

1 GARY S. WINUK
Chief of Enforcement
2 NEAL P. BUCKNELL
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

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

10
11 In the Matter of:

12 MARTIN BERTRAM,

13 Respondent.

FPPC No. 10/1093

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
17 Respondent Martin Bertam, hereby agree that this Stipulation will be submitted for consideration by the
18 Fair 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 additional administrative
21 hearing to determine the liability of Respondent.

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 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 \$6,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
8 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
9 administrative penalty described above, and same shall be held by the State of California until the
10 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
11 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
12 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
13 by Respondent in connection with this Stipulation shall be reimbursed. Respondent further stipulates and
14 agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the

15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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

3
4 Dated: _____

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

7 Dated: _____

8 Martin Bertram, Respondent

9
10 **DECISION AND ORDER**

11 The foregoing Stipulation of the parties “In the Matter of Martin Bertram,” FPPC No. 10/1093,
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.

14
15 IT IS SO ORDERED.

16
17 Dated: _____

18 Ann Ravel, Chair
19 Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Martin Bertram (“Respondent Bertram”) was an unsuccessful candidate for the Bakersfield City Council in the November 2, 2010 election.

The Political Reform Act (the “Act”)¹ requires that expenditures of campaign funds must be related to a political, legislative, or governmental purpose. Depending upon the circumstances, such expenditures either must be reasonably related or directly related. In this matter, Respondent used campaign funds for purposes other than those permitted by the Act.

For purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: On or about January 27, 2011, Respondent Martin Bertram made an expenditure of campaign funds in the amount of \$1,500 for personal legal fees—which were unrelated to any political, legislative, or governmental purpose—in violation of Sections 89512, 89513, subdivisions (b)(1) and (2), as well as 89514.

COUNT 2: On or about May 9, 2011, Respondent Martin Bertram made an expenditure of campaign funds in the amount of \$2,500 for personal legal fees—which were unrelated to any political, legislative, or governmental purpose—in violation of Sections 89512, 89513, subdivisions (b)(1) and (2), as well as 89514.

SUMMARY OF THE LAW

The violations discussed below occurred between approximately January and May of 2011. All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations in 2011.

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.

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. 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.

As described above, one of the purposes of the Act is to prevent the personal use of campaign funds (because the rule against personal use of campaign funds is the only thing separating campaign contributions from bribery). Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Prohibition Against Personal Use of Campaign Funds

An expenditure to seek office must be reasonably related to a political purpose, but if it confers a direct and substantial personal benefit on the candidate of more than \$200, the expenditure must be directly related to a political, legislative or governmental purpose. (Sections 89511, subdivision (b)(3), and 89512.)

Campaign funds may not be used to pay for professional services unless the services are directly related to a political, legislative, or governmental purpose. Expenditures of campaign funds for attorney’s fees and other costs in connection with administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except where the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee’s activities or out of a candidate’s or elected officer’s activities, duties, or status as a candidate or elected officer. (See Sections 89513, subdivisions (b)(1) and (2), as well as 89514.)

SUMMARY OF THE FACTS

Respondent Bertram was an unsuccessful candidate for the Bakersfield City Council in the November 2, 2010 election. His campaign committee was Martin Bertram for City Council 2010.

Approximately three weeks before the election, Kern County prosecutors charged him with violations of Penal Code sections 502, subdivision (c)(2) (unauthorized copying/use of computer data, a misdemeanor); 148, subdivision (a)(1) (obstruction of peace officer, a misdemeanor); and 502, subdivision (c)(7) (accessing computer without permission, an infraction). The charges included allegations that he accessed personal and campaign documents of Ken Mettler during Mr. Mettler's race in connection with the 2010 Republican primary election for the California Assembly, 32nd District. Also, the charges included allegations that Respondent Bertram distributed the accessed information to others, including the media. Mr. Mettler was defeated in the primary by his opponent, Shannon Grove.

Ultimately, Respondent Bertram pled *nolo contendere* to the second and third charges described above, and the first charge was dismissed, but he incurred legal fees from the law firm of Swanson O’Dell. Some of these legal fees were covered or advanced by Respondent Bertram’s campaign consultant, Western Pacific Research², and have not been repaid by Mr. Bertram to date, but some of the legal fees were paid directly by Respondent Bertram with his own campaign funds. This is described in more detail below.

² Western Pacific Research also was the campaign consultant for Shannon Grove.

Counts 1 and 2

On or about January 27 and May 9, 2011, Respondent Bertram made expenditures of campaign funds in the amounts of \$1,500 and \$2,500, respectively, for personal legal fees that he owed to the law firm of Swanson O'Dell in connection with the above-described criminal matter.

This was a prohibited, personal use of campaign funds because the expenditures were unrelated to Respondent Bertram's candidacy for Bakersfield City Council.

In this way, Respondent Bertram committed two violations of Sections 89512, 89513, subdivisions (b)(1) and (2), as well as 89514.

CONCLUSION

This matter involves two counts of violating the Act which carry a maximum administrative penalty of \$5,000 per violation, for a total maximum penalty of \$10,000. (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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Counts 1 and 2, these types of violations are similar to violations of Section 89512.5 (which imposes restrictions on the use of committee funds by non-candidate-controlled committees). A recent stipulation involving this type of violation shows that the penalty has been in the mid-range. (See *In the Matter of Lynwood Teachers Association PAC and Michael Jochum*, FPPC No. 11/337, approved Aug. 16, 2012 [\$3,000 penalty imposed for county general

purpose committee's expenditure of funds unrelated to political, legislative or governmental purpose].)

Personal use of campaign funds is a serious violation of the Act because the prohibition against such personal use is the only thing separating campaign contributions from bribery. Under these circumstances, imposition of an agreed upon penalty in the amount of \$3,000 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 does not have a history of violating the Act.

PROPOSED PENALTY

For the foregoing reasons, imposition of a total penalty in the amount of \$6,000 is recommended.