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

10
11 In the Matter of:

12 PERCY MCGEE,

13 Respondent.

FPPC No. 09/637

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
17 Respondent Percy McGee agree that this Stipulation will be submitted for consideration by the Fair
18 Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
20 matter and to reach a final disposition without the necessity of holding an administrative hearing to
21 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
24 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the
25 right to personally appear at any administrative hearing held in this matter, to be represented by an
26 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the
27 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
28 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

1 It is further stipulated and agreed that Respondent committed two violations of the Political
2 Reform Act. These violations are described in Exhibit 1, which is a true and accurate summary of the
3 facts in this matter. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth
4 herein.

5 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
6 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of
7 \$2,000. One or more checks or money orders totaling said amount—to be paid to the General Fund of
8 the State of California—is/are submitted with this Stipulation as full payment of the administrative
9 penalty described above, and same shall be held by the State of California until the Commission issues its
10 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
11 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
12 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
13 connection with this Stipulation shall be reimbursed. Respondent further stipulates and agrees that in the
14 event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission

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1 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
2 disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

5 Gary S. Winuk, Chief of Enforcement
6 Fair Political Practices Commission

7 Dated: _____

8 Percy McGee, Respondent

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10 **DECISION AND ORDER**

11 The foregoing Stipulation of the parties “In the Matter of Percy McGee,” FPPC No. 09/637,
12 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
13 Practices Commission, effective upon execution below by the Chairman.

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15 IT IS SO ORDERED.

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17 Dated: _____

18 Ann Ravel, Chair
19 Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Percy McGee (“Respondent”) was a member of the Pittsburg Unified School District Board of Trustees. In this capacity, he managed public investments and was required to file annual Statements of Economic Interests (“SEI’s”) disclosing certain sources of income.

For purposes of this Stipulation, Respondent’s violations of the Political Reform Act (the “Act”)¹ are stated as follows:

COUNT 1: On or about March 30, 2009, Respondent Percy McGee, in his capacity as a member of the Pittsburg Unified School District Board of Trustees, filed a Statement of Economic Interests for the 2008 calendar year, but he failed to list Merrill Lynch as a source of income in violation of Sections 87200, 87203, and 87207.

COUNT 2: On or about March 30, 2010, Respondent Percy McGee, in his capacity as a member of the Pittsburg Unified School District Board of Trustees, filed a Statement of Economic Interests for the 2009 calendar year, but he failed to list Merrill Lynch as a source of income in violation of Sections 87200, 87203 and 87207.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations in question.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that assets and income of public officials which may be materially affected by their official actions should be disclosed. (Section 81002,

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, 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 as in effect at the time of the violations, unless otherwise indicated.

subd. (c.) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Required Filing of Annual Statements of Economic Interests

Certain public officials, including those who manage public investments, must file Statements of Economic Interests on an annual basis. (Sections 87200 and 87203.) Among other things, the Statements of Economic Interests must include sources of income of \$500 or more, and generally speaking, in the case of the official’s pro rata share of income to a business entity, the official must identify any significant source of income to the business entity (if the official’s pro rata share of the receipts from such a source was \$10,000 or more for the calendar year). (Sections 87203 and 87207.)

SUMMARY OF THE FACTS

As stated above, at all relevant times, Respondent was a member of the Pittsburg Unified School District Board of Trustees. In this capacity, he managed public investments and was required to file annual Statements of Economic Interests disclosing certain sources of income.

Also, at the time, he was a financial advisor, and he received significant fees and commission income from Merrill Lynch in excess of \$10,000 per year. The commissions were paid pursuant to an agreement with Merrill Lynch relative to various accounts that Respondent handled.

Counts 1 and 2

On or about March 30, 2009, Respondent Percy McGee, in his capacity as a member of the Pittsburg Unified School District Board of Trustees, filed a Statement of Economic Interests for the 2008 calendar year, but he failed to list Merrill Lynch as a source of income.

Also, on or about March 30, 2010, Respondent Percy McGee, in his capacity as a member of the Pittsburg Unified School District Board of Trustees, filed a Statement of Economic Interests for the 2009 calendar year, but he failed to list Merrill Lynch as a source of income.

In this way, Respondent committed two violations of Sections 87200, 87203 and 87207.

CONCLUSION

This matter consists of two counts. The maximum penalty that may be imposed per count is \$5,000. Thus, the maximum penalty that may be imposed for both counts is \$10,000. (See Section 83116, subd. (c).)

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory

scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): (1) the seriousness of the violations; (2) the presence or lack of intent to deceive the voting public; (3) whether the violation was deliberate, negligent, or inadvertent; (4) whether the Respondent demonstrated good faith in consulting with Commission staff; (5) whether there was a pattern of violations; and (6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

One of the more recent stipulations involving SEI non-disclosure imposed a penalty in the low range. (See *In the Matter of Gregory Fox*, FPPC No. 10/798, approved Nov. 10, 2011 [\$1,000 penalty imposed per count for four counts of SEI non-disclosure].)

Penalties for SEI non-disclosure violations range widely depending upon the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

In this case, Barbara Wilson, the Superintendent for Pittsburg Unified School District (the "District") during the period of time in question, had an account with Merrill Lynch that was handled by Respondent, and part of Respondent's commission income from Merrill Lynch was attributable to Ms. Wilson's account. However, there was insufficient evidence to determine whether or not Respondent had a conflict of interest with respect to Ms. Wilson's employment contract with the District in part because the District appears not to have maintained documentation regarding Ms. Wilson's performance evaluations (in which Respondent may or may not have participated).

Under these circumstances, imposition of an agreed upon penalty in the amount of \$1,000 per count is justified. A higher penalty is not being sought because Respondent cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, Respondent's violations appear to have been unintentional, having resulted from a mistaken understanding of the reporting requirements for commission income. Additionally, Respondent does not have a prior history of violating the Act.

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$2,000 is recommended.