

1 REED & DAVIDSON, LLP
2 DARRYL R. WOLD #41193,
3 Of Counsel
4 4199 Campus Drive, Suite 550
5 Irvine, California 92612
6 Phone 949-737-6835
7 Fax 949-737-6839
8 dwold@cox.net

9 Attorneys for Respondents Chris Norby,
10 Norby for Supervisor, and Betty Presley,
11 Treasurer

12 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
13 STATE OF CALIFORNIA

14 In the Matter of)	FPPC No. 09/773
)	OAH No. 2011050957
15 CHRIS NORBY, NORBY FOR)	RESPONDENT CHRIS NORBY'S
16 SUPERVISOR, and BETTY)	RESPONSE TO ENFORCEMENT DIVISION'S
17 PRESLEY, Treasurer,)	OPENING BRIEF Re: ADMINISTRATIVE
18 Respondents)	LAW JUDGE'S PROPOSED DECISION

19 Respondent Chris Norby respectfully submits this brief in response to the Enforcement
20 Division's opening brief that urges the Commission to reject the Proposed Decision filed by
21 Administrative Law Judge Ralph Dash ("the ALJ").

22 The ALJ found, after a full day-long hearing, that Norby's expenditure of \$340 to reserve a
23 room for one week at a motel that caters to transient and homeless families, to enable him to spend a
24 portion of those days (and nights) looking firsthand at the situation in which those families found
25 themselves, was for a permissible governmental purpose, and definitely not for his personal benefit,
26 and recommended that the Commission dismiss the Accusation in this matter.

27 The ALJ's recommendation followed his thorough 13-page Proposed Decision, which
28 carefully and methodically reviewed the testimony and documentary evidence presented at the

1 hearing in fifteen “Findings of Fact,” and discussed the application of the law, in 11 separate
2 “Conclusions of Law.” (Those findings and conclusions are referred to herein as “Finding [number]”
3 and “Conclusion [number].”) The hearing included several hours of testimony from four witnesses,
4 including Respondents Norby and his campaign treasurer, Betty Presley, one witness that Norby
5 called (a former wife, Charlotte Chai), and one witness who testified on behalf of the FPPC,
6 investigator Janet Seely, and on extensive documentary evidence submitted by both sides. The ALJ’s
7 decision was also based on thorough pre-trial briefing by both sides, and on extensive post-hearing
8 briefs, also filed by both sides, summarizing the evidence presented and the application of the law.
9 The FPPC was ably represented at the hearing by two staff attorneys, who presented the FPPC’s
10 witness and cross-examined both Norby and Presley.

11 In the face of this, the Enforcement Division now makes the surprising recommendation that
12 the Commission reject the ALJ’s carefully-considered findings and conclusions as to Norby, and
13 decide the case itself. (The Enforcement Division at least does not dispute the ALJ’s
14 recommendation that Respondents Presley and Norby’s committee be dismissed, so the Commission
15 should dismiss them from this case, regardless of any other action it takes.) The Enforcement
16 Division also makes the very questionable proposal that the Commission decide the case by referring
17 it back to the staff to review the transcript and the rest of the record and submit a written decision to
18 the Commission for its consideration – understandably a procedure that would be preferred by the
19 staff to attempt to retain control of the decision, but not a procedure that would provide a fair and
20 impartial review of the evidence by the Commissioners themselves, as a basis for their decision. The
21 staff’s preferred procedure would lack basic fairness to Norby, by leaving the matter essentially in the
22 hands of staff who have already recommended a decision against him.

23 Respondent Norby, however, urges the Commission to adopt the ALJ’s proposed decision in
24 its entirety, and to dismiss the Accusation as to him also. The Commission can confidently rely on
25 the ALJ’s well-considered recommendation, and finally put an end to this matter.

26
27 **The ALJ’s Decision Was Strong and Unequivocal in its Conclusion in Favor of**
28 **Respondents, and Should Be Respected.**

1 This matter arose in August, 2007, when Norby paid \$340 for a room for one week at the
2 Fullerton Inn, and then was reimbursed by his campaign committee. At that same time, Norby wrote
3 on the receipt that he submitted to his treasurer for reimbursement, "\$340 cash out-of-pocket
4 reimbursement. Fullerton Inn. 1-week stay to study homeless/motel residents & children in 4th
5 district." (Finding 4 (f).) Norby's committee filed a Form 460 for that period reporting the purpose
6 of the reimbursement in virtually the same language. The Accusation, however, contended that
7 Norby stayed at the motel for personal reasons because his marriage at the time was failing and he
8 needed a place to stay.

9 Norby's testimony explained his purpose in looking at the conditions of homeless and
10 transient families by describing his familiarity, first as a city council member and then as a county
11 supervisor, with reports and statistics on the numbers of homeless families living in motels in parts of
12 his district in Fullerton and Anaheim, and the issues those conditions raised for local government. In
13 light of those reports, he finally decided to stay in one of the motels to look first-hand at those motels
14 and the people living in them, to put faces on the statistics and the reports. Norby also testified to the
15 conditions in the motel as being unpleasant, which is one reason he stayed there for only three nights
16 of the seven he had paid for. The ALJ himself viewed the motel after the hearing, to see it first-hand.

17 After hearing the testimony and considering all of the evidence, the ALJ understandably
18 reached his strong and unequivocal conclusion about Norby's stay at the motel:

19 "One would be hard-pressed to find any 'personal' reason to stay there
20 if it was not necessary to do so. The only reasonable conclusion to be
21 reached, based on all of the evidence, is that Norby's stay of a few
22 nights at the motel was for the purpose he claimed it to be . . ."
(Conclusion 11.)

22 The Enforcement Division's opening brief itself acknowledges these findings and
23 conclusions:

24 "[The] ALJ determined that (a) Respondent Norby could have stayed
25 either at his own home or at Ms. Chai's house [his previous wife, who
26 was out of the country at the time]; (b) the Fullerton Inn was not a nice
27 place to stay; and (c) conducting a homeless study was the only
28 reasonable conclusion as to why Respondent Norby would have stayed
there. Accordingly, the ALJ's proposed decision found that
Respondent Norby's stay at the inn was for a governmental purpose and
not for his personal benefit." (Opening Brief, at 10:3-8.)

1 “The only reasonable conclusion to be reached” cannot be over-emphasized, and pointedly
2 says why the Commission should accept the ALJ’s recommendation.

3 The Enforcement Division nevertheless asks the Commission to reject the compelling
4 determination by the ALJ and revisit the evidence itself.

5
6 **The Opening Brief Does Not Address the Evidentiary Standards Applicable in an**
7 **Administrative Hearing, or Show How Those Standards Were Not Properly Applied.**

8 Before discussing the specific arguments that the Enforcement Division offers to support its
9 recommendation, it is important to note and then keep in mind throughout the following discussion,
10 the critical evidentiary standards that govern decision-making in administrative hearings – the burden
11 of proof and the standard of proof. Neither has been addressed by the Enforcement Division in its
12 opening brief. The ALJ’s Conclusions of Law began by setting out these standards which are critical
13 to any decision in the administrative hearing process, and must be taken into account.

14 The ALJ correctly stated the applicable rule: “Absent a statute to the contrary, the burden of
15 proof in disciplinary administrative proceedings rests upon the party making the charges” (citation
16 omitted), and thus in this case is on the FPPC. (Conclusion 1.)

17 In this administrative proceeding, the ALJ further explained, the standard of proof is a
18 preponderance of the evidence: “This standard of proof in this proceeding is a preponderance of the
19 evidence . . . usually defined in terms of probability of truth, e.g., ‘such evidence as, when weighed
20 with that opposed to it, has more convincing force and the greater probability of truth.’” (Citations
21 omitted.) (Conclusion 2.)

22 The Enforcement Division’s opening brief repeatedly relies on minor factual contentions to
23 question the ALJ’s decision, but completely fails to discuss how those details would outweigh the
24 substantial evidence to the contrary, that supported the ALJ’s findings and conclusions, which the
25 ALJ carefully set out. The Enforcement Division’s arguments thus fall short of being persuasive that,
26 even if they were given credibility and the Commission revisited the evidence, that would change the
27 outcome by shifting the preponderance of the evidence to the FPPC’s side.

28

1 **The Enforcement Division’s Opening Brief Does Not Provide Any Persuasive Reason to**
2 **Reject the ALJ’s Well-considered Proposed Decision.**

3 The Enforcement Division’s opening brief begins with a lengthy section giving their version
4 of the events at issue in this case, but in doing so relies primarily on a newspaper article to which the
5 ALJ gave “little weight” because of its obvious bias and inaccurate facts. (Conclusion 9, see also
6 Finding 12.) After hearing all of the testimony, including Norby’s testimony that he was extremely
7 embarrassed by the reporter’s questions about his marital life and his responses to her were simply an
8 attempt to avoid further publicity about that (see Finding 12), the ALJ reached his ultimate
9 conclusion, related above, that “The only reasonable conclusion to be reached, based on all of the
10 evidence, is that Norby’s stay of a few nights at the motel was for the purpose he claimed it to be . . .”
11 – that is, to observe the conditions of the transient and homeless families who used that motel as their
12 residence. (Conclusion 11.)

13 After that lengthy opening section, the opening brief then addresses the factors that Regulation
14 18361.9(b)(1) provides that “the opening brief may address.” That discussion, however, however,
15 does not provide a persuasive reason for the Commission to reject the ALJ’s detailed findings and
16 conclusions, and revisit the evidence itself.

17 (It should be noted that the briefs at this stage are prepared without the benefit of the
18 transcript, which the FPPC has not requested yet. Characterizations of the testimony, therefore, are
19 based on the best recollections and notes of counsel on both sides, and can be assumed to be in good
20 faith, but they should not be taken as verbatim excerpts from the transcript.)

21 The factors are as follows (these are numbered 1-5 to correspond to that numbering in the
22 opening brief; in Regulation 18261.9(b)(1) the same factors are listed by letters, (A) - (E)):

23
24 **1. Whether the facts stated in the proposed decision are consistent with the evidence**
25 **presented.**

26 Under this factor, the opening brief takes issue with five aspects of the proposed decision,
27 under headings a - e.

1 **a. The absence of a finding by the ALJ that Norby’s testimony that his stay at**
2 **the motel had nothing to do with his marital difficulties which was, in the Enforcement**
3 **Division’s view, “not true.”**

4 The ALJ did not make this finding for the obvious reason that in light of all of the
5 testimony, and assessing the credibility of witnesses in the live testimony before him, the ALJ
6 concluded that Norby’s assertion in fact was true, and that he rented the motel room for the reason he
7 gave. There was more than adequate evidence to support the ALJ’s conclusion.

8 The proposed decision recounts Norby’s testimony that at the time he rented the room,
9 both his wife and his son were out of town so he had no “domestic duties” to keep him at home, and
10 he therefore was free to spend time on his investigation of conditions experienced by the homeless
11 who stayed in transient resident motels; and that if he had actually needed to stay at a hotel, he could
12 have afforded nicer accommodations than the Fullerton Inn (Finding 8).

13 Norby also testified that he owned the home that he and his then-wife lived in; that he
14 continued to stay there after the week of August 1 while he and his wife attempted to resolve their
15 marital issues; and that even the disputed newspaper article in the LA Times (FPPC’s Exhibit 15)
16 recounting the reporter’s interview with Norby about his motel stay also quoted his wife at the time
17 “as saying she had not asked Norby to leave the house.” (Finding 6.)

18 Norby further testified that he could have stayed the entire week at the home of his
19 previous wife, Charlotte Chai, who was traveling out of the country at the time, and that he in fact
20 spent several nights there, staying only three nights at the motel. Ms. Chai’s testimony corroborated
21 that testimony, explaining that Norby sometimes “house sat” for her when she traveled and that she
22 gave him a key and the garage door opener. (Finding 9.)

23 The opening brief relies heavily on the circumstance that Norby and his wife at the
24 time were experiencing marital difficulties, and that the divorce papers eventually filed recited the
25 date of separation as August 1, 2007 (Finding 6). That finding, however, also recounted Norby’s
26 testimony explaining that the date was selected by his wife’s lawyer, and that he continued to live at
27 their home (which he owned) after that date.

1 The clear preponderance of the evidence was that Norby stayed at the motel because of
2 his interest in observing the conditions of the transient and homeless families who lived there, and not
3 because of any marital difficulties he was experiencing.
4

5 **b. The absence of a finding by the ALJ that Norby's stay at the motel was, in the**
6 **Enforcement Division's view, not related to a "homeless study."**

7 The ALJ obviously did not make this finding either because he concluded that Norby's
8 stay at the motel was in fact for the purpose of observing the conditions of homeless people – a
9 conclusion supported by the overwhelming preponderance of the credible evidence.

10 To support its contention to the contrary, the opening brief (at 11:13-19) points to
11 Norby's expenditures for two restaurant meals during the week of August 1, which show he did not
12 spend full time at the motel. (FPPC's Exhibit 13.) The proposed decision properly noted that "The
13 meal receipts shed no light on the issue at hand as they went unexplained." (Finding 11.) The
14 proposed decision itself does not reflect a relevant aspect of Norby's testimony, which the opening
15 brief of course does not mention either, that candidly explained that he did not, in fact, spend many
16 daytime hours at the motel because there was little activity there during the day, and the best
17 opportunities to observe the residents there and talk to them (which he did) was in the evenings.
18 Norby candidly testified that he spent most daytime hours in his duties as chairman of the board of
19 supervisors.

20 The opening brief (at 11:20-12:13) also relies heavily on the hearsay account of the
21 reporter's interview with Norby, in which he allegedly admitted that he stayed at the motel for
22 personal reasons. The ALJ, however, carefully considered that article, and the testimony of FPPC
23 investigator Janet Seely recounting her interview of the reporter to try to corroborate the statements in
24 the article, and properly determined to give "little weight" to the article. In the ALJ's words, "The
25 reference [in the article] to the motel as a 'bed and breakfast,' coupled with the reporter's rehashing
26 of rumors derogatory to Norby, lead to the distinct impression that the reporter was less interested in
27 the facts than in somehow implicating a public figure as having committed illegal activity."
28 (Conclusion 9.)

1 The proposed decision also recounts some of Norby’s testimony concerning the interview
2 with the reporter and her questions about his personal life; that he was “extremely embarrassed” by
3 the rumors, and that he wanted to protect his wife from further embarrassment herself, so he told the
4 reporter that “if anyone thought there was a relationship between the motel and the divorce he would
5 be happy to refund the money.” (Finding 12.) It is not reflected in the proposed decision, but the
6 record would reflect Norby’s further testimony that his primary objective in talking to the reporter,
7 and subsequently refunding the reimbursement to his campaign, was to avoid further publicity about
8 his marital problems, and that he testified that he did not intend by his responses to admit any
9 violation of law.

10 The proposed decision also notes that the reporter’s story acknowledged that Norby
11 had told her that he had learned a lot about homeless and motel families during his stay at the motel
12 (Finding 5, excerpts from article, last paragraph). Thus, notwithstanding anything else he may have
13 said to the reporter, Norby also continued to describe his interest in the conditions of the transient and
14 homeless residents at the motel as a purpose of his stay there. That is significant because there is no
15 requirement that an officeholder receive no personal benefit from an expenditure of campaign funds,
16 so even if Norby needed (in the Enforcement Division’s view) a place to stay, and he thus received a
17 personal benefit, there was no need for him to stay at this uncomfortable motel, but he clearly did so
18 for the purpose that the ALJ found, to study the conditions of the homeless who lived there. Norby
19 did use the motel for that purpose, so the expenditure was directly related to a permissible
20 governmental purpose. (This is analogous to an officeholder staying at a hotel to attend an out-of-
21 town conference on governmental issues at that hotel: The attendee needs a place to stay while at the
22 conference, so in a sense gets a personal benefit from the expenditure for the hotel, but stays at that
23 particular hotel for a permissible governmental purpose, so the hotel is a permissible expenditure.
24 That would be true even if the hotel was a luxury hotel – the FPPC does not try to parse out the
25 amount of personal benefit, if staying there serves a permissible governmental purpose and that is just
26 as true if the accommodations are suited primarily for the homeless.)

1 **c. The absence of a finding by the ALJ that Ms. Chai's residence was, in the**
2 **Enforcement Division's view, not available to Norby at the start of his stay at the motel.**

3 The ALJ of course did not make such a finding because there was no evidence to support it,
4 and the testimony was to the contrary.

5 The opening brief's contention that the Chai residence was not available to Norby during the
6 full time for which he rented the motel room (beginning August 1) flies in the face of the findings by
7 the ALJ that the Chai residence was available to Norby from August 1 on, based on all of the
8 testimony, and not just a selected portion quoted apparently from some counsel's memory in the
9 Enforcement Division's opening brief. The proposed decision recounts that Norby testified that "he
10 could have stayed at her house for the whole month of August had he so desired. Ms. Chai testified
11 that she and their son traveled out of the country for the entire month of August, 2007." (Finding 9,
12 underlining added for emphasis.) Thus, "it is concluded that, during the first week of August 2007,
13 Respondent had available to him both his own home and Ms. Chai's home in which to reside."
14 (Conclusion 11.)

15 The issue of the precise timing of Ms. Chai's departure to travel, however, is virtually
16 irrelevant to the question of whether Norby stayed at the motel because he needed a place to stay.
17 Norby testified that his wife had not asked him to move out of their home, as the newspaper article
18 said his wife confirmed. (Finding 6.) There was no reason he could not have stayed at his own home,
19 as well as at better hotel accommodations.

20
21 **d. The absence of a finding by the ALJ on Norby's financial circumstances, which in the**
22 **Enforcement Division's view compelled him to stay at a cheap motel.**

23 The ALJ made no such finding, again for the obvious reason that there was no evidence to
24 support it.

25 The opening brief goes far afield in this section, to engage in complete and uncorroborated
26 speculation that Norby stayed at the inexpensive Fullerton Inn because he could not afford a nicer
27 place to stay. There are, of course, other relatively inexpensive motels that do not cater primarily to
28 transient homeless residents. But that again is virtually irrelevant -- Norby did not have to leave his

1 home at all, and he could have stayed the full week at Ms. Chai's home, where he in fact did stay part
2 of the week. Further, no evidence was introduced on his financial circumstances at the time, and
3 speculation about his financial circumstances could not have supported the finding that the
4 Enforcement Division advocates.

5
6 **e. The absence of a finding by the ALJ that Norby's alleged purpose to study the**
7 **conditions of homeless motel residents was, in the Enforcement Division's view, a sham.**

8 The ALJ did not make this finding either because after considering all of the testimony and
9 documentary evidence, the ALJ properly concluded that Norby's stated purpose in staying at the
10 motel was genuine.

11 In arguing to the contrary, the opening brief makes the somewhat frivolous argument that
12 there was no evidence that Norby or his staff engaged in extensive preparation for his stay at the
13 motel. The nature of his stay at the motel, however, of course did not require "preparation" beyond
14 packing a toothbrush. Although not reflected in the ALJ's decision, Norby testified that he had
15 repeatedly seen reports on the transient and homeless who stayed in motels that catered to them in his
16 districts for the years when he was a council member and then a county supervisor, and that he was
17 thus familiar with the issues that those motels and their residents raised for local governments, and
18 where those motels were located. The newsletter article he wrote recounted his interest in those
19 issues and his observations on them. He did not need further information from county staff or others
20 to go see those conditions for himself.

21 The opening brief further argues that the fact that Norby did not write the newsletter article
22 until after he was questioned on the motel expenditure by a reporter somehow retroactively makes his
23 purpose for staying at the motel a sham. The timing of the article, however, does not change Norby's
24 purpose in staying at the motel, which he said from the start was for the purpose of experience with
25 homeless issues (Finding 4, "f", describing Norby's note on the motel receipt contemporaneous with
26 his stay there) or what he in fact did there, which was observe conditions and residents, talk to people
27 staying there, and generally experience what it was like. As the ALJ found, "[Norby's] testimony
28 offered much the same information as that contained in the article he wrote." Accordingly, the article

1 was set forth in part in the proposed decision, “as it explains well the ‘governmental purpose’ to
2 which Norby attributed his motel stay.” (Finding 10.)

3 A relatively inconsequential expenditure of \$340 does not require a major study or need to
4 lead to legislative recommendations after the fact to validate it – just getting firsthand experience with
5 the significant governmental issues posed by homeless and transient motel residents is certainly
6 justification for that small expenditure.

7
8 **2. Whether the proposed decision contains an accurate statement and/or application of**
9 **the law.**

10 The opening brief generally agrees with the ALJ’s statements of the law (see Conclusions 3, 4,
11 and 5, setting out the applicable provisions of the Political Reform Act), and does not point to any
12 error in a statement of the law or its application. It nevertheless takes issue with the decision,
13 apparently based primarily on a disagreement with the ALJ’s assessment of the weight and credibility
14 of minor aspects of the evidence.

15 In part “a.” of this section, the opening brief appears to contend that the ALJ should have
16 given different weight to the hearsay evidence in the newspaper article, and should have discussed it
17 in more detail. The proposed decision, however, carefully considered the article in light of the
18 testimonial evidence, explained that admissibility under the admissions exception to the hearsay rule
19 does not mean accepting the statements as fact or at face value (Conclusion 7), and carefully
20 explained why the ALJ gave the article little weight (Conclusion 9).

21 In part “b.” of this section, the opening brief simply quibbles further with the ALJ’s careful
22 weighing of the evidentiary value of the newspaper article, contending that he should have reached a
23 different conclusion. The arguments, however, are not persuasive – for instance, the brief attempts to
24 equate the reporter’s misleading description of the motel as a “bed and breakfast” with Norby’s
25 description of it as a “resident motel,” which in the context in which Norby used that term (actually
26 “residence motel” in Norby’s newsletter article, Finding 10) clearly referred to a motel where people
27 on the verge of homelessness lived, and thus “weekly rates” were posted. That characterization does
28

1 not restore the lack of credibility of the reporter in calling that motel a “bed and breakfast,” and the
2 opening brief’s argument that it does is somewhat risible.

3
4 **3. Whether there is additional material evidence that could not, with reasonable**
5 **diligence, have been discovered and presented at the administrative hearing.**

6 The opening brief simply says none is known to exist, so this factor likewise would not
7 support rejection of the ALJ’s recommendation.

8
9 **4. Which of the dispositions provided for in Government Code section 11517 is**
10 **recommended by the Enforcement Division and why.**

11 The opening brief lists the options open to the agency, spelled out in Government Code
12 section 11517(c)(2), including among others to adopt the proposed decision in its entirety, or reject
13 the decision and refer the case back to the ALJ to take additional evidence and prepare a revised
14 proposed decision. The opening brief rejects these options, of course, because the Enforcement
15 Division does not agree with the proposed decision, and would not want the case going back to an
16 independent fact finder again.

17 The Enforcement Division instead urges a course of action that will keep the presentation of a
18 decision for Commission action in the control of the staff, but would effectively deny Norby a fair
19 hearing. Thus, the Enforcement Division urges the Commission to reject the proposed decision, and
20 decide the case on the record, including the transcript, either with or without taking additional
21 evidence. (Opening Brief, at 19:1-3). The Enforcement Division further recommends that the
22 Commission request the Legal Division to review the record and draft a final written decision for the
23 Commission to consider.

24 This recommended course of action would be manifestly unfair to Norby. It would give the
25 staff inordinate influence over the process, and thereby deprive Norby of an independent, objective
26 fact finder to review his case in full and decide it. A decision on the written record alone, including
27 the transcript, would also deprive Norby of the ability to have the fact finder hear the oral testimony
28 and assess the credibility of witnesses, including himself. This is critical, as the opening brief

1 attempts to cast doubt on the credibility of Norby's testimony in several respects. The ALJ explained
2 the significance of live testimony in the important task of assessing the credibility of witnesses, and
3 how a written transcript can be misleading:

4 "In this matter, the credibility of the witnesses has been evaluated
5 pursuant to the factors set forth in Evidence Code section 780: the
6 demeanor and manner of the witness while testifying, the character of
7 the testimony, the capacity to perceive at the time the events occurred . .
8 . and the attitude of the witness toward the proceeding . . . [¶] 'On the
9 cold record a witness may be clear, concise, direct, unimpeached,
10 uncontradicted – but on a face to face evaluation, so exude insincerity
11 as to render his credibility factor nil. Another witness may fumble,
12 bumble, be unsure, uncertain, contradict himself, and on the basis of a
13 written transcript be hardly worthy of belief. But one who sees, hears
14 and observes him may be convinced of his honesty, his integrity, his
15 reliability.' (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127,
16 140.)" (Conclusion 10.)

17 The Enforcement Division's recommendation that the Commission decide this case primarily
18 on the transcript would have precisely those pitfalls in assessing the extensive and essential testimony
19 in this case, and thus deprive Norby of a fair hearing. That recommendation itself must be rejected.

20 It is of course not necessary for the Commission to decide how to afford Norby a fair hearing,
21 within the constraints of its own time. The Commission should simply adopt the impartial, careful,
22 and thorough decision proposed by the ALJ, an experienced and neutral trier of fact, and, as he
23 recommended, dismiss the Accusation against all respondents.

24 **Summary and Conclusion**

25 The most obvious feature of this case is the very small amount of money at issue in the
26 disputed expenditure of campaign funds – \$340. Counsel for Respondent is not aware of any case
27 involving such a small amount in which the Enforcement Division has invested so very much time.
28 The pursuit of this case, in light of the facts, even to an administrative hearing involving two FPPC
staff attorneys, showed a remarkable lack of perspective.

That extravagant investment of staff time began with the investigation triggered by a
complaint filed by a citizen in November, 2009, almost two years after the \$340 expenditure in
question. That investigation requested all of Norby's campaign records for the full second half of the
2007 calendar year in which the expenditure was made, and involved a staff investigator's reviews

1 and reports on the extensive records provided in response and on additional computer searches for
2 newspaper articles and other information on Norby – none of which resulted in any further charges.
3 The investigation culminated in a probable cause proceeding on the \$340 motel expense that included
4 additional full briefing by an FPPC senior staff attorney, a probable cause hearing before another
5 senior commission counsel, and the preparation and filing of a 13-page Accusation against Norby, his
6 campaign committee, and his treasurer (who the Enforcement Division now agrees with the ALJ
7 should be dismissed from this proceeding).

8 Because Norby would not stipulate to a settlement that would have required him to admit to
9 the wrongful use of campaign funds, regardless of the penalty amount, this matter proceeded to an
10 administrative hearing. That involved an appearance by a senior commission attorney and briefing
11 filed in advance for a settlement conference at the Office of Administrative Hearings in Los Angeles.
12 When that failed to achieve a settlement, again because Norby would not stipulate to a settlement that
13 would have required him to admit to the wrongful use of campaign funds, this matter proceeded to a
14 full hearing before an administrative law judge, again at the OAH office in Los Angeles.
15 Commission legal staff prepared further briefing for that hearing, and assembled and filed numerous
16 exhibits. Two Commission attorneys – a senior counsel and another counsel from the Enforcement
17 Division– appeared for that full day of a hearing in Los Angeles. Additional post-hearing briefing
18 was prepared and filed by Enforcement Division attorneys, and Respondents.


19 After the ALJ, who was the first neutral and objective fact finder to review this case, issued a
20 strong and unequivocal finding in favor of Respondents, the Enforcement Division nevertheless now
21 wishes to pursue the matter still further, and invest still more attorney and staff time in it.

22 More importantly, the Enforcement Division now asks the Commission itself to invest its own
23 time in this case, to review the 13-page Proposed Decision by the ALJ and the extensive briefs now
24 filed by both parties in connection with the Enforcement Division’s current recommendation to reject
25 the ALJ’s decision, and if the Commission does so, then at least to consider what will be a lengthy
26 transcript of several hours of testimony at the administrative hearing and the additional briefing that
27 will be submitted in light of the transcript, possibly to hear additional evidence and argument by
28 counsel at a new hearing, and to then consider the entire record and reach a new decision itself.

1 Respondents respectfully urge the Commission to bring an end to this, by adopting the ALJ's
2 proposed decision in its entirety.

3 Dated: March 21, 2012

4 REED & DAVIDSON, LLP

5
6 By: 
7 DARRYL R. WOLD, Of Counsel
8 Attorneys for Respondents
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE - BY OVERNIGHT DELIVERY SERVICE

My business address is 4199 Campus Drive, Suite 550, Irvine, California 92612. I am an active member of the State Bar of California and not a party to this action. I served the document(s) described as:

RESPONDENT CHRIS NORBY'S RESPONSE TO ENFORCEMENT DIVISION'S OPENING BRIEF Re: ADMINISTRATIVE LAW JUDGE'S PROPOSED DECISION

in the action entitled: In the Matter of Chris Norby, *et al.*, Respondents; FPPC No. 09/773

by service to:

John Wallace
Acting Executive Director
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
(Original and six copies)

Gary S. Winuck
Chief of Enforcement
Neal P. Bucknell
Senior Commission Counsel
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
(One copy)

On March 21, 2012 for overnight delivery by Federal Express by delivering the document(s), in an envelope designated by the carrier with delivery fees provided for, addressed as set out above, to

 x a facility regularly maintained by the carrier.

 _ a courier or driver authorized by the carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 21, 2012 at Irvine, California.

 DARRYL R. WOLD

Printed Name

Signature