeting
Agenda
Item 10
City Manager
Report
City Manager
Report
City Manager
Report

City of
Council
Meeting
Agenda
Item 11
City Manager
Report
City Manager
Report

City of
Council
Meeting
Agenda
Item 12
City Manager
Report
City Manager
Report

City of
Council
Meeting
Agenda
Item 13
City Manager
Report
City Manager
Report

Agenda

City of
Council
Meeting
Agenda
Item 14
City Manager
Report
City Manager
Report

ATTACHMENT 1

City of
Council
Meeting
Agenda
Item 15
City Manager
Report
City Manager
Report

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Attorneys for Complainant
6

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of

12 DOUGLAS HANSON, COMMITTEE TO
RE-ELECT MAYOR DOUG HANSON
13 TO INDIAN WELLS CITY COUNCIL
2012, and M. ELENA HANSON,

14 Respondents.
15

OAH No.

FPPC Case Nos. 14/549 and 14/775

ACCUSATION

(Gov. Code, § 11503)

16 Complainant, the Enforcement Division of the Fair Political Practices Commission
17 (“Commission” or “FPPC”), alleges as follows:

18 **PARTIES**

19 1. The Commission is a state agency charged with the duty to administer, implement, and
20 enforce the provisions of the Political Reform Act. (Gov. Code, §§ 83111 and 83116.) The Political
21 Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
22 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in
23 California Code of Regulations, title 2, sections 18110 through 18997. Unless otherwise noted, all
24 statutory references are to the Government Code, and all regulatory references are to Title 2, Division 6
25 of the California Code of Regulations.

26 2. In 2012, Respondent Douglas Hanson was the Mayor of Indian Wells. He was re-elected
27 to the Indian Wells City Council on November 6, 2012. Shortly after the election, a different city council
28 person became the mayor—pursuant to newly approved Measure Q, which called for appointment of a

1 new mayor every December on a rotating basis. Hanson has continued to serve as an Indian Wells City
2 Councilman since that time, but when he sought re-election in November 2016, he was unsuccessful.

3 3. Respondent Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council
4 2012 was Hanson's candidate controlled committee.

5 4. Respondent M. Elena Hanson was the committee treasurer—and she is the wife of
6 Respondent Douglas Hanson. All references to “Hanson” are intended to refer to Respondent Douglas
7 Hanson, but at times, he is referred to as Mr. Hanson to distinguish him from his wife/treasurer, Mrs.
8 Hanson.

9 **JURISDICTION**

10 5. When the Commission determines there is probable cause for believing that the Political
11 Reform Act has been violated, it may hold a hearing in accordance with the Administrative Procedure
12 Act to determine if a violation has occurred. (Section 83116.)

13 6. On September 14, 2016, pursuant to Regulation 18361.4, subdivision (e), the Commission
14 issued an order finding that there is probable cause to believe Respondents violated the Political Reform
15 Act. A true and correct copy of the order is attached as Exhibit 1.

16 7. This Accusation was prepared and served in accordance with the terms of the order.

17 8. There is a statute of limitations in this case, which provides that the Enforcement Division
18 must serve a probable cause report on each Respondent within five years of any violation to be
19 prosecuted. (Sections 83115.5 and 91000.5.) On or about March 21, 2016, the probable cause report was
20 served on the Respondents. The violations in this case occurred less than five years prior to this date (as
21 described in more detail below).

22 **SUMMARY OF THE CASE**

23 9. This case involves nine violations of the Political Reform Act, which occurred in 2012,
24 2013, and 2014.

25 10. Count 1 pertains to a closed session meeting of the Indian Wells City Council in 2014.
26 One of the agenda items called for a confidential conference with the city's legal counsel regarding
27 anticipated litigation. The matter involved a claim for damages against the city and certain officials for
28 defamation. Hanson was required to recuse himself and leave the room because he had a landlord-tenant

1 relationship with the claimant—who was a source of income to Hanson. Hence, Hanson had a conflict of
2 interest in the discussion and decision-making process. Although Hanson recused himself from voting, he
3 refused to leave the room—even when he was asked/told to leave and told words to the effect that he
4 should not be there due to his conflict of interest (by the city attorney and the other council members who
5 were present). This had a chilling effect on any discussion of the agenda item by the other council
6 members—who were unwilling to discuss the matter in the presence of Hanson due to his conflict of
7 interest and his relationship with the claimant. As discussed in more detail later in this Accusation, this
8 was a violation of the Political Reform Act’s disqualification/recusal procedures.

9 11. Counts 2 through 9 pertain to Hanson’s 2012 re-election campaign. These counts involve
10 failure to comply with the Act’s campaign reporting requirements; violation of the rule requiring
11 candidates to use a single, designated campaign bank account; unlawful use of cash to make campaign
12 expenditures; unlawful making and acceptance of cash contributions; and failure to keep required
13 committee records.

14 12. When Hanson was seeking re-election in 2012, several other candidates were running as
15 well. According to www.smartvoter.org, the election results for the top seven candidates were:

Candidate	# of Votes
Ted Mertens	927
Douglas “Dong” Hanson	877
Ty Peabody	849
Bill Powers	774
Larry “Bear” Bonafide	692
Dana Reed	642
Haddon B. Libby	596

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22 13. Only the top three candidates were elected. Hanson placed second, beating Peabody by
23 about 28 votes. The significance of the campaign violations in this case (Counts 2 through 9)—and the
24 public harm—must be considered in the context of this very close election.

25 APPLICABLE LAW

26 14. The Political Reform Act and its regulations are amended from time to time. Most of the
27 violations in this case occurred in 2012. For this reason, all legal references and discussions of law
28 pertain to the Act’s provisions as they existed at that time—unless otherwise noted.

1 indistinguishable from the effect on the public generally and whether the official’s participation was
2 legally required—are affirmative defenses, which are not applicable to this case.)

3 21. First, the individual must be a public official. (Section 87100.) The Act defines “public
4 official” to include an employee of a local government agency. (Section 82048.)

5 22. Second, the official must make, participate in making, or attempt to use his or her official
6 position to influence a governmental decision. (Section 87100 and Regulation 18700.) For example, an
7 official makes a governmental decision when he votes on a matter—or when he obligates/commits his
8 agency to any course of action. (Regulation 18702.1, subds. (a)(1) and (3).)

9 23. Third, the official must have an economic interest that may be financially affected by the
10 governmental decision. (Sections 87100, 87103; and Regulations 18700, et seq.) There are various types
11 of economic interests that may be affected. This case involves a source of income to the public official.
12 In this regard, the Act provides that a public official has an economic interest in any person from whom
13 he has received income of \$500 or more within 12 months prior to the time when the relevant
14 governmental decision is made. (Regulation 18703.3, subd. (a)(1).) For example, a public official who is
15 a landlord has an economic interest in a tenant if that tenant paid \$500 or more to the public official
16 during the previous 12 months.

17 24. Fourth, it must be determined if the economic interest of the official is directly or
18 indirectly involved in the decision. (Regulation 18704.) A person is directly involved when that person
19 (either personally or through an agent) initiates the proceeding in which the decision will be made by
20 filing a claim, application, appeal, or the like. (Regulation 18704.1, subd. (a)(1).) Another way in which a
21 person may be directly involved is where the person is a named party in, or is the subject of, the
22 proceeding concerning the decision before the official or the official’s agency. A person is the subject of
23 a proceeding if the decision involves approval or denial of any entitlement to that person. (See
24 Regulation 18704.1, subd. (a)(2).)

25 25. Fifth, it must be determined if the governmental decision has a material financial effect on
26 the economic interest. (Sections 87100 and 87103.) In the case of an economic interest that is a directly
27 involved source of income, the financial effect is deemed to be material if it is reasonably foreseeable.
28 (Regulation 18705.3, subd. (a).)

1 26. Sixth, it must be determined if the material financial effect was reasonably foreseeable.
2 (Sections 87100 and 87103.) For purposes of an economic interest that is a named party in, or the subject
3 of, a governmental decision before the official or the official's agency, the financial effect is presumed to
4 be reasonably foreseeable. (Regulation 18706, subd. (a).)

5 27. Notably, this presumption applies even where the decision involves the *denial* of an
6 entitlement to the economic interest. This is consistent with the notion that even a decision *not* to pay
7 someone is a reasonably foreseeable financial effect. For this reason, Regulation 18706, subdivision (a),
8 provides: "A financial effect on an economic interest is presumed to be reasonably foreseeable if the
9 economic interest is a named party in, or the subject of, a governmental decision before the official or the
10 official's agency. An economic interest is the subject of a proceeding if the decision involves the
11 issuance, renewal, approval, *denial* or revocation of any license, permit, *or other entitlement* to, or
12 contract with, the economic interest. . . ." (Emphasis added.)

13 **Avoidance of Actual and Potential Conflicts of Interest through Mandatory Disqualification**

14 28. The Act provides that certain public officials who have a financial interest in a decision
15 (as discussed above) must follow a very specific disqualification/recusal procedure to avoid conflicts of
16 interest and "potential" conflicts of interest. (Section 87105.) This applies to various public officials,
17 including members of city councils. (Sections 87105, subd. (a), and 87200.)

18 29. More specifically—in July 2014—there was a disqualification/recusal procedure for
19 governmental decisions relating to an agenda item noticed for a meeting subject to the Brown Act or the
20 Bagley-Keene Act. Upon identifying a conflict of interest or even a *potential* conflict of interest, and
21 immediately prior to consideration of the matter, the official was required to do all of the following (per
22 Section 87105 and Regulation 18702.5):

- 23 ❖ Publicly identify the financial interest giving rise to the conflict of interest or potential conflict of
24 interest in detail sufficient to be understood by the public. (For governmental decisions to be
25 made during a closed session of a public meeting, it was acceptable for the public identification to
26 be made orally during the open session before the beginning of closed session.)
- 26 ❖ Recuse himself from discussing and voting on the matter.
- 27 ❖ Leave the room until after conclusion of the discussion, vote, and any other disposition of the
28 matter.

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- 1 ❖ For governmental decisions made during a closed session of a public meeting, in addition to
2 leaving the room during consideration of the matter, the public official was prohibited from
3 knowingly obtaining or reviewing a recording or any other non-public information regarding the
4 decision.

5 30. As pointed out in *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050, 1058, “It
6 is not just actual improprieties which the law seeks to forestall but also the appearance of possible
7 improprieties.” In that case, the court noted that despite a town council member’s “insistence that nothing
8 improper could come of his silent observation of the closed session, or his later acquisition of the tape,
9 we are concerned with how this might look to the public. To permit a financially interested council
10 member to be privy, unnecessarily, to confidential information which might affect his business interests
11 gives the appearance of impropriety. In our society, information is power. The council member might use
12 the confidential information to his advantage personally, or he might disclose the information improperly
13 to others interested in the decision. [Footnote omitted.] Furthermore, the disqualified member’s mere
14 presence, or knowledge thereafter, might also subtly influence the decisions of other council members
15 who must maintain an ongoing relationship with him.” (*Id.* at p. 1058.) Also, the court reiterated, “Again,
16 we are dealing with public perceptions and not actual conduct.” (*Id.*, fn. 6.) Additionally, the court noted
17 (at p. 1059):

18 In this particular case, our conclusion is based in large part on the
19 fact that the reason for the closed session was to have the town council
20 confer with legal counsel. . . . As noted in *Sutter Sensible Planning, Inc. v.*
21 *Board of Supervisors, supra*, 122 Cal.App.3d 813, 824, “there is a public
22 entitlement to the effective aid of legal counsel in civil litigation.”
23 Moreover, “[A]n attorney who cannot confer with his client outside his
24 opponent’s presence may be under insurmountable handicaps.” (*Ibid.*) In
25 the case where a council member is disqualified from participation in a
26 decision because of a financial conflict of interest, it does not appear to be
27 in the best interest of the town to have that council member present at
28 discussions between the council and its attorney concerning that decision.
The attorney, as well as the other council members, might not feel as free
to disclose everything necessary when a “biased” public official were
present. The council members and attorney might feel similarly inhibited
where they are aware that a “biased” council member can later obtain a
tape recording of the attorney-council discussion. The town might thus be
denied effective assistance of counsel.

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1 The terms “in-kind” and “non-monetary” are interchangeable. (See Section 84203.3 as compared to
2 Regulation 18421.1, subd. (f).)

3 36. For example, if you pay for goods or services for the benefit of a committee, you are
4 making an in-kind/non-monetary contribution to the committee because your money is not going directly
5 to the committee, but the committee is receiving the benefit of your money in the form of the goods or
6 services. Also, if a vendor grants a discount for goods or services to a candidate—and if the discount is
7 not available to the public generally—then the vendor is making an in-kind/non-monetary contribution to
8 the candidate. (See Section 82015, subd. (c), and Regulation 18215, subd. (b)(3).)

9 **Required Filing of Campaign Statements and Reports by Specific Deadlines**

10 37. At the core of the Act’s campaign reporting system is the requirement that committees,
11 including candidate controlled committees, must file campaign statements and reports for certain
12 reporting periods and by certain deadlines. (Sections 84200, et seq.)

13 38. For example, each candidate or committee that makes or receives a late contribution, must
14 file a late contribution report within 24 hours of making or receiving the contribution. (Section 84203,
15 subds. (a) and (b).)

16 39. A “late contribution” includes a contribution aggregating \$1,000 or more that is made or
17 received by a candidate or his controlled committee before an election, but after the closing date of the
18 last campaign statement that was required to be filed before the election. (Section 82036.) This period of
19 time before the election is referred to as the late contribution reporting period. In connection with the
20 general election that was held on November 6, 2012, the late contribution reporting period was October
21 21 through November 5, 2012.

22 40. For more information about reporting periods and filing deadlines, see the schedule
23 attached hereto as Exhibit 2—which is an official publication of the Fair Political Practices Commission
24 that was applicable to candidates for local office (and their committees) in connection with the election
25 that was held on November 6, 2012.

26 41. As for the place of filing, candidates for city office and their controlled committees are
27 required to file their campaign statements and reports with the city clerk. (Section 84215, subd. (d).)

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1 **Required Contents of Campaign Statements:**

2 **Disclosure of Receipts and Expenditures, Including Contributions and Loans**

3 42. Campaign statements are required to disclose certain information about receipts and
4 expenditures, including the following information (per Sections 84211, subs. (a), (b), (c), (f), (g), (i),
5 (k); and 84216):

- 6 ❖ the total amount of contributions received during the period covered by the campaign statement,
7 including loans, and the total cumulative amount of contributions received;
- 8 ❖ the total amount of contributions received during the period from persons who gave a cumulative
9 amount of \$100 or more, including loans—along with the following additional information about
10 each such contributor:
 - 11 ➤ the contributor's full name;
 - 12 ➤ his or her street address;
 - 13 ➤ his or her occupation;
 - 14 ➤ the name of his or her employer, or if self-employed, the name of the business;
 - 15 ➤ the date and amount received for each contribution received during the period, and if the
16 contribution is a loan, the interest rate for the loan;
 - 17 ➤ the cumulative amount of contributions;
- 18 ❖ the total amount of expenditures made during the period, including contributions/loans, and the
19 total cumulative amount of expenditures made;
- 20 ❖ the total amount of expenditures made during the period to persons who received \$100 or more,
21 including contributions/loans—along with the following information about each recipient of such
22 expenditures:
 - 23 ➤ the recipient's full name;
 - 24 ➤ his or her street address;
 - 25 ➤ the amount of each expenditure;
 - 26 ➤ a brief description of the consideration for which each expenditure was made;
 - 27 ➤ in the case of an expenditure which is a contribution to a candidate, elected officer, or
28 committee, the date of the contribution, the cumulative amount of contributions made to
that recipient, the full name of the recipient, and the office and district/jurisdiction for
which he or she seeks nomination or election;
- ❖ if the cumulative amount of loans received from or made to a person is \$100 or more and a loan
has been received from or made to a person during the period, or is outstanding during the period,
the following additional information must be reported for each such person/loan:
 - the person's full name;
 - his or her street address;
 - his or her occupation;

- the name of his or her employer, or if self-employed, the name of the business;
- the original date and amount of each loan;
- the due date and interest rate of the loan;
- the cumulative payment made or received, to date, at the end of the period;
- the balance outstanding at the end of the period; and
- the cumulative amount of contributions.

Required Reporting of Non-monetary/In-kind Contributions

43. The above reporting requirements for contributions, also apply to non-monetary/in-kind contributions. For disclosure purposes, a non-monetary/in-kind contribution is deemed to be “made” by the contributor, and “received” by the candidate or committee, on the earlier of the following dates (per Regulation 18421.1, subd. (f)):

- ❖ the date that funds are expended by the contributor for goods or services, if the specific expenditure is made at the behest of the candidate or committee; or
- ❖ the date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the goods or services, or the date that the candidate or committee otherwise receives the benefit of the expenditure.

44. If the recipient of a non-monetary/in-kind contribution (of \$100 or more) finds it difficult to estimate the fair market value of the contribution, the recipient needs to request the information from the contributor in writing. When such a request is made, the contributor is required by law to report the value to the recipient in writing. (Section 84300, subd. (d).)

Required Reporting of Reimbursed Expenditures

45. In some cases, expenditures may be made on behalf of a committee by a volunteer or paid employee of the committee, using that person’s personal funds. The Act provides that such expenditures may be reimbursed by the committee and will be deemed expenditures from the campaign bank account if the committee treasurer is provided with a dated receipt and a written description of each expenditure prior to reimbursement—provided that reimbursement is paid within 45 days. (Regulation 18526, subd. (a).)

46. However, specific reporting requirements apply. For expenditures totaling \$100 or more in a filing period, the expenditures by the person to be reimbursed must be reported by the candidate/committee on the campaign statement for the filing period during which the expenditures are

1 made. Additionally, when the person is reimbursed, the reimbursement must be reported on the campaign
2 statement for the filing period during which the reimbursement is made. (See Regulation 18526, subd.
3 (c).)

4 **Required Reporting of Accrued Expenses**

5 47. For reporting purposes, an expenditure is deemed to be made on the date the payment is
6 made or on the date consideration, if any, is received, whichever is earlier. (Sections 82025 and 82044.)
7 When goods or services are received first—and payment is not made until later—the expenditure is
8 known as an “accrued expense.” These types of unpaid bills must be disclosed as accrued expenses when
9 the goods/services first are provided/rendered. (Regulation 18421.6, subd. (b).) This rule helps prevent
10 candidates and committees from hiding campaign spending until after the election. Accrued expenses
11 (excluding loans) that remain outstanding must be reported on each campaign statement until they are
12 extinguished. (Regulation 18421.6, subd. (a).)

13 48. If the exact amount of an accrued expense is not known, the campaign filing for that
14 reporting period must state that the amount reported is an estimate. Once the exact amount is determined,
15 the filings containing the estimate must be amended—or in the alternative, the correct amount may be
16 disclosed on the campaign filing for the reporting period in which the exact amount is determined. (See
17 Regulation 18421.6, subd. (b).)

18 **Required Contents of Late Contribution Reports**

19 49. The above disclosure requirements pertain to campaign statements, including semi-annual
20 campaign statements and pre-election campaign statements—both of which are filed on what is called a
21 Form 460. For contributions of \$1,000 or more that are made or received during the late reporting period
22 (which was the last 16 days before the election in 2012), a different type of filing, known as a late
23 contribution report or a Form 497, is required. With respect to the required contents of late contribution
24 reports, the recipient of a late contribution must report (per Section 84203, subd. (a)):

- 25 ❖ his or her full name and street address;
- 26 ❖ the date and amount of the late contribution;
- 27 ❖ whether the contribution was made in the form of a loan;
- 28 ❖ the full name of the contributor; and

- 1 ❖ the contributor's street address, occupation, and the name of the contributor's employer, or if self-
2 employed, the name of the business.

3 **One Bank Account Rule**

4 50. The Act requires campaign funds to be segregated from non-political, personal accounts
5 and kept in a single, designated campaign bank account. (Section 85201.) All contributions or loans
6 made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee
7 must be deposited into this account. (Section 85201, subd. (c).) Any personal funds that will be utilized
8 to promote the election of the candidate must be deposited into the account prior to expenditure. (Section
9 85201, subd. (d).) All campaign expenditures must be made from the account. (Section 85201, subd. (e).)
10 At times, this is referred to as the one bank account rule.

11 51. There is an exception for volunteers or paid employees of a committee—who may use
12 their personal funds to make expenditures on behalf of the committee and later be reimbursed (as
13 described in more detail above). However, this exception does not apply to candidates. (See Section
14 85201, subds. (a), (c), (d), (e); and Regulation 18526.) Because of the one bank account rule, personal
15 funds of candidates must first be deposited into the campaign bank account prior to expenditure;
16 candidates may not make campaign-related expenditures from personal funds and be reimbursed.

17 **Prohibition Against Cash Contributions and Expenditures of \$100 or More**

18 52. The Act provides that no campaign contribution of \$100 or more may be made or received
19 in cash. (Section 84300, subd. (a).) Also, no campaign expenditure of \$100 or more may be made in
20 cash. (Section 84300, subd. (b).)

21 **Recordkeeping Requirements**

22 53. It is the duty of each candidate, treasurer, and elected officer to maintain detailed
23 accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that
24 campaign statements properly were filed, and to otherwise comply with the Act's campaign disclosure
25 provisions. (Section 84104.) This duty includes maintenance of detailed information and original source
26 documentation for a period of four years following the date the campaign statement to which they relate
27 is filed. (Regulation 18401, subds. (a) and (b)(2).)

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1 54. For example, for a contribution received of \$100 or more, the accounts and records must
2 contain (per Regulation 18401, subd. (a)(3)):

- 3 ❖ a continuous computation of campaign account balances;
- 4 ❖ a listing that reflects the dates and daily totals of the contributions;
- 5 ❖ the amount of each contribution, and the full name and street address of the contributor;
- 6 ❖ the occupation and employer (or, if self-employed, the name of the principal place of business) of
7 the contributor;
- 8 ❖ the cumulative amount received from the contributor;
- 9 ❖ specification as to whether the contribution is monetary or nonmonetary;
- 10 ❖ in the case of a non-monetary/in-kind contribution, the fair market value also must be recorded,
11 along with a description of the goods or services received;
- 12 ❖ if a contribution is received through an intermediary or agent, the accounts and records also must
13 contain the full name and street address, occupation, and employer (or, if self-employed, the
14 name of the principal place of business) of the intermediary or agent and of the true source of the
15 contribution;
- 16 ❖ original source documentation must include all bank statements, check registers, check stubs,
17 bank or passbooks, and any other records reflecting a continuous computation of campaign
18 account balances in any savings or checking account, money market account, certificate of
19 deposit, credit card account, or any other campaign account, in any bank or other financial
20 institution, plus:
 - 21 ➤ copies of contributor checks, cashier's checks, money orders, wire transfers, deposit or
22 duplicate deposit slips, and any other documents, reflecting all items deposited, and all
23 deposits made, to any campaign account, in any bank or other financial institution;
 - 24 ➤ contributor cards, letters of transmittal, and notices received from contributors;
 - 25 ➤ in the case of a nonmonetary contribution, if the contributor has not provided the value of
26 the nonmonetary contribution, the original source documentation also must include a
27 memorandum or other record describing the method used to determine the value of the
28 goods or services contributed;
 - in the case of contributions made through wire transfer, credit card transaction, debit
 account transaction, or similar electronic payment option, the original source
 documentation also must include all credit card receipts, transaction slips or other writings
 signed by the contributor, credit card vouchers, and other documentation of credit card
 transactions, including credit card confirmation numbers and itemized transaction reports,
 as well as any other information collected when debiting the contributor's account;
 - in the case of contributions made through electronic transactions via the Internet, original
 source documentation also must include a record of the transaction created and
 transmitted by the cardholder, including the name of the cardholder, the cardholder's
 address and the card number; and
 - all communications caused to be sent by the candidate, treasurer, elected officer, or
 committee to secure the foregoing information.

1 55. For an expenditure of \$25 or more, or a series of payments for a single product or service
2 totaling \$25 or more, the accounts and records must contain (per Regulation 18401, subd. (a)(4)):

- 3 ❖ the date the expenditure was made, the amount of the expenditure, the full name and street
4 address of the payee, and a description of the goods or services for which each expenditure was
5 made;
- 6 ❖ if the person or vendor providing the goods or services is different from the payee, the accounts
7 and records also must contain the same detailed information for that person or vendor;
- 8 ❖ original source documentation must include cancelled checks, wire transfers, credit card charge
9 slips, bills, receipts, invoices, statements, vouchers, and any other documents reflecting
10 obligations incurred by the candidate, elected officer, campaign treasurer, or committee, and
11 disbursements made from any checking or savings account, or any other campaign accounts, in
12 any bank or other financial institution;
- 13 ❖ but in lieu of cancelled checks, the original source documentation may consist of copies of
14 cancelled checks that contain a legible image of the front and back of the cancelled check,
15 provided the copy was obtained from the financial institution.

16 56. For a loan made or received, the accounts and records must contain the same items
17 described above as for contributions received of \$100 or more. However, original source documentation
18 requirements for loans are different than the requirements for contributions. For loans, original source
19 documentation must include promissory notes, extensions of credit, security agreements, loan guarantees,
20 and all other documents reflecting the indebtedness. Plus, the accounts and records must include the
21 interest rate and due date, if any, of the loan, and the full name and street address of any guarantor, or any
22 person liable directly, indirectly, or contingently for the loan. (See Regulation 18401, subd. (a)(7).)

23 **Joint and Several Liability of Candidate, Committee and Treasurer**

24 57. It is the duty of a committee treasurer to ensure that the committee complies with the Act.
25 (Sections 81004, 84100, and Regulation 18427.) A treasurer may be held jointly and severally liable,
26 along with the candidate and the committee, for violations committed by the committee. (Sections
27 83116.5 and 91006.)

28 **Penalty for Violations of the Political Reform Act**

 58. Each violation of the Act is punishable by imposition of a monetary penalty of up to
\$5,000 per violation, which must be paid to the General Fund of the State of California. (Section 83116,
subd. (c).)

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1 **Factors to be Considered by the Commission and Administrative Law Judge**

2 59. Regulation 18361.5, subdivision (d), provides:

3 In framing a proposed order following a finding of a violation
4 pursuant to Government Code section 83116, the Commission and the
5 administrative law judge shall consider all the surrounding circumstances
6 including but not limited to:

7 (1) The seriousness of the violation;

8 (2) The presence or absence of any intention to conceal, deceive or
9 mislead;

10 (3) Whether the violation was deliberate, negligent or inadvertent;

11 (4) Whether the violator demonstrated good faith by consulting the
12 Commission staff or any other government agency in a manner not
13 constituting a complete defense under Government Code section 83114(b);

14 (5) Whether the violation was isolated or part of a pattern and
15 whether the violator has a prior record of violations of the Political Reform
16 Act or similar laws; and

17 (6) Whether the violator, upon learning of a reporting violation,
18 voluntarily filed amendments to provide full disclosure.

19 **VIOLATIONS OF THE ACT**

20 60. All of the foregoing paragraphs are incorporated by reference, as if in full, into each of the
21 counts set forth below.

22 Count 1:	Closed Session Disqualification/Recusal Matter (Section 87105)
23 Respondent:	Douglas Hanson

24 61. On or about July 17, 2014, a special meeting of the Indian Wells City Council was held.

25 62. Item 4 of the agenda for this meeting included multiple matters to be discussed in closed
26 session pursuant to the Brown Act (Gov. Code, §§ 54950-54963). Two of these matters were identified in
27 the agenda as: "Conference with Legal Counsel Regarding Anticipated Litigation. Significant Exposure
28 to Litigation Pursuant to Government Code Section 54956.9(d)(2). Number of Potential Case: 2*." The
citation to Government Code section 54956.9 is a reference to the portion of the Brown Act that extends
the attorney-client privilege to such closed session conferences—making them confidential. (See Gov.
Code, § 54956.9, subd. (b): "This section is the exclusive expression of the lawyer-client privilege for
purposes of conducting closed-session meetings pursuant to this chapter.")

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1 63. According to city records and witness statements of those in attendance, one of the
2 potential cases to be discussed at this confidential, closed session conference was a written claim for
3 damages against the city, former Councilman Bill Powers, and then-Mayor Pro Tem Ty Peabody for
4 libel, defamation of character, and harassment. (The claim had been presented to the City of Indian Wells
5 on or about July 2, 2014.)

6 64. The claimant, Randall Nolen, alleged that Powers and Peabody came to the Nolen home
7 and falsely accused Nolen—in front of his wife—of criminal activity in connection with anonymous “hit
8 piece” mass mailers that opposed six candidates for Indian Wells City Council in 2012. (These mailers
9 were the subject of a Commission-approved stipulation in the matter of Haddon Libby, FPPC Case No.
10 12/880.)

11 65. According to city records, at the time of the closed session meeting, the Indian Wells City
12 Council consisted of Mayor Ted Mertens, Mayor Pro Tem Ty Peabody, Councilman Patrick Mullany,
13 Councilwoman Mary Roche, Councilman Hanson—and the city attorney was Stephen Deitsch.

14 66. The purpose of the closed session conference was to allow the city council to have a
15 confidential, frank discussion with the city attorney about the Nolen claim before deciding how to
16 proceed on the claim. Reasonably, this would have included discussions and advice about legal strategy,
17 the city’s exposure/liability, the probable truth or falsity of the alleged defamatory statements, suspicions
18 about who may have been behind the underlying anonymous mass mailers, areas to suggest for
19 investigation to the city’s claims administrator if the Nolen claim were to be denied, and a vote regarding
20 approval or denial of the Nolen claim.

21 67. Since then-Mayor Pro Tem Peabody had a conflict of interest, he recused himself from the
22 closed session meeting regarding the Nolen claim and did not attend.

23 68. Hanson also had a conflict of interest—as discussed in the following six-step analysis.
24 (The legal citations below are intended to refer to statutes and regulations—as they were in effect on July
25 17, 2014.)

26 69. The first step of a conflict of interest analysis is to determine if an individual is a public
27 official. (Section 87100.) In this case, Hanson was a public official because he was an employee of a
28 local government agency. (Section 82048.)

1 70. Second, the official must make, participate in making, or attempt to use his or her official
2 position to influence a governmental decision. (Section 87100 and Regulation 18700.) In this case, the
3 confidential conference regarding the Nolen claim was going to involve the entire spectrum of making,
4 participating in making, and influencing a governmental decision because it was going to culminate in a
5 vote of some kind—whether to approve or deny the Nolen claim, whether to recommend certain areas for
6 investigation to the city’s claims administrator, etc. (See Regulation 18702.1, subds. (a)(1) and (3), which
7 provides that an official makes a governmental decision when he votes on a matter—or when he
8 obligates/commits his agency to any course of action.)

9 71. Third, the official must have an economic interest that may be financially affected by the
10 governmental decision. (Sections 87100, 87103; and Regulations 18700, et seq.) There are various types
11 of economic interests that may be affected. For example, the Act provides that a public official has an
12 economic interest in any person from whom he has received income of \$500 or more within 12 months
13 prior to the time when the relevant governmental decision is made. (Regulation 18703.3, subd. (a)(1).) At
14 the time of the closed session meeting, Hanson rented a home to the claimant, Nolen, who was one of
15 Hanson’s tenants. Records reflect that pursuant to this landlord-tenant relationship, Nolen had been
16 paying rent to Hanson in the approximate amount of \$1,500 per month for years. For this reason, Hanson
17 had an economic interest in Nolen.

18 72. Fourth, it must be determined if the economic interest of the official is directly or
19 indirectly involved in the decision. (Regulation 18704.) A person is directly involved when that person
20 (either personally or through an agent) initiates the proceeding in which the decision will be made by
21 filing a claim, application, appeal, or the like. (Regulation 18704.1, subd. (a)(1).) In this case, Nolen was
22 directly involved in the proceeding regarding his claim for damages because he initiated the proceeding
23 by filing his claim.

24 73. Another way in which a person may be directly involved is where the person is a named
25 party in, or is the subject of, the proceeding concerning the decision before the official or the official’s
26 agency. A person is the subject of a proceeding if the decision involves approval or denial of any
27 entitlement to that person. (See Regulation 18704.1, subd. (a)(2).) In this case, Nolen also was directly
28 involved because he was a named party for purposes of his own claim for damages. Additionally, he was

1 directly involved for the separate reason that he was the subject of the proceeding—since the decision
2 was going to involve approval or denial of his claim.

3 74. Fifth, it must be determined if the governmental decision has a material financial effect on
4 the economic interest. (Sections 87100 and 87103.) In the case of an economic interest that is a directly
5 involved source of income—like Nolen—the financial effect is *deemed* to be material if it is reasonably
6 foreseeable. (Regulation 18705.3, subd. (a).)

7 75. Sixth, it must be determined if the material financial effect was reasonably foreseeable.
8 (Sections 87100 and 87103.) For purposes of an economic interest that is a named party in, or the subject
9 of, a governmental decision before the official or the official's agency, the financial effect is *presumed* to
10 be reasonably foreseeable. (Regulation 18706, subd. (a).)

11 76. Notably, this presumption applies even where the decision involves the *denial* of an
12 entitlement to the economic interest. This is consistent with the notion that even a decision *not* to pay
13 someone is a reasonably foreseeable financial effect. For this reason, Regulation 18706, subdivision (a),
14 provides: “A financial effect on an economic interest is presumed to be reasonably foreseeable if the
15 economic interest is a named party in, or the subject of, a governmental decision before the official or the
16 official's agency. An economic interest is the subject of a proceeding if the decision involves the
17 issuance, renewal, approval, *denial* or revocation of any license, permit, *or other entitlement* to, or
18 contract with, the economic interest. . . .” (Emphasis added.)

19 77. In this case, reasonable foreseeability is *presumed* because Nolen was a named party for
20 purposes of his own claim for damages. Also, reasonable foreseeability is *presumed* for the separate
21 reason that Nolen was the subject of the proceeding—since the decision was to involve approval or
22 denial of his claim for damages.

23 78. As outlined in the foregoing six-step analysis, at the outset of the closed session
24 conference regarding the Nolen claim, Hanson had a conflict of interest.

25 79. For this reason, he was required to follow a very specific disqualification/recusal
26 procedure to avoid conflicts of interest and “potential” conflicts of interest. (Section 87105.)

27 80. Specifically—in July 2014—there was a disqualification/recusal procedure for
28 governmental decisions relating to an agenda item noticed for a meeting subject to the Brown Act (as in

1 the case of the Nolen claim). Per Section 87105 and Regulation 18702.5 (as they were in effect on July
2 17, 2014), Hanson was required to do all of the following:

- 3 ❖ Publicly identify the financial interest giving rise to his conflict of interest or potential conflict of
4 interest in detail sufficient to be understood by the public. For governmental decisions to be made
5 during a closed session of a public meeting, it was acceptable for the public identification to be
6 made orally during the open session before the beginning of closed session.
- 7 ❖ Recuse himself from discussing and voting on the matter.
- 8 ❖ Leave the room until after conclusion of the discussion, vote, and any other disposition of the
9 matter.
- 10 ❖ For governmental decisions made during a closed session of a public meeting, in addition to
11 leaving the room during consideration of the matter, the public official was prohibited from
12 knowingly obtaining or reviewing a recording or any other non-public information regarding the
13 decision.

14 81. As part of the Enforcement Division's investigation, statements were obtained from each
15 city council member—as well as City Attorney Deitsch. According to these statements, at the closed
16 session conference regarding the Nolen claim, the city attorney advised Hanson to recuse himself and
17 leave the room due to his conflict of interest—but Hanson refused to do so. The other council members
18 (Mertens, Mullany, and Roche) also stated that Hanson had a conflict of interest, and they asked him to
19 leave the room, but Hanson refused to do so.

20 82. At this meeting, at least some of the council members had concerns or suspicions about
21 the relationship between Hanson and Nolen—and the potential involvement of Hanson and Nolen with
22 the 2012 “hit piece” mailers. The city council was entitled to discuss these concerns or suspicions with
23 City Attorney Deitsch at the closed session conference since the truth is a defense to defamation, and the
24 Nolen claim included allegations of libel and defamation of character, which would turn upon whether
25 Nolen actually was involved with the unlawful mailers. However, Hanson's refusal to leave the room had
26 a chilling effect on any discussion of the Nolen claim by the other council members—who were
27 unwilling to discuss the claim in the presence of Hanson due to his conflict of interest, his relationship
28 with the claimant, and concerns that Hanson might divulge confidential, attorney-client discussions to
others outside of closed session. (These are legitimate concerns, which are discussed in *Hamilton v.*
Town of Los Gatos (1989) 213 Cal.App.3d 1050, 1059.)

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1 83. For these reasons, discussion of the merits of the Nolen claim did not occur. Most of the
2 meeting was spent arguing about Hanson needing to leave the room, and ultimately, the city council
3 voted to deny/reject the Nolen claim subject to concurrence by the city's claims administrator. Although
4 Hanson did recuse himself from voting—he refused to leave the room or otherwise acknowledge his
5 conflict.

6 84. In this way, Hanson violated the disqualification/recusal procedure set forth in Section
7 87105 and Regulation 18702.5 (as it was in effect in July 2014), which provide, among other things, that
8 a public official with a conflict of interest or a potential conflict of interest must not be present when the
9 decision is being considered in closed session or knowingly obtain or review a recording or any other
10 non-public information regarding the governmental decision. Since the meeting, Hanson has admitted to
11 this violation—as follows:

- 12 ❖ Following the closed session meeting in question, City Attorney Deitsch requested advice from
13 the Fair Political Practices Commission regarding Hanson's conflict of interest (by way of a letter
dated July 28, 2014). A true and correct copy of this letter is attached as Exhibit 3.
- 14 ❖ Also, Hanson made a similar request (by way of a letter dated July 29, 2014). A true and correct
15 copy of this letter is attached as Exhibit 4.
- 16 ❖ On or about August 4, 2014, the Fair Political Practices Commission's General Counsel, Zackery
17 P. Morazzini—and Assistant General Counsel, John W. Wallace—issued an official advice letter
in response to the foregoing requests from Hanson and Deitsch. A copy of this letter is attached as
Exhibit 5.
- 18 ❖ On August 7, 2014, Hanson wrote an email to City Attorney Deitsch. In the email, Hanson stated,
19 "As you know, I asked the FPPC for a ruling as to whether I had a conflict of interest regarding
20 the Nolen claim because he rents a house from me. [¶] They found that because he pays rent to
me and my wife, this is a conflict situation. [¶] Therefore, should the Nolen claim ever appear on
21 any future council agenda, closed or open session, I will recuse myself and leave the room when
the matter is first introduced."

22 Count 2:	Campaign Reporting Violations – Reporting Period of January 1 through June 30, 2012 (Section 84211)
23 Respondents:	Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to 24 Indian Wells City Council 2012, and M. Elena Hanson 25

26 85. On or about July 31, 2012, Hanson, his committee, and the committee's then-treasurer,
27 Mrs. Hanson, filed a semi-annual campaign statement for the reporting period of January 1 through June
28 30, 2012 (mistakenly denoted by them as the reporting period of May 29 through June 30, 2012).

1 However, the campaign filing failed to comply with the reporting requirements of Section 84211 in
2 multiple ways, including, but not limited to:

- 3 ❖ On or about May 11, 2012, Hanson used his personal checking account to make a committee
4 expenditure in the amount of \$977.85 to High Tech Mailing. He claims this was a loan to his
5 committee. This transaction was required to be reported on the campaign statement filed for the
6 period ending June 30, 2012 as a committee expenditure and as a contribution/loan from Hanson
7 to his committee—by the deadline of July 31, 2012—but it was not reported on the filing. Instead,
8 the expenditure was reported late—on a campaign statement filed for the period ending
9 September 30, 2012. Even then, no mention was made that the payment was a loan by Hanson to
10 his committee.
- 11 ❖ On or about June 11, 2012, the committee debit card was charged in the amount of \$140.06 for a
12 transaction with Staples. This campaign expenditure was required to be reported on the campaign
13 statement filed for the period ending June 30, 2012 by the deadline of July 31, 2012, but it was
14 not reported on the filing.

15 86. In this way, Hanson, his committee, and Mrs. Hanson violated the campaign reporting
16 requirements of Section 84211.

17	Count 3:	Campaign Reporting Violations – Reporting Period of July 1 18 through September 30, 2012 (Section 84211)
19	Respondents:	Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to 20 Indian Wells City Council 2012, and M. Elena Hanson

21 87. On or about October 5, 2012, Hanson, his committee, and Mrs. Hanson filed a pre-
22 election campaign statement for the reporting period of July 1 through September 30, 2012. However, the
23 campaign filing failed to comply with the reporting requirements of Section 84211 in multiple ways,
24 including, but not limited to:

- 25 ❖ On or about July 30, 2012, Hanson used the committee checking account to make a campaign
26 expenditure in the amount of \$200. The check was made payable to “CASH,” and it was cashed
27 by a person named Ed Carter. This campaign expenditure was required to be reported on the
28 campaign statement filed for the period ending September 30, 2012 by the deadline of October 5,
2012. Also, the reported information was required to include accurate identification of the payee.
Although the expenditure was reported, the payee falsely was reported as Ann Adams—not
“CASH.” (This false reporting served to conceal the unlawful nature of this cash transaction, as
discussed more fully in Count 8).
- ❖ On or about August 1, 2012, Hanson made a contribution in the amount of \$2,000 to his own
committee. This contribution was required to be reported on the campaign statement filed for the
period ending September 30, 2012 by the deadline of October 5, 2012, but it was not reported on
the filing. Instead, the contribution was reported late—in June 2014, well after the election—on
an amended campaign statement.

- 1 ❖ Hertz Rental Car records reflect that on August 24, 2012, Ed Carter rented a Fiat. At the time, the
 2 estimated rental period was from August 24 through October 24, 2012. The estimated credit card
 3 charge was \$1,215. When Carter rented the Fiat, he added Hanson as an additional driver.
 4 Carter's rental of the Fiat was for political purposes. When interviewed, Carter admitted that he
 5 rented the Fiat for Hanson so that Hanson could put a car wrap on it. On or about August 27,
 6 2012 (three days after the Fiat was rented), Hanson did in fact pay to have the Fiat wrapped in a
 7 political car wrap, which prominently advertised Hanson's 2012 re-election campaign. When
 8 asked why Hanson did not put the wrap on his own car, Carter stated words to the effect: "Have
 9 you ever seen those little Fiats? They are just as cute as they can be." Carter went on to say words
 10 to the effect that a big car would not attract the same attention as a little Fiat. Under these
 11 circumstances, Carter's rental of the Fiat for Hanson was a non-monetary contribution to
 12 Hanson's campaign with an estimated value at the time of \$1,215. Receipt of this contribution
 13 was required to be reported on the campaign statement filed for the period ending September 30,
 14 2012 by the deadline of October 5, 2012, but it was not reported on the filing.
- 15 ❖ According to financial records provided by Hanson, he paid \$1,400 to AdRhythm for the above-
 16 described Fiat car wrap on or about August 27, 2012—using a committee credit card. (This was
 17 reported as a committee expenditure.) The Fiat car wrap read, in part, "Re-Elect Mayor Hanson."
 18 According to a declaration signed under penalty of perjury by Soterios Anagnostou, co-owner of
 19 AdRhythm, Hanson asked if the price of the political car wrap could be negotiated—and
 20 Anagnostou gave Hanson a discount in the amount of \$800 (charging only \$1,400 instead of
 21 \$2,200) specifically because Hanson was a city official and Anagnostou wanted to help out the
 22 community. Also, on a different vehicle for Hanson, Anagnostou provided a window wrap that
 23 read in part, "Re-Elect Mayor Doug Hanson." This additional wrap was provided free of charge.
 24 Normally, it would have cost approximately \$150. In this manner, Hanson received a discount of
 25 at least \$800 from AdRhythm (and potentially as much as \$950), which was not available to the
 26 general public. Under these circumstances, the discount was a non-monetary contribution from
 27 AdRhythm to Hanson's campaign. This contribution was required to be reported on the campaign
 28 statement filed for the period ending September 30, 2012 by the deadline of October 5, 2012, but
 it was not reported on the filing.

88. In this way, Hanson, his committee, and Mrs. Hanson violated the campaign reporting requirements of Section 84211.

Count 4:	Campaign Reporting Violations – Reporting Period of October 1 through October 20, 2012 (Section 84211)
Respondents:	Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson

89. On or about October 25, 2012, Hanson, his committee, and Mrs. Hanson filed a pre-election campaign statement for the reporting period of October 1 through October 20, 2012. However, the campaign filing failed to comply with the reporting requirements of Section 84211 in multiple ways, including, but not limited to:

- ❖ During the reporting period of October 1 through October 20, 2012, the Printing Place printed and mailed several thousand political postcards and letters on behalf of Hanson and his committee. Ultimately, Hanson's committee paid approximately \$4,196 to the Printing Place for these mailings—but not until after the election. Prior to the election, these mailings were required to be reported as an accrued expense (unpaid bill) on the campaign statement filed for the period ending October 20, 2012 by the deadline of October 25, 2012, but this accrued expense was not reported on the filing.
- ❖ On or about October 3, 2012, Hanson made a contribution in the form of a loan in the amount of \$500 to his own committee. This was required to be reported on the campaign statement filed for the period ending October 20, 2012 by the deadline of October 25, 2012, but it was not reported on the filing.
- ❖ On or about October 9, 2012, an expenditure in the amount of \$229.41 was incurred by Hanson's committee for a transaction with Good Stuff Pizza. This campaign expenditure was required to be reported on the campaign statement filed for the period ending October 20, 2012 by the deadline of October 25, 2012, but it was not reported on the filing.
- ❖ On or about October 16, 2012, Hanson used his personal debit card to make two campaign expenditures in the amounts of \$190.70 and \$137.88 for two transactions with OfficeMax. He claims these were loans to his committee. These payments, totaling \$328.58, should have been reported on the campaign statement filed for the period ending October 20, 2012 as campaign expenditures and as contributions/loans from Hanson to the committee—by the deadline of October 25, 2012—but they were not reported on the filing. Instead, they were reported late, well after the election—on a campaign statement filed in 2013 for the period ending December 31, 2012.
- ❖ On or about October 16, 2012, Hanson provided personal cash in the amount of \$500 to his wife/treasurer, Mrs. Hanson, and she spent the money on postage on behalf of the committee. However, the postal charges totaled \$810. Mrs. Hanson used her personal debit card to pay the excess amount of \$310. Councilman Hanson used personal cash to reimburse her in the amount of \$310. He claims both payments to his wife, totaling \$810, were loans to the committee. These transactions were required to be reported on the campaign statement filed for the period ending October 20, 2012 as campaign expenditures, reimbursement to Mrs. Hanson, and as contributions/loans from Councilman Hanson to his committee—by the deadline of October 25, 2012—but they were not reported on the filing. Instead, the expenditures were reported late, well after the election—on a campaign statement filed in 2013 for the period ending December 31, 2012. Even then, no mention was made of the reimbursement to Mrs. Hanson.

90. In this way, Hanson, his committee, and Mrs. Hanson violated the campaign reporting requirements of Section 84211.

Count 5:	Failure to File Late Contribution Report (Section 84203)
Respondents:	Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson

91. On or about October 26, 2012, Hanson's committee received a contribution in the amount of \$1,000 from Donna McMillan. Hanson, his committee, and Mrs. Hanson were required to report

1 receipt of this contribution by filing a late contribution report (Form 497) within 24 hours, but they failed
2 to do so.

3 92. In this way, Hanson, his committee, and Mrs. Hanson violated the 24-hour reporting
4 requirements of Section 84203.

5	Count 6:	Campaign Reporting Violations – Reporting Period of October 21 through December 31, 2012 (Section 84211)
6	Respondents:	Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson
7		
8		

9 93. On or about January 31, 2013, Hanson, his committee, and Mrs. Hanson filed a semi-
10 annual campaign statement for the reporting period of October 21 through December 31, 2012
11 (mistakenly denoted by them as the reporting period of October 1 through December 31, 2012).
12 However, the campaign filing failed to comply with the reporting requirements of Section 84211 in
13 multiple ways, including, but not limited to:

- 14 ❖ On or about October 23 and 25, 2012, Mrs. Hanson spent personal funds totaling approximately
15 \$238.35 on groceries on behalf of the committee for a meet and greet. On or about October 25,
16 2012, Councilman Hanson used personal cash to reimburse Mrs. Hanson for the expenditures.
17 This was required to be reported on the campaign statement filed for the period ending December
18 31, 2012 as a campaign expenditure, as a reimbursement to Mrs. Hanson, and as a contribution
19 from Councilman Hanson to his own committee—by the deadline of January 31, 2013, but this
20 disclosure was not provided on the filing. Instead, the expenditure was reported late (on an
21 amendment filed on or about March 4, 2013) as a committee payment to Mrs. Hanson for a meet
22 and greet.
- 23 ❖ During the reporting period of October 21 through December 31, 2012, a committee expenditure
24 was made to High Tech Mailing in the amount of \$802.53. This campaign expenditure was
25 required to be disclosed on the campaign statement filed for the period ending December 31,
26 2012 by the deadline of January 31, 2013, but it was not reported on the filing. Instead, the
27 expenditure was reported late—on an amendment filed on or about March 4, 2013.
- 28 ❖ On or about December 27, 2012, Hanson made two campaign expenditures to the Printing Place
in the amounts of \$1,500 and \$921 with checks drawn on his personal checking account. (These
were partial payments to cover the accrued expense that totaled approximately \$4,196, which is
described in Count 4 above.) He claims these payments were loans to his committee. These
payments, totaling \$2,421, were required to be reported on the campaign statement filed for the
period ending December 31, 2012 as campaign expenditures and as contributions/loans from
Hanson to the committee—by the deadline of January 31, 2013—but they were not reported on
the filing. Instead, they were reported late—on an amendment filed on or about March 4, 2013.
- ❖ During the reporting period of October 21 through December 31, 2012, another committee
expenditure was made to the Printing Place in the amount of \$1,775. (This payment covered the

1 balance of the accrued expense that totaled approximately \$4,196, which is referenced in the
2 immediately preceding paragraph.) This campaign expenditure was required to be disclosed on
3 the campaign statement filed for the period ending December 31, 2012 by the deadline of January
4 31, 2013, but it was not reported on the filing. Instead, the expenditure was reported late—on an
5 amendment filed on or about March 4, 2013.

6 94. In this way, Hanson, his committee, and Mrs. Hanson violated the campaign reporting
7 requirements of Section 84211.

8 Count 7:	Violation of the One Bank Account Rule (Section 85201)
9 Respondent:	Douglas Hanson

10 95. In connection with Hanson's candidacy for re-election to the Indian Wells City Council in
11 2012, Hanson violated the one bank account rule in multiple ways, including, but not limited to:

- 12 ❖ On or about May 11, 2012 (as described in Count 2), Hanson used his personal checking account
13 to make a campaign expenditure in the amount of \$977.85 to High Tech Mailing. This was a
14 contribution/loan to his committee. For this to be lawful, Hanson was required to deposit the
15 contribution/loan into his campaign bank account, and the committee expenditure should have
16 been paid from the campaign account. However, he failed to do this.
- 17 ❖ On or about October 16, 2012 (as described in Count 4), Hanson used his personal debit card to
18 make two campaign expenditures in the amounts of \$190.70 and \$137.88 for two transactions
19 with OfficeMax. These were contributions/loans to his committee. For this to be lawful, Hanson
20 was required to deposit the contributions/loans into his campaign bank account, and the
21 committee expenditures should have been paid from the campaign account. However, he failed to
22 do this.
- 23 ❖ On or about October 16, 2012 (as described in Count 4), Hanson provided personal cash in the
24 amount of \$500 to his wife/treasurer, Mrs. Hanson, and she spent the money on postage on behalf
25 of the committee. However, the postal charges totaled \$810. Mrs. Hanson used her personal debit
26 card to pay the excess amount of \$310. Councilman Hanson used personal cash to reimburse her
27 in the amount of \$310. Both payments to Mrs. Hanson, totaling \$810, were contributions/loans
28 from Councilman Hanson to the committee. To avoid violating the one bank account rule,
Hanson should have deposited the contributions/loans into his campaign bank account, and the
payments to his wife should have been paid from the campaign account. However, he failed to do
this.
- ❖ On or about October 23 and 25, 2012 (as described in Count 6), Mrs. Hanson spent personal
funds totaling approximately \$238.35 on groceries on behalf of the committee for a meet and
greet. On or about October 25, 2012, Councilman Hanson used personal cash to reimburse Mrs.
Hanson for the expenditures. This was a contribution by Hanson to his own campaign. To avoid
violating the one bank account rule, Hanson should have deposited the contribution into his
campaign bank account, and the reimbursement to his wife should have been paid from the
campaign account. However, he failed to do this.

1 ❖ On or about December 27, 2012 (as described in Count 6), Hanson made two campaign
2 expenditures to the Printing Place in the amounts of \$1,500 and \$921 with checks drawn on his
3 personal checking account. These payments were contributions/loans to his committee. For this to
4 be lawful, Hanson was required to deposit the contributions/loans into his campaign bank
5 account, and the committee expenditures should have been paid from the campaign account.
6 However, he failed to do this.

7 96. In this way, Hanson violated Section 85201, which provides that: (a) all personal funds
8 that will be utilized to promote the election of a candidate must be deposited into a single, designated
9 campaign bank account prior to expenditure; (b) all campaign expenditures must be made from this same
10 account; and (c) all contributions or loans made to the candidate or to the candidate's controlled
11 committee must be deposited into this account.

Count 8:	Unlawful Cash Transactions (Section 84300)
Respondents:	Douglas Hanson and Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012

12
13 97. In connection with Hanson's candidacy for re-election to the Indian Wells City Council in
14 2012, Hanson and his committee violated the Act's prohibition against cash contributions and
15 expenditures in multiple ways, including, but not limited to:

- 16 ❖ On or about July 30, 2012, Hanson used the committee checking account to make a campaign
17 expenditure in the amount of \$200, which was made payable to "CASH." For this to be lawful,
18 the check should not have been made payable to "CASH." (As described more fully in Count 2,
19 this expenditure was reported on the committee's campaign statement as a payment to Ann
20 Adams—but the check actually was cashed by Ed Carter.)
- 21 ❖ On or about October 16, 2012 (as described in Count 4), Hanson used personal cash to make two
22 payments in the amounts of \$500 and \$310 to his wife/treasurer, Mrs. Hanson, for postage
23 expenses for the committee. These payments were cash expenditures made on behalf of the
24 committee, and they were cash contributions from Hanson to the committee. Since each payment
25 was in excess of \$100, it was unlawful to use cash to make the payments, and the committee was
26 prohibited from accepting the contributions.
- 27 ❖ On or about October 25, 2012 (as described in Count 6), Hanson used personal cash to make a
28 payment to Mrs. Hanson in the amount of \$238.35 for groceries for a meet and greet. This
29 payment was a cash expenditure made on behalf of the committee, and it was a cash contribution
30 from Hanson to the committee. Since the payment was in excess of \$100, it was unlawful to use
31 cash to make the payment, and the committee was prohibited from accepting the contribution.

32 98. In this way, Hanson and his committee violated Section 84300, subdivisions (a) and (b),
33 which provides that no campaign contribution of \$100 or more may be made or received in cash—and no
34 campaign expenditure of \$100 or more may be made in cash.

Count 9:	Failure to Keep Required Committee Records (Section 84104)
Respondents:	Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson

99. As part of its investigation, the Enforcement Division obtained copies of committee records in this case. However, the records were incomplete, reflecting that Hanson, his committee, and Mrs. Hanson failed to maintain (for a period of four years following the filing of each applicable campaign statement) detailed accounts, records, bills, and receipts necessary to prepare campaign statements, establish that campaign statements properly were filed, and to otherwise comply with Chapter 4 of the Act.

100. For example, missing items included accounts, records, and original source documentation regarding several loans that Hanson made to his own committee in 2012, which totaled in excess of \$5,000. (These loans are described in more detail in the preceding counts.) Other examples include:

- ❖ No receipt was kept for the Staples expenditure of June 11, 2012 in the amount of \$140.06 (described in Count 2).
- ❖ No invoice or other committee records were kept regarding the committee check dated July 30, 2012 in the amount of \$200 that was made payable to “CASH,” but which was cashed by Ed Carter (described in Count 3). During the investigation, Hanson produced an altered copy of this check to the Enforcement Division with a handwritten note on the “For” line that said, “Office Work.” However, when the Enforcement Division obtained a copy of the check directly from the bank, it was revealed that the “For” line actually was empty.
- ❖ No invoice or other committee records were kept regarding a committee check dated August 9, 2012 in the amount of \$378 that was made payable to Ann Adams. Of note: this check also was cashed by Ed Carter—instead of Ann Adams.
- ❖ No invoice or other committee records were kept regarding a committee check dated August 24, 2012 in the amount of \$480 that was made payable to Ann Adams.
- ❖ No receipt was kept for the Good Stuff Pizza expenditure of October 9, 2012 in the amount of \$229.41 (described in Count 4).

101. In this way, Hanson, his committee, and Mrs. Hanson failed to comply with the Act’s recordkeeping requirements in violation of Section 84104 and Regulation 18401.

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PRAYER

WHEREFORE, Complainant prays as follows:

1. That the Commission hold a hearing pursuant to Section 83116, and at such hearing find that Respondents Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson violated the Act as alleged herein;

2. That the Commission order Respondents Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson to pay a monetary penalty pursuant to Section 83116, subdivision (c), of up to \$5,000.00 for each violation of the Act alleged herein, for a total monetary penalty in an amount not to exceed \$45,000;

3. That the Commission grant such other and further relief as it deems just and proper.

Date: 28 Feb 2017



Galena West
Chief of Enforcement
Fair Political Practices Commission

TABLE OF EXHIBITS TO ACCUSATION

In the Matter of Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson (FPPC Case Nos. 14/549 and 14/775)

#	Description
1	Order re: Probable Cause
2	FPPC Filing Schedule – Candidates for Local Office – November 2012 Election
3	City Attorney's Written Request for Advice to the FPPC
4	Hanson's Written Request for Advice to the FPPC
5	FPPC Advice Letter to Hanson and the City Attorney

EXHIBIT 1

1 **FAIR POLITICAL PRACTICES COMMISSION**
2 428 J Street, Suite 620
3 Sacramento, CA 95814
4 Telephone: (916) 322-5660

5 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
6 **STATE OF CALIFORNIA**

7
8 In the Matter of:

FPPC No. 14/549 and 14/775

9
10 DOUGLAS HANSON, COMMITTEE TO RE-
11 ELECT MAYOR DOUG HANSON TO
12 INDIAN WELLS CITY COUNCIL 2012, and
13 M. ELENA HANSON,

ORDER RE: PROBABLE CAUSE

14 Respondents.

15
16 This matter came on for a probable cause conference pursuant to Regulation 18361.4 on
17 September 7, 2016. Authority to conduct this proceeding and to determine the issue of probable cause
18 was delegated to Senior Commission Counsel Jack Woodside under Regulation 18361. Appearing for
19 the Enforcement Division were Senior Commission Counsel Neal Bucknell and Special Investigator
20 Ann Flaherty. Respondent Doug Hanson appeared as well as attorney G. Dana Hobart on Respondents'
21 behalf.

22 The purpose of a probable cause conference is for the Executive Director, or a duly authorized
23 designee, to determine whether probable cause exists to believe that a respondent violated the Political
24 Reform Act (the "Act")¹ as alleged by the Enforcement Division in its Report in Support of a Finding of
25 Probable Cause.

26
27
28 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.

1 Probable cause to believe a violation has occurred will be found to exist when "the evidence is
2 sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion
3 that a proposed respondent committed or caused a violation." (Regulation 18361.4(e).) A finding of
4 probable cause does not constitute a finding that a violation has actually occurred. (*Id.*)

5 The Report in Support of a Finding of Probable Cause alleges that Respondents violated the Act
6 as follows:

7 **Count 1:** On or about July 17, 2014, at a closed session meeting of the Indian Wells City Council
8 that was held pursuant to the Brown Act, one of the agenda items called for a confidential
9 conference with the city's legal counsel regarding anticipated litigation. The matter
10 involved a claim for damages against the city and certain officials for defamation. The
11 claimant, Randall Nolen, alleged that he falsely had been accused of criminal activity in
12 connection with anonymous "hit piece" mass mailers that opposed six candidates for
13 Indian Wells City Council in 2012. The purpose of the closed session was to allow the
14 council to have a confidential, frank discussion with the city attorney before deciding
15 how to proceed on the claim. Some council members wanted to discuss Hanson's
16 relationship with Nolen and Hanson's potential involvement with the "hit piece" mailers.
17 The council members were entitled to discuss these matters with the city attorney because
18 the truth is a defense to defamation. Hanson was required to recuse himself and leave the
19 room because he had a landlord-tenant relationship with the claimant, Nolen, who was a
20 source of income to Hanson. Hence, Hanson had a conflict of interest in the discussion
21 and decision-making process. Although Hanson recused himself from voting, he refused
22 to leave the room—even when he was asked/told to leave and told words to the effect that
23 he should not be there due to his conflict of interest (by City Attorney Deitsch, Mayor
24 Mertens, Councilman Mullany, and Councilwoman Roche). This had a chilling effect on
25 any discussion of the Nolen claim by the other council members—who were unwilling to
26 discuss the matter in the presence of Hanson due to his conflict of interest and
27 relationship with the claimant. In this way, Hanson violated the disqualification/recusal
28 procedure set forth in Section 87105 and Regulation 18702.5 (as it was in effect in 2014),
which provide, among other things, that a public official with a conflict of interest or a
potential conflict of interest must not be present when the decision is being considered in
closed session or knowingly obtain or review a recording or any other non-public
information regarding the governmental decision.

24 **Count 2:** On or about July 31, 2012, Hanson, his committee, and Mrs. Hanson filed a semi-annual
25 campaign statement for the reporting period of January 1 through June 30, 2012
26 (mistakenly denoted by them as the reporting period of May 29 through June 30, 2012),
27 but they failed to comply with the Act's campaign reporting requirements in multiple
28 ways. This included failure to properly report: committee expenditures totaling
approximately \$1,117 and a contribution/loan from Hanson to his committee in the
approximate amount of \$977. In this way, Hanson, his committee, and Mrs. Hanson
violated Section 84211.

1 **Count 3:**

2 On or about October 5, 2012, Hanson, his committee, and Mrs. Hanson filed a pre-
3 election campaign statement for the reporting period of July 1 through September 30,
4 2012, but they failed to comply with the Act's campaign reporting requirements in
5 multiple ways. This included failure to properly report: a contribution from Hanson to his
6 committee in the amount of \$2,000, receipt of non-monetary/in-kind contributions worth
7 at least \$2,015, and a committee expenditure in the amount of \$200. In this way, Hanson,
8 his committee, and Mrs. Hanson violated Section 84211.

9 **Count 4:**

10 On or about October 25, 2012, Hanson, his committee, and Mrs. Hanson filed a pre-
11 election campaign statement for the reporting period of October 1 through October 20,
12 2012, but they failed to comply with the Act's campaign reporting requirements in
13 multiple ways. This included failure to properly report: accrued expenses totaling
14 approximately \$4,196, contributions/loans from Hanson to his committee totaling at least
15 \$1,638, committee expenditures totaling at least \$1,367, and reimbursement to Mrs.
16 Hanson in the amount of \$310. In this way, Hanson, his committee, and Mrs. Hanson
17 violated Section 84211.

18 **Count 5:**

19 On or about October 26, 2012, Hanson's committee received a contribution in the amount
20 of \$1,000 from Donna McMillan. Hanson, his committee, and Mrs. Hanson were
21 required to report receipt of this contribution by filing a late contribution report (Form
22 497) within 24 hours, but they failed to do so—in violation of Section 84203.

23 **Count 6:**

24 On or about January 31, 2013, Hanson, his committee, and Mrs. Hanson filed a semi-
25 annual campaign statement for the reporting period of October 21 through December 31,
26 2012 (mistakenly denoted by them as the reporting period of October 1 through
27 December 31, 2012), but they failed to comply with the Act's campaign reporting
28 requirements in multiple ways. This included failure to properly report: campaign
expenditures totaling at least \$5,236, contributions/loans from Hanson to his committee
totaling at least \$2,659, and reimbursement to Mrs. Hanson in the approximate amount of
\$238. In this way, Hanson, his committee, and Mrs. Hanson violated Section 84211.

Count 7:

In connection with Hanson's candidacy for re-election to the Indian Wells City Council
in 2012, Hanson paid multiple committee expenditures (totaling at least \$4,775) with
personal funds, which were not first deposited into the committee's single, designated
campaign bank account. He claimed these payments were loans/contributions from
himself to his committee. In this way, Hanson violated Section 85201.

Count 8:

In connection with Hanson's candidacy for re-election to the Indian Wells City Council
in 2012, Hanson and his committee violated the Act's prohibition against cash
contributions and expenditures in multiple ways. This included Hanson's use of personal
cash to make multiple expenditures on behalf of the committee (totaling approximately
\$1,048). Each payment was in excess of \$100, and each payment was a cash contribution
from Hanson to his committee. Also, Hanson made a committee expenditure in the
amount of \$200 via a check made payable to "CASH." In this way, Hanson and his
committee violated Section 84300, subdivisions (a) and (b).

1 **Count 9:**

2 In connection with Hanson's candidacy for re-election to the Indian Wells City Council
3 in 2012, Hanson, his committee, and Mrs. Hanson failed to maintain (for a period of four
4 years following the filing of each applicable campaign statement) detailed accounts,
5 records, bills, and receipts necessary to prepare campaign statements, establish that
6 campaign statements properly were filed, and to otherwise comply with Chapter 4 of the
7 Political Reform Act. This included, but was not limited to, failure to maintain accounts,
8 records, and original source documentation regarding several contributions/loans that
9 Hanson made to his own committee in 2012 (which totaled in excess of \$5,000) and
10 several committee expenditures (totaling approximately \$1,427). In this way, Hanson, his
11 committee, and Mrs. Hanson failed to comply with the Act's recordkeeping requirements
12 in violation of Section 84104 and Regulation 18401.

13 Based on the facts presented to me in documents submitted by the Enforcement Division and by
14 Respondents, and on evidence and argument presented by the parties during the probable cause
15 conference, I find that notice was given as provided by Section 83115.5 and Regulation 18361.4. I
16 further find that there is probable cause to believe Respondents violated the Political Reform Act as
17 alleged in the Report in Support of a Finding of Probable Cause. Notwithstanding this finding of
18 probable cause, Respondents are presumed to be innocent of any violation of the Act unless and until a
19 violation is proved in a subsequent proceeding.

20 I therefore direct that the Enforcement Division issue an Accusation against Respondents in
21 accordance with this Finding.

22 IT IS SO ORDERED.

23 Dated: 9-14-16

24 By: 

25 Jack Woodside, Senior Commission Counsel
26 Fair Political Practices Commission

**FPPC No. 14/549 and 14/775, In the matter of Douglas Hanson, Committee to Re-Elect Mayor
Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson**

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. On the date below, I served the following document:

ORDER RE: PROBABLE CAUSE

MANNER OF SERVICE

(U.S. Mail) By causing a true copy thereof to be served on the parties in this action through the U.S. Mail and addressed as listed below. I am familiar with the procedure of the Fair Political Practices Commission for collection and processing of correspondence for mailing with the United States Postal Service, and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

SERVICE LIST

Mr. G. Dana Hobart
o/b/o Douglas and Elena Hanson
Hobart Mediation Solutions
36989 Palmdale Road
Rancho Mirage, CA 92270

(By Personal Service) On Wednesday, September 14, 2016, at approximately 3:15 p.m., I personally served:

Galena West, Chief of Enforcement, at 428 J Street, Suite 700, Sacramento, CA 95814.
Neal Bucknell, Senior Commission Counsel, at 428 J Street, Suite 700, Sacramento, CA 95814.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this document is executed at Sacramento, California, on September 14, 2016.



Sheva Tabatabaiejad

EXHIBIT 2

**Fair Political Practices Commission
Candidates for Local Office
Committees Primarily Formed to Support/Oppose Local Candidates
Committees Primarily Formed to Support/Oppose Local Measures
Being Voted on November 6, 2012**

Deadline	Period	Form	Notes
Apr 30, 2012 <i>Quarterly</i>	1/1/12 – 3/31/12	460	<ul style="list-style-type: none"> ▪ Ballot Measure Committees formed during this period must file this report. Candidate committees and committees primarily formed to support/oppose candidates are not required to file this report.
July 31, 2012 <i>Semi-Annual</i>	thru – 6/30/12	460 470	<ul style="list-style-type: none"> ▪ All committees must file Form 460. ▪ Incumbents and candidates who filed candidacy papers on or before June 30, and who do not have open committees must file Form 470. (See Form 470 bullet below.)
Oct 5, 2012 <i>Pre-Election</i>	7/1/12 – 9/30/12	460 470	<ul style="list-style-type: none"> ▪ All committees must file Form 460. ▪ Incumbents and candidates who are listed on the ballot and who do not have open committees must file Form 470. This report is not required if a Form 470 was filed by July 31.
Oct 25, 2012 <i>Pre-Election</i>	10/1/12 – 10/20/12	460	<ul style="list-style-type: none"> ▪ All committees must file this report. ▪ File personal delivery or guaranteed overnight service.
Within 24 Hours <i>16-Day Reports</i>	10/21/12 – 11/5/12	496 497	<ul style="list-style-type: none"> ▪ 496: File if independent expenditures of \$1,000 or more are made. Candidates and primarily formed ballot measure committees: Do not file for expenditures made on your own committee's behalf. ▪ 497: File if a contribution of \$1,000 or more is received. ▪ 497: File if a contribution of \$1,000 or more is made to <i>another</i> candidate or <i>another</i> measure being voted upon November 6. ▪ Deadlines: File within 24 hours except the deadline for a Form 497 reporting a contribution received on October 21 is October 22, and the deadline for a Form 497 due October 27 or 28, is extended to October 29. ▪ The recipient of a non-monetary contribution during this period must file a Form 497 report within 48 hours from the time the contribution is received. ▪ File personal delivery, guaranteed overnight service, or fax.
Jan 31, 2013 <i>Semi-Annual</i>	10/21/12 – 12/31/12	460	<ul style="list-style-type: none"> ▪ All committees must file this report unless the committee filed a termination Form 410 and Form 460 before December 31.

Fair Political Practices Commission

Additional Election Reports

Depending on committee activity, one or all of the following reports may also be required:

- **465 - Supplemental Independent Expenditure Report:** Committees that make independent expenditures of \$1,000 or more file this report. Candidates see prohibition below.
- **511 - Paid Spokesperson Report:** File within 10 days of making an expenditure totaling \$5,000 or more to an individual to appear in an advertisement to support or oppose a ballot measure.

- **Judges/ Unpaid Officeholders:** Elected officers whose salaries are less than \$200 per month and judges who are not listed on a ballot are not required to file the semi-annual statement due July 31 if no contributions were received or expenditures made from January 1 through June 30.
- **Primarily Formed Ballot Measure Committees:** Prior to the semi-annual period in which the measure(s) supported or opposed is being voted upon, committees must file quarterly campaign statements in addition to semi-annual statements. Following the election, quarterly statements may also be required.
- **Period Covered:** The period covered by any statement begins on the day after the closing date of the last statement filed, or January 1, if no previous statement has been filed.
- **Method of Delivery:** All paper filings are to be filed by personal delivery or first class mail unless otherwise noted.
- **Filing Deadlines:** Deadlines are extended when they fall on a Saturday, Sunday, or an official state holiday. This extension does not apply to Form 497 due November 3 or November 4, 2012, or any Form 496 report. Such reports must be filed within 24 hours regardless of the day of the week. Late statements are subject to a \$10 per day late fine.
- **Prohibition on Candidate Independent Expenditures:** A controlled committee may not make independent expenditures to support or oppose candidates and may not contribute to another committee for the purpose of making independent expenditures to support or oppose other candidates.
- **Form 470:** Incumbents and candidates who do not have a committee or do not raise/spend \$1,000 in 2012 may file Form 470. This form is filed only once during a calendar year. If, later during the calendar year, a campaign committee must be opened, a Form 470 Supplement and the Form 460 must be filed.
- **Candidates:** After an election, reporting requirements will depend on whether the candidate is successful and whether a campaign committee is maintained.
- Local jurisdictions may impose contribution limits and additional filing requirements.
- All statements are public documents.
- For important information, refer to www.fppc.ca.gov and click on the Candidates and Committees section. Candidates use [Campaign Manual 2](#), and ballot measure committees use [Campaign Disclosure Manual 3](#) or [contact the FPPC](#) for specific information.



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ಬೆಂಗಳೂರು

ಇವುಗಳ ಮೇರೆಗೆ ಸರ್ಕಾರದ ಅನುಮೋದನೆ

2019

ಅಧಿನಿಯಮ

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ಇವುಗಳ ಮೇರೆಗೆ ಸರ್ಕಾರದ ಅನುಮೋದನೆ

EXHIBIT 3

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Los Angeles
(213) 617-8100
Riverside
(951) 686-1450

BBK
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Stephen P. Deitsch
(909) 483-6642
stephen.deitsch@bbklaw.com

July 28, 2014

VIA OVERNIGHT COURIER

General Counsel
Fair Political Practices Commission
428 "J" Street, Suite 620
Sacramento, CA 95814

Re: City of Indian Wells - Request for Formal Advice

Dear General Counsel:

As City Attorney for the City of Indian Wells ("City"), we request formal advice on whether Indian Wells City Council Member Doug Hanson can participate in any future City Council discussions or decisions regarding a pending claim and potential lawsuit which might be filed against the City by Mr. and Mrs. Randall Nolen ("Nolens").

Factual Background

Council Member Doug Hanson owns rental property in the City. The Nolens currently rent this property from Council Member Hanson. For the purposes of this letter, we ask you to assume that Council Member Hanson has received more than \$500 in the form of rental income from the Nolens in the past 12 months. Last month, the Nolens filed a claim against the City alleging that a current and a former Council Member visited their home and subsequently harassed, defamed and intimidated them.¹ The claim sought damages in the amount of \$1 million. The Nolens have not presently filed a lawsuit based on the claim, but may do so in the future.

Question Presented

Can Council Member Hanson make or participate in future City Council discussions or decisions pertaining to the pending claim or a potential lawsuit that may be filed against the City by the Nolens?

¹ The claim against the City stems from a series of anonymous mass mailings that were distributed in the City during the 2012 election cycle.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

FPPC
July 28, 2014
Page 2

Analysis

A public official has a financial interest in a decision within the meaning of the Political Reform Act if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any one of five enumerated economic interests. For purposes of this analysis, we ask that you assume that Council Member Hanson has the following:

- an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Gov. Code § 87103(c); Regulation 18703.3.)

We understand that any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material. (Regulation 18705.3(a).) We further understand that a source of income is directly involved in a decision before an official's agency when that source has initiated a claim or is a named party in, or is the subject of, the proceeding concerning the decision before the official's agency. (Regulation 18704.1(a),(b).)

Given the upcoming decisions that could arise around a pending claim or potential lawsuit against the City, we ask for formal written advice as to whether Council Member Hanson can participate going forward. We understand that the FPPC rendered a 2004 opinion in the Wynder Advice Letter where the FPPC opined that a Mayor Pro Tem had a conflict of interest prohibiting her participation in settlement discussions because the official's tenant was a named party in the lawsuit. (Wynder Advice Letter, No. A-04-116.) However, in a 1987 opinion, the FPPC advised a city attorney and two council members that they could participate in decisions involving a claim against the City (which included themselves as additional named parties), decisions on applications related to the claim, and other decisions affecting the claim because in part at that time no actual lawsuit had been filed. (Newton Advice Letter, No. A-87-046.) However, unlike the facts in Newton, Council Member Hanson's source of income is the named party initiating the claim and any potential lawsuit.

We believe that the Nolens are sources of income to Council Member Hanson because they are his tenants in a rental property he owns and that it is reasonably foreseeable that any City Council discussion or decision involving a pending claim or potential lawsuit by the Nolens against the City would result in a material financial effect on persons who are sources of income to Council Member Hanson. As a result, we believe, subject to your advice, that Council Member Hanson is disqualified from participating in any discussion or decision involving any pending claim or potential lawsuit against the City in which the Nolens are a named party. We understand that you will respond to this request within 21 working days. If you find that you



BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

FPPC
July 28, 2014
Page 3

need additional facts in order to issue the formal written advice, please let us know as soon as possible and we will provide you with the required information.

Sincerely,



Stephen P. Deitsch
of BEST BEST & KRIEGER LLP
City Attorney
City of Indian Wells

cc: Doug Hanson. City Council Member
Wade G. McKinney. City Manager

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EXHIBIT 4

CONFIDENTIAL

Douglas H Hanson
Council Member, City of Indian Wells, CA.
[REDACTED]
Indian Wells, CA. 92210

Via Fed Express and Fax

July 29, 2014

General Counsel
Fair Political Practices Commission
428 "J" Street, Suite 620
Sacramento, CA 95814

Re: City of Indian Wells -- Request for Formal Advice

Dear General Counsel;

This letter is intended to respond to the letter from our city attorney to you, dated July 28, 2014.

The attorney notes that Mr. and Mrs. Nolen, two residents of Indian Wells, are making a claim for damages against the city and one or more council members arising out of political issues occurring in our 2012 elections. The political issues seem to have developed a life of their own as this request suggests.

The city attorney asks you for a finding that I should not be permitted to participate in a city council hearing on the Nolen claim because the Nolens rent a home from me. I submit that standing alone, this is not the test.

I do rent a home to the Nolens and do receive rent in excess of \$500.00.

As I read Government Code section 87103, I should be disqualified from participating in the hearing only "if it is reasonably foreseeable that the decision will have a material financial effect on me, my family, or the Nolans. There is no way I could have a material financial benefit because of their claims.

The Nolens have been renting their home from my wife and me for three years. Mr. Nolen is a Talent Manager and has been paying the required rent for three years which indicates they are neither impecunious nor unable to continue making their monthly payments -- regardless of the outcome of their claims. They would not have a "material financial benefit" in the sense that it would allow them to continue doing what they have been doing for the past three years -- pay their rent. They can and doubtlessly will continue paying their rent regardless of the outcome of their claim.

This claim has no potential benefit or detriment to me or my family in any way whatsoever. I have no conflict of interest.

Respectfully,

[REDACTED]

Doug Hanson
Indian Well City Council

cc: Wade G. McKinney, City Manager |

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EXHIBIT 5



1 of 1 DOCUMENT

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
ADVICE LETTERS

Our File No. A-14-141

2014 Cal. Fair-Pract. LEXIS 120

August 4, 2014

[*1] Douglas H. Hanson, Councilmember
City of Indian Wells

████████████████████
Indian Wells, CA 92210

Stephen P. Deitsch, City Attorney
City of Indian Wells
2855 E. Guasti Road, Suite 400
Ontario, CA 91761

Re: Your Request for Advice

Dear Mr. Deitsch and Mr. Hanson:

This letter responds to your requests for advice regarding Councilmember Hanson's responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act"). n1 Because we simultaneously received requests from the city n2 and from Councilmember Hanson with respect to the same decisions, we have merged the two requests. Please note that the Commission does not provide advice on other conflict of interest provisions, such as common law conflicts of interest. Moreover, the Commission does not act as the finder of fact when rendering [*2] advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are accurate. If this is not the case, then our advice could be different.

QUESTION

May Councilmember Hanson participate in the city council's discussion of a claim and possible litigation filed by persons who also are tenants of the councilmember that pay rent to him?

CONCLUSION

The councilmember may not make, participate in making, or influence a decision which will have a foreseeable and material financial effect on the councilmember's source of income.

FACTS

Council Member Doug Hanson owns rental property in the city and rents to Mr. and Mrs. Randall Nolens. In the councilmember's letter of July 28, 2014, he confirms that he receives more than \$ 500 a year from the Nolens.

The Nolens filed a claim against the City of Indian Wells alleging that a current and a former Council Member (neither was Councilmember Hanson) visited their home and subsequently harassed, defamed, and intimidated them. According to the city's facts, the claim is for damages in the amount of \$ 1 million from the city. The Nolens have not presently filed a lawsuit based [*3] on the claim, but may do so in the future.

ANALYSIS

The Act's conflict-of-interest rules prohibit a public official from making, participating in making, or using his or her official position in any way to influence a governmental decision in which the official knows, or has reason to know, that he or she has a "financial interest." (Section 87100.) Section 87103 provides that a public official has a "financial interest" in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the official's economic interests. To determine whether a public official has a "conflict of interest" in a specific governmental decision, we employ a standard eight-step analysis outlined in Regulation 18700(b).

City councilmembers are "public officials" under the Act. You have stated that there are governmental decisions coming before the city council that the councilmember wishes to participate in. Thus, the first two steps are met and we begin at Step 3 of the eight-step analysis.

Step 3: What are the Councilmember's [*4] Interests?

A public official has a financial interest in a decision within the meaning of Section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any one of five enumerated interests in Section 87103. (Regulations 18703-18703.5.) The applicable interests include:

- . An interest in a business entity in which a public official has a direct or indirect investment of \$ 2,000 or more (Section 87103(a), Regulation 18703.1(a)) or is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).)
- . An interest in real property in which a public official has a direct or indirect interest of \$ 2,000 or more. (Section 87103(b), Regulation 18703.2.)
- . Any source of income, including promised income, to the public official that aggregates to \$ 500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.)
- . Any source of gifts to the public official if the gifts aggregate to \$ 440 or more within 12 months prior to the decision. [*5] (Section 87103(e), Regulation 18703.4.)

. A public official also has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. (Section 87103, Regulation 18703.5.)

Your question only implicates potential financial effects on a source of income to the councilmember, the Nolens. As noted by the councilmember, there are no facts to suggest that the decisions on the claims will have any foreseeable financial effect on him personally or his lease of his property to the Nolens, or the property itself. However, since the Nolens filed the claim for damages and they are a source of income to the councilmember, they are the basis for a potential conflict of interest.

Step 4: Will the Nolens be directly or indirectly involved in the governmental decisions and will the decisions have a foreseeable and material financial effect on the Nolens?

Regulation 18704.1 and 18706 n3 provide that a person is directly involved in a decision [*6] before an official's agency when that person, either directly or by an agent, initiates the proceeding in which the decision will be made, is a named party, or is the subject of the proceeding concerning the decision before the official or the official's agency. Since in this case, a source of income is a named party in the claim and potential lawsuit, they are a named party and the subject of the proceedings. Therefore, the councilmember's interest in the Nolens as a source of income is directly involved in the decisions in question.

The materiality standard for a source of income that is directly involved in a governmental decision can be found in Regulation 18705.3. "Any reasonably foreseeable financial effect on a person who is a source of income to a public official and who is directly involved in a decision before the official's agency is deemed material." (Regulation 18705.3(a).) The Nolens are directly involved in the decision, therefore the financial effect on the source of income interest is deemed material. n4 [*7]

Councilmember Hanson asks whether the relevant inquiry is if the Council's decision about the legal proceedings will affect the Nolens' ability to continue paying rent to him. However, under the Act the applicable standard for a conflict of interest is whether it is reasonably foreseeable that the Council's decision about the legal proceedings could have a material financial effect on the Nolens, and in this case it could. The Act restricts officials from making governmental decisions that will have a financial effect on someone who is a source of income to them.

Steps 7 & 8: Does any exception apply?

Two exceptions apply to the standard eight-step analysis in cases where it is reasonably foreseeable that a materiality standard will be met as per a given public official. There are no facts suggesting either of these exceptions applies to your facts.

The first exception is the Public Generally Exception. Even if an official has a conflict of interest, disqualification is not required if the governmental decision affects the public official's interests in a manner that is indistinguishable from the manner in which the decision will affect the public generally. (Section 87103; [*8] Regulation 18707(a).) In order for the exception to apply, the decision must effect a "significant segment" of the public in "substantially the same manner" as it financially affects his interest.

The other exception allows a public official to participate in a decision if it is "legally required." (Section 87101.) In the case where a public official is otherwise disqualified to participate in a governmental decision, he or she may participate if the participation is legally required. (Section 87101; Regulation 18708.) This exception is narrowly construed and applies only when it is legally impossible for the decision to be made without the participation of a disqualified official, and where there is no "alternative source of decision consistent with the purposes and terms of the statute authorizing the decision." Typically, this exception is invoked when, due to disqualification, an agency is unable to convene a "quorum" of its members.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini

General Counsel

By: John W. Wallace

Assistant General Counsel

Counsel, Legal Division

FOOTNOTES:

n1 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.

[*9]

n2 While the Act requires that the Commission provide formal written advice or informal assistance to any person whose duties under the Act are in question or to that person's authorized representative, the Commission does not provide formal written advice to a third party about a public official's duties under the Act. (Section 83114; Regulation 18329.)

n3 Regulation 18706(a) provides that "[a] financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official's agency."

n4 A city councilmember who has a conflict of interest in a decision noticed at a public meeting, must: (1) immediately prior to the discussion of the item, orally identify each type of interest involved in the decision as well as details of the interest, as discussed in Regulation 18702.5(b), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.

[*10]