



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent Via Electronic and U.S. Mail

September 24, 2014

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Augustine Fallay

**SUBJECT: REQUEST FOR HEARING BY AUGUSTINE FALLAY ON HIS
FUTURE RESTRICTIONS WITH THE CITY AND COUNTY OF
SAN FRANCISCO.**

Dear Mr. Fallay:

As you are aware, the above matter will be considered by the Civil Service Commission at a meeting to be held on **October 6, 2014 at 2:00 p.m.** in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/Civil_Service under "Meetings" no later than end of day on Wednesday, October 1, 2014. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal was emailed to you on July 11, 2014; however, a hard copy is also available for your review in the Commission's offices.

You have requested in writing via email to me on September 23, 2014 that the Commission indefinitely postpone your appeal pending resolution of any and all litigation you may have against the City. I will provide the Commission with a copy of your email and our other substantive communications to date. As I have indicated, you should be prepared to present on your appeal at the October 6th meeting (or have a representative do so on your behalf) in the event that your request is denied.

In the event that you wish to submit any additional documents in support of your appeal or your request for postponement, the deadline for receipt in the Commission office is 5:00 p.m. on **Tuesday, September 30, 2014** (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information that is not relevant to the appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

THIS DOCUMENT SUPPORTS
CALENDAR ITEM 11

E. DENNIS NORMANDY
PRESIDENT

DOUGLAS S. CHAN
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

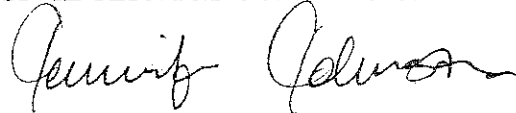
IFER C. JOHNSTON
EXECUTIVE OFFICER

All calendared items will be heard and resolved at this time unless postponement is granted. Therefore, it is important that you or an authorized representative attend the hearing on your appeal in the event that your request for postponement is denied. Should your request be denied and you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department.

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Jennifer.Johnston@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION



JENNIFER JOHNSTON
Executive Officer

Attachment

Cc: Susan Gard, Department of Human Resources
Niger Edwards, Department of Human Resources
Tom Hui, Department of Building Inspection
Emily Morrison, Department of Building Inspection
Robert J. Williams, Esq.
Commission File
Commissioners' Binder
Chron



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent Via Electronic and U.S. Mail

July 7, 2014

E. DENNIS NORMANDY
PRESIDENT

NOTICE OF CIVIL SERVICE COMMISSION MEETING

DOUGLAS S. CHAN
VICE PRESIDENT

Augustine Fallay

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

**SUBJECT: REQUEST FOR HEARING BY AUGUSTINE FALLAY ON HIS
FUTURE RESTRICTIONS WITH THE CITY AND COUNTY OF
SAN FRANCISCO.**

GINA M. ROCCANOVA
COMMISSIONER

Dear Mr. Fallay:

IFER C. JOENSTON
EXECUTIVE OFFICER

The above matter will be considered by the Civil Service Commission at a meeting to be held on July 21, 2014 at 2:00 p.m. in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/Civil_Service under "Meetings" no later than end of day on Wednesday, July 16, 2014. Please refer to the attached Notice for procedural and other information about Commission hearings. We will email you a copy of the department's staff report on your appeal when we receive it, which shall be no later than the end of business day on July 10th. A copy of the department's staff report will also be available for your review at that time in the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco.

In the event that you wish to submit any additional documents in support of your appeal, the deadline for receipt in the Commission office is 5:00 p.m. on Tuesday, July 15, 2014 (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information that is not relevant to the appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

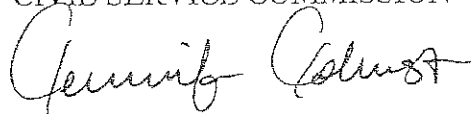
It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance.

THIS DOCUMENT SUPPORTS
CALENDAR ITEM _____

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Jennifer.Johnston@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION

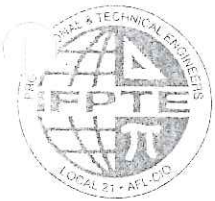


JENNIFER JOHNSTON
Executive Officer

Attachment

Cc: Donna Kotake, Department of Human Resources
Robert Williams, Esq.
Commission File
Commissioners' Binder
Chron

Appeal



INTERNATIONAL
FEDERATION OF
PROFESSIONAL
AND
TECHNICAL
ENGINEERS

LOCAL 21
AFL-CIO

An Organization of
Professional and Allied
Technical Employees

MAIN OFFICE

ORPHEUM
THEATER BUILDING
1182 MARKET STREET
ROOM 425
SAN FRANCISCO, CA
94102

(415) 864-2100

(510) 251-2199

FAX: (415) 864-2166

SOUTH BAY OFFICE

675 N. FIRST STREET
SUITE 715
SAN JOSE, CA,
95112

(408) 291-2200

FAX: (408) 291-2203

www.ifpte21.org

March 6, 2006

Kate Favetti, Executive Officer
SF Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102

RECEIVED
EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION
SAN FRANCISCO

06 MAR -7 PM 1:04



original of fax
w/ AUGUSTINE FALLAY
VIA FAX/MAIL

RE: Request for Hearing

Dear Ms: Favetti:

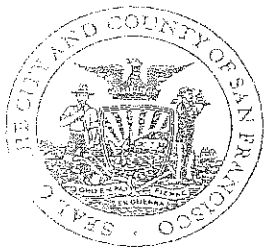
Please consider this notice as a request for a hearing for review on the future employability of Mr. Augustine Fallay.

We filed a grievance and will be proceeding to arbitration on the termination of Mr. Fallay, Planner IV from his employment at the Department of Building Inspection.

Sincerely,

Nilka Julio
Representative/Organizer

Cc: Augustine Fallay
Duane Reno
David Novogrodsky



Fallay, Augustine

CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

DATE: March 8, 2006
REGISTER NO.: 0126-06-7
APPELLANT: AUGUSTINE FALLAY

GAVIN NEWSOM
MAYOR

LINDA RICHARDSON
PRESIDENT

THOMAS T. NG
VICE PRESIDENT

ALICIA D. BECERRIL
COMMISSIONER

DONALD A. CASPER
COMMISSIONER

MORGAN R. GORRANO
COMMISSIONER

KATE FAVETTI
EXECUTIVE OFFICER

Nilka Julio
IFPTE Local 21
1182 Market Street, Room 425
San Francisco, CA 94102

Dear Ms. Julio:

The Civil Service Commission has received your letter on behalf of Augustine Fallay requesting a hearing on his future employability as a Planner IV at the Department of Building Inspection.

Your request has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

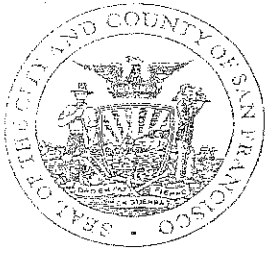
If timely and appropriate, this matter will be scheduled for hearing by the Civil Service Commission in the near future. You will be notified approximately one week in advance of the hearing date. The Civil Service Commission meets on the 1st and 3rd Mondays of each month. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date.

Sincerely,

CIVIL SERVICE COMMISSION

KATE FAVETTI
Executive Officer

- c: Philip Ginsburg, Human Resources Director
- Elizabeth Jacobi, Department of Human Resources
- Amy Lee, Department of Building Inspection
- Alpha
- Chron



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM
MAYOR

LINDA RICHARDSON
PRESIDENT

THOMAS T. NG
VICE PRESIDENT

ALICIA D. BECERRIL
COMMISSIONER

DONALD A. CASPER
COMMISSIONER

MORGAN R. GORRANO
COMMISSIONER

KATE FAVETTI
EXECUTIVE OFFICER

NOTICE OF HEARING ON FUTURE EMPLOYMENT
WITH THE CITY AND COUNTY OF SAN FRANCISCO

DATE: March 8, 2006

REGISTER NO.: 0126-06-7

APPELLANT: AUGUSTINE FALLAY

Philip Ginsburg
Human Resources Director
44 Gough Street
San Francisco, CA 94103

Dear Mr. Ginsburg:

The Civil Service Commission has received the attached request for hearing on the future employability of Augustine Fallay, Planner IV at the Department of Building Inspection.

This matter has been tentatively scheduled for hearing by the Civil Service Commission at 10:00 a.m. on June 5, 2006 in Room 400, 4th Floor, City Hall, 1 Dr. Carlton B. Goodlett Place. If you are unable to proceed on this date or if for any reason the appeal is not timely or appropriate, please notify me by use of the "Action Request on Pending Appeal/Request" (CSC Form Number 13).

Sincerely,

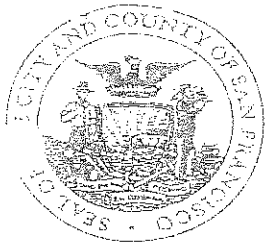
CIVIL SERVICE COMMISSION

A handwritten signature in cursive script, appearing to read "Kate Favetti".

KATE FAVETTI
Executive Officer

Attachment

c: Elizabeth Jacobi, Department of Human Resources
Amy Lee, Department of Building Inspection



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent via U.S. and Electronic Mail

SCOTT R. HELDFOND
PRESIDENT

E. DENNIS NORMANDY
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

KATE FAVETTI
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

JENNIFER C. JOHNSTON
EXECUTIVE OFFICER

DATE: February 5, 2014
REGISTER NO.: 0126-06-7
APPELLANT: IFPTE, LOCAL 21
(AUGUSTINE FALLAY)

Bob Britton
IFPTE Local 21
1182 Market Street, Room 425
San Francisco, CA 94102.
BBritton@IFPTE21.org

Dear Mr. Britton:

I am attempting to resolve the Civil Service Commission's ("Commission") outstanding appeals, which includes the above-referenced appeal submitted in back in 2006 by then-IFPTE, Local 21 representative Nilka Julio, regarding the restrictions placed on Augustine Fallay's future employment with the City (see attached). Ms. Julio submitted no other documentation in support of the appeal beyond her initial letter dated March 6, 2006, nor any contact information for Mr. Fallay.

I was recently informed by the Department of Human Resources ("DHR") that the litigation regarding the arbitrator's decision to deny IFPTE, Local 21's grievance and uphold Mr. Fallay's termination has been resolved in the City's favor (see attachments). DHR indicates that it is prepared to submit a staff report on the appeal so that the matter may be finally heard at an upcoming Commission meeting.

As this matter is nearly eight years old and the underlying litigation is now resolved, I am writing to you inquire as to your intent to proceed with the appeal. If you are still interested in having this appeal heard by the Commission, please submit written confirmation to that effect no later than close of business Friday, February 14, 2014 to my attention at Jennifer.Johnston@sfgov.org or at 25 Van Ness, Suite 720, San Francisco, 94102. **If we do not receive your confirmation by February 14th, the Commission will consider IFPTE, Local 21's appeal withdrawn.** However, we will also allow Mr. Fallay the option of pursuing the appeal and ask that, in either case, you provide us with any contact information you may have on file for Mr. Fallay so that we may include him on future communications.

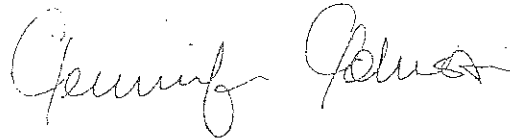
In the event that IFPTE, Local 21 does wish to pursue the appeal, DHR

will submit its staff report on the matter so that it may be scheduled for hearing in the near future. The Commission generally meets on the 1st and 3rd Mondays of each month. We will notify you of the meeting date via email no later than two Fridays before the hearing date, and will also provide you with DHR's staff report at that time. In the meantime, I recommend you compile any additional information you would like to submit to the Commission in support of IFPTE, Local 21's position on the matter. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date (note that the Commission requires an original and eight copies of any supplemental/rebuttal materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.) that the Commission need not know in reviewing the matter, as it will be considered a public document.

You may contact me at Jennifer.Johnston@sfgov.org or (415) 252-3250 if you have any questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sfgov.org/Civil_Service.

Sincerely,

CIVIL SERVICE COMMISSION



JENNIFER JOHNSTON
Executive Officer

Cc: Micki Callahan, DHR
Donna Kotake, DHR
Alpha
Chron

ATTACHMENT 1



INTERNATIONAL
FEDERATION OF
PROFESSIONAL
AND
TECHNICAL
ENGINEERS

LOCAL 21
AFL-CIO

An Organization of
Professional and Allied
Technical Employees

MAIN OFFICE

ORPHEUM
THEATER BUILDING
1162 MARKET STREET
ROOM 425
SAN FRANCISCO, CA
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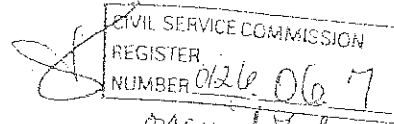
www.ifpte21.org

March 6, 2006

Kate Favetti, Executive Officer
SF Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102

RECEIVED
EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION
SAN FRANCISCO

06 MAR -7 PM 1:04



original of fax
re: AUGUSTINE FALLAY
VIA FAX/MAIL

RE: Request for Hearing

Dear Ms. Favetti:

Please consider this notice as a request for a hearing for review on the future employability of Mr. Augustine Fallay.

We filed a grievance and will be proceeding to arbitration on the termination of Mr. Fallay, Planner IV from his employment at the Department of Building Inspection.

Sincerely,

Nilka Julio
Representative/Organizer

Cc: Augustine Fallay
Duane Reno
David Novogrodsky

ATTACHMENT 2

A MATTER OF ARBITRATION

CITY OF SAN FRANCISCO, DEPARTMENT DEPARTMENT OF BUILDING INSPECTION)	CALIFORNIA MEDIATION AND CONCILIATION CASE NO. ARB-07-0153
)	
Employer)	GRIEVANCE: Termination of Augustine E. Fallay
Vs.)	
)	HEARING: July 21, 23, 25, 2008 January 6, 2009
INTERNATIONAL FEDERATION OF PROFESSIONAL ENGINEERS LOCAL 21)	
)	DECISION ISSUED: May 1, 2009
Grievant)	

DECISION OF WILLIAM E. ENGLER, ARBITRATOR

APPEARANCES BY:

On Behalf of the Grievant/Union

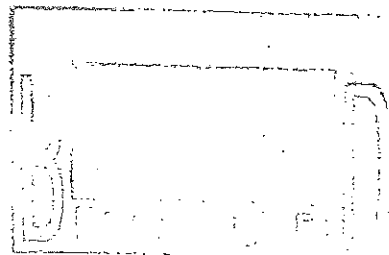
Duane Reno, Esq.
Law Offices of Davis and Reno
22 Battery Street, Suite 1000
San Francisco, CA 94111-5524

On Behalf of the Employer

Daniel J. Herrera, San Francisco
City Attorney
By: Margaret W. Baumgartner, Esq.
Deputy City Attorney
Office of the City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102

2014 JAN 17 AM 9:53

RECEIVED
ENERGY AND UTILITIES
CIVIL SERVICE COMMISSION
SAN FRANCISCO



STATEMENT OF PROCEDURE

This matter arises out of the application and interpretation of the Memorandum of Understanding, which exists, between the above-named Union and Employer. Unable to resolve the dispute between them, the parties selected this arbitrator in accordance with the terms of the collective bargaining agreement to hear and resolve the matter. The hearings were held on July 21, 23, 25, 2008 and January 6, 2009. During the course of the proceeding the parties had an opportunity to present evidence and to cross-examine witnesses. The parties filed timely briefs in this matter, which were received on March 19, 2009.

ISSUES

The parties stipulated the issue in question is whether Mr. Fallay was discharged for just cause, and if not, what is the appropriate remedy?

BACKGROUND

Augustine Fallay (hereinafter referred to as the Grievant) was hired as a planner in the Department of City Planning in 1994. In August 2001, he was transferred to the Department of Building Inspection (DBI). He initially worked as a building inspector and then was placed in charge of the Planning Coordination department, as the Manager of the One-Stop Department. The One-Stop was one of the divisions within the Permit Processing division. It was developed to establish a parallel permit process so that a permanent coordinator would be assigned to a project. A permit applicant would submit their plans in duplicate at the One Stop Desk, on the main floor at 1660 Mission Street. The permit would be assigned to a permanent coordinator who would make sure that all the different departments that needed to review the set of plans could review them at the same time. This was a radical change from the serial review process where each portion of the permit would be reviewed while the rest of the permit departments had to wait in line until the previous department was finished. The assigned intake would establish the routing for the project, identifying all of the different departments that need to review the project in the course of the processing.

In 2003 the Grievant was promoted from planner IV in DBI to the Division Manager position in the Permit Coordination division or One-Step for the Department of Building Inspections. Mr. Tony Fu, whose Chinese name is Dong Fu, first met the Grievant in 1995 when he submitted a permit to do remodeling for an exercise room on the ground floor of his home. Mr. Fu has been friends with the Grievant since that project and he has been involved with the Grievant on a number of construction projects in the City over the years. The most recent projects were one at 663 Chenery Street, another at 337-28th Avenue and another project at 547-23rd Avenue. Mr. Fu advises that he had projects pending in the Department of Building Inspection pretty much continually since 1994.

In early 2000 the Grievant asked Mr. Fu while they were looking at a piece of property in Oakland that the Grievant would like to purchase about the possibility of obtaining a \$50,000. Loan from Mr. Fu. Mr. Fu went to his partner in the 663 Chenery Street project, a Mr. Demas Yan, and asked him about supplying the loan to the Grievant. According to Mr. Fu, Mr. Yan did not hesitate and said he would supply the funds for the loan. At that time, Mr. Yan and Mr. Winky Wong had a financial involvement in the property at 663 Chenery Street. Mr. Fu advised that he was the contractor on the project and went into the property as a joint venture. At the beginning of the project it was three partners, Mr. Yan, another, Winky Wong, and Mr. Fu.

On May 5, 2000, the Grievant and Mr. Fu and Mr. Yan met at the KOI Restaurant in Daly City, California. Mr. Yan had not previously met the Grievant. Mr. Yan gave a check for \$50,000 to the Grievant at the request of Mr. Fu based on the promissory note drafted by Mr. Fu and signed by the Grievant. Ms. Lei Mr. Fu's former wife's name was on the checking account the check was written on. Mr. Yan advised that, at the time of the loan, he owed Crystal Lei, \$25,000, so Mr. Yan believed that one-half of the money he gave to the Grievant was Tony Fu's. Mr. Yan drafted a promissory note in the amount of \$50,000, which provided that it was to be repaid on demand, with interest at the annual rate of 6%. There was no schedule of repayment set out in the note. The Grievant signed this promissory note on May 5, 2000, at

which time he received the check for \$50,000 from Mr. Yan. Ms. Lei's name was also on the check. Mr. Yan expected the loan to be repaid, "probably in no more than a year." Mr. Yan did not believe that his portion of the \$25,000 was a big number.

Mr. Yan did not intend the loan to be a bribe, but Mr. Yan recalled that Mr. Fu indicated to Mr. Yan that Mr. Fu may forgive a portion of the money. Subsequently, Mr. Yan pressed Mr. Fu to get the loan repaid, but Mr. Fu had said or suggested to Mr. Yan that the Grievant was not willing to repay the loan, and that it would not be in Mr. Fu or Ms. Lei's best interest to make him repay the loan. Mr. Fu therefore suggested that Mr. Yan assign the loan to Ms. Lei in September 2003. This information is based upon a Stipulation agreed to by the City and the attorney for the Grievant based on the testimony of Mr. Yan.

The due-on-demand promissory note signed by the Grievant on May 5, 2000, sets forth that the "Grievant promises to pay to the order Demas Wai Yan and Tony D. X. Fu (collectively, "the lender"), at 1433 7th Avenue, San Francisco, California, 94122, (or at such other place as the lender may designate in writing) the sum of \$50,000 (fifty-thousand dollars) with interest from May 8, 2000 on the unpaid principal at the rate of 6% per annum. The unpaid principal and accrued interest shall be payable in full on any future date on which the lender demands repayment (the due date). The promissory note itself is in the hearing file as City Exhibit 1D. The parties further stipulated that soon after the loan was assigned by Mr. Yan to Ms. Lei in September 2003 Mr. Yan came to believe that Mr. Fu and Ms. Lei had taken advantage of or defrauded him. Mr. Yan telephoned the Grievant and told the Grievant not to repay the loan to Ms. Lei. Mr. Yan did not provide a copy of the assignment to the Grievant. The Grievant said to Mr. Yan that he wasn't sure who has the legitimate claim to the repayment. Mr. Yan got the impression that the Grievant was not willing to pay.

THE INVESTIGATIVE PROCESS

On Wednesday, August 10, 2005, John Kelly and Adriel Hampton, investigators for the City of San Francisco, were assigned the task of investigating the conduct and job performance

of the Grievant. The request for investigation by Amy Lee, the Acting DBI Director, followed the arrest of the Grievant on August 4, 2005 by the FBI and the San Francisco District Attorney's Office and subsequent news stories related to that arrest which appeared in the San Francisco press. The Grievant was accused in the press of having taken a loan and other gifts from a developer in exchange for the Grievant's using his influence at the Planning Department and DBI on behalf of projects associated with the developer. The Grievant was additionally accused of not having reported the loans and gifts, which he had received from the developer. On Wednesday, September 7, 2005 and Tuesday, September 13, 2005 the Grievant was interviewed by the investigators from the City Attorney's Office, with his attorney present. There was a transcript of those interviews made and the Grievant was read his *Lybarger* admonition. During the investigation the participants involved with the \$50,000 loan were interviewed as well as DBI personnel who had information with respect to the allegations made against the Grievant.

On October 25, 2005, the Acting Director of the Department of Building Inspections sent a *Skelly* letter to the Grievant informing him of DBI's intent to terminate him from his position as a class 5293 planner IV and scheduling a *Skelly* hearing for November 9, 2005.

The *Skelly* meeting was held on November 16, 2005. The Grievant attended with the union and his Criminal Attorney but did not testify. On December 14, 2005, Acting Director Lee issued a notice of termination citing the basis for termination as the charges listed in the Intent to Discharge *Skelly* letter. The charges in the *Skelly* letter are as follows: 1) accepting \$50,000 from and entering into a promissory note with Tony Fu, Demas Yan, and Lee Ming Lei, who had projects before the City; 2) accepting cash and gifts from Fu and engaging in other transactions with him while he had projects with the City; 3) being personally involved with projects affiliated with Fu, Yan, and Lei before and after accepting cash, gifts, and a "loan" from them; 4) failing to report the "loan"; 5) failing to report the cash and other gifts he received from Fu; and 6) dishonesty and unprofessional conduct. The *Skelly* letter, which is City Exhibit 6, sets out in

substantial detail the specific allegations, which support the six bases for discharge, set forth on the first page of the *Skelly* letter.

The City asserted that the Union had bypassed its time requirements for filing the grievance in this matter and took the position that the discharge of the Grievant was not arbitrable. This issue was placed before this arbitrator and it was concluded that the matter is arbitrable on the merits and that was so ordered. That decision was dated March 31, 2008.

Prior to March 2008, the Grievant was tried in Superior Court in San Francisco before a jury. Portions of the indictment were found to be without merit by the jury and the District Attorney decided not to retry other portions of the case. As a result, there was no conviction of the Grievant for any of the charges for which he was tried in criminal court.

It is admitted by the Grievant that he did obtain the loan as described above for \$50,000 on May 5, 2000. The Grievant admits that he did not pay back Ms. Lei, Mr. Fu or Mr. Yan any portion of the \$50,000 or interest that was called for under the promissory note. He further admits that he did not report the loan in any of the years after 2000 on the Form 700 of the Fair Political Practices Commission. At the direction of his attorney on October 7, 2005, the Grievant submitted amended Forms 700 for each of the years showing the "loan" out standing for each of the years. He did not report any gift that the loan may have turned into based on requirements of the Fair Political Practices Commission Form 700.

RELEVANT CONTRACT TERMS

Article 1.E. – Grievance Procedures

9. Discipline/Discharge Grievances

- a. The City shall have the right to discipline any non-probationary, permanent, temporary civil service, or provisional employee who has served the equivalent of a probationary period for just cause. As used herein, discipline shall be defined as discharge, suspension and disciplinary demotion.

RELEVANT PORTIONS OF THE CALIFORNIA FAIR
POLITICAL PRACTICES COMMISSION FORM 700

The Grievant filed commencing from April 1996 through April 2005 a Statement of Economic Interest for Designated Employees. On each form he showed no reportable interest on any of the schedules. This meant that even after 2000 when he accepted the \$50,000 from Mr. Yan he continued to show that he had no reportable interest on any of the schedules. The Form 700 each year consistently provided information to the filers, which were critical to correctly providing the information requested on the forms.

THE QUICK TIPS FOR EASIER FILING SECTION provided

1) Know your jurisdiction – you only have to report investments and business positions in business entities, real property, and income from sources that are located or doing business in your agency's jurisdiction. Gifts are reportable regardless of the jurisdiction.

If you file because your position is listed in a state or local agency's conflict of interest code, review your disclosure categories because they will describe the specific interest you must report. Obtain your disclosure categories from your agency – they are not contained in the Form 700.

THE INTRODUCTION SECTION of the form advised:

Loan Prohibitions:

State and local public officials may not receive any personal loan totaling more than \$250 from an official, employee or consultant of, or from anyone who contracts with, their government agency. . . Under certain circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.

The introduction section provides telephone numbers for employees to obtain information with respect to filing responsibilities.

SCHEDULE D

In the Form 700 package schedule D dealt with loans (in the 2004 and 2005 Form 700 the schedule was for loans was changed to Schedule C). The instructions for Schedule D and later Schedule C stated: "loans received or outstanding during the reporting period, which total \$500 or more from a single source located in or doing business in your jurisdiction are reportable. Your community property interest in loans received by your spouse also must be reported."

Schedule D and subsequently Schedule C required that the name of the lender and his address be included and the filer is to check the appropriate box describing the lender's business activity. Further the filer is to disclose the interest rate and terms of the loan.

THE TERMS AND DEFINITION SECTION OF THE FORM 700

Conflict of Interest: a public official or employee has a conflict of interest under the Act when all of the following occur: the official makes, participates in making, or uses his or her official position to influence a governmental decision; it is reasonably foreseeable that the decision will affect the official's economic interest; the effect of the decision on the official's economic interest will be material; and the effect of the decision on the official's economic interest will be different than its effect on the public generally.

Conflict of Interest Code: The Act requires every state and local government agency to adopt the Conflict of Interest Code. The Code may be contained in a regulation, policy, statement, or city or county ordinance.

Disclosure Categories: The section of an agency's conflict of interest code that specifies the types of personal economic interest officials and employees of an agency must disclose on their Statements of Economic Interest. Disclosure categories are usually contained in an appendix or an attachment to the Conflict of Interest Code. Contact your agency to get a copy of your disclosure categories.

Enforcement: The Fair Political Practices Commission investigates suspected violations of the Act. Other law enforcement agencies (the Attorney General or District Attorney) also may initiate investigations under certain circumstances. If violations are found, the Commission may initiate administrative enforcement proceedings, which could result in the imposition of monetary penalties of up to \$5,000 per violation.

Instead of administrative prosecution, a civil action may be brought for negligent or intentional violations by the appropriate civil prosecutor (the Commission, Attorney General, or District Attorney), or a private party residing within the jurisdiction. In civil actions, the measure of damages is up to the amount of value not properly reported.

Persons who violate the conflict of interest disclosure provisions of the Act also may be subject to discipline by their agency including dismissal.

Fair market value: When reporting the value of an investment, interest and real property, or gifts, you must disclose the fair market value – the price at which the item would sell for on the open market. This is particularly important in valuing gifts because the fair market value of a gift may be different from the amount it cost the donor to provide.

Loans: State and local elected and appointed officials and employees are prohibited from receiving any personal loan totaling more than \$250 from an official, an employee or consultant of their governmental agencies or any governmental agency over which the official or the official's agency has direction or control. In addition, loans of more than \$250 from any person who has a contract with the official's agency or an agency under the official's control are prohibited unless the loan is from a commercial lending institution or part of a retail installment or credit card transaction made in the regular course of business on terms available to members of the public. . .

A personal loan made to a public official that is not being repaid or was being repaid below certain amounts would become a gift to the official under certain circumstances.

THE DEPARTMENT OF BUILDING INSPECTION HANDBOOK FOR PROFESSIONAL EMPLOYEES

At the time the Grievant transferred from the Planning Department to the Department of Building Inspection on August 24, 2001, he acknowledged that he received critical policies -- conflict of interest reporting and policy. In 2002 and 2004 the Department of Building Inspection distributed its Handbook for Professional Conduct of its Employees.

UNDER THE INTEGRITY SECTION OF THE CODE OF PROFESSIONAL CONDUCT

I (the employee) will demonstrate the highest standards of personal integrity in order to inspire public confidence and trust in City employees.

I will accept no gift, special favor, privilege, or benefit offered by a member of the public or by persons or businesses regulated by the Department, doing business with the Department or seeking to do business with the Department for doing my job. When accepting a lawful gift, I will be aware that the public perception may make a negative judgment of me or the Department.

Guidelines -- a good rule of thumb to follow when you are uncertain if something is proper or not is simply ask yourself, "Do I feel comfortable performing this action or seeing someone else perform it?" If the answer is, "No, that you feel uncomfortable or are worried that someone will find out" that's a good indication that something may not be right.

No. 9 -- what should I do if I am offered a gift (item of monetary value, favor, reward, entertainment, loan or meal) by a customer for good service or in celebration of a holiday?

The Charter section C8.105 (f) prohibits City officers and employees from receiving directly or indirectly any compensation, reward, or gift from any source (except the City and County or any other government agency to which he or she has been duly appointed) for any service, advice, assistance or other matter related to the governmental processes of the City and County. Your paycheck and the satisfaction of a job well done are sufficient compensation for performance of official duties. In general, personal gifts for doing your job must be refused

or returned with a friendly but firm message that you are not allowed to receive gifts for doing your job. All employees should consider themselves to be subject to public scrutiny. Public perception of conflict of interest may be stricter than City policy and employees are subject to public and press opinion.

Be advised that there are a number of restrictions on acceptance of other kinds of gifts. If you are presented with a gift, consult City Attorney Julia Mall at 415/554-4705 or call the City Attorney's general number, 415/554-4700.

Under the Definitions section of the Code the definition with respect to Integrity is, "adherence to high moral and ethical principles: a strong sense of honesty: trustworthiness: doing the right thing because it is the right thing.

THE POLICY SECTION OF THE HANDBOOK OF PROFESSIONAL CONDUCT

It states, "City officials are subject to strict conflict of interest laws and policies governing official conduct. Per San Francisco Charter Section 15.103, "all officers and employees of the City and County are subject to all California state laws and City ordinances proscribing conflicts of interest and incompatible activities, as well as the provisions of Charter section CB 105. Any violation of such laws is official misconduct and is basis for discipline and/or removal, in addition to any other penalties proscribed by law.

CONFLICTS OF INTEREST

There are several city and state laws that prohibit City officials from participating in decisions in which they have a financial interest. In most cases these laws provide that the conflicts may be avoided if the official discloses his or her interest and abstains from participating in or seeking to influence a decision in which the official has financial interest. In some cases, however, the official must choose between maintaining the financial interest and continuing to serve as a public official.

Charter section C8 105(a) – this section prohibits an officer or employee of the City and County from becoming directly or indirectly interested in any contract, franchise, right, privilege or sale or lease of property awarded, entered into, or authorized by him or her, by those under his or her supervision and control, or by a board or commission of which he or she is a member. An officer or employee must divest himself or herself of such interest within 60 days or resign from his or her position. Charter section CB 105 provides some exceptions to this result.

CHARTER SECTION CB 105

Charter section CB 105 prohibits an officer or employee of the City and County from making, participating in making, or in anyway attempting to influence a governmental decision in which he or she has reason to know he or she has a financial interest. This provision is the local counterpart of the California Political Reform Act Conflicts of Interest provision, a state law, described on page two of this section.

The Ethics Commission guidelines for identifying conflicts of interest set forth a step-by-step procedure for establishing whether a financial interest will have a material financial effect on an official's economic interest.

San Francisco Civil Service Commission Rule 118.3 provides: "no officer or employee may participate in any activity or enterprise where income, profit, or other gain is or may be accrued, which could reflect on the honor or efficiency of the City service, or be contrary to the best interest of the City service in any respect.

LIMITS AND REPORTING REQUIREMENTS FOR GIFTS, HONORARIA, TRAVEL AND LOANS

The Political Reform Act imposes limits on gifts and prohibits honoraria payments received by public officials, including designated employees (i.e., individuals required to file statements of economic interests under the San Francisco Conflict of Interest code).

Designated employees may not accept gifts from any single source totaling more than \$320 in a calendar year if they are required to report income or gifts received from that source in their SEIS.

A gift is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.

For more information concerning gifts, honoraria and for a discussion of travel and loans, please refer to the San Francisco Ethics Commission Manual on Governmental Ethics Laws.

A list of telephone numbers of individuals who may provide information and guidance is listed.

THE GRIEVANT'S ADMISSIONS AS TO WHAT RULES HE RECALLED THAT HE REVIEWED IN ORDER TO FILL OUT THE FORM 700 AND THOSE HE DID NOT REVIEW.

The Grievant testified that he did receive in February 2002 the Code of Professional Conduct at the Department of Building Inspection (Exhibit M). He admitted that he looked through the Code.

On April 23, 2005, the Grievant signed a declaration under penalty of perjury that he had read the Sunshine Ordinance and had attended an annual training session on the Sunshine Ordinance. This declaration shows that the Grievant attended the training on April 23, 2005.

At that training they were talked to about disclosure categories and how to fill out the Form 700. He admitted that a week and one-half later checked his old form and just filled in "like I have been doing which is what just most of us do." He admitted that he, "did not research his disclosure category and that he did not know about categories." He volunteered he didn't think that Department of Building Inspection had only one disclosure category. Fallay admitted that he never took the opportunity to ask any available source about his reporting obligations.

The initial step would have been to contact the Ethics Commission to ascertain what disclosure category he was under.

The Grievant admitted that he might have reviewed the Employee Handbook for the Department of Building Inspection and it could have had a section on conflict of interest and ethical obligations. He contended that if he didn't know about something he would take and read the areas that were of interest to him at the time he was reading. He didn't know if he read about, conflict of interest, but there are books on that. He stated that he didn't really believe he had a conflict of interest so, no, it didn't interest him. He admitted that he received all the policies set out in the receipt when he moved to the Department of Building Inspection. He advised that he could have read the conflict of interest reporting policy. He wasn't sure. He recalled that he did receive the Employee Code of Professional Conduct which came with the February 25, 2002, memo and also the May 27, 2004, update of the Employee Code of Professional Conduct.

The Grievant stated that he, "misunderstood the economic statement Form and he failed to report the loan on any of the yearly Statements of Economic Interest until he was arrested in 2005. He advised that before he was arrested he did not know to do it and obviously that doesn't excuse the fact that he didn't file it." The Grievant admitted that he found out some facts with respect to his amended forms that he must report the two red envelopes containing \$100 that was given to his wife by Tony Fu for his newborn son.

THE GRIEVANT DEALING WITH THE LENDERS AFTER RECEIVING THE LOAN.

The Grievant asserted that after he received his loan he did not plan check any projects for Mr. Yan, Mr. Fu, or Ms. Lei. The Grievant asserted that plan check is when you get a project, somebody brings in the project. It's assigned to you by the supervisor. You are supposed to look at it for code compliance, and that means extensive review. You have authority to say, this is good, it's okay to go out, or you can ask for more information, or you can tell them to revise it. You are the one responsible for that plan, whatever goes on with it or

whatever goes wrong with it, you will be responsible for it. After he got the loan, he never look any more projects from the lenders to review.

The Grievant's recall of his connection with the Project at 337 28th Avenue

This was a project that came in in 2002 or 2003. It was brought to my attention by Senior Building Inspector Ed Sweeney. He advised me that he had a project and that he needed help in dealing with Crystal Lei. Sweeney told the Grievant that there was a series of violations, they had done a lot of work on the job without permits, and he had been trying to get them to comply and the Department couldn't. Since the policy of the Department is to prod people to comply with the code requirements, we attempt to work with them to do what is right because they are the property owners and have put a lot of money into their property. The Grievant recalled that every now and then he would have a conversation with Inspector Sweeney about the project. The Grievant did act as a go-between with Ms. Lei at the request of Mr. Sweeney. The Grievant advised that when he got involved with this case, he went to the Deputy Director, Mr. Hutchinson, to find out what was involved – could he talk to the owners about what they should do. It was apparent that they had filed a series of permits in the Department in 2001 and 2002, this was called serial permitting. The Grievant advised the owners Fu and Lei to put all the plans together, hire a credible architect or engineer. The owners worried that it was going to take too long, to get approval of the project. The Grievant advised Fu that he could bring it through the expedited process which the Grievant explained to him was the one-stop coordination process. Fu brought his project into the clerk at the One Stop counter and the permit detail report for 337 28th Avenue showed that on January 16, 2004, the permit was brought into one-stop. It was then sent to Jim Hutchinson, the Assistant Director of DBI at the direction of the Grievant. The permit detail report shows that the start date of the report was January 6, 2004, when it was plan checked by Edward Sweeney.

The Project at 663 Chenery Street

The Grievant advised that this was a project that came in as a demolition of a single-story residential building. The Contractor on the permit was San Francisco Contractors Association which was operated by Mr. Fu. It was to be replaced with a two or three story residence over a commercial space. The project was assigned to the Grievant by his former supervisor, Laurie Scott. He was supposed to plan check it and approve it for the Planning Department and he did that. The project was approved before the Grievant's loan was received in May of 2000. The demolition permit on this project was approved by the Grievant on the day that it was filed and assigned to the Grievant on February 28, 2000. There were a total of 11 permit applications on the project over the course of the project...

The Grievant admitted that he could have had continued involvement on the Chenery Street project after he had received the loan from Messrs. Yan and Fu and Lei in May of 2000. This was because he had originally been handed the project and he knew the details of it. This was an unusual project in that it required the changing of two what appeared to be bedrooms into storerooms. The Grievant advised that this had occurred much later in the project than when he originally became involved. The Grievant did admit that he interacted with both Ed Sweeney and Tony Fu with respect to this project. He recalled that he told Tony Fu and Demas Yan to remove the windows on the side of the building, because the neighbors didn't like it and he didn't want to see neighbors appeal the project, since "I was on the side of the neighbors."

The Grievant did attend meetings with neighbors because he knew the details of the case from start to finish. The Grievant advised that it would have been very difficult for anybody else to pick up the project. It would have required someone to be trained on the project. It is apparent from a note received from the neighbor who had filed appeals that the Grievant had mediated with the owners and the persons who filed the appeal. This mediation by the Grievant resulted in the withdrawal of the appeal on March 29, 2001.

There was a permit approval on the Chenery Street project that showed at the top "okay to issue (Gus) and that was in June 2003. The Grievant advised that in his position as manager of one-stop, he handled the Chenery Street case from beginning to end and he didn't do any more work on it, in terms of code compliance. The Grievant advised that he wrote, okay to issue, only as manager of quality control. He contends that his staff reviewed the permit and they said it was fine and he proceeded to give and "ok to issue, for the project.

The Project at 28th Avenue Owned by Crystal Lei

At the time of this project when he was discussing it with Tony Fu, he was working in the Department of Building Inspection as opposed to the Department of Planning. He advised that Tony Fu would call him at home. He was asked to get involved in discussing the project with Fu by Inspector Ed Sweeney. The Grievant recalled that he explained to Mr. Fu what the problems were and what he needed to do to resolve them. He went out to the property at the request of Mr. Sweeney along with Mr. Sweeney. While they were at the property Mr. Sweeney signed off on the permit application. In 2004, at the time this was occurring, the Grievant had the plans for the project sent to the Assistant Director, of DBI Mr. Hutchinson.

At the same time the Grievant was having conversations with Tony Fu about the property on 28th Avenue. His face to face conversations with Mr. Fu were recorded by Mr. Fu wearing a wire at the request of the FBI. In those conversations, the Grievant was heard to tell Tony Fu that he, the Grievant, had convinced Ed Sweeney to sign off on this project. When he was questioned about this the Grievant responded that, "Actually, I told Tony Fu a lot of things to calm him down to do the right thing." When he was asked if in one of those telephone conversations with Tony Fu that he had told him that he, the Grievant, had forced Ed Sweeney to sign off on the project, the Grievant admitted that he might have said that but that that statement was not true and the he was trying to calm Tony Fu down. The Grievant denied that

he was trying to show Mr. Fu that he had any authority as such. Rather, he was trying to make Tony Fu calm down.

The Grievant admitted that in these conversations that he had had with Tony Fu about the project and the loan that the Grievant told Tony Fu that he, the Grievant, had saved Fu hundreds of thousands of dollars. During this same conversation, the Grievant admitted that he was upset that Crystal Lei at that time was asking him to pay interest on the loan. The Grievant advised that he was upset because right from the start of the first year, he had been offering to pay back the money and "I would think my understanding is, if I started offering to pay back the money and they do not accept it, I do not think you can add interest on it after you have been asked, so I was particularly angry. It's like, oh, you have been stringing me along so that you can increase this money I have to pay, and it's like taking me for more money." So yes, I was more upset about the interest she put on it, when right from the start when I was telling them consistently, I want to pay this money, and they said no Then all of a sudden they say; oh, now you owe us this. You would be angry too." The Grievant stated that because at the time he didn't have the money when they started to ask for the money, he got the money in March, April 2005. Crystal had made a demand in 2003 for the money with interest.

The Grievant asserted that when he explained to Tony Fu what the Department wanted him to do on the Chenery Street project; he was acting for the benefit of the Department because, at that point they needed somebody who could talk to Tony Fu and his wife. The Grievant advised that the policy we employ in the Department is to try our utmost to get these people to comply with the code because if we don't, what are you going to do? So the Department always gets somebody from the out side or from within the Department to talk to these persons, talk to them as a friend or have a business partner come in and talk to the person. We need to get them to comply with the code. We do not drive them into court or try to do anything like that.

TESTIMONY OF GOGAN CONCERNING INTEREST RATES AT THE TIME THE LOAN WAS MADE TO THE GRIEVANT

Jude A. Gogan, the Vice President of Financial Services for the San Francisco Federal Credit Union, was called as a witness in the criminal trial involving the Grievant and testified and was cross-examined by the Grievant's criminal lawyer. Mr. Gogan confirmed that the Credit Union's financial records for the Grievant reflected that on May 9, 2000, the bank offered its customers non-secured loans, that is without collateral, from prime rate plus 5%, prime rate plus 6% or prime rate plus 8%. Prime rate is the rate most lenders would give their best customers. It is now evolved into something more like the federal fund rate plus 300 basis points. On May 9, 2000, the prime rate was 9%, so with the additional rate that the bank offered for

unsecured loans that would mean that the rate to unsecured loan borrowers would be at 14%, 15% or 17%.

Mr. Gogan advised that if a customer took out a loan on May 8, 2000 and didn't make any payments but paid it all off on February 28, 2005, almost five years later, the total payments for the three rates of loans would be at; 14% - \$83,683.47; at 17% the interest would be \$40,909.36 with a total payout of \$90,901.36. Mr. Gogan advised that in May 2000 the bank did not offer an unsecured loan for \$50,000. The bank's maximum unsecured on a signature loan was a loan of \$15,000

Testimony of Deputy Executive Director of San Francisco Ethics Commission.

Mabel Ng, the Deputy Executive Director of the San Francisco Ethics Commission testified that the Form 700, Statement of Economic Interests, at Instruction 8 for all the years stated that, "you need to report loans that you received, even loans that are outstanding during the reporting period that total \$500 or more from a single source." My understanding is that you're required to disclose an interest rate because people want to make sure that you are receiving, that the loan you're receiving, is actually a loan. You're paying market value interest rather than an interest that is below market value rate, because if it is below market value rate, it is deemed a gift, to the extent if there's a difference between the two rates.

Also, you want to make sure, when you're dealing with conflicts of interest, and when you're dealing with financial interests, you want to make sure that when you are making a governmental decision you're not being influenced by the financial interest that you have. And that's why the State has decided that you need to report what your interest is, so that there's a comparison made, what the interest is with your loan with respect to what is the fair market value for that interest. This is spelled out in the Fair Political Practices Commission Regulations. It could be in the reference manual provided by the FPPC. If you receive a loan that is below market value, where the interest is below market value, the difference between your interest that you're paying and the full market value, that difference is deemed a gift to you

during that time. She further advised that if you're getting a loan from a bank that makes loans during the regular course of business and you're getting a loan regardless because you're a member of the public and not because of your position in a City agency or State agency, you don't have to report that loan. If it turns out that such a loan is available to members of the public then you need not report it because this is something that's available to everyone.

Ms. Ng was asked by the Grievant's counsel, "So, if a City employee received a loan from an individual who lives in Walnut Creek, is that not reportable?" Ms. Ng replied "If that person does business in the City of San Francisco on a regular basis that would be reportable. For instance, if the person was employed in San Francisco and has some other kind of business relationships on an ongoing basis with the City, it would be reportable." Ms. Ng was asked was that true for employees in all different categories or just for employees in Category One? She replied, "It's for all categories.

MR FU RECOLLECTION ABOUT HAVING A BUSINESS CARD FROM BAY CAL LOAN

Mr. Fu advised that when he purchased the house at 337 28th Avenue in 2002, he decided to find out how things go with loans. He went to a loan company called Bay Cal. He identified a business card with his name on it from Bay Cal and advised that he was not engaged with Bay Cal prior to 2002. Mr. Sean Kelly testified that the Grievant provided a copy of this business card for Bay Cal with the Grievant's name on it to Mr. Kelly during his investigation. The Grievant advised that the card had been presented to him by Tony Fu in the spring of 2000 when the Grievant had indicated to Mr. Fu that he needed to find a source of a loan.

The Grievant introduced evidence that the Director of DBI, Amy Lee, obtained a short-term \$58,000 loan from Roy Guinnane, a building inspection Commissioner. The circumstances of this loan were completely different from that of the Grievant. The lender, Guinnane, was a commissioner not a permit applicant. Nothing suggests that Guinnane had any projects before the Department, either before or after the loan, nor, if any such projects existed, that Ms. Lee became involved in any way with them. Further, Inspector Sweeney testified that Ms. Lee paid back the loan within weeks. There was no evidence in the record concerning whether or not Ms. Lee reported the loan on her Form 700 nor any evidence to suggest that she attempted to keep it secret because she knew it was wrong.

POSITION OF THE PARTIES

POSITION OF THE CITY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION

The City and County of San Francisco terminated the Grievant a Building Inspector, after an investigation showed that Fallay accepted a check for \$50,000 from persons with business before the Department of Building Inspections ("DBI"). (City Ex. 12) The Grievant failed to report the payment, whether as a loan or a gift, on his Form 700 Statement of Economic Interest ("SEI"), which is a form whose purpose is to report financial relationships that could create conflicts of interest. Although Fallay corrected his SEI forms after the FBI arrested him for bribery, his excuses for failing to report the money before that time lack credibility and are in any case no defense for his failure to report this clearly reportable financial transaction.

In addition to failing to report the transaction on his SEI form, Fallay continued to assist the people who provided him with the check on their pending building projects. Because he failed to report the financial transaction, the Department could not act to prevent a conflict of interest. Fallay's breach of the rules greatly weakened the public's trust in the Building Inspection Department.

The Department terminated Fallay. The District Attorney also charged Fallay with various crimes, including bribery. Fallay grieved his termination. When it reached the arbitration step of the grievance process, the City believed that Fallay has abandoned his grievance because he did not request an arbitration date. However, the arbitrator held that Fallay did not waive his right to a hearing on the merits. Thereafter the parties conducted a hearing on the merits that took place over four days. In addition the parties stipulated to the admission of certain evidence from the criminal trial.

The City's statutes regarding Form 700 SEI form places employees into four categories. For all times relevant to this proceeding, the law required all employees of the Department of Building Inspection to complete the Form 700 and all employees in that Department fell within disclosure category one. Form 700 required all employees in Mr. Fallay's category to report personal outstanding loans and gifts which were made for over \$5,000 because unpaid loans are "financial interests." In addition, the San Francisco Charter prohibited the Grievant from accepting a gift from a person doing business with or seeking to do business with the Grievant's department or from "any person who during the prior twelve months knowingly attempted to influence the officer or employee and any legislative or administrative action." The San Francisco Charter provides gifts can include loans at below market interest and provides that there are circumstances in which a loan can become a gift. That is when the interest rate is below market rate and when the loan is not repaid. After the FBI arrested the Grievant, he amended his Form 700 to report the \$50,000 payment and two \$100 gifts made by Mr. Fu to the Grievant's wife on behalf of their newborn son.

There was substantial information available to the Grievant regarding the reporting requirements of the Form 700: the Handbook for Professional Conduct distributed to DBI employees; training with respect to Sunshine and Ethics responsibilities given to DBI employees; and the Employee Handbook for DBI employees given to DBI employees setting forth reporting requirements and ethics requirements.

There is no dispute as to the loan made by Mr. Yan on a bank account, which was jointly owned by Ms. Lei and the fact that she, Mr. Fu and Mr. Yan are named (as collectively the lender) on the due on demand promissory note signed by the Grievant on May 5, 2000 when he received the \$50,000 loan.

The Grievant in his position as One-Stop manager gave the final approval from one-stop division and otherwise worked on the Chenery Street project. Without the approval from one-stop the permit for Chenery St. would not issue. Further, the Grievant acted as a go between for DBI with Mr. Fu and Ms. Lei. He also participated in public mediation sessions with neighbors who were appealing the Chenery Street permit. With respect to the project on 28th Avenue, the Grievant acted as a go between for DBI and Mr. Fu and Ms. Lei on the 28th Avenue project. The Grievant in a taped conversation with Mr. Fu on behalf of the FBI stated to Mr. Fu that he had forced Inspector Ed Sweeney to sign off on the 28th Avenue project and that he had convinced Inspector Sweeney to reduce the fines due on that project.

The City contended that the Grievant committed egregious misconduct which is set out in the six charges incorporated into the Department of Building Inspections letter dated October 25, 2005, informing the Grievant that it intended to terminate him from his position as a Class 5293 – Planner IV and that a *Skelly* meeting was scheduled. The City asserted that the charges were supported by the evidence although denied by the Grievant.

The City argued that the Grievant's misconduct warrants termination as his activities as set forth in the October 25, 2005, letter created an impression of corruption within DBI. The conflict of interest codes were designed to encourage public trust. Mr. Taniguchi, the Support Services Director for DBI who oversees personnel or human resources' budget and finance, management information services for the Department, stated, "People have to feel that the process for, whether it is obtaining a building inspection, a permit, or the inspection itself, it has to be fair and impartial without any influence." A questionable financial relationship with someone who is applying for a discretionary governmental approval is corrosive to a decision-

making process. The Grievant's acceptance of the \$50,000 payment, his failure to report the payment, and his continued work on troublesome projects of Yan, Lei and Fu constitute egregious misconduct showing dishonesty and bad faith. Continuing to employ the Grievant would create significant problems in maintaining the public trust which is so crucial to the operations of DBI. The Grievant did not act in good faith. He knew, or should have known, of his reporting requirements and the conflicts of interest codes yet he embroiled himself in a questionable financial relationship with persons doing business before his Department. The Grievant told Mr. Fu that he did and could help him obtain DBI approvals. The Grievant never repaid the loan and never took any documented steps to do so. The circumstances of the loan should have alerted the Grievant that he was engaging in unprofessional conduct. He took the unsecured, low interest loan from a stranger after he was unable to obtain a commercial loan. The person giving him the money at that time thanked him for his work on the lender's development projects for the City. Tony Fu kept saying there was no reason to repay the loan. The Grievant acknowledged in a tape conversation with Mr. Fu that Mr. Fu could use the loan to blackmail the Grievant. The Grievant knew the Department had significant problems with building projects on which the Grievant remained involved. No evidence supports a finding that the Grievant acted in good faith. Rather, all circumstances suggest the Grievant knew what he did was wrong.

POSITION OF THE UNION:

The issue in this matter is whether there was just cause for the discharge of the Grievant from his position in the City's Department of Building Inspection and if not, what is the appropriate remedy? The charges that were the basis for the termination of the Grievant were stated in the Grievant's *Skelly* hearing notice and notice of termination. The City submitted into evidence a report of the City Attorney investigators which detailed the accounts of the \$50,000 loan made to the Grievant and the Grievant's involvement in the projects of Mr. Fu, Ms. Lei and Mr. Yan, which the Grievant had before and after the loan and his failure to report the loan on

his annual Statement of Economic Interest forms. According to the investigators, the Grievant continued to act in his official capacity on projects that Fu, Lei and Yan were involved with after the Grievant took the \$50,000 loan. The City contends further that the Grievant understood that the loan was intended as repayment for assistance he provided to Mr. Fu and Mr. Yan at DBI. However, the City failed to meet its burden of proof in these allegations. There is no evidence that the Grievant did anything after he took the loan from Mr. Yan which amounted to favoritism to Fu, Lei or Yan. The evidence showed instead that the Grievant received the \$50,000 loan, purposely declined to have any involvement in projects concerning Fu or Lei except as acting as a mediator with them at the request of another DBI employee or verifying that their projects had been plan checked by other DBI employees vested with that duty. The Grievant maintained a level of professionalism that is expected and required by his position. Both the Grievant and Mr. Yan denied the loan was intended as a repayment for assistance that the Grievant provided Mr. Fu and Mr. Yan. The City provided no evidence to the contrary. The Grievant believed the loan was personal business, not relevant to his position and therefore was not necessary to report the loan on his annual Statement of Economic Interest forms. His Statement of Economic Interest policies allow for mistakes to be amended any time an error is discovered. The Grievant amended his annual Statement of Economic Interest forms right away when it was brought to his attention that he had made a mistake by not including the loan on those forms. The Grievant's conduct was fully within the scope of regulations applicable to DBI employees. He did not compromise his position nor intentionally leave out information on his annual Statement of Economic Interest forms for personal gain. The City's investigation and decision to terminate the Grievant were obviously unfairly based on and substantially influenced by the allegations against the Grievant that were reported in the press and that were grounds for his arrest by the FBI. These allegations were determined to be unfounded when the Grievant was acquitted by a jury of criminal charges based on those allegations. For all these reasons and

this further explained below, the City failed to provide evidence sufficient to meet the City's burden of proof that the City had just cause for the termination of the Grievant's employment.

The City shall have the right to discipline any non-probationary permanent, temporary civil service, or provisional employee who has served the equivalent of a probationary period for "just cause". As used herein, discipline shall be defined as discharge, suspensions and disciplinary demotion. The Union proposed the seven question test established by arbitrator Carroll Daugherty in the *Grief Brothers Cooperage Corporation*, 42 LA 555, where if a series of seven questions elicited the answer "no" there was no just cause basis for discipline.

The Union argues that the principle of progressive discipline that calls for a progressive, constructive attempt to correct behavior was absent in the City's institution of discipline with no attempt to institute a series of steps to bring about corrective behavior. The Union argues that in order for the termination of the Grievant's employment to be upheld without progressive discipline the City had the burden of proving both that what the Grievant did was egregiously wrong and that the Grievant knew at the time that what he was doing was wrong.

With respect to the \$50,000 loan, the Grievant testified that he did not believe he was violating any City rule or regulation by accepting this loan from Mr. Yan. He was planning to use the money to pay off his ex-wife for the house they had been living in. He had been trying to get a loan and was unable to do so from banks. He spoke to Tony Fu who had previously advised him that he was a loan broker. The Grievant asked if Mr. Fu could set up such a loan and the loan was arranged with Mr. Yan and the Grievant's plan was to pay the loan within a year by refinancing the home that he would take over. After he obtained the loan, he did take his ex-wife's name off the deed and obtained the house free and clear. He did refinance the loan and went to Tony Fu and told him he was ready to pay it off. Mr. Fu advised him, "Don't worry about it." About two years later after the loan, Demas Yan called the Grievant and asked for the repayment of the loan. The Grievant advised that he did not have the money at that time but that he would refinance the house and pay him. Tony Fu later told the Grievant, "don't worry

about it, don't worry about it" and then "just forget about the loan." Subsequently the loan was assigned to Mr. Fu's former wife, Crystal Lei, and she asked for the loan to be paid. The Grievant advised that he refinanced the loan again in about March 2005. He then received a call from Mr. Yan advising him not to honor the assignment of a portion of the loan to Crystal Lei. At that time he had a conversation with Mr. Yan from Hong Kong and Mr. Yan told him, "Don't pay them because they tricked me into signing the loan to them." Everything then went back to square zero. The Grievant then insisted that he needed clarification from both parties and he was not sure whom he should pay.

The City produced no evidence that the loan from Mr. Yan to the Grievant was intended as a bribe or inducement to engage in official misconduct. The evidence was that this was an ordinary transaction as far as all of the parties were concerned. Neither Mr. Fu nor Mr. Yan expected that the Grievant would perform his official duties any differently because he had taken the loan. The City produced no evidence that the Grievant had given preferential treatment to Mr. Fu or Mr. Yan after the Grievant received the loan from Mr. Yan.

When Mr. Yan was interviewed by investigator Hampton, he advised as follows.

"And when I gave the loan to Augustine, I didn't expect he'll do anything for us in return, and I didn't mention that he'll do anything in particular. And obviously we didn't have any problems at the time in our projects, so that's nothing to ask him to do us any favors on. But in my mind the reason why Tony asked me to give him the loan is, I think, it's pretty obvious to me in my mind, is that Tony wanted to establish a good working relationship with as many people as possible at DBI. It never came up. I never expected him to be able to do anything for us that he couldn't do for other people. One is I didn't expect him to do anything illegal for us, and I never brought up that, you know, that he should do this for us because you owe me a loan, and never mentioned this either.

The City is unable to cite any law, rule or regulation that the Grievant violated by his acceptance of a loan that was not intended as a bribe or as an inducement for the Grievant to engage in official misconduct but instead was an ordinary business transaction. The City relies on its Handbook for Professional Conduct for the Department of Building Inspection. However, Mabel Ng, Deputy Executive Director of San Francisco Ethics Commission testified that she

assisted the Controller's office in drafting this document and it was created in 2002, two years after the Grievant took the loan from Mr. Yan. The Grievant could not have acted in 2000 in a manner prohibited by the Handbook because the Handbook did not then exist. Further, the Handbook does not prohibit City employees from taking loans from persons who have projects pending at DBI. The Handbook incorporates the City's conflict of interest policy; however, that policy does not prohibit an employee from having or acquiring financial interest that may be affected by official decisions. Instead, the City's conflict of interest policy only prohibits a City employee from participating in or influencing official decisions that may affect their financial interest. Ms. Ng testified that DBI employees are required to report loans from private lenders on their annual SEI if the lender does business in San Francisco on a regular basis. Inasmuch as the City rules require that such loans be reported, the City rules do not prohibit DBI employees from accepting such loans. There is no evidence that Mr. Yan made the loan to the Grievant for doing his job in a particular manner. The Grievant's acceptance of the loan from Mr. Yan was not in itself just cause for termination of the Grievant.

Mr. Hutchinson was the Deputy Director in charge of Inspections for a ten-month period that ended in August 2005. Mr. Hutchinson understood that the most serious charge against the Grievant is that the Grievant took the loan from Mr. Fu. Mr. Hutchinson testified that Ms. Amy Lee who is a former Acting Director of DBI and signed the notice terminating the Grievant also had received a loan from a person who had submitted permit applications to DBI for approval.

Senior building inspector Sweeney testified that stuff came out about former Acting Director Amy Lee accepting a loan from Mr. Roy Guinanne, who was at the time a commissioner of the Building Inspection Commission. Mr. Sweeney saw a cancelled check that Ms. Lee used to repay the loan that she had received from Mr. Guinanne. Mr. Sweeney testified that the loan was made from Mr. Guinanne to Ms. Lee in 2003 or 2004. Ms. Lee repaid the loan within two months.

The Union points out that one of the just cause tests is whether the employer has applied its rules, orders, and penalties evenhandedly without discrimination to all employees. The Grievant's acceptance of the loan from Mr. Yan thus does not constitute just cause for termination. Further, the City alleged that the Grievant accepted gifts that consisted of two \$100 received in a red envelope at the time of the birth of the Grievant's child and given to the Grievant's wife. There was no evidence that these gifts were intended as a bribe or inducement for the Grievant to engage in official misconduct. There was no evidence produced by the City that the Grievant gave preferential treatment to Mr. Fu after the Grievant received these gifts from Mr. Fu.

The Grievant testified that the gifts of the two red envelopes were given to his wife for his son.

The Union argues that City rules require that gifts be reported on the annual Form 700, Statement of Economic Interest, therefore it necessarily follows that the City rules do not prohibit DBI employees from accepting such gifts as long as they are not intended as a bribe or inducement by the recipient to engage in official misconduct. The fact that these were gifts that were given to the Grievant's wife and children was not in itself a violation of the City's conflict of interest policy and does not constitute just cause for termination of the Grievant.

Being personally involved with projects affiliated with Mr. Fu, Mr. Yan and Ms. Lei before and after accepting cash gifts and loans from them. Grounds for termination can only be a just cause to terminate with respect to projects that were affiliated with Mr. Fu, Mr. Yan and Ms. Lei after he received the loan from Mr. Yan on May 5, 2000.

663 Chenery Street

The Grievant was the original planner on this project which he plans checked and approved the permit before he received the loan from Mr. Yan on May 5, 2000. He then declined to perform any further work on the project after that date because he had taken the loan from Mr. Yan and he did not feel comfortable doing any further work on the project.

Neighborhood opposition came in with respect to a property line dispute concerning a window that neighbors contended would intrude or violate their privacy. The issue went to appeal and the Grievant told the owners that he was going to suggest they remove the window because they didn't need a window for ventilation or anything. They went back to Winky Wong, the owner, and he agreed to remove the window and the project was approved. The Grievant admitted that the project came back on appeal twice after he had initially approved it prior to the loan and it was handled by Isolde Wilson. He did not plan check the new application because he didn't feel comfortable doing that because at the time he knew that Demas Yan was involved in the project. He gave it back to his supervisor. There was a later application for additional work on the property in September 2000. The Grievant didn't feel comfortable doing the work on that and turned it over again to another planner, Delvin Washington. After the loan, the Grievant admits that he might have had involvement with Chenery when he was the manager of One-Stop coordination. He contends that someone advised Susan Brookfield who is the CBD, the issuing desk, to approve it. The Grievant advised that even though he had not touched it or did not do anything but because of his claim it was already under my name and my name is put on the project once they assign the project to you. At this time I am not the manager actually. Once they assign the project to you, your name is put in automatically. The Grievant contended that he didn't do anything on this project. He didn't think it was approvable and he wanted it sent back. He advised that he didn't know what happened but she must have seen his name and sometimes they are professional and so she put it "approved not by A. Fallay" because she wanted to make sure that even though it's under my name at One-Stop I didn't give the authority to approve it.

Senior Building Inspector Sweeney testified that the Grievant acted as a mediator with Mr. Fu on this project and communicated to Mr. Fu the requirements that Mr. Sweeney said Mr. Fu needed to meet in order that the permit for the project would be approved without further delay. Mr. Sweeney advised on the Chenery Street project that he was called into the Chief

Building Inspector's office and was told that a very unreasonable customer, Tony Fu, was yelling and threatening lawsuits and not being very nice. The Chief Inspector told Sweeney "I want you to go to the job on Chenery and I want you to figure out how to final it." The big item on the project was they had one unit with no direct communication between the two unit. The Grievant explained to the contractor Mr. Fu that he would have to make two bedrooms on the third floor into storage units. You have to take this studio apartment that controls two storage units because there's no intercommunication between them. The building was a mess. The Grievant had come up to Sweeney and said that he knew the owner and asked him exactly what I told him. "Mr. Fu's English – he's an immigrant – it's not the best and Gus asked me what exactly I had told Tony Fu. I told Gus technically I wanted to final the job". The Grievant communicated to Mr. Fu whatever Mr. Sweeney had told him in order to facilitate the changing of the bedrooms to storerooms. Mr. Sweeney advised that it was an unusual scenario to have a building that has a studio apartment that controls two storage rooms the size of bedrooms. He advised that it was to get them out of everybody's hair to final them. To final them means to issue a certificate of final completion so that they can go sell it. This occurred in 2001 or 2002 as estimated by Mr. Sweeney.

337 28th Avenue

With respect to the project at 337 28th Avenue, the Grievant testified that he received the loan from Mr. Yan that had been arranged by Mr. Fu and that Mr. Fu had no involvement with that project except for acting as a mediator between DBI, Mr. Fu and Ms. Lei at the request of other DBI employees. The Grievant advised that in 2002 or 2003 he was advised of the project by Inspector Sweeney and was told that he needed help with Crystal Lei in dealing with her on the project. Mr. Sweeney advised that they had a series of violations, they have done work without permits, and we have been trying get them to comply and we can't. The Grievant advised that the City's policy in a situation like this is to attempt to prod people in order to comply with code requirements. The policy of the Department is that they try and find ways to

go through people they are connected with, or people they are close to, or people they respect who can at least move them one way or the other in order to get them to comply with the Department's requirements. They told the Grievant that there was a way I could help to bring the project to a close with them. The Grievant contended that he made no decisions as to whether the property was in compliance with codes or not. He didn't have the authority to do that. He discussed the project with Inspector Sweeney every now and then. He ended up acting as a go-between at Inspector Sweeney's request on this particular project. The owners had engaged in applying for a series of permits in 2002 or 2001. The Grievant advised them that they should hire a credible architect or engineer. Mr. Fu worried that this was going to take a long time to get approved and the Grievant advised him that he should bring it through the expediting process that was the One-Stop process. This is where applications are expedited and the One-Stop desk does quality control on projects. Mr. Fu was told what exactly he needed to do for the One-Stop to expedite his process. He brought the project in and the clerk at the counter was about to take it in when she saw a notation on the City record that all plans or what comes in on this project should be sent to Deputy Director Jim Hutchinson. Mr. Hutchinson testified that the Grievant was the go-between for the One-Stop center on this project. The Grievant did not do anything regarding this project that Mr. Hutchinson considered inappropriate. Mr. Sweeney testified that the Grievant did not try and influence his decision as to whether to sign off on the work or not.

547 23rd Avenue

The Grievant testified the only involvement he had with this project after he received the loan from Mr. Yari was to verify that the project had been plan checked and had the necessary approval from other employees for the projects to proceed. The Permit Details report shows in September 2004 when the Grievant was the manager of what is called permit coordination or One-Stop, in that position the Grievant has to make sure that each department responsible for checking one code compliance has made that check. The Grievant after getting agreement that

permits should not be approved told Inspector Zulawabar to send it back Plan Check Division in DBI to look at it again. It was sent to the Deputy Director of the Building Department Tom Hui. He sent it back and indicated that it was fine to issue. The Grievant did not think it was fine and advised him that he was not going to put his signature on it. Hui put his signature on it as Deputy Director and overrode the Grievant at that point. The form says, "Approved by Gus" but actually Tom Hui was the one who actually approved it.

The evidence thus does not show that there were projects affiliated with Mr. Yan, Mr. Fu or Ms. Lei which the Grievant approved or which were approved because of his influenced after the Grievant's wife and children received the red envelope from Mr. Fu or the Grievant received the loan from Mr. Yan on May 5, 2000.

In fact, the Grievant purposely declined to have any involvement in any projects concerning Mr. Fu and Ms. Lei except for acting as mediator between them at the request of other DBI employees on the Chenery Street and the 28th Avenue project.

One of the just cause tests is whether the degree of discipline administered by the employer was reasonably related to the seriousness of the employee's proven offense. Inasmuch as the San Francisco Ethics Commission policies that if an employee fails to disclose a loan or gift he or she has received on the Form 700 will not suffer any adverse consequences if the employee files and amended Form 700 upon learning the loan or gift should have been reported and, inasmuch as the Grievant did file an amended statement that he should have reported the loan from Mr. Yan and the gifts from Mr. Fu, this cannot be considered a serious offense that would warrant termination without any previous progressive discipline. Moreover, the City has failed to prove that the Grievant was aware at the time he filed the original Statement of Economic Interest that he was required to disclose the loan from Mr. Yan and the gifts from Mr. Fu. The City has the burden of proving both the Grievant was egregiously wrong and knew at the time what he was doing was wrong. The City failed to meet its burden of proof on either of these essential elements.

The City's sixth and final ground for termination was dishonesty and unprofessional conduct on the Grievant's part. This ground for termination rests on the presumption that all of the previous grounds for termination have been proven. However, as shown above, the City failed to meet its burden of proof that it had just cause for termination of the Grievant's employment on any of the previous grounds. The Grievant was given an overall performance rating of seven out of nine on his 2004 appraisal. He was a long-term employee of the City who had received a promotion to the Civil Service classification of Planner III and in 2001 was promoted to Planner IV.

Inasmuch as just cause did not exist for the termination of the Grievant's employment the usual remedy would be reinstatement with back pay and benefits. The Local therefore requests the grievance be sustained and as the remedy that the Grievant be reinstated with full back pay and benefits from December 14, 2005.

DECISION

The California State Political Reform Act of 1974 requires many state and local officials and employees to disclose certain personal financial holdings. One of the Act's stated purposes declares: assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided. California Government Code Section 81002(c). Further the Act adds:

Public officials whether elected or appointed, should perform their duties in an impartial manner free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Cal Government Code Section 81001(b)).

The Act establishes a complex decentralized system of managing this disclosure in which each state and local government agency is required to adopt and implement a separate conflict of interest code.

The City of San Francisco implements this procedure through the use of the Fair Political Practices Commission Form 700. Any conflict of interest under the Political Reform Act can only come about if a public official makes or participates in making a government decision that has reasonably foreseeable material financial affect on the official's personal financial interest. The Form 700 includes extensive instructions on how to fill it out.

The City Department of Building Inspection asserted in its October 25, 2005, letter to the Grievant, that it had just cause to discharge the Grievant based on his 1) accepting \$50,000 from and entering into a promissory note with Tony Fu, Demas Yan and Lei Ming Lei who had projects before the City; 2) accepting cash and gifts from Fu and engaging in other transactions with him while he had projects with the City; 3) being personally involved with projects affiliated with Fu, Yan, and Lei before and after accepting cash, gifts and a loan from the; 4) failing to report the loan; 5) failing to report the cash and other gifts received from Fu; and 6) dishonesty and unprofessional conduct.

The facts with respect to the acceptance of the \$50,000 loan by the Grievant on May 5, 2000 drawn on the account of Mr. Yan and Ms. Lei with Mr. Fu, Mr. Yan and Ms. Lei identified on the promissory note as (collectively the "lender") the sum of \$50,000 was loaned at the interest rate of 6% per annum with the unpaid principal and interest payable in full on any future date on which the lender demands repayment (the due date) are not in dispute. The promissory note was unsecured by any properties. The loan was never paid back and there were no terms for repayment of the loan set forth on the due on demand promissory note.

The Grievant each year from 2000 to 2005 filed with the Deputy Executive Director of the San Francisco Ethics Commission a Statement of Economic Interest Form 700 signed under penalty of perjury where in he checked the box showing no reportable interests in any schedule including Schedule D and subsequently Schedule C having to do with income -- loans. The Union argues that there has been no application of the principle of progressive discipline in this matter. The Employer should have attempted to correct the Grievant's behavior by a step-by-

step increase in the nature of responses in order to correct the Grievant's behavior. I have concluded based on my review of the evidence in this matter that although progressive discipline customarily is an element of just cause, when the action of the Grievant as in this case is so egregious as to undercut the Employer's trust in the integrity of the Grievant, I do not believe that progressive discipline should be required. I perceive that the nature of the offense in failing to disclose a \$50,000 loan from individuals who he clearly knew did business with the City's Department of Building Inspection is so destructive of the Employer-employee trust that the process of engaging in progressive discipline in order to rehabilitate the Grievant could not possibly be effective.

The Grievant consistently contended that he did not understand the reporting requirements with respect to loans received and that he believed that as long as the money received was not going to be spent within the jurisdiction of San Francisco there was no reason to report the loan. The initial subject in the Quick Tips For Easy Filing on the Form 700 states, "know your jurisdiction. You only have to report investments in business positions and business entities, real property and income from sources that are located or are doing business in your Agency's jurisdiction. Gifts are reportable regardless of the jurisdiction."

The Grievant assiduously engaged in a practiced attempt not to understand the information provided to explain the requirements of Form 700. The Grievant stated that he had no knowledge of disclosure categories although the third paragraph on the Easier Filing page states, "obtain your disclosure categories from your Agency. They are not contained on the Form 700." The Grievant never attempted to obtain his disclosure category. All non-secretarial employees working in the Department of Building Inspection were disclosure category one which means they were required to disclose all financial interests reportable on the form.

The Grievant acknowledges that he is a graduate of Golden Gate Law School yet asserts that he signed the yearly Statement of Economic Interest on the Form 700, under penalty of perjury, without knowledge of the reporting requirements with respect to loans and

without attempting to contact a representative of the City's Fair Political Practices Commission or the State of California. All of these Agency's telephone numbers were on the Form 700 or the Code of Professional Conduct for the Department of Building Inspection. The Grievant admitted receiving the Code of Professional Conduct for the DBI in February 2002 and an updated document in 2004. He asserts that he reviewed the documents. The fact that these documents issued after the loan was made is immaterial since they were in effect while the loan was still outstanding and still not repaid at all.

The Union asserts that the Grievant accepting the \$50,000 loan and failing to report it on the Form 700 did not affect his job performance because he took no actions with respect to the projects of the lenders which he would have not taken irrespective of the fact that he had the outstanding loan. A number of the actions which he took with respect to the 663 Chenery Street project and the 28th Avenue project where he became involved in mediation of both projects after the loan had been made leave a serious question as to the appropriateness of his becoming involved in these projects at all. Further, these situations exemplify just the situations that, failure to identify his economic interests, placed the City DBI, where it asks him to engage in some normal work function which he should not engage in because of his unreported financial interests. There is insufficient evidence to establish that the actions which he took with respect to these and the project at 32nd Avenue well could have been affected by the loan, which he obtained. But neither I nor DBI can be sure. Be that as it may, the fact that the loan was received and not reported for five years amounts to irresponsible misconduct and it is reasonable to assume that this act irreparably damaged the City's trust in his decision-making. It is difficult to comprehend how the City could trust the Grievant making decisions involving hundreds of thousands of dollars where he is basically using his unsupervised discretion and judgment in dealing with the public.

It is admitted by the City that Acting Director of DBI Amy Lee obtained a \$ 58,000 dollar loan from Roy Guinnane who was at the time of the loan a San Francisco Building Inspection

Commissioner. It is without question that at the time the loan was made by Guinnane he had no projects with the City and he had not been presenting projects before the DBI for many years. There is no evidence as to whether Ms. Lee reported the loan on her form 700. I do not believe that the fact of Lee's loan was evidence that the City invoked a different standard in dealing with Lee's loan compared to the Grievant's.

The allegations of the Grievant receiving loans from contractors who did business with the Department of Building Inspection and other gifts given by those contractors appeared in the San Francisco newspapers. The notoriety given to those stories can only have harmed the City's reputation for fair dealing with all customers seeking to obtain approval of construction projects in the City. The taking of the loan and the failure to report it seriously undermined the relationship between the Grievant and the City where the Grievant's integrity was brought clearly into question.

I do not believe that it is necessary to establish that there was a direct *quid pro quo* provided by the Grievant, in return for the loan, in order to find Just Cause for discharge in the circumstances of this case.. Just the fact that the loan was received and not reported and made known to the City through newspaper articles clearly undermined his employment relationship with the City. The Grievant's reprehensible conduct has seriously undermined any trust and confidence in his continued employment as a planner/ Manager in light of the responsibilities of his job, which he owed to the public.

The fact that the loan given to the Grievant was at an interest rate substantially below that which could have been obtained by the general public made the Loan a gift. It was clearly established by Jude Gogan the Vice President of Financial Services for San Francisco Federal Credit Union that , the General Public could not obtain an unsecured loan in May of 2000 for \$50,000 and the fact that the loan was not repaid turns the loan into a gift. . Further Gogan established that the six% rate of interest was not obtainable by the General Public in May of 2000. Under the Form 700 all gifts need to be reported and when the corrected Form 700's

were made for the forms that were missed from 2000 through 2005, there was no admission that the loans were in fact gifts under the terms of the Form 700. See Ca FPPCAAdv, 1-00-111, 2000 WL 1088218 (Cal.Fair.POL.Prac.Com.) *1 Tyrone. Vahedi July 12, 2000

The Form 700 in itself supplied constructive notice to the Grievant because he could have discovered all the necessary reporting requirements by engaging in proper diligence. His situation was such as to cast upon him the duty of inquiring into the rules with respect to reporting the loan. In observing the Grievant over the days of hearing, I was impressed by the fact that he is an intelligent man who was cognizant of the import of what he was testifying to and how he attempted to not make admissions, which were detrimental to his position. For that reason, I do not find it credible that he had so little understanding of his responsibilities of reporting this loan on the Form 700,

I am of the belief that the Grievant intentionally falsified the Form 700's thereby substantially impairing the employer-employee trust, which was needed for a person in his position of responsibility. It is evident that the Grievant engaged in these activities, in failing to report the loan, in order to gain economic benefit to the detriment of the Department of Building Inspection. The Department of Building Inspection's Code of Professional Conduct, although it was not instituted until 2002, was in place from 2002 until the loan was reported in 2005. It contains the prohibitions against accepting gifts, special favors, privilege, or benefit offered by a member of the public or by persons or business regulated by the Department doing business with the Department or seeking to do business with the Department for doing my (ones) job.

Accordingly, the City had just cause to discharge the Grievant following the investigation engaged in by the City Attorney's office according to credible evidence in the record, that the Grievant received a loan which he did not report for five years and had no reasonable explanation for his failure to report the loan on the Form 700. It should be noted that the Form 700 provides that persons who violate the conflict of interest disclosure provisions of the Act also may be subject to discipline by their agency, including dismissal.

ATTACHMENT 3

COPY

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8 Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 05 2010
CLERK OF THE COURT
BY: _____ Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

13 AUGUSTINE FALLAY,
14 Petitioner,
15 vs.
16 CITY OF SAN FRANCISCO,
17 DEPARTMENT OF BUILDING
INSPECTION,
18 Respondents.

Case No. CPF-09-509696
[PROPOSED] ORDER SUSTAINING
DEMURRER WITHOUT LEAVE TO AMEND
Hearing Date: October 29, 2009
Hearing Judge: Hon. C. Woolard
Time: 9:30 a.m.
Place: 302

21 This matter came on for hearing on Thursday, October 29, 2009 before the Honorable Judge
22 Charlotte W. Woolard in Department 302 of the above-entitled court, Deputy City Attorney Margaret
23 W. Baumgartner appearing for respondent City and County of San Francisco ("City"), and Augustine
24 Fallay appearing in pro per.

25 Having reviewed and considered the papers submitted and the parties' oral argument, the court
26 hereby SUSTAINS the City's demurrer to the writ without leave to amend on the grounds that: (1)
27 petitioner failed to serve and file his petition within 100 days of the date of service of the arbitration
28

1 award as required by California Code of Civil Procedure § 1288; and (2) petitioner lacks standing to
2 bring this petition as he was not a party to the underlying matter.

3 Dated: February 1, 2010
4 MAR 05 2010

By: CHARLOTTE WOOLARD
5 HON. CHARLOTTE WOOLARD
6 JUDGE, SAN FRANCISCO SUPERIOR COURT

7 APPROVED AS TO FORM:
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9 Augustine Fallay, Plaintiff in pro per
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7 E-Mail: margaret.baumgartner@sfgov.org

8 Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

13 AUGUSTINE FALLAY,

14 Petitioner,

15 vs.

16 CITY OF SAN FRANCISCO,
17 DEPARTMENT OF BUILDING
INSPECTION,

18 Respondents.

Case No. 509696

**DEMURRER TO PETITION TO VACATE
CONTRACTUAL ARBITRATION AWARD**

Hearing Date: October 29, 2009
Time: 9:30 a.m.
Hearing Judge: Hon. Charlotte W. Woolard
Place: 302

Date Action Filed: July 24, 2009
Trial Date: None Set

2014 JAN 17 AM 9:53
RECEIVED
EXHIBITION
CIVIL SERVICE COMMISSION
SAN FRANCISCO

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

The City and County of San Francisco ("City") terminated Building Inspector Augustine Fallay's employment after it determined that Fallay took a \$50,000 unsecured "loan" at below market rate interest from a person doing business with the Department, which Fallay never paid back. Fallay failed to report the payment as either a loan or a gift on Fallay's Statement of Economic Interest, a document that requires disclosure of such financial interests. The disclosure is designed to avoid exactly the type of conflicts of interest in which Fallay subsequently engaged by assisting the lender with his building project while the loan remained outstanding.

Pursuant to the terms of the Memorandum of Understanding between Fallay's Union and the City ("MOU"), Fallay's Union grieved Fallay's termination. After a delay caused by Fallay's criminal prosecution for bribery, which resulted in a hung jury on most charges, Fallay's Union proceeded with his grievance. On May 1, 2009, the arbitrator issued his decision upholding the Department's termination of Fallay. Through this petition, Fallay seeks to vacate that award.

In his petition, Fallay alleges that the arbitrator served the award on May 15, 2009. Fallay filed his petition to vacate the award on July 24, 2009, 85 days after the arbitrator issued the award, and days after Fallay alleges the arbitrator served the award. However, Fallay failed to serve the petition on the City, the only named defendant, until September 9, 2009, 131 days after the date of the award, and 116 days after Fallay alleges that the arbitrator served the award. Thus, the award is untimely.

Additionally, Fallay's Union, not Fallay, was a party to the arbitration. Therefore, Fallay lacks standing to seek to vacate the arbitration award through this petition.

II. ARGUMENT

A. Fallay's Petition is Untimely

California Code of Civil Procedure § 1288 provides that "a petition to vacate an [arbitration] award shall be served and filed no later than 100 days after the date of the service of a signed copy of the award." In this case, Fallay alleges in his complaint that the arbitrator served a signed copy of the award on May 15, 2009.¹ Fallay did not serve his petition until September 9, 2009, 116 days later. It

¹ The City's records show that it received the award earlier than May 15, 2009, but even accepting as true Fallay's allegation that it was served on May 15, it is untimely.

1 Moreover, Fallay never argued that he was somehow exempt from the provisions of the MOU,
2 and he therefore waived that argument.

3 Thus, even if the court were to somehow find that the petition was timely, the City and County
4 of San Francisco cannot answer the petition as drafted. The court should sustain the demurrer on this
5 ground also.

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court should sustain the demurrer without leave to amend.

8 Dated: December 4, 2012

9 DENNIS J. HERRERA
10 City Attorney
11 ELIZABETH SALVESON
12 Chief Labor Attorney
13 MARGARET W. BAUMGARTNER
14 Deputy City Attorneys

15 By: _____
16 MARGARET W. BAUMGARTNER
17 Attorneys for Respondent
18 CITY AND COUNTY OF SAN FRANCISCO
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1 award as required by California Code of Civil Procedure § 1288; and (2) petitioner lacks standing to
2 bring this petition as he was not a party to the underlying matter.

3 Dated: ~~February 1, 2010~~

MAR 05 2010

4 By: CHARLOTTE WOOLARD
5 HON. CHARLOTTE WOOLARD
6 JUDGE, SAN FRANCISCO SUPERIOR COURT

7 APPROVED AS TO FORM:
8

9 Augustine Fallay, Plaintiff in pro per
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2014 JAN 17 AM 9:53
CIVIL SERVICE DIVISION
SUPERIOR COURT

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 ELIZABETH SALVESON, State Bar #83768
Chief Labor Attorney
3 MARGARET W. BAUMGARTNER, State Bar #151762
Deputy City Attorney
4 Fox Plaza
1390 Market Street, Fifth Floor
5 San Francisco, California 94102-5408
Telephone: (415) 554-3859
6 Facsimile: (415) 554-4248
E-Mail: margaret.baumgartner@sfgov.org

7 Attorneys for Defendant
8 CITY AND COUNTY OF SAN FRANCISCO

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

13 AUGUSTINE FALLAY,
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1 NOTICE OF DEMURRER AND DEMURRER

2 TO PETITIONER IN PRO PER:

3 PLEASE TAKE NOTICE that on October 29, 2009 at 9:30 a.m., in Department 302 of the
4 above Court, located at 400 McAllister Street, San Francisco, Hon. Charlotte Wollard presiding,
5 defendant City and County of San Francisco (the "City"), by and through its attorneys of record, will
6 and hereby does demur to plaintiff's Petition to Vacate Arbitration Award on the following grounds:

- 7 1. The petition was not timely filed and served; and
8 2. The petition does not state a valid basis for vacating the award; and
9 3. The petition does not state a valid basis for vacating the award and is internally inconsistent;

10 and

- 11 4. Fallay waived any argument that he was not subject to the grievance procedure.

12 The City's Demurer is based on (1) this Notice of Demurrer and Demurrer attached hereto; (2)
13 the Memorandum of Points and Authorities in Support of Demurrer attached hereto; and (3) the City's
14 request for judicial notice filed herewith.

15 Dated: October 1, 2009

16 Respectfully submitted,

17 DENNIS J. HERRERA
18 City Attorney
19 ELIZABETH SALVESON
20 Chief Labor Attorney
21 MARGARET W. BAUMGARTNER
22 Deputy City Attorneys

23 By: _____
24 MARGARET W. BAUMGARTNER

25 Attorneys for Respondent
26 CITY AND COUNTY OF SAN FRANCISCO
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

The City and County of San Francisco ("City") terminated Building Inspector Augustine Fallay's employment after it determined that Fallay took a \$50,000 unsecured "loan" at below market rate interest from a person doing business with the Department, which Fallay never paid back. Fallay failed to report the payment as either a loan or a gift on Fallay's Statement of Economic Interest, a document that requires disclosure of such financial interests. The disclosure is designed to avoid exactly the type of conflicts of interest in which Fallay subsequently engaged by assisting the lender with his building project while the loan remained outstanding.

Pursuant to the terms of the Memorandum of Understanding between Fallay's Union and the City ("MOU"), Fallay's Union grieved Fallay's termination. After a delay caused by Fallay's criminal prosecution for bribery, which resulted in a hung jury on most charges, Fallay's Union proceeded with his grievance. On May 1, 2009, the arbitrator issued his decision upholding the Department's termination of Fallay. Through this petition, Fallay seeks to vacate that award.

In his petition, Fallay alleges that the arbitrator served the award on May 15, 2009. Fallay filed his petition to vacate the award on July 24, 2009, 85 days after the arbitrator issued the award, and 116 days after Fallay alleges the arbitrator served the award. However, Fallay failed to serve the petition on the City, the only named defendant, until September 9, 2009, 131 days after the date of the award, and 116 days after Fallay alleges that the arbitrator served the award. Thus, the award is untimely.

Additionally, Fallay's Union, not Fallay, was a party to the arbitration. Therefore, Fallay lacks standing to seek to vacate the arbitration award through this petition.

II. ARGUMENT

A. Fallay's Petition is Untimely

California Code of Civil Procedure § 1288 provides that "a petition to vacate an [arbitration] award shall be served and filed no later than 100 days after the date of the service of a signed copy of the award." In this case, Fallay alleges in his complaint that the arbitrator served a signed copy of the award on May 15, 2009.¹ Fallay did not serve his petition until September 9, 2009, 116 days later. It

¹ The City's records show that it received the award earlier than May 15, 2009, but even accepting as true Fallay's allegation that it was served on May 15, it is untimely.

1 is therefore untimely as a matter of law. The court should therefore sustain the demurrer. See *De*
2 *Mello v. Souza* (1973) 36 Cal.App.3d 79 (failure to serve and file petition to vacate within 100 days
3 jurisdictional bar).

4 **B. Fallay was Not a Party to the Grievance and Therefore Cannot Move to Vacate**

5 California Code of Civil Procedure § 1285 provides that "any party to an arbitration" may
6 petition to vacate an arbitration award. In this case, the MOU provides that only the Union may file a
7 grievance arising from a final disciplinary decision. See Req. for Jud. Notice Ex. A. Only the City
8 and County of San Francisco and the International Federation of Professional Engineers Local 21, not
9 Fallay, were parties to the arbitration. See pg. 1 of Award; Req. Jud. Notice Ex. A pg. 5 (providing
10 that only the Union may file a grievance). Thus, Fallay lacks authority to file a petition to vacate the
11 award as a matter of law. See *Archuleta v. Grand Lodge of Intern'l Ass'n. of Machinist* (1994) 262
12 Cal.App.2d 202 (sustaining demurrer to petition to vacate where individual grievant, not union,
13 brought motion to vacate).

14 **C. Fallay's Petition Is Internally Inconsistent and Fails to State a Basis for Vacating**
15 **the Arbitration Award**

16 Fallay checked on box in the section of the form petition requesting a basis for vacating the
17 arbitration award: that the arbitrator exceeded his or her authority. Then, in the facts section, Fallay
18 asserts that he is "not bound or subject to the arbitration agreement." Yet, in Section 4, Fallay alleges
19 that the parties entered into a 1994 Collective Bargaining Agreement,² and as a remedy he requests a
20 new arbitration hearing.

21 These allegations are inherently inconsistent. If in fact a collective bargaining agreement
22 provides for arbitration (which it does; see Request for Jud. Notice Ex. A) then the arbitrator did not
23 exceed his authority by holding an arbitration and deciding whether just cause justified Fallay's
24 termination. If, on the other hand, Fallay is not bound or subject to the arbitration agreement, he
25 cannot obtain a new arbitration hearing.

26
27 ² The City is confused by why Fallay references a 1994 Collective Bargaining Agreement. The
28 current MOU is for the period 2006 to 2009; the prior MOU, which applied to the underlying
proceeding, was in effect from 2003 to 2006. The grievance language did not change from one MOU
to the next in any way that affects this matter.

1 Moreover, Pally never argued that he was somehow exempt from the provisions of the MOU,
2 and he therefore waived that argument.

3 Thus, even if the court were to somehow find that the petition was timely, the City and County
4 of San Francisco cannot answer the petition as drafted. The court should sustain the demurrer on this
5 ground also.

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court should sustain the demurrer without leave to amend.

8 Dated: December 4, 2012

9 DENNIS J. HERRERA
10 City Attorney
11 ELIZABETH SALVESON
12 Chief Labor Attorney
13 MARGARET W. BAUMGARTNER
14 Deputy City Attorneys

15 By: _____
16 MARGARET W. BAUMGARTNER

17 Attorneys for Respondent
18 CITY AND COUNTY OF SAN FRANCISCO
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ORIGINAL
0049-14-7

Augustine Fallay

February 27, 2014

Civil Service Commission
25 Van Ness Ave, Suite 720
San Francisco, CA 94102

Re: Civil Service Appeal of March 6, 2006

To Whom It May Concern:

Pursuant to a letter dated February 24, 2014, from Mr. Bob Britton, the Director, Field Services of Professional & Technical Engineers (Local 21, AFL-CIO) that you have now decided to act on an appeal filed eight years ago (March 6, 2006) on my future employability with the City and County of San Francisco, and that you have slated February 28, 2014 as a deadline date by which I must inform you whether or not I intend to pursue the subject appeal. This is to inform you that I would like to pursue the said appeal to your Commission.

In view of the above statement, I would be grateful if you can let me know what the next steps would be for me to follow. Also please note that my current lawyers at the Law Firm of Covington & Burling in San Francisco, currently representing me in the 9th Circuit are copied.

Very truly yours

Augustine Fallay

Cc: Robert Williams: Covington & Burling
Bob Britton (Local 21, AFL-CIO)

2014 FEB 28 PM 1:05
CIVIL SERVICE COMMISSION
SAN FRANCISCO
DIRECTOR



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

March 11, 2014

Sent via U.S. Mail
Augustine Fallay

SCOTT R. HELDFOND
PRESIDENT

E. DENNIS NORMANDY
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

KATE FAVETTI
COMMISSIONER

GENA M. ROCCANOVA
COMMISSIONER

JENNIFER C. JOHNSTON
EXECUTIVE OFFICER

Dear Mr. Fallay:

I write in response to your letter dated February 27, 2014 to the Civil Service Commission ("Commission") confirming your intent to pursue the appeal originally filed by IFPTE, Local 21 regarding the restrictions on your future employment with the City and County of San Francisco (CSC Register No. 0126-06-7).

I apologize for not responding sooner, but I required additional time to research a statement you made in your letter. You indicated, or at least implied, that you have active litigation in the 9th Circuit Court of Appeals. However, a representative from the City Attorney's Office has informed me that all outstanding litigation on the issue of your separation has been resolved. If that is incorrect, and if the issue under litigation is your underlying separation from the City, then I must await the resolution of that matter prior to scheduling your appeal before the Commission, since a ruling requiring your reinstatement would render the appeal moot. Please advise by Friday, March 21, 2014 whether the litigation on your separation has concluded; additionally, please clarify as to whether I should communicate with you or your attorney regarding the appeal. You may either email me at Jennifer.Johnston@sfgov.org or direct the correspondence to my attention at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.

You also ask for information as to what the procedure is for scheduling your appeal before the Commission. I have notified the Department of Human Resources and Department of Building Inspection of your request to pursue the appeal, and have directed that the departments prepare a staff report so that your appeal can be calendared in the near future. The Commission generally meets on the 1st and 3rd Mondays of each month. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please submit your request to CivilService@sfgov.org (this will also result in your receiving the meeting notice and staff report a few days sooner).

In the meantime, you may wish to compile any additional information you would like to submit to the Commission in support of your position. To date, the Commission has not received anything other than IFPTE, Local 21's very brief letter dated March 6, 2006 appealing the restrictions on your future employment.

The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date (note that the Commission requires an original and eight copies of any supplemental/rebuttal materials you wish to submit--- all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

You may contact me by email at Jennifer.Johnston@sfgov.org or by phone at (415) 252-3247 if you have any further questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sfgov.org/Civil_Service.

Sincerely,

CIVIL SERVICE COMMISSION

A handwritten signature in cursive script, appearing to read "Jennifer Johnston", written in black ink.

JENNIFER JOHNSTON
Executive Officer

Cc: Donna Kotake, Department of Human Resources

CIVIL SERVICE COMMISSION
REGISTER
NUMBER 006514.7

Re: A. Fallay Appeal
SA

EXAMINED
CIVIL SERVICE COMMISSION
2014 MAR 17 PM 1:52

Augustine Fallay

Phone:
Email:

March 17, 2014, 2014

Civil Service Commission
25 Van Ness Ave, Suite 720
San Francisco, CA 94102

Re: Civil Service Appeal of March 6, 2006

Dear Ms. Johnston

In response to your letter dated March 11, 2014, in which you stated that you have been informed by the City Attorney's Office that "all outstanding litigation on the issue of (my) separation has been resolved", this is to inform you that nothing can be farther from the truth. As you might know, assuming that you have read my personnel file (and here's hoping that it has not gone mysteriously missing, as such files are wont to, when the City does not have a case), I was terminated by the City on December 14, 2005 and this complaint was filed on March 6, 2006 but did not act on it until now. So, with respect to my termination, I filed a Civil Right Claim under 42 U.S.C .1981.

The District Court erroneously dismissed it on the bases of Statute of Limitation; it assumed that claims under 1981 are also subject to the two year statute of limitation normally assigned for other civil cases in California. I have appealed the dismissal of that claim and similar claims to the 9th Circuit as it is my understanding that claims under 42 U.S.C. 1981 in particular are subject to a four year statute of limitation. The City filed a motion to uphold the dismissal but the 9th Circuit turned them down, stating that my appeal had merit. Also, note that even though the Federal claims were dismissed, a dismissal that is now the subject of appeal before the 9th Circuit, the court stipulated that I can litigate other state claims in the State Court. So we are far from resolved, and I have no clue what they are talking about.

The 9th Circuit then got the Law Firm of Covington & Burling to represent me for my appeal (I had been representing myself until then) and ordered the City to go into mediation, that mediation never materialized. So we are heading for the courts. Covington & Burling will prepare and present my brief on April 4, 2014; the City and other Defendants should answer by June 5, 2014. These are the facts as I know them.

Very truly yours

Augustine Fallay

Cc: Robert Williams: Covington & Burling
Bob Britton (Local 21, AFL-CIO)

Response to Civil Service Commission

Mon 3/17/2014 12:41 PM

To: Kotake, Donna (HRD) <donna.kotake@sfgov.org>; CivilService (CSC) <civilservice@sfgov.org>; bbritton@ifpte21.org <bbritton@ifpte21.org>;

@ 1 attachment

Letter to the Civil Service Commission (4).docx

RECEIVED
CIVIL SERVICE COMMISSION
MAR 17 2014 12:52 PM



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent via U.S. and Electronic Mail

April 24, 2014

Augustine Fallay

SCOTT R. HELDFOND
PRESIDENT

E. DENNIS NORMANDY
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

KATE FAVETTI
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

JENNIFER C. JOHNSTON
EXECUTIVE OFFICER

Re: Appeal by Augustine Fallay of the Restrictions on His Future ;
Employment with the City and County of San Francisco, CSC Register
No. 0126-06-7

Dear Mr. Fallay:

I write regarding your letter to me dated March 17, 2014 responding to my inquiry by letter dated March 11, 2014 about the status of your litigation against the City.

You indicate in your letter that you have appealed to the 9th Circuit Court of Appeals the Federal District Court's dismissal of your claims against the City under 42 U.S.C. 1981. You also indicate that the law firm of Covington & Burlig is representing you in that matter and would be presenting your brief before the Court on April 4, 2014. However, the City Attorney's Office reports that it is not aware of any such suit, and that it has attempted to contact your attorney at Covington & Burlig without response.

The Civil Service Commission's policy provides that appeals of restrictions on future employment must be postponed pending resolution of any grievance or lawsuit challenging the underlying separation, since the individual's separation could be overturned. Therefore, it would be helpful to have a copy of the brief to which you refer, and any other documents or additional information regarding your litigation against the City so that I may research the issue further. You may email it to me at Jennifer.Johnston@sfgov.org or send it via U.S. mail to my attention at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.

In the absence of any such documentation or additional information regarding your litigation, or any objection from you, I will proceed with calendaring your appeal to be heard before the Civil Service Commission at a meeting in June or July 2014, depending on the date of the department's staff report submission.

The Civil Service Commission generally meets on the 1st and 3rd Mondays of each month. We will endeavor to give you as much notice of the meeting date as possible, but no less than ten (10) calendar days prior to the meeting at which your appeal is scheduled to be heard. As I indicated in my previous communication to you of March 11th, you at that time will be able to pick up a copy of the department's

staff report at the Commission's offices located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102; however, please do let me know if you would instead prefer Commission staff to email you a copy of the meeting notice and staff report.

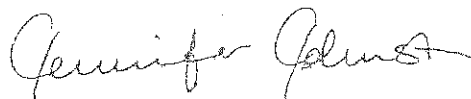
I note that the only documentation we have on record regarding your appeal is a very brief appeal letter from IFPTE, Local 21 dated March 6, 2006 (see the attached). As I also indicated in my letter to you of March 11th, the deadline to submit any additional information or documentation in support of your appeal is due in the Commission office by 5:00 p.m. on the Tuesday preceding the meeting date (the meeting notice will include information regarding the submission deadline). Please note that the Commission requires an original and eight copies of any supplemental/rebuttal materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered. You must also redact your submission for any confidential or sensitive information that the Commission need not know in reviewing your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

Finally, in my letter to you of March 11th, I ask for clarification as to whether I should communicate with you or with your attorney regarding your appeal. You did not respond on the issue; accordingly, I will continue to assume that I should communicate with you directly, absent direction from you otherwise.

You may contact me by email at Jennifer.Johnston@sfgov.org or by phone at (415) 252-3247 if you have any questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sfgov.org/Civil_Service.

Sincerely,

CIVIL SERVICE COMMISSION



JENNIFER JOHNSTON
Executive Officer

Attachment (1)

Cc: Donna Kotake, Department of Human Resources

Johnston, Jennifer (CSC)

From: Johnston, Jennifer (CSC)
Sent: Monday, April 28, 2014 9:38 AM
To:
Cc: 'Kotake, Donna (donna.kotake@sfgov.org)'; Bushman, Jennifer (Maglalang) (CSC); 'Eng, Sandra (sandra.eng@sfgov.org)'; 'bmuscat@ifpte21.org'
Subject: FW: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
Attachments: 20140404_Filed_Replacement_Opening_Brief.pdf

Dear Mr. Fallay:

Your email was forwarded on to me by one of the other recipients since I did not receive the original. Please take note of my correct email address — Jennifer.Johnston@sfgov.org – for any future communications (you misspelled my last name in the email address) to ensure that I receive them.

Thank you for the additional information and copy of your attorney's brief. I am sure that it will be most helpful in clarifying with the City Attorney's Office the status of your litigation against the City.

As I have indicated to you in previous communications, the Civil Service Commission's policy is generally to place on hold appeals of restrictions on future employment in the event that the underlying separation is pending resolution in arbitration and/or litigation. However, in light of the fact that the grievance on your termination was resolved in arbitration (I understand that you disagree with the arbitrator's decision), that your suit against the City regarding your termination was resolved at least in District Court (I understand that you are appealing that decision), and that it has been several years since the appeal on your future employment restrictions was filed with the Civil Service Commission, I will proceed with scheduling your appeal this June or July upon receipt of a staff report from the department, absent any objection from you. Please refer to my previous communications for information on staff reports, submission deadlines and Civil Service Commission meeting procedures.

However, your complaint against the union is not within the jurisdiction of the Civil Service Commission, and is therefore not subject to the Commission's review. Rather, complaints alleging unfair labor practices may be directed to the Public Employees Relations Board.

You may contact me if you have any questions.

Sincerely,

Jennifer Johnston
Executive Officer
Civil Service Commission
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto:;
Sent: Saturday, April 26, 2014 5:43 PM
To: jennifer.johnston@sfgov.org; Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC);
bmuscat@ifpte21.org
Subject: Fwd: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Ms. Johnston,

Attached is the Appeal Brief. You can contact my lawyer at anytime. His name is Robert Williams and his particulars are attached to the brief. I have also copied the Director of my Union because I believe that their decision to not pursue my appeal on my employability with to the Commission and to not represent me is a breach of contract. For the City Attorney's office to say that my case is settled and finished is disingenuous but really a dangerous nonsense.

If you are interested, I can send you my Seconded Amended complaint which catalog in details of similar or more egregious conducts that were never punished, and a Declaration by the then deputy Director of DBI of an unspoken policy in DBI against colored people who are the only people fired from managerial positions in the last 20+ years for violations committed in a more egregious manner by people of other races on a routine bases without any repercussions. A practice that continues today, because as I write this letter, there is no senior staff in DBI major division of Plan Checking that is black. It is exclusively White and Asian.

Anyway, as you can see the City Attorney's Office lied (because they knew or should have known) that what they told your office was not true. And as I said, even if I don't win this appeal, which I am confident that I will, I still have State claims to pursue which are already filed and only needs to be transferred to Superior Court. And if I lose them, I will again appeal them all the way to the highest court. They filed a motion for the 9th circuit to dismiss my case, but the court turned down their motion saying that the case has merits that need pursuing, and appointed a Law Firm to represent me. All of this is public record.

The issue here though is my "employability", that is, the city taking away my right to apply for any job with the city, an appeal of which you folks have held up for eight years even after I won the charges brought against me in court. You are only now following up on it, and my own Union, where I paid dues for over 15 years has decided to also throw me under the bus by not representing me. Whether a move on it would affect my appeal now, you can discuss it with my lawyers.

That is where we are.

Thanks for you time and please excuse my typos

Augustine Fallay

----- Forwarded message -----

From: Williams, Robert <rwilliams@cov.com>

Date: Fri, Apr 4, 2014 at 11:14 PM

Subject: FW: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

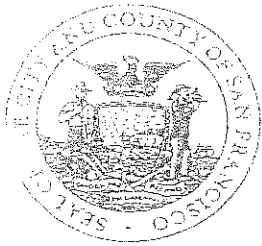
To: Guah Kuteh

Gus,

Attached is our as-filed appellate brief and excerpts of records. Their responses are due by June 6th, and we will then have 2 weeks to file any replies. Feel free to reach out if you have any questions, otherwise, I will forward their answering briefs when we get them.

Best,

Rob



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent via U.S. and Electronic Mail

May 13, 2014

Robert J. Williams, Esq.
Covington & Burling LLP
One Front Street, 35th Floor
San Francisco, CA 94111
RWilliams@cov.com

Re: Appeal by Augustine Fallay of the Restrictions on His Future Employment
with the City and County of San Francisco, CSC Register No. 0126-06-7

Dear Mr. Williams:

I write in response to two emails from Augustine Fallay to me—one sent yesterday evening, and the other sent at approximately 2 a.m. this morning (see the attached)—by which he requests that I communicate with you directly regarding his appeal before the Civil Service Commission (“Commission”).¹ Accordingly, I will address all future correspondence on the matter to you with copy Mr. Fallay pursuant to the Commission’s standard protocol, unless otherwise directed by you or Mr. Fallay; and I will respond to your communications only, unless otherwise specifically directed by you or Mr. Fallay.

For the record, despite Mr. Fallay’s assertions otherwise as articulated in his two recent emails, he had not previously requested that I communicate with you directly regarding his appeal before the Commission. And although he has indicated that you are representing him in his appeal before the 9th Circuit Court of Appeals, he had not previously indicated that you are representing him in his appeal before the Commission. I can provide you with copies of all previous communications to date, but to summarize:

- Mr. Fallay wrote to the Commission on February 27, 2014, indicating that he did wish to pursue the appeal on his future employment restrictions to the Commission. He also indicated that your firm was representing him in a matter before the 9th Circuit Court of Appeals; however, he did not indicate that you were also representing him in his appeal before the Commission or that I should otherwise communicate with you directly on this matter.
- I wrote to Mr. Fallay on March 11, 2014, inquiring as to the status of his litigation and specifically requesting clarification as to whether I should direct future communications regarding his appeal before the Commission to his attorney instead.
- Mr. Fallay responded on March 17, 2014, explaining that he has appealed to the 9th Circuit Court of Appeals the District Court’s decision to dismiss his

¹ As you may know, in March 2006, Mr. Fallay’s union (IFPTE, Local 21) filed an appeal with the Commission regarding the proposed restrictions on his future employment with the City and County of San Francisco.

complaint. Although he indicated that your firm was representing him in that matter, he did not indicate that you were also representing him in his appeal before the Commission or that I should otherwise communicate with you directly on this matter.

- I wrote to Mr. Fallay on April 24, 2014, asking for more information or documentation regarding his litigation because the City Attorney's Office had indicated that it had no record of such litigation and that it had attempted to contact you without response. I also specifically wrote, "Finally, in my letter to you of March 11th, I ask for clarification as to whether I should communicate with you or with your attorney regarding your appeal. You did not respond on the issue; accordingly, I will continue to assume that I should communicate with you directly, absent direction from you otherwise."
- Mr. Fallay responded on April 26, 2014 (that email begins the train of communications in the attached email correspondence) with additional information regarding his litigation, and forwarded an email from you with Plaintiff-Appellant's Replacement Brief attached thereto. Although he indicated that I could contact you at any time regarding the particulars of his litigation, he did not specify that you were also representing him in his appeal before the Commission or that I should otherwise only communicate with you directly on this matter. In fact, I note that he copied his union representative on that email, insisting that the union should be representing him in his appeal before the Commission; he, however, did not copy you.

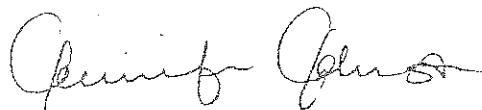
The remainder of our correspondence has been through email (again, see the attached).

I will defer to Mr. Fallay to provide you with copies of our communications to date as outlined above, but would be happy to forward them to you directly if you would like. Again, Mr. Fallay's appeal has been scheduled to be heard at the Commission meeting of Monday, July 21, 2014 (Commission meetings begin at 2 p.m. in Room 400 of City Hall) to accommodate his availability. Commission staff will forward you a copy of the department's staff report as soon as we receive it, which will be no later than July 10, 2014; a hard copy will also be available for your review at the Commission's offices located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.

Should you have any questions, you may contact me by email at Jennifer.Johnston@sfgov.org; by phone at (415) 252-3247; or by mail to 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. You may also access the Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sfgov.org/Civil_Service.

Sincerely,

CIVIL SERVICE COMMISSION



JENNIFER JOHNSTON
Executive Officer

Attachments (2)

Cc: Micki Callahan, Department of Human Resources
Donna Kotake, Department of Human Resources
Augustine Fallay, Appellant,

Johnston, Jennifer (CSC)

From: [REDACTED]
Sent: Tuesday, May 13, 2014 2:07 AM
To: Johnston, Jennifer (CSC)
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); bmuscat@ifpte21.org
Subject: Re: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Again Ms. Johnston, since for some reason you continue to contact me directly even though I have clearly indicated to you that I have a Law Firm representing me, and have made it clear that I'd rather you contact them directly, that you continuing to contact me directly is legally not the way to do things, especially with an active case on the same issue in court. So still, for the umpteenth time, I would really appreciate it if you can contact my lawyers directly. I have provided you with names and phone numbers; indeed I have even provided you with a copy of their brief when you requested it.

So I am not going to literally walk to my slaughter, so to speak, and engage in something that might undermine my case or have a mitigating impact without their say so. I hope you understand. After all, this appeal was made eight years ago, you folks never moved on it even after I won my case, you held on to it for eight years, while I have wallowed in tattered penury. Please talk to my lawyers, I will go by whatever they say.

Thanks

Gus Fallay

—Original Message—

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>

To:

Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra.eng@sfgov.org>; bmuscat <bmuscat@ifpte21.org>

Sent: Mon, May 12, 2014 11:00 am

Subject: RE: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Dear Mr. Fallay:

The department has indicated that they can be available for the Civil Service Commission meeting of July 21st. Please let me know by end of day this Friday, May 16th if that date will not work for you.

Sincerely,

Jennifer Johnston
Executive Officer
Civil Service Commission
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: Johnston, Jennifer (CSC)

Sent: Monday, May 12, 2014 8:04 AM

To: 'a'

Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); bmuscat@ifpte21.org

Subject: RE: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Dear Mr. Fallay:

I have had no discussions (nor any contact) with your attorneys.

In light of your unavailability during June, I will arrange for your appeal to be heard at either the Civil Service Commission meeting of July 7th or July 21st to accommodate your schedule. I will let you know the departments' meeting date of preference. If you have a strong preference for either date, please do let me know as well.

Sincerely,

Jennifer Johnston
Executive Officer
Civil Service Commission
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [<mailto:>]

Sent: Friday, May 09, 2014 2:27 PM

To: Johnston, Jennifer (CSC)

Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); bmuscat@ifpte21.org

Subject: Re: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Dear Ms. Johnston,

While I am willing to go ahead with the hearing, I am not sure if you did consult with my appeal lawyers, whose particulars I had presented you. I will also be out of the country, in England for the entire month of June. So I would be grateful if you can take that into consideration in your scheduling.

Yours truly

Augustine Fallay

-----Original Message-----

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>

To: a <_____>

Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra.eng@sfgov.org>; bmuscat <bmuscat@ifpte21.org>

Sent: Fri, May 9, 2014 12:34 pm

Subject: RE: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Dear Mr. Fallay:

I write in follow-up to my previous communication to you on May 1, 2014 (below), as I have not heard back from you.

Your appeal will be scheduled for a hearing before the Civil Service Commission this June (either June 2nd or June 16th, depending on when the department submits its staff report). You may at that time request that the Civil Service Commission grant you an indefinite postponement of your appeal pending complete resolution of all of your litigation, if you wish to do so. However, you should be prepared to present your appeal in the event that the Commission denies your request.

We will endeavor to provide you with as much notice as possible as to exactly which meeting date your appeal will be heard (either June 2nd or June 16th), but no less than two Thursdays prior to the meeting. We will forward you an electronic copy of the department's staff report at that time. Please see my previous communications to you with information on supplemental submissions, meeting procedures, etc. I have attached them for your ease of reference.

You may feel free to contact me if you have any questions.

Sincerely,

Jennifer Johnston
Executive Officer
Civil Service Commission
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: Johnston, Jennifer (CSC)

Sent: Thursday, May 01, 2014 8:15 AM

To: 'a'

Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); bmuscat@ifpte21.org

Subject: RE: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Dear Mr. Fallay:

I am not entirely clear on whether you are formally requesting an indefinite postponement of your appeal before the Civil Service Commission pending the full resolution of any litigation you have against the City, or if you are simply stating a slight preference. Could you please clarify?

Sincerely,

Jennifer Johnston
Executive Officer
Civil Service Commission
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto: _____]
Sent: Thursday, May 01, 2014 12:37 AM
To: Johnston, Jennifer (CSC)
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); bmuscat@ifpte21.org
Subject: Re: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Ms. Johnston,
I am sincerely sorry that I misspelled your last name, it was unintentional. But while I do not mind you conducting your hearing right now, I want to be on record that you should wait for my appeal to go through before such hearing is conducted. I am sure you are aware that no ruling by a lower court that is on appeal is considered a final ruling, especially where a claim has been dismissed not for lack of claims, but for statute of limitations. The lower court ruled that my claims were time barred as they were under the two-year statute of limitation, instead of the four year limitation assigned to 1981 claims. As expected, the 9th Circuit had already ruled, objecting to the City's motion to uphold the dismissal, that my case had merits worth pursuing.

However, if you must conduct your hearing, the said appeal notwithstanding, I am ready for it. I would however, be very grateful if you can again send me the details of the process and what I need to submit to the commission.

Sincerely
Augustine Fallay

-----Original Message-----

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>
To: _____
Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra.eng@sfgov.org>; 'bmuscat@ifpte21.org' <bmuscat@ifpte21.org>
Sent: Mon, Apr 28, 2014 9:38 am
Subject: FW: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Dear Mr. Fallay:

Your email was forwarded on to me by one of the other recipients since I did not receive the original. Please take note of my correct email address — Jennifer.Johnston@sfgov.org — for any future communications (you misspelled my last name in the email address) to ensure that I receive them.

Thank you for the additional information and copy of your attorney's brief. I am sure that it will be most helpful in clarifying with the City Attorney's Office the status of your litigation against the City.

As I have indicated to you in previous communications, the Civil Service Commission's policy is generally to place on hold appeals of restrictions on future employment in the

event that the underlying separation is pending resolution in arbitration and/or litigation. However, in light of the fact that the grievance on your termination was resolved in arbitration (I understand that you disagree with the arbitrator's decision), that your suit against the City regarding your termination was resolved at least in District Court (I understand that you are appealing that decision), and that it has been several years since the appeal on your future employment restrictions was filed with the Civil Service Commission, I will proceed with scheduling your appeal this June or July upon receipt of a staff report from the department, absent any objection from you. Please refer to my previous communications for information on staff reports, submission deadlines and Civil Service Commission meeting procedures.

However, your complaint against the union is not within the jurisdiction of the Civil Service Commission, and is therefore not subject to the Commission's review. Rather, complaints alleging unfair labor practices may be directed to the Public Employees Relations Board.

You may contact me if you have any questions.

Sincerely,

Jennifer Johnston
Executive Officer
Civil Service Commission
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto:]
Sent: Saturday, April 26, 2014 5:43 PM
To: jennifer.johntson@sfgov.org; Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); bmuscat@ifpte21.org
Subject: Fwd: Augustine Fallay - CA No. 10-16437 – ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Ms. Johnston,

Attached is the Appeal Brief. You can contact my lawyer at anytime. His name is Robert Williams and his particulars are attached to the brief. I have also copied the Director of my Union because I believe that their decision to not pursue my appeal on my employability with to the Commission and to not represent me is a breach of contract. For the City Attorney's office to say that my case is settled and finished is disingenuous, but really a dangerous nonsense.

If you are interested, I can send you my Seconded Amended complaint which catalog in details of similar or more egregious conducts that were never punished, and a Declaration by the then deputy Director of DBI of an unspoken policy in DBI against colored people who are the only people fired from managerial positions in the last 20+ years for violations committed in a more egregious manner by people of other races on a routine bases without any repercussions. A practice that continues today, because as I write this letter, there is no senior staff in DBI major division of Plan Checking that is black. It is exclusively White and Asian.

Anyway, as you can see the City Attorney's Office lied (because they knew or should have known) that what they told your office was not true. And as I said, even if I don't win this appeal, which I am confident that I will, I still have State claims to pursue which are already filed and only needs to be transferred to Superior Court. And if I lose them, I will again appeal them all the way to the

highest court. They filed a motion for the 9th circuit to dismiss my case, but the court turned down their motion saying that the case has merits that need pursuing, and appointed a Law Firm to represent me. All of this is public record.

The issue here though is my "employability", that is, the city taking away my right to apply for any job with the city, an appeal of which you folks have held up for eight years even after I won the charges brought against me in court. You are only now following up on it, and my own Union, where I paid dues for over 15 years has decided to also throw me under the bus by not representing me. Whether a move on it would affect my appeal now, you can discuss it with my lawyers.

That is where we are.

Thanks for you time and please excuse my typos

Augustine Fallay

----- Forwarded message -----

From: Williams, Robert <rwilliams@cov.com>

Date: Fri, Apr 4, 2014 at 11:14 PM

Subject: FW: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT
PRIVILEGED COMMUNICATION

To: Guah Kuteh <guahkuteh@cov.com>

Gus,

Attached is our as-filed appellate brief and excerpts of records. Their responses are due by June 6th, and we will then have 2 weeks to file any replies. Feel free to reach out if you have any questions, otherwise, I will forward their answering briefs when we get them.

Best,
Rob

Johnston, Jennifer (CSC)

From: [redacted]
Sent: Monday, May 12, 2014 5:50 PM
To: Johnston, Jennifer (CSC)
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); bmuscat@ifpte21.org
Subject: Re: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Dear Ms. Johnston:

i have informed you, given you the name of the Law Firm (Covington & Burling) and my Lawyer's name (Robert Williams), their prepared appeal brief, which has all their contact info. but for some reason you are telling me that you have not contacted them, and you have continued to deal with me directly. For me this is a bit awkward, especially when I believe that you are aware that you should be talking to that Law Firm, except of course they opine otherwise. Is there any reason why you have avoided talking to/contacting them?

I will be returning to the US on 7/9/2014.

Sincerely
Augustine Fallay

-----Original Message-----

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>
To: [redacted]
Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra.eng@sfgov.org>; bmuscat <bmuscat@ifpte21.org>
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Dear Mr. Fallay:

I have had no discussions (nor any contact) with your attorneys.

In light of your unavailability during June, I will arrange for your appeal to be heard at either the Civil Service Commission meeting of July 7th or July 21st to accommodate your schedule. I will let you know the departments' meeting date of preference. If you have a strong preference for either date, please do let me know as well.

Sincerely,

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Dear Ms. Johnston,

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Yours truly

Augustine Fallay

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Augustine Fallay

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From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>
To: ; _____@il.com>
Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra_eng@sfgov.org>; 'bmuscat@ifpte21.org' <bmuscat@ifpte21.org>
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From: a [mailto:_____n]
Sent: Saturday, April 26, 2014 5:43 PM
To: jennifer.johnston@sfgov.org; Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); bmuscat@ifpte21.org
Subject: Fwd: Augustine Fallay - CA No. 10-16437 -- ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Ms. Johnston,
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write this letter, there is no senior staff in DBI major division of Plan Checking that is black. It is exclusively White and Asian.

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Thanks for you time and please excuse my typos

Augustine Fallay

----- Forwarded message -----

From: Williams, Robert <rwilliams@cov.com>

Date: Fri, Apr 4, 2014 at 11:14 PM

Subject: FW: Augustine Fallay - CA No. 10-16437 – ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

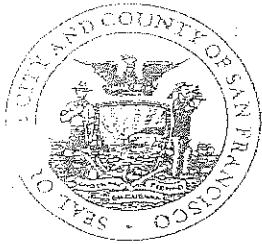
To: Guah Kuteh <guahkuteh@cov.com>

Gus,

Attached is our as-filed appellate brief and excerpts of records. Their responses are due by June 6th, and we will then have 2 weeks to file any replies. Feel free to reach out if you have any questions, otherwise, I will forward their answering briefs when we get them.

Best,

Rob



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent via U.S. and Electronic Mail

May 19, 2014

Robert J. Williams, Esq.
Covington & Burling LLP
One Front Street, 35th Floor
San Francisco, CA 94111
RWilliams@cov.com

Re: Appeal by Augustine Fallay of the Proposed Restrictions on His Future
Employment with the City and County of San Francisco, CSC Register
No. 0126-06-7

Dear Mr. Williams:

I write in response to Augustine Fallay's most recent email to me on May 13, 2014 in which he questioned the Civil Service Commission's ("Commission") reasons and motivations for scheduling his appeal of the proposed restrictions on his future employment with the City and County of San Francisco ("City"). Specifically, Mr. Fallay wrote, "What has left me a bit miffed is your office's seeming total belief in what the City Attorney's office told you even in the face of stack facts [sic] made available to you, which in turn has made you surge ahead with such aggressiveness for a hearing. Yes, I must admit that this heightened pursuit for a hearing on an appeal that was filed eight years ago and never even acknowledged much less touched until a couple of months ago makes me speculate if the motive is just pursuit for justice, or it is to use the result of such hearing as a mitigating factor in my case against the City." I am addressing this communication to you with copy to Mr. Fallay, per his previous directive.

I understand that this process has been frustrating for Mr. Fallay, and believe that it would be helpful if I clarified some of the facts regarding the Commission's efforts to schedule his appeal. At the outset, it is important to note that the issue on appeal before the Commission is not Mr. Fallay's arrest and prosecution for bribery or his termination, but rather whether he should be restricted from any future employment with the City.

Second, the Commission is an entirely separate agency from the City Attorney's Office and the Department of Building Inspection ("DBI") under the Charter. As you know, the Commission is not a named party in Mr. Fallay's litigation against the City/DBI/City officials; nor did the Commission have any involvement in Mr. Fallay's arrest and prosecution for bribery, or DBI's decision to terminate Mr. Fallay and recommend that he be restricted from any future employment with the City. The Commission has no reason to seek to jeopardize Mr. Fallay's litigation against the City/DBI/City officials, nor were the Commission's actions to schedule his appeal intended to impact or influence that litigation in any

SCOTT R. HELDFOND
PRESIDENT

E. DENNIS NORMANDY
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

KATE FAVETTI
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

JENNIFER C. JOHNSTON
EXECUTIVE OFFICER

way (in fact, as noted below, the Commission was unaware of any such litigation until recently).

Third, it is the Commission's policy to place on hold appeals of proposed future employment restrictions pending the resolution of any grievance or litigation challenging the appellant's release from City employment. This is because any arbitration award or court decision overturning the underlying separation would render such appeal moot and/or could serve to vitiate or abrogate a decision by the Commission to uphold the recommended employment restriction(s).¹ Therefore, the Commission held Mr. Fallay's appeal in abeyance pending issuance of the arbitration award on his termination, and continued to place the appeal on hold when it learned that Mr. Fallay had petitioned the California Superior Court to vacate that arbitration award. This was the basis for the delay in scheduling Mr. Fallay's appeal for a hearing before the Commission.

Fourth, the Commission endeavors to schedule all appeals in a timely manner to ensure that they are addressed and resolved efficiently, effectively and fairly. This is particularly the case with appeals of proposed future employment restrictions, since individuals with pending future employment restrictions may not work for the City in any capacity until such appeals are resolved. As Mr. Fallay's appeal was filed several years ago, I asked the Department of Human Resources ("DHR") to inquire with the City Attorney's Office regarding the status of Mr. Fallay's petition to vacate the arbitration award upholding his termination. Upon learning in January 2014 that the Superior Court had dismissed Mr. Fallay's petition, I endeavored to schedule the appeal on his future employment restrictions and directed DBI to prepare a staff report on the matter so that it may be heard by the Commission. I had no knowledge at the time of any other active litigation or claims that Mr. Fallay was pursuing against the City/DBI/City officials.

To be clear, my decision to schedule Mr. Fallay's appeal was made pursuant to the Commission's policy requiring that appeals of future employment restrictions be scheduled as quickly as possible following resolution of any arbitration or litigation on the underlying separation. At no time did DBI, DHR, the City Attorney's Office or any other department or City official request that I schedule Mr. Fallay's appeal or otherwise indicate an interest in my doing so. And again, the Commission is an entirely separate and independent entity under the Charter.

Fifth, once Mr. Fallay informed me that he still has active litigation against the City/DBI, I followed up with him to request additional information in an effort to: 1) understand exactly what litigation remains active and the status of any such litigation; 2) decipher whether that litigation includes a continued challenge to the arbitration award upholding his termination; and, 3) decipher whether, if resolved in Mr. Fallay's favor, it could otherwise result in his termination being overturned. This was in order to determine whether and how to proceed with scheduling his appeal, since the City Attorney's Office at the time was unaware of any active litigation that Mr. Fallay had against the City/DBI/City officials regarding his termination.²

By email on April 26, 2014, Mr. Fallay provided me with more information regarding the particulars of his litigation in federal court, as well as a copy of your replacement opening brief in

¹ Mr. Fallay's is not a unique situation. Currently, there are four other appeals of future employment restrictions before the Commission that have been placed on hold pending resolution in arbitration/litigation.

² I understand that Mr. Fallay is suspicious of the City Attorney's Office indication at the time that it was unaware of any active appeal by Mr. Fallay before the Ninth Circuit Court of Appeals, but I note that the Appellate Commissioner entered an order appointing pro bono counsel in Mr. Fallay's appeal back in April 2013. At the time of DHR's inquiry to the City Attorney's Office nine months later, you had not yet submitted your opening brief in the matter.

that matter dated April 4, 2014. Based on your brief, it appears that Mr. Fallay is not appealing the Superior Court's decision to deny his petition to vacate the arbitration award, or that he is otherwise requesting that his termination be overturned. Rather, if I understand it correctly, Mr. Fallay is appealing the District Court's decision to dismiss on procedural grounds his various claims against the City/DBI/City officials (and other individuals and entities) for monetary damages resulting from the alleged violation of his civil rights in connection with his arrest and prosecution for bribery and his resulting termination.³ Please do let me know if I am incorrect on this point.

As I indicated to Mr. Fallay by email on April 28, 2014, in light of the fact that the grievance on his termination had been resolved in arbitration in May 2009, that his petition to vacate that arbitration award in Superior Court had been resolved in March 2010, and that it had already been approximately eight years since the appeal on his future employment restrictions was filed with the Commission (and nearly ten years since his termination in December 2005), I decided to proceed with scheduling his appeal this June or July absent any objection from him.

Sixth, it was my understanding that Mr. Fallay wanted me to schedule his appeal before the Commission. In Mr. Fallay's letter to me dated February 27, 2014, he confirmed his desire to pursue his appeal and asked for information on what the next steps would be to do so. In other communications he has criticized the delay in scheduling his appeal before the Commission. For example, in his email to me on April 26, 2014, he wrote, "The issue here though is my 'employability', that is, the city taking away my right to apply for any job with the city, an appeal of which you folks have held up for eight years even after I won the charges brought against me in court." Accordingly, I directed DBI to prepare a staff report and scheduled the matter for the Commission meeting of July 21st based on Mr. Fallay's and DBI representatives' availability.

However, in his most recent communications, Mr. Fallay seems to equivocate on whether he wants his appeal to be heard. In an email on May 1, 2014, he wrote, "But while I do not mind you conducting your hearing right now, I want to be on record that you should wait for my appeal to go through before such hearing is conducted. [...] However, if you must conduct your hearing, the said appeal notwithstanding, I am ready for it." As you will note in my communications to Mr. Fallay on April 24th, April 28th and May 1st, 2014, I have repeatedly sought clarification from Mr. Fallay as to whether he would like to seek an indefinite postponement of his appeal before the Commission pending resolution of any and all litigation he may have against the City and/or DBI.

I understand from Mr. Fallay's communications to me on March 17th and April 26th, 2014 that there remains the option for him to not only pursue his claims for monetary damages in federal court, but also in state court for various other additional causes action under applicable state law(s). Further, if the Ninth Circuit Court of Appeals grants Mr. Fallay's appeal of the District Court's decision to dismiss his federal and state claims against the City based on procedural grounds, it will be remanded to the District Court for determination on the merits. Assuming that occurs, Mr. Fallay could further appeal the District Court's decision on any one or more of his claims with which he is dissatisfied. Mr. Fallay could likewise appeal any decisions regarding his claims in state court with which he is dissatisfied. Indeed, Mr. Fallay has indicated that he intends to appeal his claims "all the way to the highest court" if necessary. This could span the course of several years (if not decades), which would in turn result in further significant delay of his appeal if the Commission

³ Specific to his claims against the City/DBI/City officials, Mr. Fallay is challenging the District Court's decision to dismiss his claims under 42 U.S.C. §§ 1981, 1983 and 1985 based on untimeliness; as well as its refusal to exercise supplemental jurisdiction over Mr. Fallay's remaining state law claims since all federal claims were dismissed.

were to continue to hold it in abeyance indefinitely, pending resolution of any and all litigation he may have against the City/DBI.

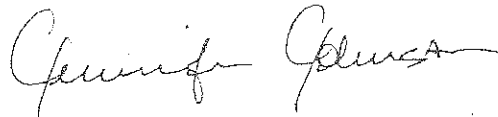
For all of the reasons stated above, I am unable to grant an indefinite postponement of Mr. Fallay's appeal before the Commission. As I have advised Mr. Fallay, he/you will have to submit a request for indefinite postponement to the Commission directly (in writing prior to, and/or verbally at, the meeting of July 21, 2014 at which his appeal is scheduled), and the reasons therefore, if that is what he is seeking. Please do let me know if that is the case. However, he/you should be prepared to present on his appeal of the proposed future employment restrictions in the event that such request is denied.

I hope that this has addressed all of Mr. Fallay's concerns regarding my motivations and reasons for scheduling his appeal before the Commission.

Should you have any questions, you may contact me by email at Jennifer.Johnston@sfgov.org; by phone at (415) 252-3247; or by mail to 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.

Sincerely,

CIVIL SERVICE COMMISSION



JENNIFER JOHNSTON
Executive Officer

Cc: Micki Callahan, Department of Human Resources
Donna Kotake, Department of Human Resources
Augustine Fallay, Appellant (

Bushman, Jennifer (Maglalang) (CSC)

From: Johnston, Jennifer (CSC)
Sent: Wednesday, September 24, 2014 3:35 PM
To: a; rwilliams@cov.com
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD); Edwards, Niger; Gard, Susan (HRD); Buick, Jeanne (HRD)
Subject: RE: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission
Attachments: Augustine Fallay (Notice of Meeting).pdf

Dear Mr. Fallay:

Thank you for the clarification. Again, I will relay your request and copies of our substantive communications to the Civil Service Commission in advance of the October 6, 2014 meeting at which your appeal is scheduled to be heard.

Please take note of the following information in the attached formal meeting notice:

As I have indicated, you should be prepared to present on your appeal at the October 6th meeting (or have a representative do so on your behalf) in the event that your request [for postponement] is denied.

In the event that you wish to submit any additional documents in support of your appeal or your request for postponement, the deadline for receipt in the Commission office is 5:00 p.m. on Tuesday, September 30, 2014 (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). [...]

All calendared items will be heard and resolved at this time unless postponement is granted. Therefore, it is important that you or an authorized representative attend the hearing on your appeal in the event that your request for postponement is denied. Should your request be denied and you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department.

You may email me with any procedural questions you may have.

Sincerely,

Jennifer Johnston
Executive Director
Civil Service Commission
City and County of San Francisco
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto: |]
Sent: Wednesday, September 24, 2014 2:11 PM
To: Johnston, Jennifer (CSC); rwilliams@cov.com
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD)
Subject: Re: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

I need it postponed till after the court case with the city is resolved.

Thanks
Gus

-----Original Message-----

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>
To: a < >; rwilliams <rwilliams@cov.com>
Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra.eng@sfgov.org>; Buick, Jeanne (HRD) (HRD) <jeanne.buick@sfgov.org>
Sent: Wed, Sep 24, 2014 10:19 am
Subject: RE: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Dear Mr. Fallay:

So that I am clear, is it your intent by this most recent communication to request indefinite postponement of your appeal pending the resolution of your litigation, or is it your intent to withdraw your appeal?

Please clarify.

Sincerely,

Jennifer Johnston
Executive Director
Civil Service Commission
City and County of San Francisco
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto: >]
Sent: Tuesday, September 23, 2014 12:00 AM
To: Johnston, Jennifer (CSC); rwilliams@cov.com
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD)
Subject: Re: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

September 22, 2014

Jennifer Johnston J
Executive Director
Civil Service Commission
City and County of San Francisco
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

Dear Ms. Johnston:

As I have made it clear to you in the last couple of weeks, this serves as a reaffirmation of my stance that I will not take part in the Civil Service Commission hearing scheduled on an appeal that was made on March 6, 2006. This decision is reached because I have an active case against the City in court dealing with the same issues and evidence that have been presented to you verbatim by the same City. You would acknowledge that I did promise two months ago to appear before the Commission, however, earlier this month, while I was preparing to present my case before the Commission, the City presented to the Court the same evidence that they have presented to you. It is therefore my position that any hearing before you on those issues will be given the city a double dip.

My position to not attend the hearing is also based on your own caveat in a letter to me dated March 11, 2014, in which you warned that "...a representative from the City Attorney's Office has informed me that all outstanding litigation on the issue of your separation has been resolved (while you apparently believed the City Attorney, it turned out to be a blatant lie). If that is incorrect (you went on, and it was incorrect), and if the issue under litigation is your underlying separation from the City, then I must await the resolution of that matter prior to scheduling your appeal before the Commission, since a ruling requiring your reinstatement would render the appeal moot." Based on this caveat vis-a-vis the latest evidence proffered in the 9th Circuit, you must agree with me that appearing and giving evidence, which you have also warned, would be a public record, would give the city an undue advantage, won't you think?

Again, although you had assured me in the past that the hearing would be de novo, with reference to no prior decisions, yet you are now making innuendos in your latest letters to the decisions of that substandard representation the Union made in my arbitration hearing. This forces me to strongly believe that the City working with your Commission wants to lure me into a hearing only to rubber-stamp the arbitration decision. Lastly you keep writing that I am only interested in monetary damages and not in employment. Please be advised that no such representation has been made to you or to anyone else. My position is that I have taken the city to court for series of Constitutional Right violations, including unlawful termination/separation and nothing is off the table.

Very truly yours

Augustine Fallay

*Dennis Yan (SBN 257854)
Augustine Fallay JD, LL.M
SF Land Use Law & Consulting
425 Market Street, Suite 2200
San Francisco, CA 94105*

*Telephone: (510) 214 - 7324
Facsimile: (415) 397-6309
Email:
Cell Phone:*

This email may contain confidential and privileged material for the sole use of its intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies. Additionally, do not rely that any e-mails that you send to this address (including legal notice of any kind) will be promptly read; any notice or other time-sensitive communication should be made in writing and transmitted via mail.

Bushman, Jennifer (Maglalang) (CSC)

From: Johnston, Jennifer (CSC)
Sent: Monday, July 14, 2014 1:05 PM
To: a
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD); Edwards, Niger; rwilliams@cov.com
Subject: RE: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Dear Mr. Fallay:

The department has agreed to your request for an extended postponement. Your appeal will be heard at the Civil Service Commission meeting of October 6, 2014; I will not be able to grant any further requests for postponement.

Your response to the department's staff report, and any additional submissions you may want to have included in the Commission's review, **is due in the Commission office by 5 p.m. on Thursday, September 25, 2014.** As a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information that is not relevant to the appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

You may feel free to contact me if you have any questions.

Sincerely,

Jennifer Johnston
Executive Director
Civil Service Commission
City and County of San Francisco
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: Johnston, Jennifer (CSC)
Sent: Monday, July 14, 2014 8:04 AM
To: 'a'; rwilliams@cov.com
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD)
Subject: RE: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Dear Mr. Fallay:

This is to confirm that your appeal has been postponed.

However, since you are requesting a significantly longer delay than we had discussed (and particularly since we already delayed the hearing by one month to accommodate your vacation schedule), I have requested the department's input. I expect to hear from them shortly.

Sincerely,

Jennifer Johnston
Executive Director
Civil Service Commission
City and County of San Francisco
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto:]
Sent: Sunday, July 13, 2014 11:37 AM
To: Johnston, Jennifer (CSC); rwilliams@cov.com
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD)
Subject: Re: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Ms. Johnston

I am not sure if you received my email late Friday, July 11 2014 as you had advised earlier the same day. As I indicated in our conversation, I received the Department's report on Friday, July 11 and they are the same duplicitous fabrications on which the court charges against me were based and were thoroughly proven to be false. I believe, that for the Commission to make an informed decision it needs to know not just the genesis of these charges, they need to know the context within which they were brought; they can only be properly understood within the context of the FBI investigations, and how the city engaged in these fabrications to literally push me to a plea bargain to avoid a court trial, which did not work. We went to trial and they lost.

To prove the falsity of these charges ("Falsity" because not only are they false, but that the Department knew/knows that they are false), I need to lay them bare with the FBI's own 302s, their tapes, and excerpts from the trial records, my work ethics in the City through my personnel file, my work history to indicate what and when I did anything for the lender, declarations from my former supervisors, very senior staffs etc.,etc. something the Union did not do when they went for the arbitration hearing. I will use the very manual presented by the Dept., to show that, even if their allegations were true, the city's own contract as indicated in these manuals, mandates a gradation of disciplinary actions and not a summary expulsion with a ban on all employments in the City (especially for a staff that had never been in violation of any rules much less face a disciplinary action); as they had done with other employees with similar and more egregious violations (the evidence will show details of such violations with dates, and if necessary, names. The only difference is race and ethnicity).

The City has presented a 148 page report, it is impossible to prepare an adequate response in two days, by July 15th as indicated in your letter, to it. To avoid the Union's mistake and contrary to my earlier request I am requesting a postponement for the hearing to the first week of October 2014.

Augustine Fallay

-----Original Message-----

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>

To: a < >; rwilliams <rwilliams@cov.com>
Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra.eng@sfgov.org>; Buick, Jeanne (HRD) (HRD) <jeanne.buick@sfgov.org>
Sent: Wed, May 28, 2014 3:38 pm
Subject: RE: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Dear Mr. Fallay:

This is to confirm my understanding of your last email to ensure that we direct all future communications regarding your appeal before the Civil Service Commission (e.g., the formal meeting notice, the department's staff report, the notice of Commission action, etc.) to the appropriate person.

In your email to me on the early morning of May 13, 2014, you wrote, "Again Ms. Johnston, since for some reason you continue to contact me directly even though I have clearly indicated to you that I have a Law Firm representing me, and have made it clear that I'd rather you contact them directly, that you continuing to contact me directly is legally not the way to do things, especially with an active case on the same issue in court. So still, for the umpteenth time, I would really appreciate it if you can contact my lawyers directly." I responded by letter on May 13, 2014, indicating that I would address all future correspondence on the matter to Mr. Williams and respond to only Mr. Williams' communications, with copy to you pursuant to the Commission's standard protocol, unless otherwise specifically directed by Mr. Williams or you.

However, it appears from your most recent communication (below) that you are now requesting that I communicate with you directly regarding your appeal and not Mr. Williams. Please let me know if I am correct on my understanding of your most recent directive; and if so, whether you would also like us to copy Mr. Williams on our communications to you.

Additionally, it would be helpful to know if you intend to request an indefinite postponement on your appeal so that I can advise the Commission in advance.

Sincerely,

Jennifer Johnston
Executive Officer
Civil Service Commission
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto:]
Sent: Tuesday, May 20, 2014 4:21 PM
To: Johnston, Jennifer (CSC); rwilliams@cov.com
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); bmuscat@ifpte21.org; Buick, Jeanne (HRD)
Subject: Re: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Ms. Johnson,
Thank you for taking your time to clarify certain issues to me and Mr. Williams.
However, I have never told you that Covington and Burling will be representing me before your Commission, they will not be. I only needed to get a clear

understanding with respect to the issues before the Commission vis-a-vis the 9th Circuit. And after discussing the same with Mr. William I am in agreement with you that the issues before the Commission, and those before the 9th Circuit can be handled separately.

That notwithstanding, I am still concerned because the claims against the

City are based on wrongful termination/ and discrimination, issues that would likely be discussed at the commission. So with that in mind I will be at the hearing in July.

Sincerely

Augustine Fallay

-----Original Message-----

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>

To: rwilliams <rwilliams@cov.com>

Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC)

<sandra.eng@sfgov.org>; bmuscat <bmuscat@ifpte21.org>; Buick, Jeanne (HRD) (HRD) <jeanne.buick@sfgov.org>; a <

Sent: Mon, May 19, 2014 12:55 pm

Subject: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Dear Mr. Williams:

Please see the attached communication in response to Augustine Fallay's most recent email communication of May 13, 2014. The original was sent via U.S. Mail earlier this morning.

Sincerely,

Jennifer Johnston
Executive Officer
Civil Service Commission
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent Via Electronic and U.S. Mail

September 24, 2014

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Augustine Fallay

**SUBJECT: REQUEST FOR HEARING BY AUGUSTINE FALLAY ON HIS
FUTURE RESTRICTIONS WITH THE CITY AND COUNTY OF
SAN FRANCISCO.**

Dear Mr. Fallay:

As you are aware, the above matter will be considered by the Civil Service Commission at a meeting to be held on **October 6, 2014 at 2:00 p.m.** in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at [www.sfgov.org/Civil Service](http://www.sfgov.org/Civil_Service) under "Meetings" no later than end of day on Wednesday, October 1, 2014. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal was emailed to you on July 11, 2014; however, a hard copy is also available for your review in the Commission's offices.

You have requested in writing via email to me on September 23, 2014 that the Commission indefinitely postpone your appeal pending resolution of any and all litigation you may have against the City. I will provide the Commission with a copy of your email and our other substantive communications to date. As I have indicated, you should be prepared to present on your appeal at the October 6th meeting (or have a representative do so on your behalf) in the event that your request is denied.

In the event that you wish to submit any additional documents in support of your appeal or your request for postponement, the deadline for receipt in the Commission office is 5:00 p.m. on **Tuesday, September 30, 2014** (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information that is not relevant to the appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

THIS DOCUMENT REPORTS
CALENDAR ITEM 11

E. DENNIS NORMANDY
PRESIDENT

DOUGLAS S. CHAN
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

IFER C. JOHNSTON
EXECUTIVE OFFICER

All calendared items will be heard and resolved at this time unless postponement is granted. Therefore, it is important that you or an authorized representative attend the hearing on your appeal in the event that your request for postponement is denied. Should your request be denied and you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department.

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Jennifer.Johnston@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION



JENNIFER JOHNSTON
Executive Officer

Attachment

Cc: Susan Gard, Department of Human Resources
Niger Edwards, Department of Human Resources
Tom Hui, Department of Building Inspection
Emily Morrison, Department of Building Inspection
Robert J. Williams, Esq.
Commission File
Commissioners' Binder
Chron

STAFF REPORT



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 126 - 06 - 7
2. For Civil Service Commission Meeting of: July 21, 2014
3. Check One:
 - Ratification Agenda
 - Consent Agenda
 - Regular Agenda X
 - Human Resources Director's Report
4. Subject: Appeal of Augustine Fallay on his Future Employment Restrictions with the City and County of San Francisco
5. Recommendation: Deny the appeal and adopt the report.
6. Report prepared by: Niger Edwards Telephone number: 415 865-5741
7. Notifications: **(Attach a list of the person(s) to be notified in the format described in IV. Commission Report Format -A).**
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: *Whitki Cook*

Date: 7/10/14
9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102

10. Receipt-stamp this form in the ACSC RECEIPT STAMP box to the right using the time-stamp in the CSC Office.

Attachment

CSC RECEIPT STAMP

Notification List
Augustine Fallay

Augustine Fallay


Robert J. Williams
Covington & Burling LLP
One Front Street, 35th Floor
San Francisco, CA 94111

Tom Hui, C.B.O. Director
Department of Building Inspection
1660 Mission Street, 6th Floor
San Francisco, CA 94103

Emily Morrison
Department Personnel officer
Department of Building Inspection
1660 Mission Street, 6th Floor
San Francisco, CA 94103

Niger M. Edwards
Senior Personnel Analyst
1660 Mission Street, 6th Floor
San Francisco, CA 94103

Donna Kotake
Workforce Development Director
Department of Human Resources
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103



MEMORANDUM

Date: July 21, 2014
To: The Civil Service Commission
Through: Micki Callahan, Director, DHR
From: Niger M. Edwards, Senior Personnel Analyst, DBI
Subject: Staff Report on Separation of Augustine Fallay, CSC Register No. 0126-06-7

AUTHORITY

Civil Service Rule Series 022 provides that the appointing officer or Human Resources Director may impose restrictions on a separated employee's future employment with the department and/or City—either indefinitely or conditioned on the individual meeting certain requirements—subject to appeal to the Civil Service Commission ("Commission").

SUMMARY

On December 14, 2005 the Department of Building Inspection (hereinafter referred to as the "Department" or "DBI") notified Augustine Fallay (hereinafter referred to as "Appellant") that his employment would be terminated with DBI, and that DBI was recommending future employment restrictions with the City and County of San Francisco ("City"). On March 6, 2006, an appeal of the future employment restrictions was submitted.

Appellant was terminated from employment based upon the following violations:

1. Violation of DBI's Code of Professional Conduct
2. Violation of the Conflict of Interest Policies
3. Violation of the City's Employee Handbook
4. Failure to Report Items on Form 700, Statement of Economic Interest ("Form 700")
5. Dishonesty and Unprofessional Conduct
6. Willful Neglect of Duty

The violations leading to the Appellant's termination stemmed from the Appellant's arrest on Thursday, August 4, 2005 by the FBI for charges related to bribery. Appellant's arrest led to an investigation by the Office of the City Attorney regarding the Appellant's conduct and job performance with the Department. The investigation commenced on Wednesday, August 10, 2005 and concluded with a report dated October 11, 2005. The City Attorney's Office Investigator, the Skelly Hearing Officer and the Arbitrator concluded that the Appellant's actions,

accepting a \$50,000 personal loan from DBI clients; accepting other gifts and cash; and failing to report these items as required, were egregious enough to warrant his termination.

The Appellant was first hired in the Planning Department on June 12, 1991 as a 5278 Planner II and in February of 2000, the Appellant was promoted to 5291 Planner III. In August 2001, the Appellant transferred to DBI where he worked as a 5293 Planner IV until his termination in August 2005. As a 5293, the Appellant was the manager of the Plan Review Services, formerly called the One Stop Program. As a manager, the Appellant was responsible for supervising and directing subordinates involved in the permit review and issuance process; coordinating applications and plan reviews with various City departments; meeting and conferring with customers and various City agencies to explain construction code requirements, discussing compliance and indicating required correction to plans and specifications; troubleshooting and resolving conflicts among the project team, customers and others; performing quality control checks on permit applications and plans; and other duties as assigned.

On May 5, 2000, the Appellant received an unsecured loan in the amount of \$50,000 from two of the Department's clients, Mr. Fu and Mr. Yan (subsequently the loan was reassigned to Ms. Lei, Mr. Fu's wife). [Attachment A, Loan Documentation] During the investigation into the matter, it was found that the Appellant had a close personal relationship with at least one client, Mr. Fu. Although the Appellant received the loan in 2001, he did not report the loan as required on the Form 700. In fact, the Appellant did not report the loan on the Form 700 until he was being investigated. From the date of the loan and until his termination, the Appellant continued to have working relationships with Mr. Fu, Ms. Lei and Mr. Yan, including assisting Building Inspectors and other employees in mediating issues between the clients, the Department and neighbors. The Appellant also continued his personal relationships with Mr. Fu and Ms. Lei, but made no attempt to notify the Department of his personal relationship or unsecured loan status with them.

On October 25, 2005 the Department issued the Appellant a Notice of Proposed Discipline advising him that an Employee Conference/Skelly meeting was scheduled for Wednesday, November 9, 2005. [Attachment B, Notice of Proposed Discipline] The Skelly meeting was held on November 16, 2005. On December 14, 2005, the Department issued a notice of termination. On March 6, 2006, the IFPTE filed a Request for Hearing regarding the Appellant's future employability with the City; and in this letter indicated that a grievance was filed and would be proceeding to arbitration. [Attachment C, Appeal of Employment Restrictions]

On May 1, 2009, the Arbitrator William E. Engler upheld the Department's action, finding that there was sufficient cause for Appellant's dismissal. [Attachment D, Arbitration Decision re: Augustine Fallay] Arbitrator Engler noted, "In observing the Grievant over the days of hearing, I was impressed by the fact that he is an intelligent man who was cognizant of the import of what he was testifying to and how he attempted to not make admissions, which were detrimental to his position. For that reason, I do not find it credible that he had so little understanding of his responsibilities of reporting this loan... I am of the belief that the Grievant intentionally falsified the Form 700's thereby substantially impairing the employer-employee trust... it is evident that the Grievant engaged in these activities, in failing to report the loan, in order to gain economic benefit to the detriment of the Department..."

ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION

The issue on appeal is whether Mr. Fallay's Future Employment Restriction is appropriate given his:

1. Violation of DBI's Code of Professional Conduct
2. Violation of the Conflict of Interest Policies
3. Violation of the City's Employee Handbook
4. Failure to Report Items on Form 700, Statement of Economic Interest
5. Dishonesty and Unprofessional Conduct
6. Willful Neglect of Duty

In March 2006, the Appellant's IFPTE representative, Nilka Julio, requested an appeal hearing on this matter; however, the appeal was placed on hold pending resolution of arbitration and other litigation. Between February and March 2014, correspondence between the Civil Service Commission, the IFPTE, and the Appellant determined that the appeal could now be heard by the Civil Service Commission.

FINDINGS AND ANALYSIS

A. The Department's Termination of the Appellant's Employment and Future Employment Restrictions was Justified.

1. **Appellant's misconduct violated multiple Department and CCSF policies when he received and did not report a \$50,000 unsecured loan, cash and other gifts from Department clients; and failed to refrain from participating in building processes affiliated with those clients.**

The City has a number of policies regarding the conduct of its employees, which include, ethics, conflicts of interest, acceptance of gifts, reporting interests etc. The Appellant participated in a number of trainings, received documents that specifically detailed employee ethical behavior and responsibilities related to employment within the Department and the CCSF, and completed several Form 700s. [Attachment E, Evidence of Training, Documents and Signed Forms] These trainings and documents included the City's Employee Handbook, Form 700, DBI Handbook for Professional Conduct and the Sunshine Ordinance training, which is provided by the City Attorney's Office. Together these forms and trainings clearly advise on the rules for accepting loans, gift and other items; and clearly outline an employee's responsibility to report such items.

During the investigation the Appellant stated that he did not understand that he had to report the loan; and he did not believe that the loan was related to his work responsibilities. The investigation revealed that the clients mentioned their projects to the Appellant in at least two instances in which the loan was discussed with the Appellant. In the first instance, as the Appellant received the loan, Mr. Yan mentioned a pending building project. In the second instance Mr. Fu's wife, Ms. Lei, attempted to forgive the Appellant of the loan in return for his assistance in obtaining approval on a project. According to the Appellant, he asked Ms. Lei if she was trying to bribe him. These two instances and the fact that the \$50,000 loan came with

no repayment terms and a below market 6% interest rate (something not obtainable through a bank or other lender during this time period), offer clear evidence of conflict of interest and inappropriate gifting, which the Appellant should have immediately recognized. None the less, the Appellant did not complete the Form 700 to report the loan until 2007, after he was investigated. In fact the Appellant did not make a payment on the loan until after his arrest, which was five years after the loan was originated. [Attachment A]

While the Appellant did not report his financial or personal relationship with these clients to DBI management, he continued to work on projects after he received the \$50,000 loan and other gifts. The Appellant's involvement in projects with Mr. Fu, Mr. Yan and Ms. Lei were: providing counter service; acting as a liaison in a situation involving the clients and a neighbor; forwarding a permit application to correct extensive notices of violations; personally travelling with a Senior Inspector to a site to mediate with one of the clients; repeatedly conversing with the Senior Inspector about the project; and approving a permit related to one of the clients. It was not until September 2005, after his arrest, that the Appellant made a payment in the amount of \$10,000 towards the loan. [Attachment A]

The Appellant repeatedly violated the terms of his employment, which include maintaining ethical behavior, avoiding conflicts of interest, and appropriate financial reporting. These violations are evidenced by his acceptance of gifts in excess of the allowable amounts; failure to report a loan from a client; receiving a loan in the amount of \$50,000 from a client; failure to disclose a financial or close relationship with a client for which he had project involvement and approval authority; and failure to recuse himself from a project where he had a close personal and financial relationship with a client.

2. Appellant's misconduct involved willful neglect and dishonesty from the date he obtained an unsecured loan from a DBI client, continuing through the misconduct investigation and until he was terminated.

During the investigative interviews held on September 7 and 13, 2005, and the Arbitration hearing held July 21, 23, and 25, 2008, and January 6, 2009, the Appellant admitted that he took and did not report cash, gifts and an unsecured loan from Department clients, Mr. Fu, Mr. Yan and Ms. Lei. The Appellant, an educated man who held a substantial position in the department, insisted that he did not understand these actions could be considered problematic. It is inappropriate to take gifts or loans from clients to whom he had substantial authority in approving, moving or otherwise influencing their projects. This very conduct is of subject in the Form 700, the City's Employee Handbook, the Sunshine Ordinance, and DBIs' Handbook for Professional Conduct, all of which the employee received a copy and or training. [Attachments F, G, H and I]

The Appellant maintained an argument that he did not understand his responsibility to report these items and to refrain from engaging in such activities. Although the Appellant claimed a lack of understanding, he also acknowledged his legal education and work responsibilities of interpreting and applying regulations, as well as the training and documentation he received regarding employment obligations; all of which discredit his claim of ignorance to his ethical obligations. After receiving training and being provided with specific written instruction of his financial and ethical obligations as a public employee, the Appellant claimed that he did not

understand his responsibility regarding the forms and admitted that he did not research or seek out information to understand his responsibilities with respect to accepting and reporting loans and gifts from clients.

The Appellant has maintained that he does not feel that he did anything wrong by accepting and not reporting his loan and gifts. In October 2005, after his arrest, the Appellant completed the Form 700 for the years 2000 through 2005 as informed to do so; however, even then he submitted incomplete forms. Although all three clients were the source of the loan, the Appellant only listed Mr. Yan as the source of the loan.

The Appellant's behavior surrounding this matter indicates that he did not consider the importance of his position as it relates to his obligations and expectations as a public employee and department manager. The Appellant's willful neglect of duty and willful dishonesty alone were grounds for termination as it undermined the reputation of the Department and the City; and indicated that he did not take into consideration the Department's interest or trust.

B. Appellant's Arguments against Future Employment Restrictions are not Persuasive.

Prior to his dismissal the Appellant presented a number of arguments in his defense. However, his arguments fail to mitigate his serious misconduct. It is clear that future employment restrictions are justified in this case.

1. The Appellant claimed he was unaware of Mr. Yan, Mr. Fu and Ms. Lei's project activity with the Department.

The Appellant claimed that he did not know that Mr. Yan had projects with the Department that he worked on before, during and following the date of the loan. However, Mr. Yan clearly advised the Appellant of his projects with the department at the time he gave the Appellant the loan. Further, the Appellant stated that he was close friends with Mr. Fu, who was also on the promissory note. The Appellant admitted during the investigation that he had contact with Ms. Lei and Mr. Yan at lunches and other social interactions. During the investigation the Appellant stated that he knew these clients were in business together, but maintained he did not know to what extent. However, the clients each own several properties and have done business with the Department on numerous occasions and in the past the Appellant provided services to these clients.

In addition, Mr. Yan and Mr. Fu names were on the loan promissory note and check given to the Appellant. [Attachment A] The Appellant stated that he did not notice his friend Mr. Fu's name on the check or promissory note until the day after he accepted he received the loan. However, the Appellant made no attempt to nullify the loan. During the investigation, the Appellant said something to the effect that he purposely did not ask his friend, Mr. Fu any questions related to business relationships, because he did not want to put himself in a situation to be questioned. This inaction suggests that the Appellant felt that the Mr. Fu may have had some inappropriate business transactions; and for this reason the Appellant should have questioned himself as to the appropriateness of his dealings with this Mr. Fu.

2. The Appellant stated that he did not feel the loan was related to bribery.

The Appellant stated that he did not believe the loan was related to bribery; however, at the time the loan was originated, Mr. Yan mentioned one of his projects in detail before giving the Appellant the loan. Mr. Yan, at the time of his comments, knew the Appellant's position within DBI and that the Appellant might have some involvement in the approval of projects. The Appellant intentionally chose not to pursue knowledge of why someone would loan him \$50,000 without repayment terms, and at the same time disclose specific dealings with the Department during the loan transaction.

Additionally, when Mr. Yan refused to take any payment from the Appellant, the Appellant did not take decisive action to pay the loan back. The Appellant claimed he had no means of getting the payment to Mr. Yan; however, the promissory note displayed Mr. Yan's address. [Attachment A] Even more, because the Appellant had a personal relationship with Mr. Fu, the Appellant could have paid the loan amount, given that Mr. Fu was named on the promissory note as the source of the loan.

The Appellant also stated that he specifically refused the expectation of a bribe offered by Ms. Lei during a time when he still had not made a payment on the loan. Even after this telling occurrence, the Appellant, a man educated in the law, and whose job was to provide interpretation and to uphold building rules and regulations, made a conscious effort not to report his relationship and loan to DBI management.

3. The Appellant claimed that his reasons for taking the loan were commercial and unrelated to the work of the Department.

Third, the Appellant claimed that he did not understand that the loans, cash and gifts should be reported. First he denied and then admitted to receiving various documents, forms and trainings that specify his responsibilities related to conflict of interest, ethics and reporting interests. In fact, the employee's personnel file contained the Appellant's signature on documents acknowledging such trainings and documents.

During the investigative interview the Appellant stated that his intent in obtaining the loan was to make improvements to his own home and to pay off equity owed to his former wife. Therefore, he believed the loan to be commercial and not reportable. However, the Appellant's reasoning is conflicting, as his use of the loan was personal, not related to business or commercial use. Further, Appendix 8 of the Form 700 defines the commercial loan as "any loan from a commercial lending institution made in the lender's regular course of business on terms available to the public [...]". [Attachment F] Given this definition, reporting requirements are not reasoned by why the loan was taken, but from whom the loan was obtained. The Appellant's loan was not issued by a commercial institution, as it was lent by two individuals, without normal repayment terms and at a below market interest rate, thereby making it reportable.

The Appellant continued to justify the loan by stating that because the loan was for his home in the City of Oakland and his personal life outside the City of San Francisco, he understood that he did not have to report the loan. Where the Appellant intended to use the loan was of little

significance, as it was his position of authority and influence regarding the Building Department's services that is of importance. If the Appellant did not understand his reporting responsibilities, he should have, at the minimum, consulted an expert on this topic. In fact the Form 700 and the trainings he attended provided instructions for seeking assistance, and encouraged employees to seek assistance if they were unsure of their responsibilities.

Lastly, the Appellant stated that he did not report the loan or his relationship with the clients to anyone in DBI because he felt that receiving these items would not affect his ability to perform his job. The Appellant's ability to perform his job after he took the loan and gifts were not the main factor in this matter, it is the adherence to rules, regulations, and policies and the impact of failing to do so that must be considered. The Sunshine Ordinance Training, Employee Handbook, DBI's Handbook for Professional Conduct and Form 700 are clearly designed to guide employees on appropriate and responsible behavior to limit the chance that their activities will be viewed negatively.

CONCLUSION

The Appellant's arguments in his defense are not persuasive. He admitted "the truth", but also pleaded ignorance where it was convenient for him to do so. The Appellant had multiple opportunities to correct his failings and failed to do so. He was provided training and given documents regarding procedure, yet he did not follow protocol or seek clarity.

While the Appellant's termination focused on the Appellant's failure to report the items and his inaction to notify the department of his personal relationship with the clients, it is very concerning that the Appellant felt it acceptable to receive a loan and gifts from Department clients. This concern is intensified by the fact that the Appellant did so knowing he had influence and authority over client projects. The Appellant did not consider that his actions could be so detrimental that the FBI and subsequently the media would take notice. The Appellant's actions are misguided and singularly focused on him, rather than the harm caused to the reputation of the Department and the City.

The Appellant, who as a manager for the Department, had an obligation to represent the Department in an ethical and professional manner. His obligation as a manager placed him in position to be an example to subordinate personnel. The Appellant's actions were willful and deliberate to protect his own interests; and for his own personal gain. The Appellant was not concerned that his actions in accepting the loan, cash and gifts; and his inaction in reporting these things undermined the trust of the Department, its employees, the City and the public.

A position in government is a position of public trust. As a City employee, the Appellant was accountable to San Francisco Constituents and those who do business with DBI. The Appellant's conduct was contrary to the interests of the public. Appellant violated the trust commensurate with his position as a City employee. It is in the best interest of the City, its employees and members of the public that Augustine Fallay be restricted from future employment with DBI and the City and County of San Francisco.

RECOMMENDATION

For all of the reasons set forth above, the Department recommends that the Civil Service Commission approve the recommendation of the Department of Building Inspection's Director to restrict the future employment of Augustine Fallay with the City and County of San Francisco as follows:

Cancel any current examination and eligibility status; No future employment with the Department of Building Inspection; No future employment with the City and County of San Francisco.

NOTIFICATIONS

See Form 22.

ATTACHMENTS

- | | |
|--------------|--|
| Attachment A | Loan Documentation |
| Attachment B | Notice of Proposed Discipline, dated 10/25/2005 |
| Attachment C | Appeal of Employment Restrictions, dated 03/06/2006 |
| Attachment D | Arbitration Decision re: Augustine Fallay, dated 05/01/2009 |
| Attachment E | Evidence of Training, Documents and Signed Forms |
| Attachment F | Example: Form 700 Statement of Economic Interests, Relevant Sections |
| Attachment G | Example: Sunshine Ordinance and Declaration, Relevant Sections |
| Attachment H | Example: CCSF Employee Handbook, Relevant Sections |
| Attachment I | Example: DBI Handbook for Professional Conduct, Relevant Sections |

Attachment A

Loan Documentation

DUE ON DEMAND PROMISSORY NOTE

For value received, the undersigned AUGUSTINE FALLAY (the "Borrower"), at 51 OAKLAND California _____, promises to pay to the order of YAN and FU, (collectively, the "Lender"), at AVE, SAN FRANCISCO, CA 94122, (or at such other place as the Lender may designate in writing) the sum of \$50,000.00 (Fifty Thousand Dollars) with interest from May 08, 2000, on the unpaid principal at the rate of 6.00% per annum.

The unpaid principal and accrued interest shall be payable in full on any future date on which the Lender demands repayment (the "Due Date").

All payments on this Note shall be applied first in payment of accrued interest and any remainder in payment of principal.

The Borrower reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty.

If any payment obligation under this Note is not paid when due, the Borrower promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.

If any of the following events of default occur, this Note and any other obligations of the Borrower to the Lender, shall become due immediately, without demand or notice:

- 1) the failure of the Borrower to pay the principal and any accrued interest in full on or before the Due Date;
- 2) the death of the Borrower or Lender;
- 3) the filing of bankruptcy proceedings involving the Borrower as a debtor;
- 4) the application for the appointment of a receiver for the Borrower;
- 5) the making of a general assignment for the benefit of the Borrower's creditors;
- 6) the insolvency of the Borrower;
- 7) a misrepresentation by the Borrower to the Lender for the purpose of obtaining or extending credit.

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

No renewal or extension of this Note, delay in enforcing any right of the Lender under this Note, or assignment by Lender of this Note shall affect the liability or the obligations of the Borrower. All rights of the Lender under this Note are cumulative and may be exercised concurrently or consecutively at the Lender's option.

This Note shall be construed in accordance with the laws of the State of California.

Signed this 5th day of May, 2000

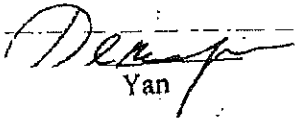
Borrower: Augustine Fallay

24

Assignment

For consideration received, Yan, assigned his interest under the Due on Demand Promissory Note, signed by Augustine Fallay in the amount of \$50,000, date on May 5th, 2000, hereby sells, assigns and transfers all his right, title and interest in and to Lei.

Executed at San Francisco, California, on this 20 day of September, 2003


Yan

THE LAW OFFICE OF

8 STREET, I

SAN FRANCISCO, CALIFORNIA 94102

TELEPHONE (

FACSIMILE (

September 6, 2005

Yan
Avenue
San Francisco, CA 94122

Fu
Boulevard,
San Francisco, CA 94121

Lei
Avenue
San Francisco, CA 94121

Dear Sirs and Madam:

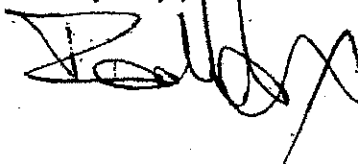
My client, Augustine Fallay, acknowledges his debt of \$50,000 plus interest and has deposited \$10,000 as partial payment into my client trust account.

As you all are aware, Mr. Yan provided a check to Mr. Fallay for \$50,000 in May 2000, reflected by the attached promissory note. At that time, Mr. Fallay (as well as Mr. Fu) was unaware that Mr. Fu's name was on the note. Since Mr. Yan had provided the funds, Mr. Fallay assumed that the entire amount was owed to Mr. Yan.

That note appears to have been the subject of a unilateral assignment from Mr. Yan to Ms. Lei in September 2003, as shown in the attached assignment. Mr. Yan now contests the assignment and has requested that Mr. Fallay arrange payments with him, as shown in Mr. Yan's letter of August 10, 2005.

Mr. Fallay has instructed me to release the first \$10,000 to the appropriate party upon the execution of a settlement agreement among the three of you or in accordance with a lawful court order. Please direct all further correspondence regarding this loan to me. Mr. Fallay is also ready to establish a payment schedule when ownership of this loan is decided.

Very truly yours,



STATEMENT OF ECONOMIC INTERESTS

DIRECTOR'S OFFICE
DEPT. OF BLDG. INSP.
Date Received
Official Use Only

COVER PAGE

REFER TO: _____
07 APR 23 PM 2:00

A Public Document

Please type or print in ink

NAME (LAST) FALLAY	(FIRST) AUGUSTINE	(MIDDLE) MORRAY	DAYTIME TELEPHONE NUMBER
MAILING ADDRESS (May use business address) ST,	CITY	STATE CA	ZIP CODE
			OPTIONAL: FAX / E-MAIL ADDRESS

1. Office, Agency, or Court

Name of Office, Agency, or Court:
DEPT. OF BUILDING INSPECTION

Division, Board, District, if applicable:
PERMIT COORDINATION DIV.

Your Position:
MANAGER

⇒ If filing for multiple positions, list additional agency(ies)/ position(s): (Attach a separate sheet if necessary.)

Agency: _____

Position: _____

2. Jurisdiction of Office (Check at least one box)

State

County of **SAN FRANCISCO**

City of **SAN FRANCISCO**

Multi-County _____

Other _____

3. Type of Statement (Check at least one box)

Assuming Office/Initial Date: ___/___/___

Annual: The period covered is January 1, 2005, through December 31, 2005.

-OR-

The period covered is **01/01/2005** through December 31, 2005.

Leaving Office Date Left: **12/14/2005**
(Check one)

The period covered is January 1, 2005, through the date of leaving office.

-OR-

The period covered is ___/___/___ through the date of leaving office.

Candidate

4. Schedule Summary

⇒ Total number of pages including this cover page: **2**

⇒ Check applicable schedules or "No reportable interests."
I have disclosed interests on one or more of the attached schedules:

Schedule A-1 Yes - schedule attached
Investments (Less than 10% Ownership)

Schedule A-2 Yes - schedule attached
Investments (10% or greater Ownership)

Schedule B Yes - schedule attached
Real Property

Schedule C Yes - schedule attached
Income, Loans, & Business Positions (Income Other than Gifts and Travel Payments)

Schedule D Yes - schedule attached
Income - Gifts

Schedule E Yes - schedule attached
Income - Travel Payments

-OR-

No reportable interests on any schedule

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete.

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

Date Signed **4-18-2007**
(month, day, year)

Signature **Augustine Morray**
(File the originally signed statement with your filing official.)

SCHEDULE C
Income, Loans & Business
Positions
 (Other than Gifts and Travel Payments)

CALIFORNIA FORM 700
 FAIR POLITICAL PRACTICES COMMISSION

Name _____

> 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME
 _____ YAN _____

ADDRESS
 _____ AVE, SAN FRANCISCO _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION
PLANNER

GROSS INCOME RECEIVED
 \$500 - \$1,000 \$1,001 - \$10,000
 \$10,001 - \$100,000 OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED
 Salary Spouse's Income Loan repayment
 Sale of _____
(Property, car, boat, etc.)
 Commission or Rental income, list each source of \$10,000 or more

 Other _____
(Describe)

> 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME

ADDRESS

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

GROSS INCOME RECEIVED
 \$500 - \$1,000 \$1,001 - \$10,000
 \$10,001 - \$100,000 OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED
 Salary Spouse's Income Loan repayment
 Sale of _____
(Property, car, boat, etc.)
 Commission or Rental income, list each source of \$10,000 or more

 Other _____
(Describe)

> 2. LOAN RECEIVED

You are not required to report loans from commercial lending institutions, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER
 _____ YAN _____

ADDRESS
 _____ AVE, S/F CA 94122 _____

BUSINESS ACTIVITY, IF ANY, OF LENDER

HIGHEST BALANCE DURING REPORTING PERIOD
 \$500 - \$1,000
 \$1,001 - \$10,000
 \$10,001 - \$100,000
 OVER \$100,000

INTEREST RATE
6% None

TERM (Months/Years)
ON DEMAND

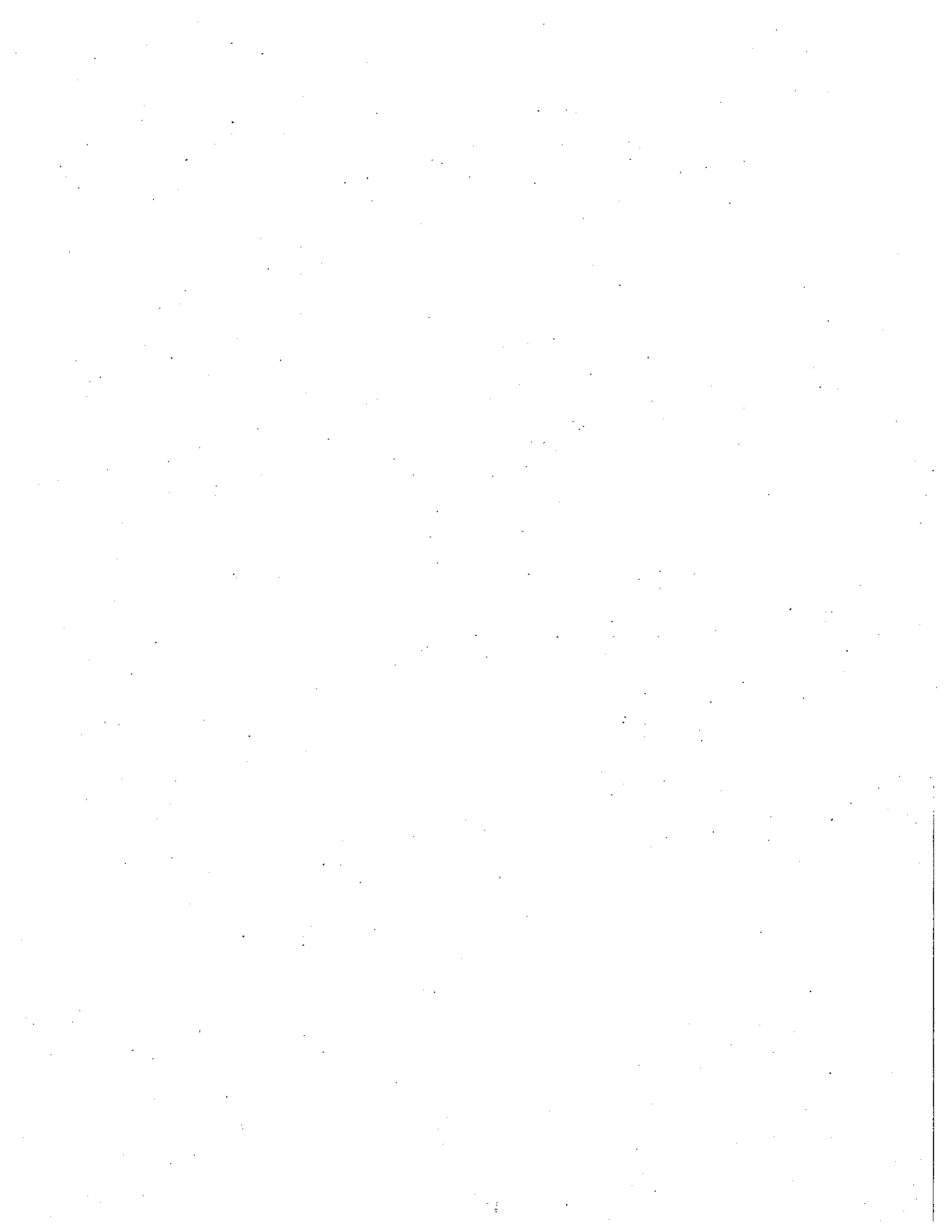
SECURITY FOR LOAN
 None Personal residence
 Real Property _____
Street address

City
 Guarantor _____
 Other _____
(Describe)

Comments: _____

Attachment B

Notice of Proposed Discipline





October 25, 2005

BY HAND DELIVERY AND OVERNIGHT MAIL

Mr. Augustine Fallay
[REDACTED]

Dear Mr. Fallay:

I am writing to inform you that Department of Building Inspection intends to terminate you from your position as a class 5293 – Planner IV and that a *Skelly* meeting is scheduled at 10:00 a.m. on Wednesday, November 9, 2005 at 1650 Mission Street, 3rd Floor – DBI Personnel Conference Room. At the *Skelly* meeting, you will have the opportunity to meet with Mr. Ed Gazzano to respond to the charges and share any objections or concerns you may have about the proposed discipline.

You are entitled to bring a representative of your choice to the *Skelly* meeting. You are not required to attend the *Skelly* meeting. You may submit a written response and any relevant written materials for the Department to consider before making a final decision. If you choose this option, you must submit your written materials to the Director's office by 5:00 p.m. on Wednesday, November 2, 2005. If you do not attend the *Skelly* meeting or submit a written response, the Department will make a decision on your proposed termination based on the above information and materials.

Please contact Carolyn Jayin at 415-558-6131 to confirm whether you will attend the *Skelly* meeting. Please also contact Lucy Palileo at 415-557-4883 if you have any questions about the *Skelly* meeting.

i. Charges

The charges are as follows:

1. accepting \$50,000 from and entering into a promissory note with [REDACTED] Fu, [REDACTED] Yan, and [REDACTED] Lei, who had projects before the City;
2. accepting cash and gifts from Fu and engaging in other transactions with him while he had projects before the City;
3. being personally involved with projects affiliated with Fu, Yan, and Lei before and after accepting cash, gifts, and a "loan" from them;
4. failing to report the "loan";
5. failing to report the cash and other gifts you received from Fu; and
6. dishonesty and unprofessional conduct.

ii. Bases for the Charges

The above charges are based on our independent investigation of your alleged violations of City policy and the professional standards for City employees. These charges are not based on the criminal charges that the District Attorney's Office and the FBI are investigating. The Department, however, reserves its right to consider whether to issue further charges if additional information becomes available after the criminal investigation and proceeding are completed and made public.

The evidence underlying the charges are discussed at length in the enclosed report prepared by the City Attorney Office's investigators. References to the report in this letter include the report's appendixes and attachments. Also enclosed are additional materials that the Department considered in concluding that your proposed termination was warranted.

The grounds for each charge are summarized below.

1. **Accepting \$50,000 from and entering into a promissory note with individuals who had projects pending with the City**

You accepted a \$50,000 check from individuals who had business before the Planning and Building Departments in exchange for executing a promissory note with more favorable terms than would normally be available from a bank or other lender. You admit that at the time entered into this "loan," you could not obtain financing from banks or other lenders who were not doing business with the Planning and Building Departments.

On May 5, 2000, you had lunch with Fu and Yan. You knew Fu and Yan had been involved in projects that had been submitted to the Planning and Building Departments for approval.

At the lunch, you filled out and signed an unsecured promissory note for \$50,000 at 6 percent interest. The note did not include any payment schedule.

The note stated in bold capital letters that the "loan" was being made by Fu and Yan. After signing the note, you accepted a check for \$50,000 drawn on a joint account of Lei and Yan. Yan signed the check in your presence during the lunch.

At the lunch, Yan also told you that he was the owner of a project at [REDACTED] for which you had recently approved the demolition of an existing structure and the construction of a replacement structure. You were also aware that Lei had projects that had been submitted to the Planning and Building Departments for approval. And you were aware that in 2003, Yan made an assignment of the "loan" to Lei.

You assert that you made informal inquiries about repaying the "loan" at various times. But you admit that Fu and Lei repeatedly told you that you did not need to repay the loan.

There is no evidence of you taking formal action to repay the loan until September 2005, when your attorney, [REDACTED], wrote Fu, Yan, and Lei a letter acknowledging the debt and

stating that you had deposited \$10,000 as partial payment into [REDACTED] client trust account. You took this action over five years after accepting the \$50,000 in May 2000; and only after the "loan" had become public knowledge.

2. Accepting cash and gifts and engaging in other transactions with Fu while he had projects pending with the City

The "loan" was not your only interaction with Fu. You had known Fu since 1993 and have a long history of social and other interactions with him.

Fu also helped you with home improvement projects at your [REDACTED] home. On one occasion you provided Fu with approximately \$800 in tiles. You assert that Fu agreed to pay you \$600 for the tiles, but admit that you never obtained any payment from Fu for the tiles.

In September 2003, Fu gave your wife two red envelopes, each containing \$100 following the birth of your son. He also gave you other gifts on these occasions which you estimated were worth an additional \$36.

Although you and Fu had an extended personal relationship, you continued to allow him to bring projects directly to you at your counter without notifying the City of your personal relationship or taking any preventive measures to avoid actual or apparent conflicts of interest.

3. Being personally involved with projects affiliated with Fu, Yan, or Lei before and after accepting the cash, gifts, and "loan"

You accepted cash, gifts, and the "loan" from Fu, Yan, or Lei when you had previously been involved with providing approvals for at least six projects affiliated with all or one of them. As explained in the report, before May 5, 2000 (when you accepted the \$50,000 check), you provided approvals at various stages for at least six projects affiliated with Fu, Lei, or Yan at:

As further explained in the report, you also continued to be personally involved with projects affiliated with Fu, Yan, and Lei after you accepted the gifts and "loan," including: [REDACTED]. Among other things, after May 5, 2000: you acted as a liaison with the [REDACTED] neighbors and builders for approximately another year; approved and forwarded a permit application to correct extensive notices of violations at [REDACTED]; accompanied senior inspector Ed Sweeney to a site visit [REDACTED] when Fu was present; repeatedly talked to Sweeney about this project; and approved a permit for [REDACTED].

When shown City records regarding the properties at [REDACTED], you admitted having acted on these projects. But you stated that you "may" not have known the sponsors' identities at the time you took official action. I do not find this statement credible in light of, among other evidence in the report: your ongoing relationship with Fu and Lei and knowledge of their business before the department; Fu's practice of bringing his projects directly to you for you to review at your counter; Yan's statement at the May 5, 2000 lunch reconfirming his role in the [REDACTED] project; your conversations with Sweeney, as reviewed in the report; your accompanying Sweeney on a visit to one of these properties while Fu was there, and

documents that you approved that identify Fu's, Yan's, and Lei's involvement with these properties.

4. Failing to report the "loan"

You did not report the "loan" to the City until after it became public knowledge in August 2005—more than five years after you accepted the \$50,000 check and signed the note in May 2000. Even though you annually filled out statement of economic interest forms that required you to notify the City of the "loan", you did not report the "loan" on these forms or otherwise notify the Department.

Finally, on October 7, 2005 you submitted amended forms with the "loan" on them. This untimely submission does not excuse keeping the "loan" a secret for five years. And even on these forms, you list only Yan as the source of the "loan."

You failed to report the "loan" for five years even though on numerous occasions you had been notified that you were required to do so under the City's conflict of interest and disclosure requirements. You received notice of these requirements in, for example: (1) your training when you first began working at the Planning Department; (2) the summary of the ethical guidelines in of the City's employee handbook; (3) the conflict of interest reporting and policy documents that you received when you joined DBI; (4) memoranda from former director Frank Chiu; (5) the instructions that accompanied the annual statement of economic interests forms that you submitted (a copy of the 2004-2005 instructions is attached as a representative example of the instructions that accompanied these forms); (6) the enclosed City Attorney's overviews of the laws governing government officials, which are readily available; and (7) the additional training sessions that you and other DBI staff attended, including the City Attorney's Office's training that covered the same topics as the session recorded in the enclosed videotape.

Especially in light of the promissory note's terms and your inability to obtain a loan from a bank, it should have been self-evident that you could not accept \$50,000 from individuals who had business with the Planning and Building Departments and whose projects you been involved with and continued to be involved in. It should have been self-evident that you immediately needed to report any such transaction to the City. Notwithstanding the obvious inappropriateness of this "loan", the trainings and instructional materials you received clearly notified you that you needed to report the "loan." And if you had any questions about specific requirements, the trainings and instructional materials informed you who to contact. Indeed, if you had concerns about this "loan" and that Lei made it difficult for you to repay, there were numerous City resources that you could have contacted for guidance and assistance.

You not only failed to report the "loan," you also did not report several other incidents surrounding the loan that the City should have been notified about. You appear to believe that Yan's statements at the May 5, 2000 lunch that the \$50,000 check "had nothing to do" with the [REDACTED] project should be treated by the Department as a factor militating against your termination. It is quite disturbing that even when a builder mentions a project pending before the City while handing you \$50,000, you did not see any reason to report this to the City. Likewise, you accuse Lei of explicitly offering in March 2005 to forgive the "loan" in exchange for you helping to obtain approval for the [REDACTED] project. But you did not report this until being interviewed by the City Attorney's Office's investigators in September 2005.

5. **Failing to report the cash and gifts you received from Fu**

You also did not report to the City the cash and gifts that you received from Fu. Again, it should have been self-evident that you should report your wife receiving envelopes with \$100 in cash from a person with projects pending before the city and whose projects you had been involved with and continued to be involved with. It should have been obvious that you should have informed the Department of your close relationship and extended interactions with Fu. But even if it were not obvious, the trainings and instructional materials listed in the previous section gave you ample notice of your reporting obligations and informed you who to contact if you had any questions.

6. **Dishonesty and Unprofessional Conduct**

The facts underlying the above charges reveal an alarming lack of honesty and professionalism. Your interview raises further concerns.

When you knew the investigators had or could easily obtain undisputable evidence of your misconduct, you admitted to things like taking the "loan," accepting the gifts, or failing to report the loan or gifts.

But at other times, your statements were not credible.

I did not believe your attempts to claim that you did not understand that there was a problem with: accepting the "loan" or gifts; being involved in projects affiliated with Fu, Yan, or Lei; or failing to report the "loan", cash, or gifts. As stated above, it should have been self evident that you could not engage in this misconduct. Notwithstanding the obvious and inherent inappropriateness of your conduct, you had received ample notice of your ethical obligations as a City employee. Yet you repeatedly tried to downplay or deny the training that you had received about your obligations as a City employee.

Your earlier legal training and your work interpreting and applying regulations further discredit your claims that you were ignorant of your ethical obligations.

I also do not believe your assertions that you were unaware of which projects Fu, Yan, and Lei had pending with the City or that you were unaware of your own involvement in these projects.

I am also particularly concerned by your statements that you did nothing wrong in accepting the "loan." You appear to believe that you are entitled to remain in your job unless this investigation determines that you engaged in bribery or shows that you met all the elements for establishing other criminal violations.

This reflects a fundamental misunderstanding of the purpose of this investigation and your obligations as a public employee. Your obligations extend beyond merely complying with criminal statutes. I expect you to at minimum, avoid any actual conflict of interest and at best, any appearance thereof. I expect you to be candid about any financial or personal interactions that you have with individuals who have business before the Planning or Building Departments.

iii. Conclusion

Each individual charge independently supports the proposed termination. When the facts underlying all the charges are considered together, they reveal an alarming pattern of dishonest and unprofessional conduct.

I place a high priority on Department employees performing their duties honestly and professionally. Your conduct has undermined the Department's mission and obligations. There is just cause for your termination.

Sincerely,


Amy Lee
Acting Director

cc: Ed Gazzano, Skelly Officer
Nilka Julio, IFPTE, Local 21
[REDACTED]
Bruce Topp, DHR

Enclosures:

- I. Report of Investigation, including Appendixes I-V and the following exhibits:
 - A – Fallay interview transcript, September 7, 2005
 - B – Fallay interview transcript, September 13, 2005
 - C – [REDACTED] Yan interview transcript
 - D – Promissory note
 - E – Assignment of loan
 - F – September 6, 2005 letter from [REDACTED] to Yan, Fu, and Lei
 - G – Fallay Statements of Economic Interest
 - H – Statement of Economic Interest forms and instructions
 - I – March 23, 2005 Fallay acknowledgment of DBI ethics training
 - J – Current CCSF Employee Handbook
 - K – Sunshine Ordinance

- L – Fallay August 4, 2001 acknowledgment of receipt of DBI policies
 - M – Frank Chiu February 25, 2002 and May 27, 2004 memos and Preliminary Code of Conduct
 - N – Documents relating to Fallay's March 23, 2005 DBI ethics training
 - O – Fallay purchase of [REDACTED] property
 - P – [REDACTED] Fu business card as loan specialist for BayCal
 - Q – Yan August 20, 2005 letter demanding repayment of loan
 - R – [REDACTED] Avenue documents
 - S – [REDACTED] Avenue documents
 - T – [REDACTED] Avenue documents
 - U – [REDACTED] Avenue permit
 - V – DBI tracking notation re. [REDACTED]
 - W – [REDACTED] documents
 - X – [REDACTED] Street appeals letter
 - Y – June 12, 2003, permit sign-off for [REDACTED] Street
 - Z – Fallay forwarding of documents regarding [REDACTED] to Jim Hutchinson
2. Audiotapes of Augustine Fallay interviews on September 7, 2005 (3 tapes) and September 13, 2005 (5 tapes)
 3. Videotape of Annual Sunshine & Ethics Laws Training 2004
 4. March 2003 Overview of the Laws Governing the Conduct of Public Officials
 5. January 7, 2000 Overview of the Laws Governing the Conduct of Public Officials
 6. October 7, 2005 letter from Augustine Fallay to Amy Lee with enclosed amendments to Form 700, Schedules C and E

Attachment C

Appeal of Employment Restrictions



INTERNATIONAL
FEDERATION OF
PROFESSIONAL
AND
TECHNICAL
ENGINEERS

LOCAL 21
AFL-CIO

An Organization of
Professional and Allied
Technical Employees

MAIN OFFICE

ORPHEUM
THEATER BUILDING
1182 MARKET STREET
ROOM 425
SAN FRANCISCO, CA
94102

(415) 864-2100
(510) 251-2199
FAX: (415) 864-2188

SOUTH BAY OFFICE

675 N. FIRST STREET
SUITE 715
SAN JOSE, CA
95112

(408) 291-2200
FAX: (408) 291-2203

www.ifpte21.org

March 6, 2006

Kate Favetti, Executive Officer
SF Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102

RECEIVED
EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION
SAN FRANCISCO

06 MAR -7 PM 1:04

CIVIL SERVICE COMMISSION
REGISTER
NUMBER 0126 06 7

original by fax
w/ AUGUSTINE FALLAY
VIA FAX/MAIL

RE: Request for Hearing

Dear Ms. Favetti:

Please consider this notice as a request for a hearing for review on the future employability of Mr. Augustine Fallay. We filed a grievance and will be proceeding to arbitration on the termination of Mr. Fallay, Planner IV from his employment at the Department of Building Inspection.

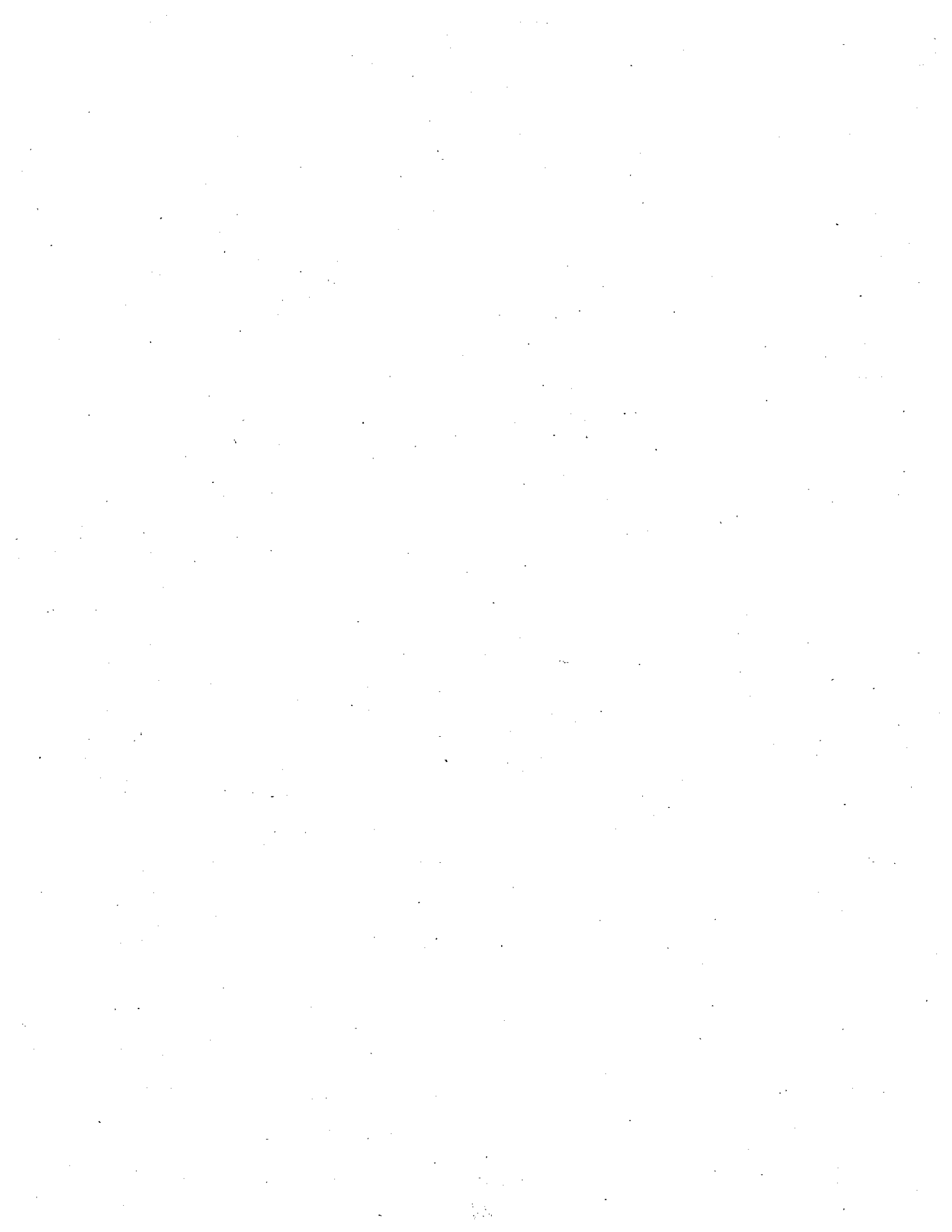
Sincerely,

Nilka Julio
Representative/Organizer

Cc: Augustine Fallay
Duane Reno
David Novogrodsky

Attachment D

Arbitration Decision re:
Augustine Fallay



A MATTER OF ARBITRATION

CITY OF SAN FRANCISCO, DEPARTMENT DEPARTMENT OF BUILDING INSPECTION)	CALIFORNIA MEDIATION AND CONCILIATION CASE NO. ARB-07-0153
Employer)	GRIEVANCE: Termination of Augustine E. Fallay
Vs.)	HEARING: July 21, 23, 25, 2008 January 6, 2009
INTERNATIONAL FEDERATION OF PROFESSIONAL ENGINEERS LOCAL 21)	DECISION ISSUED: May 1, 2009
Grievant)	

DECISION OF WILLIAM E. ENGLER, ARBITRATOR

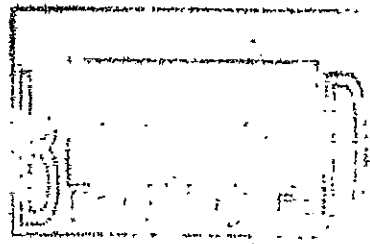
APPEARANCES BY:

On Behalf of the Grievant/Union

Duane Reno, Esq.
Law Offices of Davis and Reno
22 Battery Street, Suite 1000
San Francisco, CA 94111-5524

On Behalf of the Employer

Daniel J. Herrera, San Francisco
City Attorney
By: Margaret W. Baumgartner, Esq.
Deputy City Attorney
Office of the City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102



STATEMENT OF PROCEDURE

This matter arises out of the application and interpretation of the Memorandum of Understanding, which exists, between the above-named Union and Employer. Unable to resolve the dispute between them, the parties selected this arbitrator in accordance with the terms of the collective bargaining agreement to hear and resolve the matter. The hearings were held on July 21, 23, 25, 2008 and January 6, 2009. During the course of the proceeding the parties had an opportunity to present evidence and to cross-examine witnesses. The parties filed timely briefs in this matter, which were received on March 19, 2009.

ISSUES

The parties stipulated the issue in question is whether Mr. Fallay was discharged for just cause, and if not, what is the appropriate remedy?

BACKGROUND

Augustine Fallay (hereinafter referred to as the Grievant) was hired as a planner in the Department of City Planning in 1994. In August 2001, he was transferred to the Department of Building Inspection (DBI). He initially worked as a building inspector and then was placed in charge of the Planning Coordination department, as the Manager of the One-Stop Department. The One-Stop was one of the divisions within the Permit Processing division. It was developed to establish a parallel permit process so that a permanent coordinator would be assigned to a project. A permit applicant would submit their plans in duplicate at the One Stop Desk, on the main floor at 1660 Mission Street. The permit would be assigned to a permanent coordinator who would make sure that all the different departments that needed to review the set of plans could review them at the same time. This was a radical change from the serial review process where each portion of the permit would be reviewed while the rest of the permit departments had to wait in line until the previous department was finished. The assigned intake would establish the routing for the project, identifying all of the different departments that need to review the project in the course of the processing.

In 2003 the Grievant was promoted from planner IV in DBI to the Division Manager position in the Permit Coordination division or One-Step for the Department of Building Inspections. Mr. [REDACTED] Fu, whose Chinese name is [REDACTED] Fu, first met the Grievant in 1995 when he submitted a permit to do remodeling for an exercise room on the ground floor of his home. Mr. Fu has been friends with the Grievant since that project and he has been involved with the Grievant on a number of construction projects in the City over the years. The most recent projects were one at [REDACTED], another at [REDACTED] and another project at [REDACTED]. Mr. Fu advises that he had projects pending in the Department of Building Inspection pretty much continually since 1994.

In early 2000 the Grievant asked Mr. Fu while they were looking at a piece of property in Oakland that the Grievant would like to purchase about the possibility of obtaining a \$50,000. Loan from Mr. Fu. Mr. Fu went to his partner in the [REDACTED] project, a Mr. [REDACTED] Yan, and asked him about supplying the loan to the Grievant. According to Mr. Fu, Mr. Yan did not hesitate and said he would supply the funds for the loan. At that time, Mr. Yan and Mr. [REDACTED] Wong had a financial involvement in the property at [REDACTED]. Mr. Fu advised that he was the contractor on the project and went into the property as a joint venture. At the beginning of the project it was three partners, Mr. Yan, another, [REDACTED] Wong, and Mr. Fu.

On May 5, 2000, the Grievant and Mr. Fu and Mr. Yan met at the [REDACTED] Restaurant in Daly City, California. Mr. Yan had not previously met the Grievant. Mr. Yan gave a check for \$50,000 to the Grievant at the request of Mr. Fu based on the promissory note drafted by Mr. Fu and signed by the Grievant. Ms. Lei Mr. Fu's former wife's name was on the checking account the check was written on. Mr. Yan advised that, at the time of the loan, he owed [REDACTED] Lei, \$25,000, so Mr. Yan believed that one-half of the money he gave to the Grievant was [REDACTED] Fu's. Mr. Yan drafted a promissory note in the amount of \$50,000, which provided that it was to be repaid on demand, with interest at the annual rate of 6%. There was no schedule of repayment set out in the note. The Grievant signed this promissory note on May 5, 2000, at

which time he received the check for \$50,000 from Mr. Yan. Ms. Lei's name was also on the check. Mr. Yan expected the loan to be repaid, "probably in no more than a year." Mr. Yan did not believe that his portion of the \$25,000 was a big number.

Mr. Yan did not intend the loan to be a bribe, but Mr. Yan recalled that Mr. Fu indicated to Mr. Yan that Mr. Fu may forgive a portion of the money. Subsequently, Mr. Yan pressed Mr. Fu to get the loan repaid, but Mr. Fu had said or suggested to Mr. Yan that the Grievant was not willing to repay the loan, and that it would not be in Mr. Fu or Ms. Lei's best interest to make him repay the loan. Mr. Fu therefore suggested that Mr. Yan assign the loan to Ms. Lei in September 2003. This information is based upon a Stipulation agreed to by the City and the attorney for the Grievant based on the testimony of Mr. Yan.

The due-on-demand promissory note signed by the Grievant on May 5, 2000, sets forth that the "Grievant promises to pay to the order [REDACTED] Yan and [REDACTED] Fu (collectively, "the lender"), at [REDACTED] San Francisco, California, 94122, (or at such other place as the lender may designate in writing) the sum of \$50,000 (fifty-thousand dollars) with interest from May 8, 2000 on the unpaid principal at the rate of 6% per annum. The unpaid principal and accrued interest shall be payable in full on any future date on which the lender demands repayment (the due date). The promissory note itself is in the hearing file as City Exhibit 1D. The parties further stipulated that soon after the loan was assigned by Mr. Yan to Ms. Lei in September 2003 Mr. Yan came to believe that Mr. Fu and Ms. Lei had taken advantage of or defrauded him. Mr. Yan telephoned the Grievant and told the Grievant not to repay the loan to Ms. Lei. Mr. Yan did not provide a copy of the assignment to the Grievant. The Grievant said to Mr. Yan that he wasn't sure who has the legitimate claim to the repayment. Mr. Yan got the impression that the Grievant was not willing to pay.

THE INVESTIGATIVE PROCESS

On Wednesday, August 10, 2005, John Kelly and Adriel Hampton, investigators for the City of San Francisco, were assigned the task of investigating the conduct and job performance

of the Grievant. The request for investigation by Amy Lee, the Acting DBI Director, followed the arrest of the Grievant on August 4, 2005 by the FBI and the San Francisco District Attorney's Office and subsequent news stories related to that arrest which appeared in the San Francisco press. The Grievant was accused in the press of having taken a loan and other gifts from a developer in exchange for the Grievant's using his influence at the Planning Department and DBI on behalf of projects associated with the developer. The Grievant was additionally accused of not having reported the loans and gifts, which he had received from the developer. On Wednesday, September 7, 2005 and Tuesday, September 13, 2005 the Grievant was interviewed by the investigators from the City Attorney's Office, with his attorney present. There was a transcript of those interviews made and the Grievant was read his *Lybarger* admonition. During the investigation the participants involved with the \$50,000 loan were interviewed as well as DBI personnel who had information with respect to the allegations made against the Grievant.

On October 25, 2005, the Acting Director of the Department of Building Inspections sent a *Skelly* letter to the Grievant informing him of DBI's intent to terminate him from his position as a class 5293 planner IV and scheduling a *Skelly* hearing for November 9, 2005.

The *Skelly* meeting was held on November 16, 2005. The Grievant attended with the union and his Criminal Attorney but did not testify. On December 14, 2005, Acting Director Lee issued a notice of termination citing the basis for termination as the charges listed in the Intent to Discharge *Skelly* letter. The charges in the *Skelly* letter are as follows: 1) accepting \$50,000 from and entering into a promissory note with [REDACTED] Fu, [REDACTED] Yan, and [REDACTED] Lei, who had projects before the City; 2) accepting cash and gifts from Fu and engaging in other transactions with him while he had projects with the City; 3) being personally involved with projects affiliated with Fu, Yan, and Lei before and after accepting cash, gifts, and a "loan" from them; 4) failing to report the "loan"; 5) failing to report the cash and other gifts he received from Fu; and 6) dishonesty and unprofessional conduct. The *Skelly* letter, which is City Exhibit 6, sets out in

substantial detail the specific allegations, which support the six bases for discharge, set forth on the first page of the *Skelly* letter.

The City asserted that the Union had bypassed its time requirements for filing the grievance in this matter and took the position that the discharge of the Grievant was not arbitrable. This issue was placed before this arbitrator and it was concluded that the matter is arbitrable on the merits and that was so ordered. That decision was dated March 31, 2008.

Prior to March 2008, the Grievant was tried in Superior Court in San Francisco before a jury. Portions of the indictment were found to be without merit by the jury and the District Attorney decided not to retry other portions of the case. As a result, there was no conviction of the Grievant for any of the charges for which he was tried in criminal court.

It is admitted by the Grievant that he did obtain the loan as described above for \$50,000 on May 5, 2000. The Grievant admits that he did not pay back Ms. Lei, Mr. Fu or Mr. Yan any portion of the \$50,000 or interest that was called for under the promissory note. He further admits that he did not report the loan in any of the years after 2000 on the Form 700 of the Fair Political Practices Commission. At the direction of his attorney on October 7, 2005, the Grievant submitted amended Forms 700 for each of the years showing the "loan" outstanding for each of the years. He did not report any gift that the loan may have turned into based on requirements of the Fair Political Practices Commission Form 700.

RELEVANT CONTRACT TERMS

Article 1.E. – Grievance Procedures

9. Discipline/Discharge Grievances

- a. The City shall have the right to discipline any non-probationary, permanent, temporary civil service, or provisional employee who has served the equivalent of a probationary period for just cause. As used herein, discipline shall be defined as discharge, suspension and disciplinary demotion.

RELEVANT PORTIONS OF THE CALIFORNIA FAIR
POLITICAL PRACTICES COMMISSION FORM 700

The Grievant filed commencing from April 1996 through April 2005 a Statement of Economic Interest for Designated Employees. On each form he showed no reportable interest on any of the schedules. This meant that even after 2000 when he accepted the \$50,000 from Mr. Yan he continued to show that he had no reportable interest on any of the schedules. The Form 700 each year consistently provided information to the filers, which were critical to correctly providing the information requested on the forms.

THE QUICK TIPS FOR EASIER FILING SECTION provided

1) Know your jurisdiction -- you only have to report investments and business positions in business entities, real property, and income from sources that are located or doing business in your agency's jurisdiction. Gifts are reportable regardless of the jurisdiction.

If you file because your position is listed in a state or local agency's conflict of interest code, review your disclosure categories because they will describe the specific interest you must report. Obtain your disclosure categories from your agency -- they are not contained in the Form 700.

THE INTRODUCTION SECTION of the form advised:

Loan Prohibitions:

State and local public officials may not receive any personal loan totaling more than \$250 from an official, employee or consultant of, or from anyone who contracts with, their government agency. . . . Under certain circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.

The introduction section provides telephone numbers for employees to obtain information with respect to filing responsibilities.

SCHEDULE D

In the Form 700 package schedule D dealt with loans (in the 2004 and 2005 Form 700 the schedule was for loans was changed to Schedule C). The instructions for Schedule D and later Schedule C stated: "loans received or outstanding during the reporting period, which total \$500 or more from a single source located in or doing business in your jurisdiction are reportable. Your community property interest in loans received by your spouse also must be reported.

Schedule D and subsequently Schedule C required that the name of the lender and his address be included and the filer is to check the appropriate box describing the lender's business activity. Further the filer is to disclose the interest rate and terms of the loan.

THE TERMS AND DEFINITION SECTION OF THE FORM 700

Conflict of Interest: a public official or employee has a conflict of interest under the Act when all of the following occur: the official makes, participates in making, or uses his or her official position to influence a governmental decision; it is reasonably foreseeable that the decision will affect the official's economic interest; the effect of the decision on the official's economic interest will be material; and the effect of the decision on the official's economic interest will be different than its effect on the public generally.

Conflict of Interest Code: The Act requires every state and local government agency to adopt the Conflict of Interest Code. The Code may be contained in a regulation, policy, statement, or city or county ordinance.

Disclosure Categories: The section of an agency's conflict of interest code that specifies the types of personal economic interest officials and employees of an agency must disclose on their Statements of Economic Interest. Disclosure categories are usually contained in an appendix or an attachment to the Conflict of Interest Code. Contact your agency to get a copy of your disclosure categories.

Enforcement: The Fair Political Practices Commission investigates suspected violations of the Act. Other law enforcement agencies (the Attorney General or District Attorney) also may initiate investigations under certain circumstances. If violations are found, the Commission may initiate administrative enforcement proceedings, which could result in the imposition of monetary penalties of up to \$5,000 per violation.

Instead of administrative prosecution, a civil action may be brought for negligent or intentional violations by the appropriate civil prosecutor (the Commission, Attorney General, or District Attorney), or a private party residing within the jurisdiction. In civil actions, the measure of damages is up to the amount of value not properly reported.

Persons who violate the conflict of interest disclosure provisions of the Act also may be subject to discipline by their agency including dismissal.

Fair market value: When reporting the value of an investment, interest and real property, or gifts, you must disclose the fair market value – the price at which the item would sell for on the open market. This is particularly important in valuing gifts because the fair market value of a gift may be different from the amount it cost the donor to provide.

Loans: State and local elected and appointed officials and employees are prohibited from receiving any personal loan totaling more than \$250 from an official, an employee or consultant of their governmental agencies or any governmental agency over which the official or the official's agency has direction or control. In addition, loans of more than \$250 from any person who has a contract with the official's agency or an agency under the official's control are prohibited unless the loan is from a commercial lending institution or part of a retail installment or credit card transaction made in the regular course of business on terms available to members of the public . . .

A personal loan made to a public official that is not being repaid or was being repaid below certain amounts would become a gift to the official under certain circumstances.

THE DEPARTMENT OF BUILDING INSPECTION HANDBOOK FOR PROFESSIONAL
EMPLOYEES

At the time the Grievant transferred from the Planning Department to the Department of Building Inspection on August 24, 2001, he acknowledged that he received critical policies – conflict of interest reporting and policy. In 2002 and 2004 the Department of Building Inspection distributed its Handbook for Professional Conduct of its Employees.

UNDER THE INTEGRITY SECTION OF THE CODE OF PROFESSIONAL CONDUCT

I (the employee) will demonstrate the highest standards of personal integrity in order to inspire public confidence and trust in City employees.

I will accept no gift, special favor, privilege, or benefit offered by a member of the public or by persons or businesses regulated by the Department, doing business with the Department or seeking to do business with the Department for doing my job. When accepting a lawful gift, I will be aware that the public perception may make a negative judgment of me or the Department.

Guidelines – a good rule of thumb to follow when you are uncertain if something is proper or not is simply ask yourself, "Do I feel comfortable performing this action or seeing someone else perform it?" If the answer is, "No, that you feel uncomfortable or are worried that someone will find out" that's a good indication that something may not be right.

No. 9 – what should I do if I am offered a gift (item of monetary value, favor, reward, entertainment, loan or meal) by a customer for good service or in celebration of a holiday?

The Charter section C8.105 (f) prohibits City officers and employees from receiving directly or indirectly any compensation, reward, or gift from any source (except the City and County or any other government agency to which he or she has been duly appointed) for any service, advice, assistance or other matter related to the governmental processes of the City and County. Your paycheck and the satisfaction of a job well done are sufficient compensation for performance of official duties. In general, personal gifts for doing your job must be refused

or returned with a friendly but firm message that you are not allowed to receive gifts for doing your job. All employees should consider themselves to be subject to public scrutiny. Public perception of conflict of interest may be stricter than City policy and employees are subject to public and press opinion.

Be advised that there are a number of restrictions on acceptance of other kinds of gifts. If you are presented with a gift, consult City Attorney Julia Mall at 415/554-4705 or call the City Attorney's general number, 415/554-4700.

Under the Definitions section of the Code the definition with respect to Integrity is, "adherence to high moral and ethical principles; a strong sense of honesty; trustworthiness; doing the right thing because it is the right thing.

THE POLICY SECTION OF THE HANDBOOK OF PROFESSIONAL CONDUCT

It states, "City officials are subject to strict conflict of interest laws and policies governing official conduct. Per San Francisco Charter Section 15.103, "all officers and employees of the City and County are subject to all California state laws and City ordinances proscribing conflicts of interest and incompatible activities, as well as the provisions of Charter section CB 105. Any violation of such laws is official misconduct and is basis for discipline and/or removal, in addition to any other penalties proscribed by law.

CONFLICTS OF INTEREST

There are several city and state laws that prohibit City officials from participating in decisions in which they have a financial interest. In most cases these laws provide that the conflicts may be avoided if the official discloses his or her interest and abstains from participating in or seeking to influence a decision in which the official has financial interest. In some cases, however, the official must choose between maintaining the financial interest and continuing to serve as a public official.

Charter section C8 105(a) -- this section prohibits an officer or employee of the City and County from becoming directly or indirectly interested in any contract, franchise, right, privilege or sale or lease of property awarded, entered into, or authorized by him or her, by those under his or her supervision and control, or by a board or commission of which he or she is a member. An officer or employee must divest himself or herself of such interest within 60 days or resign from his or her position. Charter section CB 105 provides some exceptions to this result.

CHARTER SECTION CB 105

Charter section CB 105 prohibits an officer or employee of the City and County from making, participating in making, or in anyway attempting to influence a governmental decision in which he or she has reason to know he or she has a financial interest. This provision is the local counterpart of the California Political Reform Act Conflicts of Interest provision, a state law, described on page two of this section.

The Ethics Commission guidelines for identifying conflicts of interest set forth a step-by-step procedure for establishing whether a financial interest will have a material financial effect on an official's economic interest.

San Francisco Civil Service Commission Rule 118.3 provides: "no officer or employee may participate in any activity or enterprise where income, profit, or other gain is or may be accrued, which could reflect on the honor or efficiency of the City service, or be contrary to the best interest of the City service in any respect.

LIMITS AND REPORTING REQUIREMENTS FOR GIFTS, HONORARIA, TRAVEL AND LOANS

The Political Reform Act imposes limits on gifts and prohibits honoraria payments received by public officials, including designated employees (i.e., individuals required to file statements of economic interests under the San Francisco Conflict of Interest code).

Designated employees may not accept gifts from any single source totaling more than \$320 in a calendar year if they are required to report income or gifts received from that source in their SEIS.

A gift is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.

For more information concerning gifts, honoraria and for a discussion of travel and loans, please refer to the San Francisco Ethics Commission Manual on Governmental Ethics Laws.

A list of telephone numbers of individuals who may provide information and guidance is listed.

THE GRIEVANT'S ADMISSIONS AS TO WHAT RULES HE RECALLED THAT HE REVIEWED IN ORDER TO FILL OUT THE FORM 700 AND THOSE HE DID NOT REVIEW.

The Grievant testified that he did receive in February 2002 the Code of Professional Conduct at the Department of Building Inspection (Exhibit M). He admitted that he looked through the Code.

On April 23, 2005, the Grievant signed a declaration under penalty of perjury that he had read the Sunshine Ordinance and had attended an annual training session on the Sunshine Ordinance. This declaration shows that the Grievant attended the training on April 23, 2005.

At that training they were talked to about disclosure categories and how to fill out the Form 700. He admitted that a week and one-half later checked his old form and just filled in "like I have been doing which is what just most of us do." He admitted that he, "did not research his disclosure category and that he did not know about categories." He volunteered he didn't think that Department of Building Inspection had only one disclosure category. Fallay admitted that he never took the opportunity to ask any available source about his reporting obligations.

The initial step would have been to contact the Ethics Commission to ascertain what disclosure category he was under.

The Grievant admitted that he might have reviewed the Employee Handbook for the Department of Building Inspection and it could have had a section on conflict of interest and ethical obligations. He contended that if he didn't know about something he would take and read the areas that were of interest to him at the time he was reading. He didn't know if he read about conflict of interest, but there are books on that. He stated that he didn't really believe he had a conflict of interest so, no, it didn't interest him. He admitted that he received all the policies set out in the receipt when he moved to the Department of Building Inspection. He advised that he could have read the conflict of interest reporting policy. He wasn't sure. He recalled that he did receive the Employee Code of Professional Conduct which came with the February 25, 2002, memo and also the May 27, 2004, update of the Employee Code of Professional Conduct.

The Grievant stated that he, "misunderstood the economic statement Form and he failed to report the loan on any of the yearly Statements of Economic Interest until he was arrested in 2005. He advised that before he was arrested he did not know to do it and obviously that doesn't excuse the fact that he didn't file it." The Grievant admitted that he found out some facts with respect to his amended forms that he must report the two red envelopes containing \$100 that was given to his wife by Tony Fu for his newborn son.

THE GRIEVANT' DEALING WITH THE LENDERS AFTER RECEIVING THE LOAN.

The Grievant asserted that after he received his loan he did not plan check any projects for Mr. Yan, Mr. Fu, or Ms. Lei. The Grievant asserted that plan check is when you get a project, somebody brings in the project. It's assigned to you by the supervisor. You are supposed to look at it for code compliance, and that means extensive review. You have authority to say, this is good, it's okay to go out, or you can ask for more information, or you can tell them to revise it. You are the one responsible for that plan, whatever goes on with it or

whatever goes wrong with it, you will be responsible for it. After he got the loan, he never took any more projects from the lenders to review.

The Grievant's recall of his connection with the Project at [REDACTED]

This was a project that came in in 2002 or 2003. It was brought to my attention by Senior Building Inspector Ed Sweeney. He advised me that he had a project and that he needed help in dealing with [REDACTED] Lei. Sweeney told the Grievant that there was a series of violations, they had done a lot of work on the job without permits, and he had been trying to get them to comply and the Department couldn't. Since the policy of the Department is to prod people to comply with the code requirements, we attempt to work with them to do what is right because they are the property owners and have put a lot of money into their property. The Grievant recalled that every now and then he would have a conversation with Inspector Sweeney about the project. The Grievant did act as a go-between with Ms. Lei at the request of Mr. Sweeney. The Grievant advised that when he got involved with this case, he went to the Deputy Director, Mr. Hutchinson, to find out what was involved -- could he talk to the owners about what they should do. It was apparent that they had filed a series of permits in the Department in 2001 and 2002, this was called serial permitting. The Grievant advised the owners Fu and Lei to put all the plans together, hire a credible architect or engineer. The owners worried that it was going to take too long, to get approval of the project. The Grievant advised Fu that he could bring it through the expedited process which the Grievant explained to him was the one-stop coordination process. Fu brought his project into the clerk at the One Stop counter and the permit detail report for [REDACTED] showed that on January 16, 2004, the permit was brought into one-stop. It was then sent to Jim Hutchinson, the Assistant Director of DBI at the direction of the Grievant. The permit detail report shows that the start date of the report was January 6, 2004, when it was plan checked by Edward Sweeney.

The Project at [REDACTED]

The Grievant advised that this was a project that came in as a demolition of a single-story residential building. The Contractor on the permit was San Francisco Contractors Association which was operated by Mr. Fu. It was to be replaced with a two or three story residence over a commercial space. The project was assigned to the Grievant by his former supervisor, Laurie Scott. He was supposed to plan check it and approve it for the Planning Department and he did that. The project was approved before the Grievant's loan was received in May of 2000. The demolition permit on this project was approved by the Grievant on the day that it was filed and assigned to the Grievant on February 28, 2000. There were a total of 11 permit applications on the project over the course of the project...

The Grievant admitted that he could have had continued involvement on the [REDACTED] project after he had received the loan from Messrs. Yan and Fu and Lei in May of 2000. This was because he had originally been handed the project and he knew the details of it. This was an unusual project in that it required the changing of two what appeared to be bedrooms into storerooms. The Grievant advised that this had occurred much later in the project than when he originally became involved. The Grievant did admit that he interacted with both Ed Sweeney and [REDACTED] Fu with respect to this project. He recalled that he told [REDACTED] Fu and [REDACTED] Yan to remove the windows on the side of the building, because the neighbors didn't like it and he didn't want to see neighbors appeal the project, since "I was on the side of the neighbors."

The Grievant did attend meetings with neighbors because he knew the details of the case from start to finish. The Grievant advised that it would have been very difficult for anybody else to pick up the project. It would have required someone to be trained on the project. It is apparent from a note received from the neighbor who had filed appeals that the Grievant had mediated with the owners and the persons who filed the appeal. This mediation by the Grievant resulted in the withdrawal of the appeal on March 29, 2001.

There was a permit approval on the [REDACTED] project that showed at the top "okay to issue (Gus) and that was in June 2003. The Grievant advised that in his position as manager of one-stop, he handled the [REDACTED] case from beginning to end and he didn't do any more work on it, in terms of code compliance. The Grievant advised that he wrote, okay to issue, only as manager of quality control. He contends that his staff reviewed the permit and they said it was fine and he proceeded to give and "ok to issue, for the project.

The Project [REDACTED] Owned by [REDACTED] Lei

At the time of this project when he was discussing it with [REDACTED] Fu, he was working in the Department of Building Inspection as opposed to the Department of Planning. He advised that [REDACTED] Fu would call him at home. He was asked to get involved in discussing the project with Fu by Inspector Ed Sweeney. The Grievant recalled that he explained to Mr. Fu what the problems were and what he needed to do to resolve them. He went out to the property at the request of Mr. Sweeney along with Mr. Sweeney. While they were at the property Mr. Sweeney signed off on the permit application. In 2004, at the time this was occurring, the Grievant had the plans for the project sent to the Assistant Director, of DBI Mr. Hutchinson.

At the same time the Grievant was having conversations with [REDACTED] Fu about the property on [REDACTED]. His face to face conversations with Mr. Fu were recorded by Mr. Fu wearing a wire at the request of the FBI. In those conversations, the Grievant was heard to tell [REDACTED] Fu that he, the Grievant, had convinced Ed Sweeney to sign off on this project. When he was questioned about this the Grievant responded that, "Actually, I told [REDACTED] Fu a lot of things to calm him down to do the right thing." When he was asked if in one of those telephone conversations with [REDACTED] Fu that he had told him that he, the Grievant, had forced Ed Sweeney to sign off on the project, the Grievant admitted that he might have said that but that that statement was not true and the he was trying to calm [REDACTED] Fu down. The Grievant denied that

he was trying to show Mr. Fu that he had any authority as such. Rather, he was trying to make [REDACTED] Fu calm down.

The Grievant admitted that in these conversations that he had had with [REDACTED] Fu about the project and the loan that the Grievant told [REDACTED] Fu that he, the Grievant, had saved Fu hundreds of thousands of dollars. During this same conversation, the Grievant admitted that he was upset that [REDACTED] Lei at that time was asking him to pay interest on the loan. The Grievant advised that he was upset because right from the start of the first year, he had been offering to pay back the money and "I would think my understanding is, if I started offering to pay back the money and they do not accept it, I do not think you can add interest on it after you have been asked, so I was particularly angry. It's like, oh, you have been stringing me along so that you can increase this money I have to pay, and it's like taking me for more money." So yes, I was more upset about the interest she put on it, when right from the start when I was telling them consistently, I want to pay this money, and they said no Then all of a sudden they say; oh, now you owe us this. You would be angry too." The Grievant stated that because at the time he didn't have the money when they started to ask for the money, he got the money in March, April 2005. [REDACTED] had made a demand in 2003 for the money with interest.

The Grievant asserted that when he explained to [REDACTED] Fu what the Department wanted him to do on the [REDACTED] project; he was acting for the benefit of the Department because, at that point they needed somebody who could talk to [REDACTED] Fu and his wife. The Grievant advised that the policy we employ in the Department is to try our utmost to get these people to comply with the code because if we don't, what are you going to do? So the Department always gets somebody from the out side or from within the Department to talk to these persons, talk to them as a friend or have a business partner come in and talk to the person. We need to get them to comply with the code. We do not drive them into court or try to do anything like that.

TESTIMONY OF [REDACTED] CONCERNING INTEREST RATES AT THE TIME THE LOAN WAS MADE TO THE GRIEVANT

[REDACTED] the Vice President of Financial Services for the San Francisco Federal Credit Union, was called as a witness in the criminal trial involving the Grievant and testified and was cross-examined by the Grievant's criminal lawyer. Mr. [REDACTED] confirmed that the Credit Union's financial records for the Grievant reflected that on May 9, 2000, the bank offered its customers non-secured loans, that is without collateral, from prime rate plus 5%, prime rate plus 6% or prime rate plus 8%. Prime rate is the rate most lenders would give their best customers. It is now evolved into something more like the federal fund rate plus 300 basis points. On May 9, 2000, the prime rate was 9%, so with the additional rate that the bank offered for

unsecured loans that would mean that the rate to unsecured loan borrowers would be at 14%, 15% or 17%.

Mr. [REDACTED] advised that if a customer took out a loan on May 8, 2000 and didn't make any payments but paid it all off on February 28, 2005, almost five years later, the total payments for the three rates of loans would be at; 14% - \$83,683.47; at 17% the interest would be \$40,909.36 with a total payout of \$90,901.36. Mr. [REDACTED] advised that in May 2000 the bank did not offer an unsecured loan for \$50,000. The bank's maximum unsecured on a signature loan was a loan of \$15,000

Testimony of Deputy Executive Director of San Francisco Ethics Commission.

Mabel Ng, the Deputy Executive Director of the San Francisco Ethics Commission testified that the Form 700, Statement of Economic Interests, at Instruction 8 for all the years stated that, "you need to report loans that you received, even loans that are outstanding during the reporting period that total \$500 or more from a single source." My understanding is that you're required to disclose an interest rate because people want to make sure that you are receiving, that the loan you're receiving, is actually a loan. You're paying market value interest rather than an interest that is below market value rate, because if it is below market value rate, it is deemed a gift, to the extent if there's a difference between the two rates.

Also, you want to make sure, when you're dealing with conflicts of interest, and when you're dealing with financial interests, you want to make sure that when you are making a governmental decision, you're not being influenced by the financial interest that you have. And that's why the State has decided that you need to report what your interest is, so that there's a comparison made, what the interest is with your loan with respect to what is the fair market value for that interest. This is spelled out in the Fair Political Practices Commission Regulations. It could be in the reference manual provided by the FPPC. If you receive a loan that is below market value, where the interest is below market value, the difference between your interest that you're paying and the full market value, that difference is deemed a gift to you

during that time. She further advised that if you're getting a loan from a bank that makes loans during the regular course of business and you're getting a loan regardless because you're a member of the public and not because of your position in a City agency or State agency, you don't have to report that loan. If it turns out that such a loan is available to members of the public then you need not report it because this is something that's available to everyone.

Ms. Ng was asked by the Grievant's counsel, "So, if a City employee received a loan from an individual who lives in Walnut Creek, is that not reportable?" Ms. Ng replied "If that person does business in the City of San Francisco on a regular basis that would be reportable. For instance, if the person was employed in San Francisco and has some other kind of business relationships on an ongoing basis with the City, it would be reportable." Ms. Ng was asked was that true for employees in all different categories or just for employees in Category One? She replied, "It's for all categories."

MR FU RECOLLECTION ABOUT HAVING A BUSINESS CARD FROM BAY CAL LOAN

Mr. Fu advised that when he purchased the house at [REDACTED] in 2002, he decided to find out how things go with loans. He went to a loan company called Bay Cal. He identified a business card with his name on it from Bay Cal and advised that he was not engaged with Bay Cal prior to 2002. Mr. Sean Kelly testified that the Grievant provided a copy of this business card for Bay Cal with the Grievant's name on it to Mr. Kelly during his investigation. The Grievant advised that the card had been presented to him by [REDACTED] Fu in the spring of 2000 when the Grievant had indicated to Mr. Fu that he needed to find a source of a loan.

The Grievant introduced evidence that the Director of DBI, Amy Lee, obtained a short-term \$58,000 loan from Roy Guinnane, a building inspection Commissioner. The circumstances of this loan were completely different from that of the Grievant. The lender, Guinnane, was a commissioner not a permit applicant. Nothing suggests that Guinnane had any projects before the Department, either before or after the loan, nor, if any such projects existed, that Ms. Lee became involved in any way with them. Further, Inspector Sweeney testified that Ms. Lee paid back the loan within weeks. There was no evidence in the record concerning whether or not Ms. Lee reported the loan on her Form 700 nor any evidence to suggest that she attempted to keep it secret because she knew it was wrong.

POSITION OF THE PARTIES

POSITION OF THE CITY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION

The City and County of San Francisco terminated the Grievant a Building Inspector, after an investigation showed that Fallay accepted a check for \$50,000 from persons with business before the Department of Building Inspections ("DBI"). (City Ex. 12) The Grievant failed to report the payment, whether as a loan or a gift, on his Form 700 Statement of Economic Interest ("SEI"), which is a form whose purpose is to report financial relationships that could create conflicts of interest. Although Fallay corrected his SEI forms after the FBI arrested him for bribery, his excuses for failing to report the money before that time lack credibility and are in any case no defense for his failure to report this clearly reportable financial transaction.

In addition to failing to report the transaction on his SEI form, Fallay continued to assist the people who provided him with the check on their pending building projects. Because he failed to report the financial transaction, the Department could not act to prevent a conflict of interest. Fallay's breach of the rules greatly weakened the public's trust in the Building Inspection Department.

The Department terminated Fallay. The District Attorney also charged Fallay with various crimes, including bribery. Fallay grieved his termination. When it reached the arbitration step of the grievance process, the City believed that Fallay has abandoned his grievance because he did not request an arbitration date. However, the arbitrator held that Fallay did not waive his right to a hearing on the merits. Thereafter the parties conducted a hearing on the merits that took place over four days. In addition the parties stipulated to the admission of certain evidence from the criminal trial.

The City's statutes regarding Form 700 SEI form places employees into four categories. For all times relevant to this proceeding, the law required all employees of the Department of Building Inspection to complete the Form 700 and all employees in that Department fell within disclosure category one. Form 700 required all employees in Mr. Fallay's category to report personal outstanding loans and gifts which were made for over \$5,000 because unpaid loans are "financial interests." In addition, the San Francisco Charter prohibited the Grievant from accepting a gift from a person doing business with or seeking to do business with the Grievant's department or from "any person who during the prior twelve months knowingly attempted to influence the officer or employee and any legislative or administrative action." The San Francisco Charter provides gifts can include loans at below market interest and provides that there are circumstances in which a loan can become a gift. That is when the interest rate is below market rate and when the loan is not repaid. After the FBI arrested the Grievant, he amended his Form 700 to report the \$50,000 payment and two \$100 gifts made by Mr. Fu to the Grievant's wife on behalf of their newborn son.

There was substantial information available to the Grievant regarding the reporting requirements of the Form 700: the Handbook for Professional Conduct distributed to DBI employees; training with respect to Sunshine and Ethics responsibilities given to DBI employees; and the Employee Handbook for DBI employees given to DBI employees setting forth reporting requirements and ethics requirements.

There is no dispute as to the loan made by Mr. Yan on a bank account, which was jointly owned by Ms. Lei and the fact that she, Mr. Fu and Mr. Yan are named (as collectively the lender) on the due on demand promissory note signed by the Grievant on May 5, 2000 when he received the \$50,000 loan.

The Grievant in his position as One-Stop manager gave the final approval from one-stop division and otherwise worked on the [REDACTED] project. Without the approval from one-stop the permit for [REDACTED] would not issue. Further, the Grievant acted as a go between for DBI with Mr. Fu and Ms. Lei. He also participated in public mediation sessions with neighbors who were appealing the [REDACTED] permit. With respect to the project on [REDACTED] the Grievant acted as a go between for DBI and Mr. Fu and Ms. Lei on the [REDACTED] project. The Grievant in a taped conversation with Mr. Fu on behalf of the FBI stated to Mr. Fu that he had forced Inspector Ed Sweeney to sign off on the [REDACTED] project and that he had convinced Inspector Sweeney to reduce the fines due on that project.

The City contended that the Grievant committed egregious misconduct which is set out in the six charges incorporated into the Department of Building Inspections letter dated October 25, 2005, informing the Grievant that it intended to terminate him from his position as a Class 5293 – Planner IV and that a *Skelly* meeting was scheduled. The City asserted that the charges were supported by the evidence although denied by the Grievant.

The City argued that the Grievant's misconduct warrants termination as his activities as set forth in the October 25, 2005, letter created an impression of corruption within DBI. The conflict of interest codes were designed to encourage public trust. Mr. Taniguchi, the Support Services Director for DBI who oversees personnel or human resources' budget and finance, management information services for the Department, stated, "People have to feel that the process for, whether it is obtaining a building inspection, a permit, or the inspection itself, it has to be fair and impartial without any influence." A questionable financial relationship with someone who is applying for a discretionary governmental approval is corrosive to a decision-

making process. The Grievant's acceptance of the \$50,000 payment, his failure to report the payment, and his continued work on troublesome projects of Yan, Lei and Fu constitute egregious misconduct showing dishonesty and bad faith. Continuing to employ the Grievant would create significant problems in maintaining the public trust which is so crucial to the operations of DBI. The Grievant did not act in good faith. He knew, or should have known, of his reporting requirements and the conflicts of interest codes yet he embroiled himself in a questionable financial relationship with persons doing business before his Department. The Grievant told Mr. Fu that he did and could help him obtain DBI approvals. The Grievant never repaid the loan and never took any documented steps to do so. The circumstances of the loan should have alerted the Grievant that he was engaging in unprofessional conduct. He took the unsecured, low interest loan from a stranger after he was unable to obtain a commercial loan. The person giving him the money at that time thanked him for his work on the lender's development projects for the City. ■■■■ Fu kept saying there was no reason to repay the loan. The Grievant acknowledged in a tape conversation with Mr. Fu that Mr. Fu could use the loan to blackmail the Grievant. The Grievant knew the Department had significant problems with building projects on which the Grievant remained involved. No evidence supports a finding that the Grievant acted in good faith. Rather, all circumstances suggest the Grievant knew what he did was wrong.

POSITION OF THE UNION:

The issue in this matter is whether there was just cause for the discharge of the Grievant from his position in the City's Department of Building Inspection and if not, what is the appropriate remedy? The charges that were the basis for the termination of the Grievant were stated in the Grievant's *Skelly* hearing notice and notice of termination. The City submitted into evidence a report of the City Attorney investigators which detailed the accounts of the \$50,000 loan made to the Grievant and the Grievant's involvement in the projects of Mr. Fu, Ms. Lei and Mr. Yan, which the Grievant had before and after the loan and his failure to report the loan on

his annual Statement of Economic Interest forms. According to the investigators, the Grievant continued to act in his official capacity on projects that Fu, Lei and Yan were involved with after the Grievant took the \$50,000 loan. The City contends further that the Grievant understood that the loan was intended as repayment for assistance he provided to Mr. Fu and Mr. Yan at DBI. However, the City failed to meet its burden of proof in these allegations. There is no evidence that the Grievant did anything after he took the loan from Mr. Yan which amounted to favoritism to Fu, Lei or Yan. The evidence showed instead that the Grievant received the \$50,000 loan, purposely declined to have any involvement in projects concerning Fu or Lei except as acting as a mediator with them at the request of another DBI employee or verifying that their projects had been plan checked by other DBI employees vested with that duty. The Grievant maintained a level of professionalism that is expected and required by his position. Both the Grievant and Mr. Yan denied the loan was intended as a repayment for assistance that the Grievant provided Mr. Fu and Mr. Yan. The City provided no evidence to the contrary. The Grievant believed the loan was personal business, not relevant to his position and therefore was not necessary to report the loan on his annual Statement of Economic Interest forms. His Statement of Economic Interest policies allow for mistakes to be amended any time an error is discovered. The Grievant amended his annual Statement of Economic Interest forms right away when it was brought to his attention that he had made a mistaken by not including the loan on those forms. The Grievant's conduct was fully within the scope of regulations applicable to DBI employees. He did not compromise his position nor intentionally leave out information on his annual Statement of Economic Interest forms for personal gain. The City's investigation and decision to terminate the Grievant were obviously unfairly based on and substantially influenced by the allegations against the Grievant that were reported in the press and that were grounds for his arrest by the FBI. These allegations were determined to be unfounded when the Grievant was acquitted by a jury of criminal charges based on those allegations. For all these reasons and

this further explained below, the City failed to provide evidence sufficient to meet the City's burden of proof that the City had just cause for the termination of the Grievant's employment.

The City shall have the right to discipline any non-probationary permanent, temporary civil service, or provisional employee who has served the equivalent of a probationary period for "just cause". As used herein, discipline shall be defined as discharge, suspensions and disciplinary demotion. The Union proposed the seven question test established by arbitrator Carroll Daugherty in the *Grief Brothers Cooperage Corporation*, 42 LA 555, where if a series of seven questions elicited the answer "no" there was no just cause basis for discipline.

The Union argues that the principle of progressive discipline that calls for a progressive, constructive attempt to correct behavior was absent in the City's institution of discipline with no attempt to institute a series of steps to bring about corrective behavior. The Union argues that in order for the termination of the Grievant's employment to be upheld without progressive discipline the City had the burden of proving both that what the Grievant did was egregiously wrong and that the Grievant knew at the time that what he was doing was wrong.

With respect to the \$50,000 loan, the Grievant testified that he did not believe he was violating any City rule or regulation by accepting this loan from Mr. Yan. He was planning to use the money to pay off his ex-wife for the house they had been living in. He had been trying to get a loan and was unable to do so from banks. He spoke to [REDACTED] Fu who had previously advised him that he was a loan broker. The Grievant asked if Mr. Fu could set up such a loan and the loan was arranged with Mr. Yan and the Grievant's plan was to pay the loan within a year by refinancing the home that he would take over. After he obtained the loan, he did take his ex-wife's name off the deed and obtained the house free and clear. He did refinance the loan and went to [REDACTED] Fu and told him he was ready to pay it off. Mr. Fu advised him, "Don't worry about it." About two years later after the loan, [REDACTED] Yan called the Grievant and asked for the repayment of the loan. The Grievant advised that he did not have the money at that time but that he would refinance the house and pay him. [REDACTED] Fu later told the Grievant, "don't worry

about it, don't worry about it" and then "just forget about the loan." Subsequently the loan was assigned to Mr. Fu's former wife, [REDACTED] Lei, and she asked for the loan to be paid. The Grievant advised that he refinanced the loan again in about March 2005. He then received a call from Mr. Yan advising him not to honor the assignment of a portion of the loan to [REDACTED] Lei. At that time he had a conversation with Mr. Yan from Hong Kong and Mr. Yan told him, "Don't pay them because they tricked me into signing the loan to them." Everything then went back to square zero. The Grievant then insisted that he needed clarification from both parties and he was not sure whom he should pay.

The City produced no evidence that the loan from Mr. Yan to the Grievant was intended as a bribe or inducement to engage in official misconduct. The evidence was that this was an ordinary transaction as far as all of the parties were concerned. Neither Mr. Fu nor Mr. Yan expected that the Grievant would perform his official duties any differently because he had taken the loan. The City produced no evidence that the Grievant had given preferential treatment to Mr. Fu or Mr. Yan after the Grievant received the loan from Mr. Yan.

When Mr. Yan was interviewed by investigator Hampton, he advised as follows.

"And when I gave the loan to Augustine, I didn't expect he'll do anything for us in return, and I didn't mention that he'll do anything in particular. And obviously we didn't have any problems at the time in our projects, so that's nothing to ask him to do us any favors on. But in my mind the reason why [REDACTED] asked me to give him the loan is, I think, it's pretty obvious to me in my mind, is that [REDACTED] wanted to establish a good working relationship with as many people as possible at DBI. It never came up. I never expected him to be able to do anything for us that he couldn't do for other people. One is I didn't expect him to do anything illegal for us, and I never brought up that, you know, that he should do this for us because you owe me a loan, and never mentioned this either.

The City is unable to cite any law, rule or regulation that the Grievant violated by his acceptance of a loan that was not intended as a bribe or as an inducement for the Grievant to engage in official misconduct but instead was an ordinary business transaction. The City relies on its Handbook for Professional Conduct for the Department of Building Inspection. However, Mabel Ng, Deputy Executive Director of San Francisco Ethics Commission testified that she

assisted the Controller's office in drafting this document and it was created in 2002, two years after the Grievant took the loan from Mr. Yan. The Grievant could not have acted in 2000 in a manner prohibited by the Handbook because the Handbook did not then exist. Further, the Handbook does not prohibit City employees from taking loans from persons who have projects pending at DBI. The Handbook incorporates the City's conflict of interest policy; however, that policy does not prohibit an employee from having or acquiring financial interest that may be affected by official decisions. Instead, the City's conflict of interest policy only prohibits a City employee from participating in or influencing official decisions that may affect their financial interest. Ms. Ng testified that DBI employees are required to report loans from private lenders on their annual SEI if the lender does business in San Francisco on a regular basis. Inasmuch as the City rules require that such loans be reported, the City rules do not prohibit DBI employees from accepting such loans. There is no evidence that Mr. Yan made the loan to the Grievant for doing his job in a particular manner. The Grievant's acceptance of the loan from Mr. Yan was not in itself just cause for termination of the Grievant.

Mr. Hutchinson was the Deputy Director in charge of Inspections for a ten-month period that ended in August 2005. Mr. Hutchinson understood that the most serious charge against the Grievant is that the Grievant took the loan from Mr. Fu. Mr. Hutchinson testified that Ms. Amy Lee who is a former Acting Director of DBI and signed the notice terminating the Grievant also had received a loan from a person who had submitted permit applications to DBI for approval.

Senior building inspector Sweeney testified that stuff came out about former Acting Director Amy Lee accepting a loan from Mr. Roy Guinanne, who was at the time a commissioner of the Building Inspection Commission. Mr. Sweeney saw a cancelled check that Ms. Lee used to repay the loan that she had received from Mr. Guinanne. Mr. Sweeney testified that the loan was made from Mr. Guinanne to Ms. Lee in 2003 or 2004. Ms. Lee repaid the loan within two months.

The Union points out that one of the just cause tests is whether the employer has applied its rules, orders, and penalties evenhandedly without discrimination to all employees. The Grievant's acceptance of the loan from Mr. Yan thus does not constitute just cause for termination. Further, the City alleged that the Grievant accepted gifts that consisted of two \$100 received in a red envelope at the time of the birth of the Grievant's child and given to the Grievant's wife. There was no evidence that these gifts were intended as a bribe or inducement for the Grievant to engage in official misconduct. There was no evidence produced by the City that the Grievant gave preferential treatment to Mr. Fu after the Grievant received these gifts from Mr. Fu.

The Grievant testified that the gifts of the two red envelopes were given to his wife for his son.

The Union argues that City rules require that gifts be reported on the annual Form 700, Statement of Economic Interest, therefore it necessarily follows that the City rules do not prohibit DBI employees from accepting such gifts as long as they are not intended as a bribe or inducement by the recipient to engage in official misconduct. The fact that these were gifts that were given to the Grievant's wife and children was not in itself a violation of the City's conflict of interest policy and does not constitute just cause for termination of the Grievant.

Being personally involved with projects affiliated with Mr. Fu, Mr. Yan and Ms. Lei before and after accepting cash gifts and loans from them. Grounds for termination can only be a just cause to terminate with respect to projects that were affiliated with Mr. Fu, Mr. Yan and Ms. Lei after he received the loan from Mr. Yan on May 5, 2000.

[REDACTED]
The Grievant was the original planner on this project which he plans checked and approved the permit before he received the loan from Mr. Yan on May 5, 2000. He then declined to perform any further work on the project after that date because he had taken the loan from Mr. Yan and he did not feel comfortable doing any further work on the project.

Neighborhood opposition came in with respect to a property line dispute concerning a window that neighbors contended would intrude or violate their privacy. The issue went to appeal and the Grievant told the owners that he was going to suggest they remove the window because they didn't need a window for ventilation or anything. They went back to [REDACTED] Wong, the owner, and he agreed to remove the window and the project was approved. The Grievant admitted that the project came back on appeal twice after he had initially approved it prior to the loan and it was handled by Isolda Wilson. He did not plan check the new application because he didn't feel comfortable doing that because at the time he knew that [REDACTED] Yan was involved in the project. He gave it back to his supervisor. There was a later application for additional work on the property in September 2000. The Grievant didn't feel comfortable doing the work on that and turned it over again to another planner, Delvin Washington. After the loan, the Grievant admits that he might have had involvement with [REDACTED] when he was the manager of One-Stop coordination. He contends that someone advised Susan Brookfield who is the CBD, the issuing desk, to approve it. The Grievant advised that even though he had not touched it or did not do anything but because of his claim it was already under my name and my name is put on the project once they assign the project to you. At this time I am not the manager actually. Once they assign the project to you, your name is put in automatically. The Grievant contended that he didn't do anything on this project. He didn't think it was approvable and he wanted it sent back. He advised that he didn't know what happened but she must have seen his name and sometimes they are professional and so she put it "approved not by A. Fallay" because she wanted to make sure that even though it's under my name at One-Stop I didn't give the authority to approve it.

Senior Building Inspector Sweeney testified that the Grievant acted as a mediator with Mr. Fu on this project and communicated to Mr. Fu the requirements that Mr. Sweeney said Mr. Fu needed to meet in order that the permit for the project would be approved without further delay. Mr. Sweeney advised on the [REDACTED] Street project that he was called into the Chief

Building Inspector's office and was told that a very unreasonable customer, [REDACTED] Fu, was yelling and threatening lawsuits and not being very nice. The Chief Inspector told Sweeney "I want you to go to the job on [REDACTED] and I want you to figure out how to final it." The big item on the project was they had one unit with no direct communication between the two unit. The Grievant explained to the contractor Mr. Fu that he would have to make two bedrooms on the third floor into storage units. You have to take this studio apartment that controls two storage units because there's no intercommunication between them. The building was a mess. The Grievant had come up to Sweeney and said that he knew the owner and asked him exactly what I told him, "Mr. Fu's English -- he's an immigrant -- it's not the best and Gus asked me what exactly I had told [REDACTED] Fu. I told Gus technically I wanted to final the job". The Grievant communicated to Mr. Fu whatever Mr. Sweeney had told him in order to facilitate the changing of the bedrooms to storerooms. Mr. Sweeney advised that it was an unusual scenario to have a building that has a studio apartment that controls two storage rooms the size of bedrooms. He advised that it was to get them out of everybody's hair to final them. To final them means to issue a certificate of final completion so that they can go sell it. This occurred in 2001 or 2002 as estimated by Mr. Sweeney.

[REDACTED]

With respect to the project at [REDACTED] the Grievant testified that he received the loan from Mr. Yan that had been arranged by Mr. Fu and that Mr. Fu had no involvement with that project except for acting as a mediator between DBI, Mr. Fu and Ms. Lei at the request of other DBI employees. The Grievant advised that in 2002 or 2003 he was advised of the project by Inspector Sweeney and was told that he needed help with [REDACTED] Lei in dealing with her on the project. Mr. Sweeney advised that they had a series of violations, they have done work without permits, and we have been trying get them to comply and we can't. The Grievant advised that the City's policy in a situation like this is to attempt to prod people in order to comply with code requirements. The policy of the Department is that they try and find ways to

go through people they are connected with, or people they are close to, or people they respect who can at least move them one way or the other in order to get them to comply with the Department's requirements. They told the Grievant that there was a way I could help to bring the project to a close with them. The Grievant contended that he made no decisions as to whether the property was in compliance with codes or not. He didn't have the authority to do that. He discussed the project with Inspector Sweeney every now and then. He ended up acting as a go-between at Inspector Sweeney's request on this particular project. The owners had engaged in applying for a series of permits in 2002 or 2001. The Grievant advised them that they should hire a credible architect or engineer. Mr. Fu worried that this was going to take a long time to get approved and the Grievant advised him that he should bring it through the expediting process that was the One-Stop process. This is where applications are expedited and the One-Stop desk does quality control on projects. Mr. Fu was told what exactly he needed to do for the One-Stop to expedite his process. He brought the project in and the clerk at the counter was about to take it in when she saw a notation on the City record that all plans or what comes in on this project should be sent to Deputy Director Jim Hutchinson. Mr. Hutchinson testified that the Grievant was the go-between for the One-Stop center on this project. The Grievant did not do anything regarding this project that Mr. Hutchinson considered inappropriate. Mr. Sweeney testified that the Grievant did not try and influence his decision as to whether to sign off on the work or not.

██████████

The Grievant testified the only involvement he had with this project after he received the loan from Mr. Yan was to verify that the project had been plan checked and had the necessary approval from other employees for the projects to proceed. The Permit Details report shows in September 2004 when the Grievant was the manager of what is called permit coordination or One-Stop, in that position the Grievant has to make sure that each department responsible for checking one code compliance has made that check. The Grievant after getting agreement that

permits should not be approved told Inspector Zulawabar to send it back Plan Check Division in DBI to look at it again. It was sent to the Deputy Director of the Building Department Tom Hui. He sent it back and indicated that it was fine to issue. The Grievant did not think it was fine and advised him that he was not going to put his signature on it. Hui put his signature on it as Deputy Director and overrode the Grievant at that point. The form says, "Approved by Gus" but actually Tom Hui was the one who actually approved it.

The evidence thus does not show that there were projects affiliated with Mr. Yan, Mr. Fu or Ms. Lei which the Grievant approved or which were approved because of his influenced after the Grievant's wife and children received the red envelope from Mr. Fu or the Grievant received the loan from Mr. Yan on May 5, 2000.

In fact, the Grievant purposely declined to have any involvement in any projects concerning Mr. Fu and Ms. Lei except for acting as mediator between them at the request of other DBI employees on the [REDACTED] and the [REDACTED] project.

One of the just cause tests is whether the degree of discipline administered by the employer was reasonably related to the seriousness of the employee's proven offense. Inasmuch as the San Francisco Ethics Commission policies that if an employee fails to disclose a loan or gift he or she has received on the Form 700 will not suffer any adverse consequences if the employee files and amended Form 700 upon learning the loan or gift should have been reported and, inasmuch as the Grievant did file an amended statement that he should have reported the loan from Mr. Yan and the gifts from Mr. Fu, this cannot be considered a serious offense that would warrant termination without any previous progressive discipline. Moreover, the City has failed to prove that the Grievant was aware at the time he filed the original Statement of Economic Interest that he was required to disclose the loan from Mr. Yan and the gifts from Mr. Fu. The City has the burden of proving both the Grievant was egregiously wrong and knew at the time what he was doing was wrong. The City failed to meet its burden of proof on either of these essential elements.

The City's sixth and final ground for termination was dishonesty and unprofessional conduct on the Grievant's part. This ground for termination rests on the presumption that all of the previous grounds for termination have been proven. However, as shown above, the City failed to meet its burden of proof that it had just cause for termination of the Grievant's employment on any of the previous grounds. The Grievant was given an overall performance rating of seven out of nine on his 2004 appraisal. He was a long-term employee of the City who had received a promotion to the Civil Service classification of Planner III and in 2001 was promoted to Planner IV.

Inasmuch as just cause did not exist for the termination of the Grievant's employment the usual remedy would be reinstatement with back pay and benefits. The Local therefore requests the grievance be sustained and as the remedy that the Grievant be reinstated with full back pay and benefits from December 14, 2005.

DECISION

The California State Political Reform Act of 1974 requires many state and local officials and employees to disclose certain personal financial holdings. One of the Act's stated purposes declares: assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided. California Government Code Section 81002(c). Further the Act adds:

Public officials whether elected or appointed, should perform their duties in an impartial manner free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Cal Government Code Section 81001(b)).

The Act establishes a complex decentralized system of managing this disclosure in which each state and local government agency is required to adopt and implement a separate conflict of interest code.

The City of San Francisco implements this procedure through the use of the Fair Political Practices Commission Form 700. Any conflict of interest under the Political Reform Act can only come about if a public official makes or participates in making a government decision that has reasonably foreseeable material financial affect on the official's personal financial interest. The Form 700 includes extensive instructions on how to fill it out.

The City Department of Building Inspection asserted in its October 25, 2005, letter to the Grievant, that it had just cause to discharge the Grievant based on his 1) accepting \$50,000 from and entering into a promissory note with [REDACTED] Fu, [REDACTED] Yan and [REDACTED] Lei who had projects before the City; 2) accepting cash and gifts from Fu and engaging in other transactions with him while he had projects with the City; 3) being personally involved with projects affiliated with Fu, Yan, and Lei before and after accepting cash, gifts and a loan from the; 4) failing to report the loan; 5) failing to report the cash and other gifts received from Fu; and 6) dishonesty and unprofessional conduct.

The facts with respect to the acceptance of the \$50,000 loan by the Grievant on May 5, 2000 drawn on the account of Mr. Yan and Ms. Lei with Mr. Fu, Mr. Yan and Ms. Lei identified on the promissory note as (collectively the "lender") the sum of \$50,000 was loaned at the interest rate of 6% per annum with the unpaid principal and interest payable in full on any future date on which the lender demands repayment (the due date) are not in dispute. The promissory note was unsecured by any properties. The loan was never paid back and there were no terms for repayment of the loan set forth on the due on demand promissory note.

The Grievant each year from 2000 to 2005 filed with the Deputy Executive Director of the San Francisco Ethics Commission a Statement of Economic Interest Form 700 signed under penalty of perjury where in he checked the box showing no reportable interests in any schedule including Schedule D and subsequently Schedule C having to do with income -- loans. The Union argues that there has been no application of the principle of progressive discipline in this matter. The Employer should have attempted to correct the Grievant's behavior by a step-by-

step increase in the nature of responses in order to correct the Grievant's behavior. I have concluded based on my review of the evidence in this matter that although progressive discipline customarily is an element of just cause, when the action of the Grievant as in this case is so egregious as to undercut the Employer's trust in the integrity of the Grievant, I do not believe that progressive discipline should be required. I perceive that the nature of the offense in failing to disclose a \$50,000 loan from individuals who he clearly knew did business with the City's Department of Building Inspection is so destructive of the Employer-employee trust that the process of engaging in progressive discipline in order to rehabilitate the Grievant could not possibly be effective.

The Grievant consistently contended that he did not understand the reporting requirements with respect to loans received and that he believed that as long as the money received was not going to be spent within the jurisdiction of San Francisco there was no reason to report the loan. The initial subject in the Quick Tips For Easy Filing on the Form 700 states, "know your jurisdiction. You only have to report investments in business positions and business entities, real property and income from sources that are located or are doing business in your Agency's jurisdiction. Gifts are reportable regardless of the jurisdiction."

The Grievant assiduously engaged in a practiced attempt not to understand the information provided to explain the requirements of Form 700. The Grievant stated that he had no knowledge of disclosure categories although the third paragraph on the Easier Filing page states, "obtain your disclosure categories from your Agency. They are not contained on the Form 700." The Grievant never attempted to obtain his disclosure category. All non-secretarial employees working in the Department of Building Inspection were disclosure category one which means they were required to disclose all financial interests reportable on the form.

The Grievant acknowledges that he is a graduate of Golden Gate Law School yet asserts that he signed the yearly Statement of Economic Interest on the Form 700, under penalty of perjury, without knowledge of the reporting requirements with respect to loans and

without attempting to contact a representative of the City's Fair Political Practices Commission or the State of California. All of these Agency's telephone numbers were on the Form 700 or the Code of Professional Conduct for the Department of Building Inspection. The Grievant admitted receiving the Code of Professional Conduct for the DBI in February 2002 and an updated document in 2004. He asserts that he reviewed the documents. The fact that these documents issued after the loan was made is immaterial since they were in effect while the loan was still outstanding and still not repaid at all.

The Union asserts that the Grievant accepting the \$50,000 loan and failing to report it on the Form 700 did not affect his job performance because he took no actions with respect to the projects of the lenders which he would have not taken irrespective of the fact that he had the outstanding loan. A number of the actions which he took with respect to the [REDACTED] project and the [REDACTED] project where he became involved in mediation of both projects after the loan had been made leave a serious question as to the appropriateness of his becoming involved in these projects at all. Further, these situations exemplify just the situations that, failure to identify his economic interests, placed the City DBI, where it asks him to engage in some normal work function which he should not engage in because of his unreported financial interests. There is insufficient evidence to establish that the actions which he took with respect to these and the project at [REDACTED] well could have been affected by the loan, which he obtained. But neither I nor DBI can be sure. Be that as it may, the fact that the loan was received and not reported for five years amounts to irresponsible misconduct and it is reasonable to assume that this act irreparably damaged the City's trust in his decision-making. It is difficult to comprehend how the City could trust the Grievant making decisions involving hundreds of thousands of dollars where he is basically using his unsupervised discretion and judgment in dealing with the public.

It is admitted by the City that Acting Director of DBI Amy Lee obtained a \$ 58,000 dollar loan from Roy Guinnane who was at the time of the loan a San Francisco Building Inspection

Commissioner. It is without question that at the time the loan was made by Guinnane he had no projects with the City and he had not been presenting projects before the DBI for many years. There is no evidence as to whether Ms. Lee reported the loan on her form 700. I do not believe that the fact of Lee's loan was evidence that the City invoked a different standard in dealing with Lee's loan compared to the Grievant's.

The allegations of the Grievant receiving loans from contractors who did business with the Department of Building Inspection and other gifts given by those contractors appeared in the San Francisco newspapers. The notoriety given to those stories can only have harmed the City's reputation for fair dealing with all customers seeking to obtain approval of construction projects in the City. The taking of the loan and the failure to report it seriously undermined the relationship between the Grievant and the City where the Grievant's integrity was brought clearly into question.

I do not believe that it is necessary to establish that there was a direct *quid pro quo* provided by the Grievant, in return for the loan, in order to find Just Cause for discharge in the circumstances of this case.. Just the fact that the loan was received and not reported and made known to the City through newspaper articles clearly undermined his employment relationship with the City. The Grievant's reprehensible conduct has seriously undermined any trust and confidence in his continued employment as a planner/ Manager in light of the responsibilities of his job, which he owed to the public.

The fact that the loan given to the Grievant was at an interest rate substantially below that which could have been obtained by the general public made the Loan a gift. It was clearly established by [REDACTED] the Vice President of Financial Services for San Francisco Federal Credit Union that , the General Public could not obtain an unsecured loan in May of 2000 for \$50,000 and the fact that the loan was not repaid turns the loan into a gift. . Further [REDACTED] established that the six% rate of interest was not obtainable by the General Public in May of 2000. Under the Form 700 all gifts need to be reported and when the corrected Form 700's

were made for the forms that were missed from 2000 through 2005, there was no admission that the loans were in fact gifts under the terms of the Form 700. See Ca FPPCAAdv,1-00-111, 2000 WL 1088218 (Cal.Fair.POL.Prac.Com.) *1 Tyrone. Vahedi July 12, 2000

The Form 700 in itself supplied constructive notice to the Grievant because he could have discovered all the necessary reporting requirements by engaging in proper diligence. His situation was such as to cast upon him the duty of inquiring into the rules with respect to reporting the loan. In observing the Grievant over the days of hearing, I was impressed by the fact that he is an intelligent man who was cognizant of the import of what he was testifying to and how he attempted to not make admissions, which were detrimental to his position. For that reason, I do not find it credible that he had so little understanding of his responsibilities of reporting this loan on the Form 700,

I am of the belief that the Grievant intentionally falsified the Form 700's thereby substantially impairing the employer-employee trust, which was needed for a person in his position of responsibility. It is evident that the Grievant engaged in these activities, in failing to report the loan, in order to gain economic benefit to the detriment of the Department of Building Inspection. The Department of Building Inspection's Code of Professional Conduct, although it was not instituted until 2002, was in place from 2002 until the loan was reported in 2005. It contains the prohibitions against accepting gifts, special favors, privilege, or benefit offered by a member of the public or by persons or business regulated by the Department doing business with the Department or seeking to do business with the Department for doing my (ones) job.

Accordingly, the City had just cause to discharge the Grievant following the investigation engaged in by the City Attorney's office according to credible evidence in the record, that the Grievant received a loan which he did not report for five years and had no reasonable explanation for his failure to report the loan on the Form 700. It should be noted that the Form 700 provides that persons who violate the conflict of interest disclosure provisions of the Act also may be subject to discipline by their agency, including dismissal.

The grievance is denied.

In light of the aforementioned considerations, the City proved by clear and convincing evidence that the Grievant was discharged for just cause.

William E Engler

William E. Engler, Arbitrator

Attachment E

Evidence of Training, Documents and Signed Forms

DEPARTMENT OF BUILDING INSPECTION
WORKPLACE SAFETY ORIENTATION FOR NEW EMPLOYEES

THE FOLLOWING IS A LIST OF GENERAL SAFETY ITEMS WHICH SHOULD BE COVERED WITH EACH EMPLOYEE:

CHECK OFF

TOPIC

- Location of exits, including fire exits
- Location of fire alarms
- Location of fire extinguishers and/or hoses
- Location of first aid kits
- N/A* Location of emergency showers and eye washes
- Location of emergency power switches & circuit breakers
- Evacuation plans and routes
- Emergency response plans and actions
- Procedures for reporting a workplace injury or illness
- Housekeeping practices
- Location of Material Safety Data Sheets (MSDS)
- Location of Code of Safe Practices
- Personal Protective Equipment (PPE)
- Procedures for reporting a safety hazard
- N/A* Location of spill kit
- _____

AUGUSTINE FALLAY
EMPLOYEE'S NAME

Augustine Fallay
EMPLOYEE'S SIGNATURE

8/24/01
DATE

Peter Burn
SUPERVISOR'S SIGNATURE

PETER BURN
SUPERVISOR'S NAME

Supervisor: Forward to Health and Safety Coordinator for filing.

cc Employee Personnel File

DPW-EHS 12/23/99

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION



WILLIE LEWIS BROWN JR., MAYOR
FRANK Y. CHIU, C.B.O., DIRECTOR

MEMORANDUM

DATE: February 25, 2002

TO: All DBI Staff

FROM: Frank Y. Chiu, C.B.O.
Director

SUBJECT: PRELIMINARY CODE OF PROFESSIONAL CONDUCT

Please find attached a PRELIMINARY Handbook of Professional Conduct. As you are aware, in a June 2001 audit of the Department, it was found that because controls on outside expeditors were lacking, there was a perception of improper preferential treatment by the Department.

In response to this finding as well as in an effort to improve public perception of DBI, it has been recommended for DBI to have guidelines for professional conduct. This Code of Professional Conduct is meant to be a preliminary working document so that management and staff can work together on improving public perception and ensure that improper preferential treatment is not provided to anyone.

Because this preliminary Code is a baseline for us to make further changes, there will be an internal DBI committee to continue to incorporate staff recommendations and address the preferential treatment issue for the Department. Laurence Kornfield, John Marquez, Wing Lau, Hanson Tom, Carolyn Tusch, and Steve Young will be working with you and my office to ensure proper follow-up throughout this process.

I also encourage you to carefully read this handbook as it also contains many of the existing City Policies. There will be three Question and Answer sessions on February 28, 2002 at 2 pm - 3 pm, 3 pm - 4 pm, and 4 pm - 5 pm in Room 2001. Staff from the City Attorney's Office, Controller's Office, Ethics Commission and our internal committee will be available to answer any questions and provide follow up information. Thank you for your attention to this very important matter.

FYC:AL

codeconductprelim.mem



MEMORANDUM

DATE: May 27, 2004
TO: All DBI Staff
FROM: Frank Y. Chiu, C.B.O.
Director
CC: Building Inspection Commission
SUBJECT: Code of Professional Conduct

Last year, a Handbook of Professional Conduct was distributed to all staff. While the Guidelines in the Handbook was deemed "Preliminary" and a "working draft" as created by the Controller's Office, it served as a baseline for ongoing efforts to improve public perception and to prohibit preferential treatment.

As stated previously, while the Guidelines were something to which staff can improve upon, it is based on existing city policies that are set forth in our employment provisions and terms. Therefore, it is critical that all employees read and adhere to all the provisions of the Handbook and its attached city policies and regulations.

If you would like additional copies, please contact Carolyn Jayln at 558-6131. Thank you for your attention to this important matter.

Ann Aherne/DBI/SFGOV
02/10/2005 02:23 PM

To DBI-Everyone/DBI/SFGOV
cc
bcc
Subject Fw: Annual Citywide Sunshine and Ethics Training

FYI,

Ann

— Forwarded by Ann Aherne/DBI/SFGOV on 02/10/2005 02:22 PM —

Judy
Boyajian@CTYATT
02/09/2005 06:00 PM

To: Linda Avery/CTYPLN/SFGOV@SFGOV, Ann
Aherne/DBI/SFGOV@SFGOV, Andrea
Green/CTYPLN/SFGOV@SFGOV, Marge
Gambelin/CTYPLN/SFGOV@SFGOV, Carolyn
Jayin/DBI/SFGOV@SFGOV
cc:
Subject: Fw: Annual Citywide Sunshine and Ethics Training

Please pass this information on to whoever needs to know at your department. Thanks.

Judith Boyajian
Deputy City Attorney
Direct: (415) 554-4636
Fax: (415) 554-4757
E-Mail: judy.boyajian@sfgov.org

— Forwarded by Judy Boyajian/CTYATT on 02/09/2005 05:56 PM —

Amy Ackerman/CTYATT
02/09/2005 09:19 AM

To CTYATT-ALL CITY ATTORNEY EMPLOYEES
cc
Subject Annual Citywide Sunshine and Ethics Training



This year's Annual Sunshine and Ethics Training is **Monday, March 7, 2005 from 5:30 to 8:00 p.m.** at the Herbst Theater at 401 Van Ness Avenue in San Francisco.

This training is mandatory for all members of City Boards and Commissions, department heads and top department managers who file their Statement of Economic Interest (Form 700) *with the Ethics Commission*. In addition, the training is recommended for all members of City advisory committees and task forces. The training is also open to the public.

Amy S. Ackerman
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place

Sylvia N. Thai/DBI/SFGOV
02/22/2005 05:59 PM

To Hanson W. Tom/DBI/SFGOV@SFGOV, Yan Y.
Chew/DBI/SFGOV@SFGOV, Robert C.
Wong/DBI/SFGOV@SFGOV, William
cc Tom C. Hui/DBI/SFGOV@SFGOV
bcc
Subject: Annual Citywide Sunshine and Ethics Training

Please attend the subject training scheduled for:

Monday, March 7, 2005
5:30 p.m. to 8:00 p.m.
Herbst Theater
401 Van Ness Avenue

This training is mandatory for department heads and managers.

Thank you.

Sylvia
8-6139

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION



GAVIN NEWSOM, MAYOR
FRANK Y. CHIU, C.B.O, DIRECTOR

MEMORANDUM

TO: «FIRSTNAME» «LASTNAME», «COD»
FROM: Amy Lee, Assistant Director
DATE: March 9, 2005

SUBJECT: Sunshine Ordinance Training

Under the Sunshine Ordinance, all City officers and employees who are required to file a Statement of Economic Interest (being sent separately) with the Ethics Commission must sign an annual declaration stating that they have read the Sunshine Ordinance and have attended, or will attend when next offered, an annual Sunshine Ordinance training session.

If you were able to attend the City's annual training on Monday, March 7th, please remember to sign your declaration and return it to the Ethic's Commission and send a copy to the Director's office for tracking purposes. For those of you who were unable to attend the annual training on Monday, March 7th, I have scheduled 4 additional internal sessions. Please make sure you attend one of these sessions. Your declaration will be collected afterwards and filed at the Ethic's Commission for you.

Sunshine Ordinance Training Sessions:

Date/Time	Location
Wednesday, March 23 rd from 10-11:30am	1660 Mission St, Room 2001
Friday, March 25 th from 8:30-10am	1660 Mission St, Room 2001
Monday, March 28 th from 2:30-4pm	1660 Mission St, Room 2001
Tuesday, March 29 th from 3-4:30pm	1660 Mission St, Room 2001

Attachment: Sunshine Ordinance Declaration Form

CC: File

AL:mh
Sunshinetraining.doc

Amy Lee, Assistant Director
1660 Mission Street, Sixth Floor - San Francisco, CA 94103
Office (415) 558-6250 - FAX (415) 558-6225
www.sfgov.org/dbi -- amy.lee@sfgov.org



DEPARTMENT OF BUILDING INSPECTION

CITY AND COUNTY OF SAN FRANCISCO
1660 MISSION STREET, SAN FRANCISCO, CALIFORNIA 94103-2414

draft MINUTES OF MEETING
Permit Coordination Division

Date: March 16, 2005

Time: 3:10 PM

Venue: PCD Central Processing Station, Ground Floor

Present: Gus Fallay
Cora Ella
Eric Omokaro
Irene Wong
Janet Yip
Jeff Lai
MaryJane D'Orazi
Sonia Alarcon

Absent: Yolanda Laurente, SP
Bill Mitchell, vacation
Maoe Tjoe, vacation
Roger Zulaybar, training

<u>Discussions/Agenda Items</u>	<u>Action/Date</u>
<p>1. Admin Issues:</p> <ul style="list-style-type: none">• Training: Gus encouraged everyone to attend a couple of trainings lined up by the Department; namely: a) Harassment Prevention Training and Sunshine Ordinance Training.• Staffing Hours. Gus reminded staff to be at the office during core hours (9:00 AM to 4:00 PM), and have a consistent time of "comings" and "goings."	<p>All Staff</p> <p>All Staff</p>
<p>2. Peer Review. Due to the recent cases of opposing viewpoints between Plan Check Services Program and PCD on Quality Assurance issues, Gus is recommending to place a Peer Review among Coordinators for QC returns. The process entails that all Coordinators take another look into plans to be returned to plan checkers. The goal ultimately is to provide the applicants efficient QC process by letting go of minor differences. When errors are found, Gus would like the Coordinators to take another look and see if error merits return to the plan checker for correction.</p>	<p>All Coordinators</p>



Cora Ella/DBI/SFGOV
03/16/2005 02:07 PM

Augustine Fallay/DBI/SFGOV@SFGOV, Sonia
To Alarcon/DBI/SFGOV@SFGOV, MaryJane
D'Orazi/DBI/SFGOV@SFGOV, Cora

cc

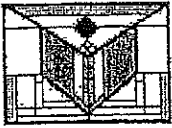
bcc

Subject Sunshine Ordinance Training

For those who were not able to attend the March 7th Sunshine Ordinance Training, please let me know which session you wish to attend among the 4 dates/sessions provided by Asst. Director Amy Lee in her March 9th memo. Based on dates you provided, a final schedule will be made..

Note that the 1st session is set next week, Wed. March 23rd, 10-11:30 AM. Please submit your choice no later than Friday, March 18th. For those who have already given me their dates (Yolanda, Sonia, Jeff, & Janet), please disregard this email. Let me know if you need additional info. Thank you.

Cora Ella, Exec. Secretary II/Office Admin
Permit Coordination Division (PCD)
Department of Building Inspection



Cora Ella

03/16/2005 02:07 PM

To: Augustine Falay/DBI/SFGOV@SFGOV, Sonia Alarcon/DBI/SFGOV@SFGOV, MaryJane D'Orazi/DBI/SFGOV@SFGOV, Cora Ella/DBI/SFGOV@SFGOV, Jeff Lai/DBI/SFGOV@SFGOV, Yolanda Laurente/DBI/SFGOV@SFGOV, Eric Omokaro/DBI/SFGOV@SFGOV, Maeo K. Tjoe/DBI/SFGOV@SFGOV, Irene Wong/DBI/SFGOV@SFGOV, Janet W. Yip/DBI/SFGOV@SFGOV, Rogelio Q. Zuleybar/DBI/SFGOV@SFGOV, Bill Mitchell/DBI/SFGOV@SFGOV

cc:
Subject: Sunshine Ordinance Training

For those who were not able to attend the March 7th Sunshine Ordinance Training, please let me know which session you wish to attend among the 4 dates/sessions provided by Asst. Director Amy Lee in her March 9th memo. Based on dates you provided, a final schedule will be made.

Note that the 1st session is set next week, Wed. March 23rd, 10-11:30 AM. Please submit your choice no later than Friday, March 18th. For those who have already given me their dates (Yolanda, Sonia, Jeff, & Janet), please disregard this email. Let me know if you need additional info. Thank you.

Cora Ella, Exec. Secretary III/Office Admin
Permit Coordination Division (PCD)
Department of Building Inspection

Name	March 23 rd	March 25 th	March 28	March 29
	Wednesday 10-11:30 AM	Friday 8:30-10 AM	Monday 2:30-4 PM	Tuesday 3-4:30 PM
- Yolanda	X		X	X
- Sonia	X			
- Jeff	X			
- Janet			X	
- Gus	X			
- Mary Jane			(misses) X	X
- Maeo T.				X
- Irene	X			
- Eric			X	
- Roger			X	X



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE DECLARATION

Under the Sunshine Ordinance, all City officers and employees who are required to file Statements of Economic Interests with the San Francisco Ethics Commission must sign an annual declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended, or will attend when next offered, an annual training session on the Sunshine Ordinance. S.F. Admin. Code Section 67.33.

Completed forms must be filed annually with the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, and are due no later than April 1 of each year. A filer who assumes office after April 1 must file this form within 30 days of the date that he or she is sworn in or assumes employment. Ethics Commission Reg. 67.33-1. The completed forms are public records. Questions regarding this form may be directed to the Ethics Commission.

I, AUGUSTINE FALLAY, declare under penalty of perjury
(Print Name Clearly)

that I have read the San Francisco Sunshine Ordinance (S.F. Admin. Code Section 67, et. seq.) and have received or will receive when next offered, training on the Sunshine Ordinance.

Signature:	<i>Augustine Fallay</i>	
Date:	3/23/05	
Print Name: (Type/Print Clearly)	AUGUSTINE FALLAY	
Position (Type/Print Clearly)	MANAGER (PCD - DBI)	
City Department (Type/Print Clearly)	DEPARTMENT OF BUILDING INSPECTIONS	
Date of Training	Attended: 3/23/05	To Be Attended: (If known)
Telephone Number:	(415) 558-6019	
E-Mail Address	Augustine-Fallay@sfgov.org	

S:\SET2005\Sunshine Dec.-2005.doc

FORM 730
Statement of Economic Interests
For Designated Employees
A PUBLIC DOCUMENT
1995/96

Date Received by Filing Official

RECEIVED

APR 01 1996

CITY & COUNTY OF S.F.
 CITY PLANNING COMMISSION

(Type or Print in Ink)

NAME OF FILER <u>Augustine Falay</u>		POSITION TITLE <u>PLANNER</u>
NAME OF AGENCY <u>SFA</u>		NAME OF DIVISION, UNIT, BOARD, BUREAU, ETC. (IF APPLICABLE) <u>DEPT. OF CITY PLANNING</u>
MAILING ADDRESS		DAYTIME TELEPHONE NUMBER

IF YOU ARE FILING AN EXPANDED STATEMENT: _____
Name of Agency Office/Position

TYPE OF STATEMENT:

ASSUMING OFFICE STATEMENT
 Date Assumed Office or, if you are an Appointed Official subject to confirmation, enter the Date Appointed or Nominated: 06 12 91
mo. day yr.

ANNUAL STATEMENT
 The period covered is January 1, 1995 through December 31, 1995.

LEAVING OFFICE STATEMENT
 The period covered is January 1, 199 through the date you left your designated position.
 Date left designated position: _____
mo. day yr.

INITIAL STATEMENT (Complete this section ONLY if your position has been recently designated or if you are filing under a new conflict of interest code for your agency.)
 Effective date of code: _____
mo. day yr.

CANDIDATE STATEMENT (Complete only if required by the conflict of interest code for the jurisdiction in which you are seeking elective office.)

VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed the statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 4/2 19 95 at SAN FRANCISCO, CA.
(month, day) (year) (city and state)

SIGNATURE Augustine Falay

FORM 730

NAME _____

Check the appropriate box for each schedule. Complete this summary page after you have carefully reviewed your disclosure category, contained in your agency's conflict of interest code, determine what types of interests must be reported. Instructions are also provided for each schedule. If a schedule does not apply to your disclosure category, check the box "No Reportable Interests."

	SCHEDULE COMPLETED AND ATTACHED	NO REPORTABLE INTERESTS
Schedule A - INVESTMENTS <i>(Not Held By A Business Entity Or Trust)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule B - INTERESTS IN REAL PROPERTY <i>(Not Held By A Business Entity Or Trust)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule C-1 - INTERESTS IN REAL PROPERTY HELD BY A BUSINESS ENTITY OR TRUST	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule C-2 - INVESTMENTS HELD BY A BUSINESS ENTITY OR TRUST	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule D - INCOME <i>(Other Than Loans and Gifts)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule D-1 - INCOME-TRAVEL PAYMENTS, ADVANCES, REIMBURSEMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule E - INCOME-LOANS <i>(Received Or Outstanding During The Reporting Period)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule F - INCOME-GIFTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule G - BUSINESS POSITIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule H-1 - COMMISSION INCOME RECEIVED BY BROKERS, AGENTS AND SALESPERSONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule H-2 - INCOME AND LOANS TO A BUSINESS ENTITY OR TRUST	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule H-3 - INCOME FROM RENTAL PROPERTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>

AFTER THE SUMMARY PAGE HAS BEEN COMPLETED, PLEASE RECYCLE THOSE SCHEDULES ON WHICH YOU HAVE NO REPORTABLE INTERESTS.

STATEMENT OF ECONOMIC INTERESTS
A Public Document

Date Received
RECEIVED

MAR 3 1 1997

Please type or print in ink

CITY & COUNTY OF S.F.
CITY PLANNING COMMISSION

NAME: AUGUSTINE PALLAY DAYTIME TELEPHONE NUMBER: (415)
MAILING ADDRESS: _____ STREET: _____ CITY: _____ ZIP CODE: _____

1. Office, Agency or Court

S.F. PLANNING DEPT.

Division, Board, District, if applicable:

Position: PLANNER

- Is the position covered by a conflict of interest code?
 Yes No
- If filing an expanded statement list agency/position:
(attach a separate sheet if necessary)

4. Schedule Summary

(Check one box for each schedule)

During the reporting period, did you have any reportable interests to disclose on:

- Schedule A-1 No Yes-attach schedule
Investments (Less than 10% Ownership)
- Schedule A-2 No Yes-attach schedule
Investments (Greater than 10% Ownership)
- Schedule B No Yes-attach schedule
Real Property
- Schedule C No Yes-attach schedule
Income & Business Positions (Income Other than Loans, Gifts and Travel)
- Schedule D No Yes-attach schedule
Income - Loans
- Schedule E No Yes-attach schedule
Income - Gifts
- Schedule F No Yes-attach schedule
Income - Travel Payments

➤ The number of pages attached:

None (no reportable interests) Number of pages _____

2. Office Jurisdiction (Check one)

- State County of SAN FRANCISCO
- City of SAN FRANCISCO
- Multi-County _____

3. Type of Statement (Check at least one box)

- Assuming Office/Initial Date: _____
(Check one)
- Elected Official
- Appointed Official (includes individuals newly hired)
- Annual (Check one)
 - The period covered is January 1, 1996 through December 31, 1996.
 - The period covered is _____ through December 31, 1996.
- Leaving Office Date Left: _____
(Check one)
 - The period covered is January 1, 1996 through the date of leaving office.
 - The period covered is _____ through the date of leaving office.
- Candidate

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed the statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 4/3 1997
(month, day) (year)

SIGNATURE Augustine Pallay

STATEMENT OF ECONOMIC INTERESTS A Public Document

Date Received

RECEIVED

APR 21 1998

CITY & COUNTY OF S.F. DEPT OF CITY PLANNING DAYTIME TELEPHONE NUMBER (415) 558-6367

Please type or print in ink

NAME AUGUSTINE FALLAY

MAILING ADDRESS STREET CITY ZIP CODE

COVER PAGE

1. Office, Agency, or Court

S.F. PLANNING DEPT.

Division, Board, District, if applicable:

Position:

PLANNER

If filing an expanded statement list agency/position: (Attach a separate sheet if necessary)

4. Schedule Summary

During the reporting period, did you have any reportable interests to disclose on:

Schedule A-1 Yes - schedule attached Investments (Less than 10% Ownership)

Schedule A-2 Yes - schedule attached Investments (Greater than 10% Ownership)

Schedule B Yes - schedule attached Real Property

Schedule C Yes - schedule attached Income & Business Positions (Income Other than Loans, Gifts, and Travel)

Schedule D Yes - schedule attached Income - Loans

Schedule E Yes - schedule attached Income - Gifts

Schedule F Yes - schedule attached Income - Travel Payments

No reportable interests

Total number of pages (including this cover page): 1

2. Office Jurisdiction (Check one)

- State County of SAN FRANCISCO City of SAN FRANCISCO Multi-County Other

3. Type of Statement (Check at least one box)

- Assuming Office/Initial Date: Elected Official Appointed Official

Annual (Check one)

The period covered is January 1, 1997 through December 31, 1997.

The period covered is through December 31, 1997.

Leaving Office Date Left: (Check one)

The period covered is January 1, 1997 through the date of leaving office.

The period covered is through the date of leaving office.

Candidate

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 4/21/98 1997 (month, day) (year)

SIGNATURE Augustine Fallay

STATEMENT OF ECONOMIC INTERESTS
A Public Document

Date Received
REC'D

APR 12 1999

Please type or print in ink

S.F. PLANNING DEPT.

~~REGISTRAR~~ ~~AGUSTINE~~
NAME (LAST) (FIRST) DAYTIME TELEPHONE NUMBER
FALLAY AUGUSTINE (415) 558-6367
MAILING ADDRESS STREET CITY ZIP CODE

COVER PAGE

1. Office, Agency, or Court

SIF CITY PLANNING

Division, Board, District, if applicable:

Position:

PLANNER

➤ If filing an expanded statement list agency/position:
(Attach a separate sheet if necessary)

2. Office Jurisdiction (Check one)

- State County of SAN FRANCISCO
- City of SAN FRANCISCO
- Multi-County _____
- Other _____

3. Type of Statement (Check at least one box)

- Assuming Office/Initial Date: ____/____/____
- Annual (Check one)
 - The period covered is January 1, 1998 through December 31, 1998.
 - The period covered is ____/____/____ through December 31, 1998.
- Leaving Office Date Left: ____/____/____ (Check one)
 - The period covered is January 1, 1998 through the date of leaving office.
 - The period covered is ____/____/____ through the date of leaving office.
- Candidate

4. Schedule Summary

➤ During the reporting period, did you have any reportable interests to disclose on:

- Schedule A-1 Yes - schedule attached
Investments (Less than 10% Ownership)
- Schedule A-2 Yes - schedule attached
Investments (Greater than 10% Ownership)
- Schedule B Yes - schedule attached
Real Property
- Schedule C Yes - schedule attached
Income & Business Positions (Income Other than Loans, Gifts, and Travel)
- Schedule D Yes - schedule attached
Income - Loans
- Schedule E Yes - schedule attached
Income - Gifts
- Schedule F Yes - schedule attached
Income - Travel Payments

➤ No reportable interests

➤ Total number of pages (including this cover page): _____

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 4/12/99 1999
(month, day) (year)

SIGNATURE Augustine Fallay

STATEMENT OF ECONOMIC INTERESTS: A Public Document

Date Received Official Use Only

RECEIVED

APR 03 2000

Please type or print in Ink

Name: FALLAY AUGUSTINE, City: CA, Daytime Telephone Number: (415) 558-6367, City & County of S.F. City Planning Commission

COVER PAGE

1. Office, Agency, or Court

Provide precise name. Do not use acronyms.

Division, Board, District, if applicable: SAN FRANCISCO CITY PLANNING

Position: PLANNER III

Expanded Statement - List agency/position: (Attach a separate sheet if necessary. Do not use acronyms.)

Agency:

Position Title:

2. Office Jurisdiction (Check one)

- State, County of SAN FRANCISCO, City of SAN FRANCISCO, Multi-County, Other

3. Type of Statement (Check at least one box)

- Assuming Office/Initial Date: Annual (checked) The period covered is January 1, 1999, through December 31, 1999. Leaving Office Date Left: The period covered is January 1, 1999, through the date of leaving office. Candidate

4. Schedule Summary

(Check applicable schedules or "No reportable interests.")

During the reporting period, did you have any reportable interests to disclose on:

- Schedule A-1 Investments (Less than 10% Ownership) Yes - schedule attached
Schedule A-2 Investments (Greater than 10% Ownership) Yes - schedule attached
Schedule B Real Property Yes - schedule attached
Schedule C Income & Business Positions (Income Other than Loans, Gifts, and Travel) Yes - schedule attached
Schedule D Income - Loans Yes - schedule attached
Schedule E Income - Gifts Yes - schedule attached
Schedule F Income - Travel Payments Yes - schedule attached

No reportable interests

Total number of pages (including this cover page): 1

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 4/3/00 (month, day, year)

SIGNATURE Augustina Fallay (File the originally signed statement with your filing officer.)

BA

STATEMENT OF ECONOMIC INTERESTS RECEIVED

A Public Document

Date Received
Official Use Only

RECEIVED

APR 09 2001

Please type or print in ink

NAME (LAST) FALLAY (FIRST) AUGUSTINE
CITY & COUNTY OF SF. DEPT. OF CITY PLANNING TELEPHONE NUMBER (415) 558-6367
MAILING ADDRESS (May be business address) STREET CITY ZIP CODE OPTIONAL FAX / E-MAIL ADDRESS
SF CA

COVER PAGE

1. Office, Agency, or Court

Provide precise name. Do not use acronyms.

Division, Board, District, if applicable:
SAN FRANCISCO CITY PLANNING
Position: PLANNER III

Expanded Statement - List agency/position:
(Attach a separate sheet if necessary. Do not use acronyms.)

Agency: _____

Position Title: _____

2. Office Jurisdiction (Check one)

- State
- County of SAN FRANCISCO
- City of SAN FRANCISCO
- Multi-County _____
- Other _____

3. Type of Statement (Check at least one box)

- Assuming Office/Initial Date: ____/____/____
- Annual (Check one)
 The period covered is January 1, 1999, through December 31, 1999.
- The period covered is ____/____/____, through December 31, 1999.
- Leaving Office Date Left: ____/____/____ (Check one)
 The period covered is January 1, 1999, through the date of leaving office.
- The period covered is ____/____/____, through the date of leaving office.
- Candidate

4. Schedule Summary

(Check applicable schedules or "No reportable interests.")

During the reporting period, did you have any reportable interests to disclose on:

Schedule A-1 Yes - schedule attached
Investments (Less than 10% Ownership)

Schedule A-2 Yes - schedule attached
Investments (Greater than 10% Ownership)

Schedule B Yes - schedule attached
Real Property

Schedule C Yes - schedule attached
Income & Business Positions (Income Other than Loans, Gifts, and Travel)

Schedule D Yes - schedule attached
Income - Loans

Schedule E Yes - schedule attached
Income - Gifts

Schedule F Yes - schedule attached
Income - Travel Payments

No reportable interests

Total number of pages (including this cover page): 1

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 4/3/01 (month, day, year)

SIGNATURE Augustina Fallay (File the originally signed statement with your filing officer.)

A Public Document

PERSONNEL SERVICES DIVISION
DEPT. OF BLDG. INSPECTION

COVER PAGE

Please type or print in ink

2002 MAR 28 PM 1:23

NAME (LAST) FALAY	(FIRST) AUGUSTINE	(MIDDLE) MORRAY	REFERRED BY MF	DAYTIME TELEPHONE NUMBER (415) 558-6019
MAILING ADDRESS (May be business address) - STREET		CITY CA	ZIP CODE	OPTIONAL: FAX / E-MAIL ADDRESS

1. Full Name of Office Sought or Held, Agency or Court:
DEPT. OF BUILDING INSPECTIONS

Division, Board, District, if applicable:
PLANNER IV

Position:
PLANNER IV

- If filing for multiple positions, list additional agency(ies)/ position(s): (Attach a separate sheet if necessary.)

Agency: _____

Position Title: _____

2. Jurisdiction of Office (Check one box)

State

County of **SAN FRANCISCO**

City of **SAN FRANCISCO**

Multi-County _____

Other _____

3. Type of Statement (Check at least one box)

Assuming Office/Initial Date: ____/____/____

Annual: The period covered is January 1, 2001, through December 31, 2001.

-or-

The period covered is ____/____/____ through December 31, 2001.

Leaving Office Date Left: ____/____/____ (Check one)

The period covered is January 1, 2001, through the date of leaving office.

-or-

The period covered is ____/____/____ through the date of leaving office.

Candidate

4. Schedule Summary
(Check applicable schedules or "No reportable interests.")

During the reporting period, did you have any reportable interests to disclose on:

Schedule A-1 Yes - schedule attached
Investments (Less than 10% Ownership)

Schedule A-2 Yes - schedule attached
Investments (Greater than 10% Ownership)

Schedule B Yes - schedule attached
Real Property

Schedule C Yes - schedule attached
Income & Business Positions (Income Other than Loans, Gifts, and Travel)

Schedule D Yes - schedule attached
Income - Loans

Schedule E Yes - schedule attached
Income - Gifts

Schedule F Yes - schedule attached
Income - Travel Payments

-or-

No reportable interests on any schedule.

Total number of pages completed including this cover page: _____

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed 3-29-2002
(month, day, year)

Signature Augustine Falay
(File the originally signed statement with your filing official.)



STATEMENT OF ECONOMIC INTERESTS COVER PAGE

PERSONNEL SERVICES DIVISION DEPT. OF BLDG. & CONSTRUCTION 2004 APR -2 AM 12:14 REFERRED BY [Signature]

A Public Document

Please type or print in ink

Name (Last, First, Middle) FALLAY AUGUSTINE MORRAY Daytime Telephone Number (415) 558-6019 Mailing Address ST, CA

1. Office, Agency or Court Name of Office, Agency or Court: DEPT. OF BUILDING INSPECTIONS Division, Board, District, if applicable: PERMIT COORDINATION DIV. Your Position: PLANNER IV - DIV. MANAGER

2. Jurisdiction of Office (Check at least one box) State County of SAN FRANCISCO City of SAN FRANCISCO

3. Type of Statement (Check at least one box) Annual: The period covered is January 1, 2003, through December 31, 2003.

4. Schedule Summary (Check applicable schedules or "No reportable interests.") During the reporting period, did you have any reportable interests to disclose on: Schedule A-1, A-2, B, C, D, E, F. -OR- No reportable interests on any schedule. Total number of pages completed including this cover page: 1

5. Verification I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. Date Signed 4/1/04 Signature Augustine Fallay

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date Received _____
OFFICE OF THE
ASSISTANT DIRECTOR

A Public Document

2005 APR -1 PM 3:30

Please type or print in ink

NAME (LAST)	(FIRST)	(MIDDLE)	DAYTIME/TELEPHONE NUMBER
FALLAY	AUGUSTINE	MORRAY	(415) 558-6019
MAILING ADDRESS STREET (May use business address)		CITY	STATE ZIP CODE
		CA	OPTIONAL: FAX / E-MAIL ADDRESS

1. Office, Agency, or Court

Name of Office, Agency, or Court:
DEPARTMENT OF BUILDING INSPECTION

Division, Board, District, if applicable:
PERMIT COORDINATION DIV.

Your Position:
DIVISION MANAGER (ACTING)

→ If filing for multiple positions, list additional agency(ies)/ position(s): (Attach a separate sheet if necessary.)

Agency: _____

Position: _____

2. Jurisdiction of Office (Check at least one box)

State

County of SAN FRANCISCO

City of SAN FRANCISCO

Multi-County _____

Other _____

3. Type of Statement (Check at least one box)

Assuming Office/Initial Date: _____

Annual: The period covered is January 1, 2004, through December 31, 2004.

-or-

The period covered is _____ through December 31, 2004.

Leaving Office Date Left: _____ (Check one)

The period covered is January 1, 2004, through the date of leaving office.

-or-

The period covered is _____ through the date of leaving office.

Candidate

4. Schedule Summary
(Check applicable schedules or "No reportable interests.")

→ During the reporting period, did you have any reportable interests to disclose on:

Schedule A-1 Yes - schedule attached
Investments (Less than 10% Ownership)

Schedule A-2 Yes - schedule attached
Investments (10% or greater Ownership)

Schedule B Yes - schedule attached
Real Property

Schedule C Yes - schedule attached
Income, Loans, & Business Positions (Income Other than Gifts and Travel Payments)

Schedule D (Eliminated - report loans on Schedule C)

Schedule E Yes - schedule attached
Income - Gifts

Schedule F Yes - schedule attached
Income - Travel Payments

-or-

→ No reportable interests on any schedule

Total number of pages completed including this cover page: _____

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete.

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

Date Signed 3-30-2005
(month, day, year)

Signature Augustine Fallay
(File the originally signed statement with your filing official.)

PR

Attachment F

Example: Form 700 Statement of
Economic Interests,
Relevant Sections



2004/2005

FORM 700

Statement of Economic Interests

a public document

Fair Political Practices Commission

428 J Street, Suite 620 • Sacramento, CA 95814

Toll-Free Advice Line: 866-ASK-FPPC • (866) 275-3772

Telephone: (916) 322-5660

www.fppc.ca.gov

QUICK TIPS FOR EASIER FILING

Most questions asked by filers are answered in detail in the instructions opposite each schedule. In addition, here are some quick tips for easier filing.

1. Know your jurisdiction

You only have to report investments and business positions in business entities, real property, and income from sources that are located or doing business in your agency's jurisdiction. Gifts are reportable regardless of the jurisdiction. (See Appendix-9 for an explanation of jurisdiction.)

2. Determine your type of disclosure

Two types of public officials complete the Form 700.

- If you file this form because you hold a position listed under Gov. Code section 87200, or you are filing as a board/commission member of a newly created agency not yet covered under a conflict-of-interest code, disclose all of your economic interests in your agency's jurisdiction. (See Appendix-1 for a complete list of 87200 filers and information on newly created agencies.)
- If you file because your position is listed in a state or local agency's conflict-of-interest code, review your disclosure categories because they will describe the specific interests you must report. **Obtain your disclosure categories from your agency. They are part of your agency's conflict-of-interest code, and are not contained in the Form 700.**

3. Reporting periods

Generally speaking, you should not change the pre-printed dates on the form. Refer to Appendix-2 if you need help determining the correct reporting period for your statement.

4. Check your calendar

File this form by the due date. Statements that are mailed are considered filed on the date of the postmark. The law does not provide for filing deadline extensions.

Statements of 30 pages or fewer may be faxed by the deadline as long as the paper version is sent within 24 hours. The faxed version must be the same as the paper version.

5. Use the provided schedules

Do not attach brokerage statements or other financial documents. For further guidance, the instructions for each schedule contain a detailed list of reportable interests.

6. Use your computer

An interactive version of Form 700 is available on our website (www.fppc.ca.gov).

7. Review your statement

Your Form 700 is a public record. Take a second look at your statement for accuracy and completeness before it is filed.

8. Sign your statement

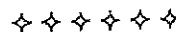
File your originally signed statement with your filing official. Keep a copy of your statement for your files. Remember that when you sign your statement, you are stating under penalty of perjury that it is true and correct.

9. Amendments

You may amend your statement at any time. Amendment schedules are available from your filing official, the FPPC, or on our website (www.fppc.ca.gov).

10. Call us

Call toll-free at 866-ASK-FPPC or locally at (916) 322-5660 if you need assistance.



Form 700 Public Access

Statements of Economic Interests are public documents. The filing officer must permit any member of the public to inspect and copy any statement.

- Forms are available for public inspection during the agency's regular business hours.
- No conditions may be placed on persons seeking access to the forms.
- No information or identification may be requested from persons seeking access.
- Reproduction fees of no more than 10 cents per page may be charged.

Where to Find...

- ◆ **Types of Statements** — See Appendix-2
- ◆ **When to File** — See Appendix-3
- ◆ **Where to File** — See Appendix-3
- ◆ **Terms and Definitions** — See Appendix-5

INTRODUCTION

The Political Reform Act (Gov. Code sections 81000-91015) requires most state and local government officials and employees to publicly disclose their personal assets and income. They also must disqualify themselves from participating in decisions which may affect their personal economic interests. The Fair Political Practices Commission (FPPC) is the state agency responsible for issuing the attached Statement of Economic Interests, Form 700, and for interpreting the law's provisions.

Gift Prohibition

Most state and local officials, employees, and candidates are prohibited from accepting gifts totaling more than \$360 (effective January 1, 2005) in a calendar year from a single source.

In addition, state officials, state candidates, and certain state employees are subject to a \$10 limit per calendar month on gifts from lobbyists and lobbying firms registered with the Secretary of State. (See Appendix-7 for more detailed information.)

State and local officials and employees also should check with their agency to determine if any other restrictions apply.

Honorarium Ban

Most state and local officials, employees, and candidates are prohibited from accepting an honorarium for any speech given, article published, or attendance at a conference, convention, meeting, or like gathering. (See Appendix-7 for more detailed information.)

Loan Prohibitions

State and local public officials may not receive any personal loan totaling more than \$250 from an official, employee, or consultant of, or from anyone who contracts with, their governmental agencies. In addition, elected officials may not receive any personal loan totaling more than \$500 from a single lender unless certain terms of the loan are specified in writing. Under certain circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it. (See Appendix-10 for more detailed information.)

Disqualification

Public officials are, under certain circumstances, required to disqualify themselves from making, participating in, or attempting to influence governmental decisions that will affect their economic interests. This may include interests they are not required to disclose (for example, certain sources of income of \$500 or more are not reportable, but may be disqualifying). Specific disqualification requirements apply to 87200 filers (for example, city councilmembers, members of

boards of supervisors and planning commissioners). These officials must orally identify the economic interest that creates a conflict of interest and leave the room before a discussion or vote takes place at a public meeting. For more information, consult Government Code section 87105 and regulation 18702.5, or refer to the booklet entitled "Can I Vote? Conflicts of Interest Overview," all of which are available on the FPPC website. Visit www.fppc.ca.gov and click on the Library & Publications icon.

Post-Governmental Employment

Members of the State Legislature and certain state agency officials and employees who leave office are subject to restrictions on representing clients or employers before their former agencies. For more information, refer to the fact sheet entitled "Leaving Your State Job? Post-Employment Restrictions May Affect You," available on the FPPC website.

Registered Domestic Partners (Effective January 1, 2005)

When reporting activity for the year 2005, filers must report investments and interests in real property held by, and sources of income to, registered domestic partners. In most cases this will apply to assuming or leaving office statements. (*In re Roberts* (2004) 17 FPPC Ops. 9.)

Federal Employees (Effective January 1, 2005)

A federal officer or employee serving in an official federal capacity on a state or local government agency is not required to fill out the Form 700. (SB 1353, Chapter 484, Stats. 2004.)

Late Filing

The filing officer who retains originally signed statements of economic interests may impose a fine for any statement that is filed late. The fine is \$10 per day up to a maximum of \$100. Late filing penalties can be reduced or waived under certain circumstances.

Persons who fail to timely file their Form 700 may be referred to the FPPC's enforcement division (and in some cases to the Attorney General or district attorney) for investigation and possible prosecution. In addition to the late filing penalties, a fine of up to \$5,000 per violation may be imposed.

For assistance concerning reporting, prohibitions, and restrictions under the Act:

- Call the FPPC toll-free at (866) ASK-FPPC.
- See the booklet entitled "Your Duty to File: A Basic Overview of State Economic Disclosure Law and Reporting Requirements for Public Officials."

INSTRUCTIONS — COVER PAGE

Enter your name, mailing address, and daytime telephone number in the spaces provided. Because the Form 700 is a document available for public review, you may list your business/office address instead of your home address.

Part 1. Office, Agency, or Court

- Enter the name of the office sought or held, or the agency or court. (Examples: State Assembly; Board of Supervisors; Office of the Mayor; Department of Finance; Hope County Superior Court.)
- Indicate the name of your division, board, or district, if applicable. (Examples: Division of Waste Management; Board of Accountancy; District 45.)
- Enter your position title. (Examples: Director; Chief Counsel; City Council Member; Staff Services Analyst.)

- If you hold multiple positions (for example, a city council member who also is a member of a county board or commission), you may be required to file statements with each agency.

To simplify your filing obligations, you may complete an expanded statement.

To do this, enter the name of the other agency(ies) with which you are required to file and your position title(s) in the space provided. Attach an additional sheet if necessary. Complete one statement covering the disclosure requirements for all positions. Each copy must contain an original signature. Therefore, before signing a statement make a copy for each agency. Sign each copy with an original signature and file with each agency.

Remember that if you assume or leave a position after a filing deadline, you must complete a separate statement. For example, a city council member who assumes a position with a county special district after the April 1 annual filing deadline must file a separate assuming office statement. In subsequent years, the city council member may expand his or her annual filing to include both positions.

Part 2. Jurisdiction of Office

- Check the box indicating the jurisdiction of your agency and, if applicable, identify the jurisdiction. Judges, judicial candidates, and court commissioners have statewide jurisdiction. All other filers should review Appendix-9 to determine their jurisdiction.
- If your agency is a multi-county office, list each county in which your agency has jurisdiction.
- If your agency is other than a state office, court, county office, city office, or multi-county office (for example, school districts and special districts), check

the "other" box and enter the county or city in which the agency has jurisdiction.

Example:

This filer is a member of a water district board with jurisdiction in a portion of Sutter County.

1. Office, Agency, or Court	
Name of Office, Agency, or Court South Sutter Water District	
Division, Board, District, if applicable:	
Position: Board member	
-- If filing for multiple positions, list additional agency(ies)/ position(s). (Attach a separate sheet if necessary.)	
Agency:	
Position:	
2. Jurisdiction of Office (Check at least one box)	
<input type="checkbox"/> State	
<input type="checkbox"/> County of _____	
<input type="checkbox"/> City of _____	
<input type="checkbox"/> Multi-County _____	
<input checked="" type="checkbox"/> Other: Sutter County	

Part 3. Type of Statement

Check at least one box. The period covered by a statement is

determined by the type of statement you are filing. If you are completing a 2004 Annual Statement, do not change the pre-printed dates to reflect 2005. Your annual statement is used for reporting the previous year's economic interests. Economic interests for your annual filing covering January 1, 2005, through December 31, 2005, will be disclosed on your statement filed in 2006. (See Appendix-2 for detailed information about types of statements.)

Combining Statements: Certain types of statements may be combined. For example, if you leave office after January 1 but before the deadline for filing your annual statement, you may combine your annual and leaving office statements. File by the earliest deadline. Consult your filing officer or the FPPC.

Part 4. Schedule Summary

- Check the "Yes" box for each schedule you use to disclose interests.

- or -

If you have nothing to disclose on any schedules, check the "No reportable interests" box. Please do not attach any blank schedules.

- Enter the total number of completed pages including the cover page.

Part 5. Verification

Complete the verification by signing the statement and entering the date signed. When you sign your statement, you are stating, under penalty of perjury, that it is true and correct. **An unsigned statement is not considered filed and you may be subject to late filing penalties.**

**STATEMENT OF ECONOMIC INTERESTS
COVER PAGE**

Date Received
Official Use Only

A Public Document

Please type or print in Ink

NAME (LAST)	(FIRST)	(MIDDLE)	DAYTIME TELEPHONE NUMBER	
MAILING ADDRESS (May use business address)		STREET	CITY	STATE ZIP CODE
OPTIONAL: FAX / E-MAIL ADDRESS				

1. Office, Agency, or Court

Name of Office, Agency, or Court: _____

Division, Board, District, if applicable: _____

Your Position: _____

⇒ If filing for multiple positions, list additional agency(ies)/ position(s): (Attach a separate sheet if necessary.)

Agency: _____

Position: _____

2. Jurisdiction of Office (Check at least one box)

- State
- County of _____
- City of _____
- Multi-County _____
- Other _____

3. Type of Statement (Check at least one box)

- Assuming Office/Initial Date: ____/____/____
- Annual: The period covered is January 1, 2004, through December 31, 2004.
- OR-
- The period covered is ____/____/____, through December 31, 2004.
- Leaving Office Date Left: ____/____/____ (Check one)
- The period covered is January 1, 2004, through the date of leaving office.
- OR-
- The period covered is ____/____/____, through the date of leaving office.
- Candidate

4. Schedule Summary

(Check applicable schedules or "No reportable interests.")

⇒ During the reporting period, did you have any reportable interests to disclose on:

- Schedule A-1 Yes - schedule attached
Investments (Less than 10% Ownership)
- Schedule A-2 Yes - schedule attached
Investments (10% or greater Ownership)
- Schedule B Yes - schedule attached
Real Property
- Schedule C Yes - schedule attached
Income, Loans, & Business Positions (Income Other than Gifts and Travel Payments)
- Schedule D (Eliminated - report loans on Schedule C)
- Schedule E Yes - schedule attached
Income - Gifts
- Schedule F Yes - schedule attached
Income - Travel Payments

-OR-

⇒ No reportable interests on any schedule

Total number of pages completed including this cover page: _____

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete.

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

Date Signed _____ (month, day, year)

Signature _____ (File the originally signed statement with your filing official.)

WHAT SCHEDULE DO I USE TO REPORT?

Business positions	Schedule A-2 or Schedule C
Commission income.....	Schedule A-2 or Schedule C (see Appendix-5)
Gifts received by family members.....	Disclosure may not be required, see Schedule E
Gifts received from family members.....	Disclosure not required, see Schedule E
Income to my business	Schedule A-2
Individual Retirement Account	Schedule A-1 or Schedule B (see Appendix-10)
Investments	Schedule A-1 or Schedule A-2
Loans made to others	Disclosure not required, but report repayments on Schedule C
Loans received.....	Schedule B for real property or Schedule C
Loans to my business	Schedule A-2
Owning a business or partnership	
If I own less than 10%	Schedule A-1
If I own 10% or more	Schedule A-2
Real estate holdings.....	Schedule B (Schedule A-2 if held by a business entity/trust)
Rental income	Schedule B or Schedule C
Rental property.....	Schedule B (Schedule A-2 if held by a business entity/trust)
Sale of my home/automobile/boat.....	Schedule C
Sole proprietorship	Schedule A-2
Spouse's or registered domestic partner's income	Schedule A-2 or Schedule C
Stock holdings	
If I own less than 10% of a company's stock	Schedule A-1
If I own 10% or more of a company's stock	Schedule A-2
Tickets and passes	Schedule E
Travel reimbursements or payments.....	Schedule F
Trusts	Schedule A-2 (see Appendix-11)

QUESTIONS AND ANSWERS

- Q. I hold two other board positions in addition to my position with the county. Must I file three statements of economic interests?
- A. Yes. However, you may complete one statement listing the county and the two boards on the cover page of the Form 700 as the agencies for which you will be filing. Report your economic interests using the broadest jurisdiction and disclosure requirements assigned to you by the three agencies. Make two copies of the entire statement **before signing it**, sign each copy with an original signature, and distribute one original to the county and to each of the two boards. Remember to complete separate statements for positions that you leave or assume during the year.
- Q. How do I disclose my spouse's or registered domestic partner's income from an employer?
- A. Report the name of the employer as a source of income on Schedule C. Beginning in 2005, filers must report the income received by a registered domestic partner. Therefore, this new requirement will affect assuming and leaving office statements filed in 2005. Because the 2004 annual statement covers income received in 2004, income from a registered domestic partner is not required to be reported on an annual statement.
- Q. I am classified as a department head but recently began acting as city manager. Should I file as the city manager?
- A. Yes. File an assuming office statement as city manager. Persons serving as "acting" or "interim" or "alternate" must file as if they hold the position.
- Q. I left one state agency to work for another state agency. Must I file a leaving office statement?
- A. Yes.
- Q. I have an investment interest in shares of stock in a company that does not have an office in my jurisdiction. Must I still disclose my investment interest in this company?
- A. Probably. The definition of "doing business in the jurisdiction" is not limited to whether the business has an office in your jurisdiction. See Appendix-9 for guidance.
- Q. My spouse and I have a living trust. The trust holds rental property in my jurisdiction, our primary residence, and investments in diversified mutual funds. I have full disclosure. How is this trust disclosed?
- A. Disclose the name of the trust, the rental property and its income on Schedule A-2. Your primary residence and investments in diversified mutual funds registered with the SEC are not reportable.
- Q. I believe I am not required to disclose the names of clients from whom my pro rata share of income is \$10,000 or more on Schedule A-2 because of their right to privacy. Is there an exception for reporting clients' names?
- A. Regulation 18740 provides a procedure in which a client's name may not be disclosed if disclosure of the name would violate a legally recognized privilege under California law. This regulation may be obtained from our website at www.fppc.ca.gov.
- Q. I am the sole owner of my business. Where do I disclose my income - on Schedule A-2 or C?
- A. Sources of income to a business in which you have an ownership interest of 10% or greater are disclosed on Schedule A-2. See Appendix-5 which defines "business entity" for more information.
- Q. I am required to report all investments. I hold many stocks through an account managed by a brokerage firm. Must I disclose these stocks even though I did not decide which stocks to purchase?
- A. Yes, you must disclose on Schedule A-1 or A-2 any stock worth \$2,000 or more in a business entity located or doing business in your jurisdiction.
- Q. If I receive a gift of two tickets to a concert valued at \$100 each, but gave the tickets to a friend because I could not attend the concert, do I have any reporting obligations?
- A. Yes. Since you accepted the gift and exercised direction and control of the use of the tickets, you must disclose the gift on Schedule E.

INSTRUCTIONS – SCHEDULE C
INCOME, LOANS, & BUSINESS POSITIONS
(Income Other than Gifts and Travel Payments)

Report the source and amount of gross income of \$500 or more you received during the reporting period. Gross income is the total amount of income before deducting expenses, losses, or taxes and includes loans other than loans from a commercial lending institution. Also report your job title with each reportable business entity, even if you received no income during the reporting period. You must also report the source of income to your spouse or registered domestic partner if your community property share is \$500 or more during the reporting period. (Filers must report income received by a registered domestic partner if the reporting period covers activity in 2005.)

A source of income must be reported only if the source is located in, doing business in, planning to do business in, or has done business during the previous two years in your agency's jurisdiction. (See Appendix-8 and 9 for more information about doing business in the jurisdiction.) Reportable sources of income may be further limited by your agency's conflict-of-interest code.

Commonly reportable income and loans include:

- Salary/wages, per diem, reimbursement for expenses
- Community property interest (50%) in your spouse's or registered domestic partner's income - **report the employer's name and all other required information**
- Income received from investment interests, such as partnerships, reported on Schedule A-1
- Commission income not required to be reported on Schedule A-2 (see Appendix-5)
- Gross income from any sale, including the sale of a house or car (report the total sale price)
- Rental income not required to be reported on Schedule B
- Prizes or awards not disclosed as gifts
- Payments received on loans you made to others, including loan repayments from a campaign committee
- An honorarium received prior to becoming a public official (see Appendix-7 concerning your ability to receive future honoraria)
- Incentive compensation (see Appendix-9)

You are not required to report:

- Salary, reimbursement for expenses or per diem, social security, disability, or other similar benefit payments received by you or your spouse or registered domestic partner from a federal, state, or local government agency.

REMINDERS

- Code filers – Your disclosure categories may not require disclosure of all sources of income.
- If you or your spouse or registered domestic partner is self-employed, report the business entity on Schedule A-2.
- Do not disclose on Schedule C income, loans or business positions already reported on Schedules A-2 or B.

- Income of dependent children.
- Payments received under an insurance policy.
- Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union, an insurance policy, or a bond or other debt instrument issued by a government agency.
- Alimony or child support payments.

See Appendix-8 for more exceptions to income reporting.

TO COMPLETE SCHEDULE C:

1. Name of Source of Income

- Disclose the name and address of each source of income or loan or each business entity with which you held a business position.
- Provide a general description of the business activity of the source or business entity (for example, law firm).
- Disclose the job title or business position, if any, you held with the business entity, even if you did not receive income during the reporting period.
- Check the box indicating the amount of gross income received or the highest balance of the loan during the reporting period.
- Identify the consideration for which the income was received.
- For income from commission sales, check the box indicating the gross income received and list the name of each source of commission income of \$10,000 or more (see Appendix-5).
- For income from rental property that is not required to be listed on Schedule B, enter "Rental Income" under "Name of Source," check the box indicating the gross income received, and, if you had a 10% or greater interest in the rental property, list the name of each tenant if your pro rata share of the gross income from that tenant was \$10,000 or more during the reporting period.

2. Loans Received

- Disclose the interest rate and the term of the loan.
 - The term of the loan is the total number of months or years given for repayment of the loan at the time the loan was entered into.
 - For variable interest rate loans, disclose the conditions of the loan (for example, Prime + 2) or the average interest rate paid during the reporting period.
- Identify the security, if any, for the loan.

If more than one loan was received or outstanding during the reporting period and the security for each loan is the same, fill out box 2 only once and indicate in the comments section that the information in box 2 applies to all loans. If the security is different, fill out a separate box 2 for each loan.

FPPC Form 700 (2004/2005)
FPPC Toll-Free Helpline: 866/ASK-FPPC

Instructions-7

SCHEDULE C
Income, Loans* & Business
Positions
 (Other than Gifts and Travel Payments)

CALIFORNIA FORM 700
 FAIR POLITICAL PRACTICES COMMISSION
 Name _____

1. NAME OF SOURCE OF INCOME

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

YOUR BUSINESS POSITION _____

GROSS INCOME RECEIVED/HIGHEST BALANCE DURING REPORTING PERIOD, IF LOAN

\$500 - \$1,000 \$1,001 - \$10,000
 \$10,001 - \$100,000 OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

Salary Spouse's income Loan repayment

Sale of _____
(Property, car, boat, etc.)

Commission or Rental Income, list each source of \$10,000 or more

Other _____
(Describe)

LOAN RECEIVED (complete box 2)

1. NAME OF SOURCE OF INCOME

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

YOUR BUSINESS POSITION _____

GROSS INCOME RECEIVED/HIGHEST BALANCE DURING REPORTING PERIOD, IF LOAN

\$500 - \$1,000 \$1,001 - \$10,000
 \$10,001 - \$100,000 OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

Salary Spouse's income Loan repayment

Sale of _____
(Property, car, boat, etc.)

Commission or Rental Income, list each source of \$10,000 or more

Other _____
(Describe)

LOAN RECEIVED (complete box 2)

1. NAME OF SOURCE OF INCOME

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

YOUR BUSINESS POSITION _____

GROSS INCOME RECEIVED/HIGHEST BALANCE DURING REPORTING PERIOD, IF LOAN

\$500 - \$1,000 \$1,001 - \$10,000
 \$10,001 - \$100,000 OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

Salary Spouse's income Loan repayment

Sale of _____
(Property, car, boat, etc.)

Commission or Rental Income, list each source of \$10,000 or more

Other _____
(Describe)

LOAN RECEIVED (complete box 2)

2. LOAN RECEIVED

INTEREST RATE _____ % None TERM (Months/Years) _____

SECURITY FOR LOAN

None Personal residence

Real Property _____
Street address _____
City _____

Guarantor _____

Other _____
(Describe)

* You are not required to report loans from commercial lending institutions, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status.

Comments: _____

00

SCHEDULE D
(ELIMINATED)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

**Report loans on
Schedule A-2, B, or C**

- You are not required to report loans from commercial lending institutions made in the lender's regular course of business on terms available to members of the public without regard to your official status.
- You are not required to report any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to your official status.

INSTRUCTIONS – SCHEDULE E INCOME – GIFTS

A gift is anything of value for which you have not provided equal or greater consideration to the donor. A gift is reportable if its fair market value is \$50 or more. In addition, multiple gifts totaling \$50 or more received during the reporting period from a single source must be reported. **Gifts are reportable regardless of where the donor is located.**

It is the acceptance of a gift, not the ultimate use to which it is put, that imposes your reporting obligation. Except as noted below, you must report a gift even if you never used it or if you gave it away to another person.

If the exact amount of a gift is not known, you must make a good faith estimate of the item's fair market value. Listing the value of a gift as "over \$50" or "value unknown" is not adequate disclosure. In addition, if you received a gift through an intermediary, you must disclose the name, address, and business activity of both the donor and the intermediary.

Commonly reportable gifts include:

- Tickets/passes to sporting or entertainment events
- Tickets/passes to amusement parks
- Parking passes
- Food, beverages, and accommodations, including those provided in direct connection with your attendance at a convention, conference, meeting, social event, meal, or like gathering, where you did not give a speech, participate in a panel or seminar, or provide a similar service
- Rebates/discounts not made in the regular course of business to members of the public without regard to official status
- Wedding gifts (see Appendix-12 to determine value)
- An honorarium. You may report an honorarium as income on Schedule C, rather than as a gift on Schedule E, if you provided services of equal or greater value than the payment received. (See Appendix-7 regarding your ability to receive future honoraria.)
- Transportation and lodging (see Schedule F)
- Forgiveness of a loan received by you

You are not required to disclose:

- Gifts that were not used and which, within 30 days after receipt, were returned to the donor or delivered to a charitable organization without being claimed by you as a charitable contribution for tax purposes

REMINDERS

- Gifts are limited by law to a value of \$360 from any one source in a calendar year.
- See Appendix-7 for additional gift and honoraria prohibitions.
- Code filers – You only need to report gifts from reportable sources.

- Gifts from your spouse or registered domestic partner, child, parent, grandparent, grandchild, brother, sister, aunt, uncle, niece, nephew, or first cousin. Included in this exception are gifts from your spouse or domestic partner's children, parents, brothers and sisters, and the spouse or registered domestic partner of the individuals listed above. The exception does not apply if the donor was acting as an agent or intermediary for a reportable source who was the true donor.
- Gifts of hospitality involving food, drink, or occasional lodging provided in an individual's home when the individual or a member of the individual's family was present
- Gifts equal in value exchanged between you and an individual, other than a lobbyist, on holidays, birthdays, or similar occasions
- Gifts of informational material provided to assist you in the performance of your official duties (for example, books, pamphlets, reports, calendars, periodicals, or educational seminars)
- A bequest or inheritance. However, inherited investments or real property may be reportable on other schedules.
- Personalized plaques and trophies with an individual value of less than \$250
- Campaign contributions
- Tickets to a fundraising event for an Internal Revenue Code section 501(c)(3) organization
- Tickets to political fundraisers
- Gifts given directly to members of your immediate family unless you received direct benefit from the gift or you exercised direction and control over the use or disposition of the gift
- A pass or ticket that provided a one-time admission to an event (theater performance, sporting event) that was not used and was not transferred to another person. Commission regulation 18946.1 provides a method for determining the value of a ticket or pass that was used or transferred to another person and for determining the value of passes or tickets which provide repeated admission to facilities or services.
- Food, beverages, and necessary accommodations provided directly in connection with an event at which you gave a speech, participated in a panel or seminar, or provided a similar service

TO COMPLETE SCHEDULE E:

- Disclose the name, address and business activity, if any, of the source.
- Provide the date (month, day, and year) of receipt, and disclose the fair market value and description of the gift.

FPFC Form 700 (2004/2005)
FPFC Toll-Free Helpline: 866/ASK-FPFC

Instructions-8

SCHEDULE E Income – Gifts

CALIFORNIA FORM 700

FAIR POLITICAL PRACTICES COMMISSION

Name _____

> NAME OF SOURCE _____

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____

> NAME OF SOURCE _____

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____

> NAME OF SOURCE _____

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____

> NAME OF SOURCE _____

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____

> NAME OF SOURCE _____

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____

> NAME OF SOURCE _____

ADDRESS _____

BUSINESS ACTIVITY, IF ANY, OF SOURCE _____

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____
___/___/___	\$ _____	_____

Comments: _____

TERMS & DEFINITIONS

The instructions located on the back of each schedule describe the types of interests that must be reported. The purpose of this section is to explain other terms used in this form that are not defined in the instructions to the schedules or elsewhere.

Blind Trust: See Trusts, Appendix-11.

Business Entity: Any organization or enterprise operated for profit, including a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association. This would include a business for which you take business deductions for tax purposes (for example, a small business operated in your home).

Code Filer: An individual who has been designated in a state or local agency's conflict-of-interest code to file statements of economic interests.

Commission Income: "Commission income" means gross payments of \$500 or more received during the period covered by the statement as a broker, agent, or salesperson, including insurance brokers or agents, real estate brokers or agents, travel agents or salespersons, stockbrokers, and retail or wholesale salespersons, among others.

In addition, you may be required to disclose the names of sources of commission income if your pro rata share of the gross income was \$10,000 or more from a single source during the reporting period. If your spouse or registered domestic partner received commission income, you would disclose your community property share (50%) of that income (for example, the names of sources of \$20,000 or more in gross commission income received by your spouse or registered domestic partner). (You must report your community property share (50%) of your registered domestic partner's income only if you are reporting activity in 2005.)

Report commission income as follows:

- If the income was received through a business entity in which you or your spouse or registered domestic partner had a 10% or greater ownership interest (or if you receive commission income **on a regular basis** as an independent contractor or agent), use Schedule A-2.
- If the income was received through a business entity in which you or your spouse or registered domestic partner **did not receive commission income on a regular basis** or you had a less than a 10% ownership interest, use Schedule C.

The "source" of commission income generally includes all parties to a transaction, and each is attributed the full value of the commission.

Examples:

- You are a partner in Smith and Jones Insurance Company and have a 50% ownership interest in the company. You sold two Businessmen's Insurance Company policies to XYZ Company during the reporting period. You received commission income of \$5,000 from the first transaction and \$6,000 from the second. On Schedule A-2, report your partnership interest in and income received from Smith and Jones Insurance Company in parts 1 and 2. In part 3, list both Businessmen's Insurance Company and XYZ Company as sources of \$10,000 or more in commission income.
- You are a stock broker for Prime Investments, but you have no ownership interest in the firm. You receive commission income on a regular basis through the sale of stock to clients. Your total gross income from your employment with Prime Investments was over \$100,000 during the reporting period. On Schedule A-2, report your name as the name of the business entity in part 1 and the gross income you have received in part 2. (You do not need to complete the information in the box in part 1 indicating the general description of business activity, fair market value, or nature of investment.) In part 3, list Prime Investments and the names of any clients who were sources of \$10,000 or more in commission income to you.
- You sell real estate on a part-time basis for Super Realty and you have no ownership interest in the company. Since you are not receiving commission income on a regular basis, you are not considered to be a business entity. On Schedule C, if you received gross commission income of \$500 or more, identify Super Realty as a source of income to you. If you received commission income of \$10,000 or more from a real estate transaction, you must report the name(s) of the source(s) on Schedule C.

Note: If your pro rata share of commission income from a single source is \$500 or more, you may be required to disqualify yourself from decisions affecting that source of income, even though you are not required to report the income. *For information regarding disclosure of "incentive compensation," see Appendix-9.*

Conflict of Interest: A public official or employee has a conflict of interest under the Act when all of the following occur:

- The official makes, participates in making, or uses his or her official position to influence a governmental decision;
- It is reasonably foreseeable that the decision will affect the official's economic interest;
- The effect of the decision on the official's economic interest will be material; and
- The effect of the decision on the official's economic interest will be different than its effect on the public generally. Check the Commission's website (www.fppc.ca.gov) for a fact sheet entitled, "Can I Vote? Conflict of Interest Overview"

Conflict-of-Interest Code: The Act requires every state and local government agency to adopt a conflict-of-interest code. The code may be contained in a regulation, policy statement, or a city or county ordinance, resolution, or other document.

An agency's conflict-of-interest code must designate all officials and employees of, and consultants to, the agency who make or participate in making governmental decisions that could cause conflicts of interest. These individuals are required by the code to file statements of economic interests and to disqualify themselves when conflicts of interest occur.

The disclosure required under a conflict-of-interest code for a particular designated official or employee should include only the kinds of personal economic interests he or she could significantly affect through the exercise of his or her official duties. For example, an employee whose duties are limited to reviewing contracts for supplies, equipment, materials, or services provided to the agency should be required to report only those interests he or she holds that are likely to be affected by the agency's contracts for supplies, equipment, materials, or services.

Consultant: An individual who contracts with or whose employer contracts with state or local government agencies and who makes, participates in making, or acts in a staff capacity for making governmental decisions. Consultants may be required to file Form 700. The obligation to file Form 700 is always imposed on the individual who is providing services to the agency, not on the business or firm that employs the individual.

FPPC regulation 18701 defines "consultants" as including the following individuals who make a governmental decision whether to:

- Approve a rate, rule, or regulation
- Adopt or enforce a law
- Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement
- Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval
- Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract
- Grant agency approval to a plan, design, report, study or similar item
- Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any of its subdivisions

A consultant also is an individual who:

- serves in a staff capacity with the agency and in that capacity participates in making a governmental decision; or
- performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's conflict-of-interest code.

Designated Employee: An official or employee of a state or local government agency whose position has been designated in the agency's conflict-of-interest code to file statements of economic interests. Individuals who contract with government agencies (consultants) may also be designated in a conflict-of-interest code.

A federal officer or employee serving in an official federal capacity on a state or local government agency is not a designated employee.

Disclosure Categories: The section of an agency's conflict-of-interest code that specifies the types of personal economic interests officials and employees of the agency must disclose on their statements of economic interests. Disclosure categories are usually contained in an appendix or attachment to the conflict-of-interest code. Contact your agency to obtain a copy of your disclosure categories.

Diversified Mutual Fund: Diversified portfolios of stocks, bonds, or money market instruments that are managed by investment companies whose business

is pooling the money of many individuals and investing it to seek a common investment goal. Mutual funds are managed by trained professionals who buy and sell securities. A typical mutual fund will own between 75 to 100 separate securities at any given time so they also provide instant diversification. *Only diversified mutual funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 are exempt from disclosure.*

Elected State Officer: Elected state officers include the Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, State Controller, Secretary of State, State Treasurer, Superintendent of Public Instruction, members of the State Legislature, members of the State Board of Equalization, and elected members of the Board of Administration of the California Public Employees' Retirement System.

Enforcement: The FPPC investigates suspected violations of the Act. Other law enforcement agencies (the Attorney General or district attorney) also may initiate investigations under certain circumstances. If violations are found, the Commission may initiate administrative enforcement proceedings that could result in fines of up to \$5,000 per violation.

Instead of administrative prosecution, a civil action may be brought for negligent or intentional violations by the appropriate civil prosecutor (the Commission, Attorney General, or district attorney), or a private party residing within the jurisdiction. In civil actions, the measure of damages is up to the amount or value not properly reported.

Persons who violate the conflict-of-interest disclosure provisions of the Act also may be subject to agency discipline, including dismissal.

Finally, a knowing or willful violation of any provision of the Act is a misdemeanor. Persons convicted of a misdemeanor may be disqualified for four years from the date of the conviction from serving as a lobbyist or running for elective office, in addition to other penalties that may be imposed. The Act also provides for numerous civil penalties, including monetary penalties and damages, and injunctive relief from the courts.

Expanded Statement: Some officials or employees may have multiple filing obligations (for example, a city council member who also holds a designated position with a county agency, board, or commission). Such officials or employees may complete one expanded statement covering the disclosure requirements for all

positions and file a complete, originally signed copy with each agency.

Fair Market Value: When reporting the value of an investment, interest in real property, or gift, you must disclose the fair market value – the price at which the item would sell for on the open market. This is particularly important when valuing gifts, because the fair market value of a gift may be different from the amount it cost the donor to provide the gift. For example, the wholesale cost of a bouquet of flowers may be \$10, but the fair market value may be \$25 or more. In addition, there are special rules for valuing free tickets and passes. Call the FPPC for assistance.

Gift and Honoraria Prohibitions:

Gifts:

State and local officials who are listed in Gov. Code section 87200 (except judges – see below), candidates for these elective offices (including judicial candidates), and officials and employees of state and local government agencies who are designated in a conflict-of-interest code are prohibited from accepting a gift or gifts totaling more than \$360 in a calendar year from a single source.

In addition, elected state officers, candidates for elective state offices, and officials and employees of state agencies are subject to a \$10 per calendar month limit on gifts from lobbyists and lobbying firms registered with the Secretary of State.

Honoraria:

State and local officials who are listed in Gov. Code section 87200 (except judges – see below), candidates for these elective offices (including judicial candidates), and employees of state and local government agencies who are designated in a conflict-of-interest code are prohibited from accepting honoraria for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

Exceptions:

- Some gifts are not reportable or subject to the gift and honoraria prohibitions, and other gifts may not be subject to the prohibitions but are reportable. For detailed information, see the FPPC fact sheet entitled "Limitations and Restrictions on Gifts, Honoraria, Travel, and Loans," which can be obtained from your filing officer or the FPPC's website (www.fppc.ca.gov).

- The \$360 gift limit and the honorarium prohibition do not apply to a part-time member of the governing board of a public institution of higher education, unless the member is also an elected official.
- If you are designated in a state or local government agency's conflict-of-interest code, the \$360 gift limit and honorarium prohibition are applicable only to sources you would otherwise be required to report on your statement of economic interests. However, this exception is not applicable if you also hold a position listed in Gov. Code section 87200 (see Appendix-1).
- For state agency officials and employees, the \$10 lobbyist/lobbying firm gift limit is applicable only to lobbyists and lobbying firms registered to lobby your agency. This exception is not applicable if you are an elected state officer or a member or employee of the State Legislature.

Judges:

Section 170.9 of the Code of Civil Procedure imposes gift limits on judges and prohibits judges from accepting any honorarium. Section 170.9 is enforced by the Commission on Judicial Performance. The FPPC has no authority to interpret or enforce the Code of Civil Procedure. Court commissioners are subject to the gift limit under the Political Reform Act.

Income Reporting: Reporting income under the Act is different than reporting income for tax purposes. The Act requires **gross** income (the amount received before deducting losses, expenses, or taxes) to be reported.

Pro Rata Share: The instructions for reporting income refer to your pro rata share of the income received. Your pro rata share is normally based on your ownership interest in the entity or property. For example, if you are a sole proprietor, you must disclose 100% of the gross income received by your business entity on Schedule A-2. If you own 25% of a piece of rental property, you must report 25% of the gross rental income received. If the income is community property, your pro rata share is 50% of your spouse's or your registered domestic partner's share.

When you are required to report sources of income to a business entity, sources of rental income, or sources of commission income, you are only required to disclose individual sources of income of \$10,000 or more. However, you may be required to disqualify yourself from decisions affecting sources

of \$500 or more in income, even though you are not required to report them.

Example:

- Alicia Ruiz is an attorney with her own law firm. As a candidate for mayor, she must disclose reportable sources of income to the firm of \$10,000 or more. Her husband Ed is also a public official. His community property share in her income is 50%, so he must disclose reportable sources of income to Alicia's law firm of \$20,000 or more.

You are not required to report:

- Salary, reimbursement for expenses or per diem, social security, disability, or other similar benefit payments received by you or your spouse or registered domestic partner from a federal, state, or local government agency.
- Campaign contributions.
- A cash bequest or cash inheritance.
- Returns on a security registered with the Securities and Exchange Commission, including dividends, interest, or proceeds from a sale of stocks or bonds.
- Payments received under an insurance policy.
- Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union, an insurance policy, or a bond or other debt instrument issued by a government agency.
- Your spouse's or registered domestic partner's income which is legally "separate" income.
- Income of dependent children.
- Automobile trade-in allowances from dealers.
- Loans and loan repayments received from your spouse or registered domestic partner, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin unless he or she was acting as an intermediary or agent for any person not covered by this provision.
- Alimony or child support payments.
- Payments received under a defined benefit pension plan qualified under Internal Revenue Code section 401(a).
- Any loan from a commercial lending institution made in the lender's regular course of business on terms available to the public without regard to your official status.
- Any retail installment or credit card debts incurred in the creditor's regular course of business on terms available to the public without regard to your official status.
- Loans made to others. However, repayments may be reportable on Schedule C.

- A loan you co-signed for another person unless you made payments on the loan during the reporting period

Incentive Compensation: "Incentive compensation" means income over and above salary that is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official's employer which correlates to the conduct of the purchaser in direct response to the effort of the official.

Incentive compensation does not include:

- Salary
- Commission income (*for information regarding disclosure of "commission income" see Appendix 5*)
- Bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum
- Executive incentive plans based on company performance, provided that the formula for determining the amount of the executive's incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company
- Payments for personal services which are not marketing or sales

The purchaser is a source of income to the official if all three of the following apply:

- the official's employment responsibilities include directing sales or marketing activity toward the purchaser; and
- there is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and
- there is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.

Report incentive compensation as follows:

- In addition to salary, reimbursement of expenses, and other income received from your employer, separately report on Schedule C the name of each person who purchased products or services sold, marketed or represented by you if you received incentive compensation of \$500 or more attributable to the purchaser during the period covered by the statement.

- If incentive compensation is paid by your employer in a lump sum, without allocation of amounts to specific customers, you must determine the amount the incentive compensation attributable to each of your customers. This may be based on the volume of sales to those customers.

(See regulations 18703.3 and 18728.5 for more information.)

Jurisdiction: You must disclose investments and sources of income that are located in or doing business in your jurisdiction, are planning to do business in your jurisdiction, or that have done business during the previous two years in your jurisdiction, and interests in real property located in your jurisdiction.

A business entity is located in or doing business in your jurisdiction if the entity has business contacts on a regular or substantial basis with a person who maintains a physical presence in your jurisdiction.

Business contacts include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods. Business contacts do not include marketing via the Internet, telephone, television, radio, or printed media.

The same criteria are used to determine whether an individual, organization, or other entity is located in or doing business in your jurisdiction.

Exception:

- Gifts are reportable regardless of the location of the donor. For example, a state agency official with full disclosure must report gifts from sources located outside of California. (Designated employees should consult their disclosure categories to determine if the donor of a gift is of the type that must be disclosed.)

For reporting interests in real property, if your jurisdiction is the state, you must disclose real property located within the state of California unless your agency's conflict-of-interest code specifies otherwise.

For local agencies, an interest in real property is located in your jurisdiction if any part of the property is located in, or within two miles of, the region, city, county, district, or other geographical area in which the agency has jurisdiction, or if the property is located within two miles of any land owned or used by the agency.

See the following explanations to determine what your jurisdiction is:

State Offices and All Courts: Your jurisdiction is the state if you are an elected state officer, a state legislator, or a candidate for one of these offices. Judges, judicial candidates, and court commissioners have statewide jurisdiction. (*In re Baly* (1979) 5 FPPC Ops. 10). If you are an official or employee of, or a consultant to, a state board, commission, or agency, or of any court or the State Legislature, your jurisdiction is the state.

County Offices: Your jurisdiction is the county if you are an elected county officer, a candidate for county office, or if you are an official or employee of, or a consultant to, a county agency or any agency with jurisdiction solely within a single county.

City Offices: Your jurisdiction is the city if you are an elected city officer, a candidate for city office, or you are an official or employee of, or a consultant to, a city agency or any agency with jurisdiction solely within a single city.

Multi-County Offices: If you are an elected officer, candidate, official or employee of, or a consultant to, a multi-county agency, your jurisdiction is the region, district, or other geographical area in which the agency has jurisdiction. (Example: A water district has jurisdiction in a portion of two counties. Members of the board are only required to report interests located or doing business in that portion of each county in which the agency has jurisdiction.)

Other (for example, school districts and special districts): If you are an elected officer, candidate, official or employee of, or a consultant to, an agency not covered above, your jurisdiction is the region, district, or other geographical area in which the agency has jurisdiction. See the multi-county example above.

Leasehold Interest: The term "interest in real property" includes leasehold interests. An interest in a lease on real property is reportable if the value of the leasehold interest is \$2,000 or more. The value of the interest is the total amount of rent owed by you during the reporting period or, for a candidate, assuming office, or initial statement, during the prior 12 months.

You are not required to disclose a leasehold interest with a value of less than \$2,000 or a month-to-month tenancy.

Loans: State and local elected and appointed officials and employees are prohibited from receiving any

personal loan totaling more than \$250 from an official, employee, or consultant of their governmental agencies or any governmental agency over which the official or the official's agency has direction or control. In addition, loans of more than \$250 from any person who has a contract with the official's agency or an agency under the official's control are prohibited unless the loan is from a commercial lending institution or part of a retail installment or credit card transaction made in the regular course of business on terms available to members of the public.

State and local elected officials are also prohibited from receiving any personal loan of \$500 or more unless the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, the date, amount, and term of the loan, the date or dates when payments are due, the amount of the payments, and the interest rate on the loan.

Campaign loans and loans from family members are not subject to the \$250 and \$500 loan prohibitions.

A personal loan made to a public official that is not being repaid or is being repaid below certain amounts will become a gift to the official under certain circumstances. Contact the FPPC for further information, or see the FPPC fact sheet entitled "Limitations and Restrictions on Gifts, Honoraria, Travel, and Loans," which can be obtained from your filing officer or the FPPC's website (www.fppc.ca.gov).

You are not required to report loans from commercial lending institutions, or any indebtedness created as part of retail installment or credit card transactions that are made in the lender's regular course of business, without regard to official status, on terms available to members of the public.

Privileged Information: You are not required to disclose on Schedule A-2, Part 3, the name of a person who paid fees or made payments to a business entity if disclosure of the name would violate a legally recognized privilege under California law. For example, a name is protected by attorney-client privilege when facts concerning an attorney's representation of an anonymous client are publicly known and those facts, when coupled with disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability.

A patient's name is protected by physician-patient privilege when disclosure of the patient's name would also reveal the nature of the treatment received by the patient because, for example, the physician is recognized as a specialist.

FPPC regulation 18740 sets out specific procedures that must be followed in order to withhold the name of a source of income.

Public Officials Who Manage Public Investments:

Individuals who invest public funds in revenue-producing programs must file Form 700. This includes individuals who direct or approve investment transactions, formulate or approve investment policies, and establish guidelines for asset allocations. FPPC regulation 18701 defines "public officials who manage public investments" to include the following:

- Members of boards and commissions; including pension and retirement boards or commissions, and committees thereof, who exercise responsibility for the management of public investments;
- High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments (for example, chief or principal investment officers or chief financial managers); and
- Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions described above.

Retirement Accounts (for example, deferred compensation and individual retirement accounts (IRAs)): Assets held in retirement accounts must be disclosed if the assets are reportable items, such as common stock (investments) or real estate (interests in real property). For help in determining whether your investments and real property are reportable, see the instructions to Schedules A-1, A-2, and B.

If your retirement account holds reportable assets, disclose only the assets held in the account, not the account itself. You may have to contact your account manager to determine the assets contained in your account.

Schedule A-1: Report any business entity in which the value of your investment interest was \$2,000 or more during the reporting period. (Use Schedule A-2 if you have a 10% or greater ownership interest in the business entity.)

Schedule B: Report any piece of real property in which the value of your interest was \$2,000 or more during the reporting period.

Examples:

- Alice McSherry deposits \$500 per month into her employer's deferred compensation program. She has chosen to purchase shares in two diversified mutual funds registered with the Securities and Exchange Commission. Because her funds are invested solely in non-reportable mutual funds (see Schedule A-1 instructions), Alice has no disclosure requirements with regard to the deferred compensation program.
- Bob Allison has \$6,000 in an individual retirement account with an investment firm. The account contains stock in several companies doing business in his jurisdiction. One of his stock holdings, Gala Computers, reached a value of \$2,500 during the reporting period. The value of his investment in each of the other companies was less than \$2,000. Bob must report Gala Computers as an investment on Schedule A-1 because the value of his stock in that company was \$2,000 or more.
- Adriane Fisher has \$5,000 in a retirement fund that invests in real property located in her jurisdiction. The value of her interest in each piece of real property held in the fund was less than \$2,000 during the reporting period. Although her retirement fund holds reportable assets, she has no disclosure requirement because she did not have a \$2,000 or greater interest in any single piece of real property. If, in the future, the value of her interest in a single piece of real property reaches or exceeds \$2,000, she will be required to disclose the real property on Schedule B for that reporting period.

Trusts: Investments and interests in real property held by a trust (including a living trust) are reported on Schedule A-2 if you, your spouse or registered domestic partner, or your dependent children had a 10% or greater interest in the trust and your pro rata share of a single investment or interest in real property was \$2,000 or more. (Filers must report investments held by a trust of a registered domestic partner if the reporting period covers activity in 2005.)

You have an interest in a trust if you are a trustor and:

- Can revoke or terminate the trust;
- Have retained or reserved any rights to the income or principal of the trust or retained any reversionary or remainder interest; or
- Have retained any power of appointment, including the power to change the trustee, or the beneficiaries.

Or you are a beneficiary and:

- Presently receive income; or
- Have an irrevocable future right to receive income or principal. (See FPPC regulation 18234 for more information.)

Examples:

- Sarah Murphy has set up a living trust which holds her principal residence, stock in several companies that do business in her jurisdiction, and a rental home in her agency's jurisdiction. Since Sarah is the trustor and she can revoke or terminate the trust, she must disclose any stock worth \$2,000 or more and the rental home on Schedule A-2. Sarah's residence is not reportable.
- Ben Yee is listed as a beneficiary in his grandparents' trust. However, Ben does not presently receive income from the trust, nor does he have an irrevocable future right to receive income or principal. Therefore, Ben is not required to disclose any assets contained in his grandparents' trust.

Blind Trusts:

A blind trust is a trust managed by a disinterested trustee who has complete discretion to purchase and sell assets held by the trust. If you have a direct, indirect, or beneficial interest in a blind trust, you may not be required to disclose your pro rata share of the trust's assets or income. However, the trust must meet the standards set out in FPPC regulation 18235, and you must disclose reportable assets originally transferred into the blind trust and income from those original assets until they have been disposed of by the trustee.

Trustees:

If you are only a trustee, you do not have a reportable interest in the trust. However, you may be required to report the income you received from the trust for performing trustee services.

Wedding Gifts: Wedding gifts must be disclosed if they were received from a reportable source during the period covered by the statement. Gifts valued at \$50 or more are reportable; however, a wedding gift is considered a gift to both spouses equally. Therefore, you would count one half the value of a wedding gift to determine if it is reportable and need only report individual gifts with a total value of \$100 or more unless a particular gift can only be used by you or is intended only for your use.

For example, you receive a placesetting of china valued at \$150 from a reportable source as a wedding gift. Because the value to you is \$50 or more, you must report the gift on Schedule E but may state its value as \$75.

Wedding gifts are not subject to the \$360 gift limit, but they are subject to the \$10 lobbyist/lobbying firm gift limit for state officials.

Privacy Information Notice

Information requested on all FPPC forms is used by the FPPC to administer and enforce the Political Reform Act (Government Code sections 81000-91014 and California Code of Regulations sections 18109-18997). All information required by these forms is mandated by the Political Reform Act. Failure to provide all of the information required by the Act is a violation subject to administrative, criminal or civil prosecution. All reports and statements provided are public records open for public inspection and reproduction.

If you have any questions regarding this Privacy Notice or how to access your personal information, please contact the FPPC at:

Manager, Filing Officer Programs
428 J Street, Suite 620
Sacramento, CA 95814
(916) 322-5660

FPPC Form 700 (2004/2005)
FPPC Toll-Free Helpline: 866/ASK-FPPC

Appendix-12

Attachment G

Example: Sunshine Ordinance and
Declaration, Relevant Sections

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Phone: (415) 252-3100
Fax: (415) 252-3112
Email: ethics.commission@sfgov.org
Web: www.sfgov.org/ethics



For SFEC use

Sunshine Ordinance Declaration

Sunshine Ordinance Training (S.F. Admin. Code § 67.33)

All City officers and employees who file Statements of Economic Interests ("SEIs") with the San Francisco Ethics Commission must annually declare that they have read and have been or will be trained on the Sunshine Ordinance, by filing this form with the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, California 94102. A filer who assumes office must file this form within 30 days of the date that he or she is sworn in or assumes employment. All other officers and employees must file the completed form no later than April 1 every calendar year. You may satisfy the training requirement by reading the Sunshine Ordinance and watching the Sunshine Ordinance portion of the "Rules of Conduct for Public Officials" training video from the City Attorney's Office at www.sfgov.org/cityattorney. The training must be completed by December 31 every year.

The completed declarations are public records. Please retain a copy of your completed form for your records for at least five years. If you have questions, please contact the Ethics Commission.

By signing below, I certify under penalty of perjury that:

I have read the Sunshine Ordinance and satisfied the Sunshine Ordinance training requirements by completing the training course prepared by the City Attorney's Office on

_____; or
(You **MUST** provide the actual date of completion mm/dd/yyyy)

I will satisfy the Sunshine Ordinance training requirements by reading the Sunshine Ordinance and completing the training course prepared by the City Attorney's Office by December 31.

If this is an assuming office filing, please provide your assuming office date:

(Insert Assuming Office Date mm/dd/yyyy)

Name (print)

Title (print)

Names of agency, department, board or commission (print)

Signature and Date

CHAPTER 67
THE SAN FRANCISCO SUNSHINE ORDINANCE OF 1999

Article

- I. IN GENERAL
- II. PUBLIC ACCESS TO MEETINGS
- III. PUBLIC INFORMATION AND PUBLIC RECORDS
- IV. POLICY IMPLEMENTATION

ARTICLE I
IN GENERAL

- Sec. 67.1. Findings and Purpose.
- Sec. 67.2. Citation.

SEC. 67.1. FINDINGS AND PURPOSE.

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a

San Francisco Administrative Code

two-month period on behalf of the City and County of San Francisco for all lobbying activities on matters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens. (Added by Proposition G, 11/2/99)

SEC. 67.29-5. CALENDARS OF CERTAIN OFFICIALS.

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date. (Added by Proposition G, 11/2/99)

SEC. 67.29-6. SOURCES OF OUTSIDE FUNDING.

No official or employee or agent of the city shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City. (Added by Proposition G, 11/2/99)

SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

(b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.

(c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial

San Francisco Administrative Code

prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The city shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the city with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed. (Added by Proposition G, 11/2/99)

SEC. 67.33. DEPARTMENT HEAD DECLARATION.

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force. (Added by Proposition G, 11/2/99)

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission. (Added by Proposition G, 11/2/99)

SEC. 67.35. ENFORCEMENT PROVISIONS.

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed. (Added by Proposition G, 11/2/99)

SEC. 67.36. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.

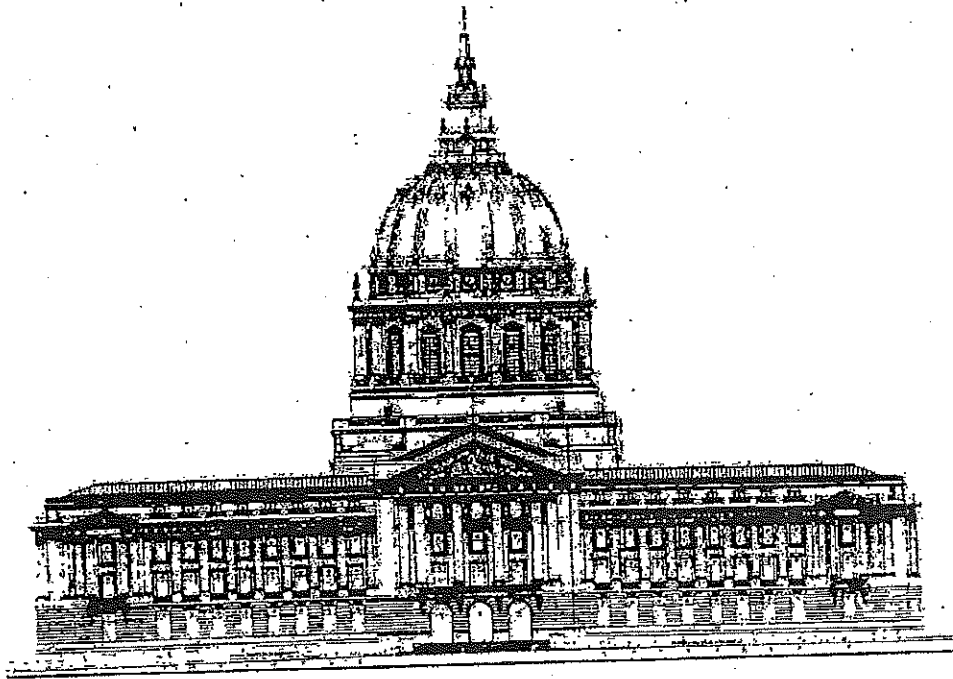
The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply. (Added by Proposition G, 11/2/99)

Attachment H

Example: City's Employee
Handbook, Relevant Sections

Employee Handbook

City and County of San Francisco



EMPLOYEE HANDBOOK

City and County of San Francisco

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Reporting and Responding to Workplace Violence

All employees are responsible for reporting any acts of intimidation, threats of violence, or acts of violence to their supervisor, department head, or Management Response Team (MRT) member. Supervisors and managers are responsible for documenting all observed or reported incidents of workplace violence.

EMPLOYEE OBLIGATIONS

Conflicts of Interest and Ethical Obligations

City employment carries with it an obligation to adhere to the highest level of ethical standards. The San Francisco Ethics Commission has assembled a manual on the state and local laws governing the conduct of public officials and employees. It is available on the Ethics Commission's website: www.sfgov.org/ethics. You are encouraged to review this manual and present any questions you may have to the Ethics Commission or your departmental personnel officer.

Some of the key ethical obligations imposed on municipal employees are summarized below:

- You may not make, participate in making, use or attempt to use your official position to influence a governmental decision that will have a reasonably foreseeable material effect on your financial interests. If your job responsibilities give you the authority to appoint personnel, commit your agency to a course of action, or enter into contracts, franchises, leases, or other financial transactions on behalf of the City, you should consult the Ethics Manual to determine whether you have any conflicts of interest.
- You may not use public resources to engage in political activity.
- Aside from your City wages and benefits, you may not accept any compensation, reward, or gift from any source for any service, advice, assistance, or other matter related to the City's governmental processes.
- You may not use or attempt to use your office or employment to influence a governmental decision in which you have a financial interest.
- You may not willfully or knowingly disclose any privileged information concerning property, government, or affairs of the City and County, unless you are required to do so by law. You may not use privileged information obtained by virtue of your office or employment to advance the financial or other private interest of yourself or others.
- After you leave City employment, you may not represent any private interest (other than yourself) before a City board or agency of which you were a member or employee for two (2) years after your departure.
- Depending on your level of decision-making authority, you may be required to file a statement of economic interest. A list of those required to file these statements, and instructions on how to do so, can be found at www.sfgov.org/ethics.



The San Francisco Ethics Commission investigates violations of these rules and other improper government activities. If you are aware of any such activities, or if you have any questions concerning the ethics rules for City employees, you can contact the Ethics Commission at (415) 581-2300. You may also call the Ethics Hotline at (415) 581-2323. All complaints will be kept confidential to the extent permitted by state law.

Employment Verification

When providing information for the purpose of verifying your employment, list your department as the employer, not the City and County of San Francisco. If you list your employer as "City and County of San Francisco" or "San Francisco Civil Service," there will be a delay in verification of employment. Consider each City and County department you worked for as a separate employer for verification purposes. Be certain that a separate request to verify your employment goes to each department where you have worked.

Work Site Security

To prevent and discourage unauthorized access to your work site, do not leave your office area unattended. Do not prop open doors or windows that are normally kept locked. Lock all office doors after business hours or when you leave. Prevent and discourage theft by securing your valuables.

Work-site keys may not be duplicated without permission and must be returned upon separation.

No-Smoking Enforcement

Smoking is not permitted in City and County offices.

Drug Free Workplace

You may not manufacture, distribute, dispense, possess, or use alcohol or illegal drugs in workplace. Any violation of this policy may be grounds for discipline up to and including dismissal. If you violate this policy, you may also be required to attend a drug-abuse education, treatment, or rehabilitation program.

If you are in a designated "safety-sensitive" position, you may be subject to a drug testing under certain circumstances.

If you perform activities in your job that are funded by a federal grant, you must notify your department head of any drug convictions for violation of drug laws that took place in the workplace within five days of any such conviction. Employees in certain safety-sensitive position, or in positions where testing is required by federal law, may be required to submit to periodic drug tests.

If you need help with an alcohol or drug abuse problem, confidential information and referrals to counseling and rehabilitation services are available from the Employee Assistance Program (EAP), (415) 554-9580. You may also request leave time for the purpose of participating in drug or alcohol treatment.

Attachment I

Example: DBI Handbook for
Professional Conduct,
Relevant Sections



HANDBOOK FOR PROFESSIONAL CONDUCT

CODE OF PROFESSIONAL CONDUCT

GUIDELINES

POLICIES REGARDING CONDUCT

RESOURCES



The Controller's City Projects team acknowledges with thanks the assistance of DBI employees who participated in development of the Code and gave their time, opinions and suggestions for situations during the nine focus group sessions we conducted at DBI. In addition, we are grateful for the time and collaboration of staff and consumers of DBI services we met with for individual interviews and check-ins. The consultations given by the City Attorney's Office and Ethics Commission staff have been invaluable. Finally, we appreciate the cooperation and encouragement we received from DBI management.

This Handbook was developed for the Department of Building Inspection by the City Projects Division of the Office of the Controller.

*Jodi Darby, Project Leader
Carina Monzón, Project Analyst*

*January 2002
(May be superseded in part or in whole by later versions)*

INTRODUCTION

A position in government is a position of public trust. For this reason, the standards of behavior for public employees are often higher than those for employees in the private sector. As public employees in the state of California, our behavior is directed by the Government Code and the Political Reform Act of 1974. As employees in San Francisco's City government, we are accountable to the residents of San Francisco. We are judged not only by our official actions and conduct, but also by our personal activities when they are related to our work for the City.

The Mayor and the Board of Supervisors, elected by the voters of San Francisco, rely on employees, as their representatives, to perform City business efficiently and economically, to protect City interests and to meet the demanding professional standards of public service. Because these standards are critical to a local government's credibility, all City employees must be familiar with the codes and laws that regulate their behavior and must be concerned with how their behavior is viewed by the public. Integrity and transparency in dealings with the public and standards for professional conduct promote quality service, equal treatment and professionalism at all levels.

All employees—line staff, supervisors, department heads, directors, the Mayor and the Board—share the responsibility for ensuring that high standards of professional conduct are maintained within the City government.

This booklet has been developed to make DBI staff aware of the existing laws and policies which affect you and to provide employees with guidelines that will ensure the public's trust is well placed. The Code of Professional Conduct included in this booklet is a baseline document developed from DBI employee suggestions. It is intended to be a living document where you involve yourself in making it even more applicable to your daily work by suggesting and bringing into the code other standards you agree to and adjusting the current language as you deem appropriate. The Policies section presents a compilation of existing rules and may be superseded as laws and policies change. DBI management and the Personnel Division welcome your continued input to keep this document current and relevant.



DEPARTMENT OF BUILDING INSPECTION CODE OF PROFESSIONAL CONDUCT

Recognizing the public trust placed on individuals engaged in the administration and enforcement of building regulatory codes, the Department of Building Inspection is committed to the highest values and principles of professional conduct. For the benefit and guidance of department staff and for the enlightenment of the public we serve, these ideals and the standards that support them are characterized below in a Code of Professional Conduct. This Code is designed to support consistent adherence to high standards, foster mutual respect, help prevent misunderstandings and avoid circumstances that could have the appearance of less than responsible professional behavior.

SERVICE

- I will convey the City's commitment to the public and generate customer confidence by being customer-centered, receptive, patient, and courteous.
- I will address customer concerns by providing information, recommending—when possible—a resolution, or by directing the customer to the appropriate person, division or other department for help.
- I will refrain from personal discussions with coworkers in the presence of customers.
- I will not allow personal opinions to affect the performance of my duties or how I represent department policies, staff or the codes we enforce.

FAIRNESS

- I will not give preferential service in any component of my assigned duties.
- I will enforce compliance with building codes equally and neutrally for all customers regardless of relationship, special interest, political/association, other affiliation or lack thereof.

SAFETY

- I will place public safety and public interest above individual, group or special interests.
- I will uphold all building codes because they are designated to protect the lives and safety of the public and are dependent upon my judgments and decisions for enforcement.

INTEGRITY

- I will demonstrate the highest standards of personal integrity in order to inspire public confidence and trust in City employees.

- I will not compromise the integrity of the permitting process by exceeding or appearing to exceed my authority; attempting to expedite plans or permits not assigned to me; providing unauthorized service outside of my area of responsibility; allowing extraordinary or unsupervised access to submitted plans or paperwork by any customer; or by asking others to do so.
- I will use my title or position only when conducting official City business or for informational purposes. In no case will I use my title or position to advance personal or political interests or secure advantage or favor for myself, my family or my friends.
- I will accept no gift, special favor, privilege, or benefit offered by a member of the public or by persons or businesses regulated by the department, doing business with the department or seeking to do business with the department for doing my job. When accepting a lawful gift, I will be aware that public perception may make a negative judgment of me or the department.

HONESTY

- I will be truthful in communicating with customers and staff, do what I say I will do, and be dependable.
- I will express an opinion or offer a suggestion to customers only when it is based on informed practical experience and honest conviction based on the codes we enforce.
- I will depict facts and situations honestly and without bias when presenting a problem for resolution by another member of staff.

CONSISTENCY

- I will enforce the codes and requirements in a consistent manner for all customers.
- I will maintain a consistent minimum standard for every customer where there is flexibility of requirement of the building code, and will support that standard throughout the department.
- I will work towards and support a consistent interpretation of codes that require interpretation throughout the department.

PROFESSIONALISM

- I understand that I am a representative of the City and will set an example by conducting myself at all times to create respect for the City, the Department, and myself.
- I will be punctual and prepared for appointments and field visits.
- I will continue training to maintain my skills. I will stay current on policy and code changes. If required to be certified, I will maintain my certification to ensure compliance with law.
- I will make suggestions and participate in the improvement of the operations of the department to the best of my ability.

GUIDELINES

The nature of DBI's work sometimes places employees in situations requiring a carefully considered judgement as to an appropriate action. Not every situation has a clear right or wrong response but attention to workplace values and standards as delineated by the Code of Professional Conduct can guide employee decision-making.

This section presents questions and scenarios that have been adapted from submissions by DBI employees during focus group sessions. The suggested responses are meant as guidelines only and are based on the application to the situation of the Code of Professional Conduct, California State law, City Charter, City ordinances and Civil Service Commission rules and policies.

Of course it is impossible to present examples covering all situations. If this section does not provide sufficient guidance, the employee is encouraged to seek assistance. Refer to the "Resources" section of this handbook for helpful sources for opinions or interpretation of law or policies.

A good rule of thumb to follow when you're not certain if something is proper or not is to simply ask yourself, "Do I feel comfortable performing this action or seeing someone else perform it?" If the answer is no, that you feel uncomfortable or are worried that someone will find out, that's a good indication that something may not be right.

1. What is the difference between preferential treatment and customer service?

Customer service delivers to every customer the same level of assistance from every member of the department. Preferential treatment delivers extraordinary effort or access—including advantage, favor, special treatment or priority—over and above the normal level of service to a specific few by one or more employees. However, in practice some customers, usually by virtue of an emergency, require something more than normal service.

2. What should I do if I am asked to provide preferential treatment such as moving a project ahead of others, overlooking a violation or signing off before all problems are cleared?

Regardless of whether the person making such a request is a public official, an official's staff member, relative, friend, DBI manager or other employee, former employee or customer, your response should be the same. Explain to the individual that DBI policy is that every customer receives the highest level of customer service. In addition, as presented in the DBI Code of Professional Conduct, explain that integrity and public safety are standards you personally adhere to. Assure the individual you will deliver the highest quality of service. However, if you are asked to do something you believe is illegal or otherwise improper, document the request with your supervisor or other manager for further action. If you believe the individual should receive additional service above what is ordinarily available to every customer because his or her situation is an

emergency, you should also document that with your supervisor or manager.

3. What should I do if I'm offered money or a gift if I will "look the other way" or otherwise expedite matters for a customer?

Your response to the individual should be the same as described in Question 2. In addition, because the request is an illegal act you must document the incident with your supervisor or other manager for further action. Supervisors and managers should report this action to the District Attorney's Office for further investigation. See Resource Guide for contact information.

4. What should I do if I see a manager, supervisor or other employee giving preferential treatment to a customer? What if I'm asked by a supervisor or manager to give preferential treatment?

Recognizing that there might be a good reason for what appears to you to be preferential treatment, you should arrange to meet privately with the manager, supervisor or employee and state that you are uncomfortable with something you think you saw and want to clarify the situation. State exactly what you think you saw and ask the person if you are interpreting the situation correctly. Give the person an opportunity to respond. If you still believe unnecessary preference is being given, take your concern to a higher level through the department chain of command. See also Question 5. If you are unsure whether conduct is improper, call the Ethics Commission to inquire.

5. What should I do if I become aware of an illegal activity by another employee?

You are encouraged to report any incidents of improper or illegal activity involving your department or another City and County department. Never confront an employee whom you suspect is involved in illegal or criminal activity.

You have several options. You may report your complaint to the Ethics Commission. You will not be retaliated against in your employment for making a good faith complaint. You may also report to the District Attorney, City Attorney or Controller's Office. For more details see the informational handout *Whistleblower Information* available from the DBI Personnel Division, or contact the Ethics Commission at 581-2300 or see their website at: www.sfgov.org/ethics/complain/comppcdr.htm

6. What should I do if I notice a customer marks his or her plans in such a way as to differentiate them from other plans in order that they might be easily identified for preferential treatment?

Marking of plans in any way has no significance unless an employee takes action based on those marks. Since it is unlikely that plans would be marked to indicate an emergency situation—which might justify extraordinary service—such action may constitute a

9. What should I do if I'm offered a gift (item of monetary value, favor, reward, entertainment, loan or meal) by a customer for "good service" or in celebration of a holiday?

The Charter Section 08.105(f) prohibits City officers and employees from receiving directly or indirectly any compensation, reward, or gift from any source (except the City and County or any other government agency to which he or she has been duly appointed) for any service, advice, assistance, or other matter related to the governmental processes of the City and County. Your paycheck and the satisfaction of a job well done are sufficient compensation for performance of official duties. In general, personal gifts for doing your job must be refused or returned with a friendly but firm message that you are not allowed to receive gifts for doing your job. All employees should consider themselves to be subject to public scrutiny. Public perception of conflict of interest may be stricter than City policy and employees are subject to public and press opinion.

Be advised that there are a number of restrictions on acceptance of other kinds of gifts. If you are presented with a gift, consult City Attorney Julia Moll at (415) 554-4705 or call the City Attorney's general number (415) 554-4700.

10. What do you do if you are invited to a company Christmas party, a customer-sponsored event, or to participate in a free round of golf?

Refer to Question 9. Also, to make your decision you might want to consider whether you would have been invited to participate in this activity if you had a different job in the department. Is everyone invited to the event? If not, why were you selected? Ask yourself if the answer given is an appropriate reason. Perhaps there is a professional reason for a DBI representative to be included in the event. Also refer to the Code of Professional Conduct. The first standard for value of Professionalism should help you answer this question.

11. Can I work on political campaigns?

City employees are free to engage in political activities while off duty. Employees are prohibited from using City resources for election campaigns. For more information about the laws governing political activities by City officers and employees refer to the Policies section of this handbook.

12. What's the policy on sexual harassment?

According to the San Francisco Administrative Code, it is the policy of the City and County of San Francisco that, in accord with State and federal laws, each City employee has the right to work in an environment free of discrimination, including sexual

Follow Through: Agree on a resolution and if you need to do something further, follow up on it. If you've promised to do something, do it right away. Nothing destroys credibility/trust as quickly as a promise broken or deferred.

18. What if I suspect something is wrong or I have questions, but I'm not yet ready to report to my supervisor, the Ethics Commission or any of the other resources outlined here?

The Department of Building Inspections has implemented a Peer Advisory Group that is made up of senior employees (not managers, however). You can take your questions or concerns to this group in complete confidentiality and they can advise you as to whether you should bring the situation to the attention of one of the other groups or not. However, the final decision on bringing the situation to a higher authority is yours and yours alone. The Peer Advisory Group is just that, advisory.

For further assistance with these or other questions, contact your supervisor or manager, the Personnel Division of DBI, Human Resources Development, the Employee Assistance Program, the Ethics Commission, or your bargaining unit representative. See the Resources section of this Handbook for contact information.



DEFINITIONS

Adversely affect – Interfere with normal performance of duties.

Benefit – Refers to an advantage, favor, exemption or anything of value.

California Political Reform Act – The Political Reform Act of 1974 (Government Code Sections 81000-91014) requires many state and local public officials and employees to disclose certain personal financial holdings. The Act also requires government officials and employees to disqualify themselves from participating in decisions which may affect their personal financial interests. The Act requires state and local governments to adopt and implement a separate conflict of interest code. The Act, which frequently has been amended, began as a ballot initiative approved by over 70 percent of California voters in the wake of the Watergate political scandals.

Charter of the City & County of San Francisco – The Charter is the basic document that describes the way that City government operates and provides services to its residents. The Charter outlines the powers and duties of all elected officials as well as those of City agencies and administrative offices.

Code – A set of behaviors agreed to by all members of a group.

Consistency – Uniformity of practice, explanation or conduct; applying codes, regulations and requirements in the same way in each instance.

Ethics – A set of personal moral rules based on an individual's beliefs, moral or religious training, and values; principles of right and wrong behavior. Ethics are brought to the workplace by each individual, not set by the employer.

Fairness – Treating all persons equally; being objective and impartial.

Gift – Any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value. (Government Code Section 82028) An item of monetary value, loan, favor, reward, entertainment, or meal.

Honesty – Being truthful; presenting information accurately; promise-keeping.

Impair – Weaken, damage or reduce; make less effective.

Integrity – Adherence to high moral and ethical principles; a strong sense of honesty; trustworthiness; doing the right thing because it is the right thing.

Municipal Codes – The San Francisco Municipal Code is a classified compilation of the general and permanent ordinances of the City of San Francisco. It includes the Charter of the City & County of San Francisco as well as the Administrative Code, Business & Tax Regulation Code, Campaign and Governmental Conduct Code, Elections Code, Fire Code, Health Code, Park Code, Planning Code, Police code, Port Code, Public Works Code, Subdivision Code, Traffic Code and Zoning Maps. The Building, Electrical, Housing, Mechanical and Plumbing Codes are also part of the overall San Francisco Municipal Codes.

Neutrality – Not expressing an opinion or taking actions that support either side in a situation or disagreement.

Preferential – Advantage, favor, special treatment or priority given to one individual or group over another.

Professional Conduct – Values commonly accepted to be desirable in every workplace for every employee (i.e. Service, Fairness, Integrity, Honesty, Consistency, Professionalism).

Professional Standards – A set of agreed-upon behaviors that encourage, support and foster professional conduct.

Professionalism – Professionalism is the combination of all the characteristics that are connected with trained and skilled people; the quality of the work one does; the attitude, methods, or standards of a professional.

Public trust – The public's confidence in the department's ability to serve them in accordance with regulatory codes and other law, City policies and generally accepted standards of professionalism.

SYMBOLS USED IN POLICIES SECTION



Reference to full text.



Reference to website.



Reference to telephone number.

POLICIES

City officials are subject to strict conflicts of interest laws and policies governing official conduct. Per San Francisco Charter Section 15.103, all officers and employees of the City and County are subject to all California State laws and City ordinances proscribing conflicts of interest and incompatible activities, as well as the provisions of Charter Section C8.105. Any violation of such laws is official misconduct and is a basis for discipline and/or removal, in addition to any other penalties prescribed by law.

Please note that the policies presented here are intended as summaries of existing law only. It is the employee's responsibility to refer to the full text. Full text references, including website addresses and telephone numbers, are provided at the end of each summary.

I. Conflicts of Interest

There are several City and State laws that prohibit City officials from participating in decisions in which they have a financial interest. In most cases these laws provide that conflicts may be avoided if the official discloses his or her interests and abstains from participating in or seeking to influence a decision in which the official has a financial interest. In some cases, however, the official must choose between maintaining the financial interest and continuing to serve as a public official.

Charter Section C8.105(a)

Charter Section C8.105(a) prohibits an officer or employee of the City and County from becoming directly or indirectly interested in any contract, franchise, right, privilege or sale or lease of property awarded, entered into or authorized by him or her, by those under his or her supervision and control, or by a board or commission of which he or she is a member. An officer or employee must divest himself or herself of such an interest within 60 days or resign from his or her position. Charter Section C8.105 provides some exceptions to this result.

Charter Section C8.105(c)

Charter Section C8.105(c) prohibits an officer or employee of the City and County from making, participating in making, or in any way attempting to influence a governmental decision in which he or she has reason to know he or she has a financial interest. This provision is the local counterpart to the California Political Reform Act conflicts of interest provisions, a State law, described on page 2 of this section. On page 3 of this section, you will find guidelines developed by the Ethics Commission for identifying conflicts of interest.



For the full text of Charter Section C8.105, please refer to the City and County of San Francisco 1996 Charter Appendix C.



The Charter can also be accessed at the following website:
<http://www.amlegal.com/sanfrancharter/lpext.dll?f=templates&fn=main-j.htm&2.0>.



For assistance in interpreting the Charter provisions, definition of terms and the answers to commonly asked questions/scenarios, please refer to the San Francisco Ethics Commission's "Manual on Governmental Ethics Laws." You can request a copy of the manual by calling the Ethics Commission at (415) 581-2300 or visiting its website at <http://www.sfgov.org/ethics/pertin.htm>.

Government Code Section 87100 et seq. (The Act)

The California Political Reform Act, Government Code Section 87100 et seq., prohibits public officials from making, participating in making, or in any way seeking to influence, governmental decisions in which they have a disqualifying conflict of interest. Charter Section C8.105(c) is the local counterpart to the Act.



The Ethics Commission provides guidelines for identifying conflicts of interest under the Act. Those guidelines are reprinted below. Please note that for a greater understanding of the Act, the reader should refer to the San Francisco Ethics Commission's "Manual on Governmental Ethics Laws." The manual provides definitions of terms and the answers to commonly asked questions/scenarios.



You can request a copy of the manual by calling the Ethics Commission at (415) 581-2300 or visiting the Commission's website at <http://www.sfgov.org/ethics/pertin.htm>.



toll-free

If you have specific inquiries about the meaning and application of the Act please call the California Fair Political Practices Commission (the FPPC), at (866) 275-3772. The FPPC, not the Commission, interprets and enforces the conflicts of interest provisions of the Act.

Ethics Commission guidelines for identifying conflicts of interest:

Steps to help identify conflicts of interest.

Step 1

Determine whether the individual is a public official. A public official is defined as a member, officer, employee, or consultant of a local government agency. The term member includes any member of a board or commission with decision-making authority.
If not, the Act does not apply.

Step 2

Determine whether the public official will be making, participating in making, or using or attempting to use his or her official position to

influence a governmental decision.
If not, the Act does not apply.

Step 3

Identify the official's economic interests that are potentially involved (i.e. investments, real property, sources of income, or business positions).

If the official has no economic interest covered by the Act, the Act does not apply.

Step 4

Determine whether the official's economic interest(s) will be directly or indirectly involved in the governmental decision.

Proceed to Step 5.

Step 5

Determine whether the applicable standard for analyzing whether the effect of the decision on the official's economic interest(s) involved will be material.

Proceed to Step 6.

Step 6

Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest.

If it will, the official has a conflict of interest.

Step 7

Determine whether the reasonably foreseeable material financial effect is distinguishable from the effect on the public generally.

If not, the official may participate in the decision.

Step 8

Determine whether the official's participation is legally required.

If so, the official may participate in the decision.

II. Limitations on Additional Employment and Other Activities

Public officials are also subject to a number of local policies governing official conduct that seek to restrict conflicts between outside activities and public duties.

San Francisco
Civil Service
Commission Rule
118.2

Additional Employment: Per Rule 118.2, except with the approval of the Human Resources Director, no person holding a full-time position under permanent or temporary civil service appointment, may engage in any employment, position or service in or out of the

service of the City in which the employee is required to perform any duties for another employer or appointing officer, and for which the employee is to receive compensation in any form, including salary, wage, fee, commission, or emolument. In no case, whether employment or contract, may outside work be in conflict with the employee's regular duties. Refer to the back of the request form for guidelines regarding whether prior permission for outside work is necessary.



Forms for requesting Approval of Additional Employment are available at the DBI Personnel Office. Please call (415) 558-6343 or visit 1650 Mission Street, Suite 304. The forms must be completed by the employee and the secondary employer, and approved by the appointing officer. The request is forwarded to the Department of Human Resources for review. The Human Resources Director will approve additional employment if certain conditions are met. For a list of those conditions and the full text of Rule 118.2, call the Civil Service Commission at (415) 252-3247 or visit its website at http://ci.sf.ca.us/civil_service

San Francisco
Civil Service
Commission Rule
118.3

Other Activities: Per Rule 118.3, no officer or employee may participate in any activity or enterprise where income, profit or other gain is or may be accrued, which could reflect on the honor or efficiency of the City service, or be contrary to the best interests of the City service in any respect. Also, no officer or employee may be involved through secondary parties in the engagement of any activity or enterprise which the employee is prohibited from engaging in directly, nor in that connection may the employee lend, convey, or authorize the use of any information or resources under the employee's control.



For the full text of Rule 118.3 call the Civil Service Commission at (415) 252-3247 or visit its website at http://ci.sf.ca.us/civil_service

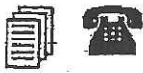
III. Incompatible Activities and Offices

Public officials are also subject to state and common laws governing official conduct that seek to restrict conflicts between outside activities and public duties.

Government Code
Section 1126

Incompatible Activities: Government Code Section 1126 prohibits City officials from engaging in compensated activities that are incompatible with their official duties. At the time of publication of this document, DBI has not adopted a statement of incompatible activities. Please consult with your supervisor or manager if you have questions regarding a possible incompatible activity.

Government Code Section 3206 SFCGC Code § 3.400(a). Also, officers and employees may not engage in political activity during working hours or on City premises. San Francisco Campaign and Government Conduct Code Section 3.400(c).



For more information, please refer to the City Attorney's memorandum, "Political Activities by City Officers and Employees," dated September 13, 2001. A copy of the memorandum can be obtained at the DBI Personnel Office, 1650 Mission Street, Suite 304. You can also call the City Attorney's Office at (415) 554-4700.

IX. Prohibition on Compensation for City Services

Charter Section C8.105(f)

Charter Section C8.105(f) prohibits City officers and employees from receiving directly or indirectly any compensation, reward, or gift from any source (except the City and County or any other government agency to which he or she has been duly appointed) for any service, advice, assistance or other matter related to the governmental processes of the City and County.



For the full text of Charter Section C8.105 please refer to the City and County of San Francisco 1996 Charter Appendix C, Section C8.105 begins on page 138.



The Charter can also be accessed at the following website: <http://www.amlegal.com/sanfrancharter/lpext.dll?f=templates&fn=main-j.htm&2.0>.

X. Limits and Reporting Requirements for Gifts, Honoraria, Travel, and Loans

Government Code Section 81000-91014 (The Act)

The Political Reform Act imposes limits on gifts and prohibits honoraria payments received by public officials, including "designated" employees (i.e., individuals required to file statement of economic interests [SEIs] under San Francisco's Conflict of Interest Code).

Designated employees may not accept gifts from any single source totaling more than \$320 in a calendar year if they are required to report income or gifts received from that source on their SEIs.

A gift is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.



For more information concerning gifts and honoraria and for a discussion of travel and loans please refer to the San Francisco Ethics Commission "Manual on Governmental Ethics Laws."



If you have questions the City Attorney's Office is available to help. Contact Deputy City Attorneys Julie Moll (415) 554-4705, Chad Jacobs (415) 554-4677, or Claire Sylvia (415) 554-4706 for legal assistance, or the Fair Political Practices Commission at (866) 275-3772.

XI. Statements of Economic Interest (Form 700)

Government Code
Section 81000-
91014 (The Act)

The Political Reform Act requires many tens of thousands of state and local public officials and employees to disclose certain personal financial holdings. In addition, as discussed above, the Act requires government officials and employees to disqualify themselves from participating in decisions which may affect their personal financial interests. The Act began as a ballot initiative approved by over 70 percent of California voters in the wake of the Watergate political scandals.



DBI employees who are required to file statements of economic interest (SEIs or Form 700s) are identified in San Francisco's Campaign and Government Conduct Code. Individuals who hold positions listed in these sections are called designated employees. To find out if you are a DBI designated employee call the DBI Personnel Office (415) 558-6343 or visit the office at 1650 Mission Street, Suite 304.



For more information about SEIs and instructions on how to fill out the form, please refer to the San Francisco Ethics Commission's "Manual on Governmental Ethics Laws."



The Ethics Commission also provides assistance in completing the forms. You can reach the Commission at (415) 581-2300. In addition, you may also call Deputy City Attorneys Julie Moll (415) 554-4705, Chad Jacobs (415) 554-4677, and Claire Sylvia (415) 554-4706.

XII. Valuing Diversity in the Workplace

Rule 103.1.8,
Civil Service
Commission

Respect for All Persons Policy: It is the policy of the City and County of San Francisco that each official, employee, and agent in official capacity, will treat all persons equally and respectfully, and will refrain from the willful or negligent use of force against any person on the basis of race, color, sex, sexual orientation, age, religion, national origin, ancestry, disability, or other protected status.

**ADDITIONAL INFORMATION
SUBMITTED BY APPELLANT**

RE: A. FALLAY APPEAL

Eng, Sandra (CSC)

ADDITIONAL MATERIAL
M. CALLAHAN
S. GARD
N. EDWARDS

From: Monday, September 29, 2014 3:59 PM
Sent: Johnston, Jennifer (ADM); rwilliams@cov.com
To: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD); Edwards, Niger; Gard, Susan (HRD)
Cc: Re: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission
Subject: Statement in support of postponement.docx
Attachments:

Dear Mr. Johnston,
I have written in support of my request for postponement.

Gus

—Original Message—

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>
To: a rwilliams <rwilliams@cov.com>
Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra.eng@sfgov.org>; Buick, Jeanne (HRD) (HRD) <jeanne.buick@sfgov.org>; Edwards, Niger <niger.edwards@sfgov.org>; Gard, Susan (HRD) (HRD) <susan.gard@sfgov.org>; Buick, Jeanne (HRD) (HRD) <jeanne.buick@sfgov.org>
Sent: Wed, Sep 24, 2014 3:34 pm
Subject: RE: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Dear Mr. Fallay:

Thank you for the clarification. Again, I will relay your request and copies of our substantive communications to the Civil Service Commission in advance of the October 6, 2014 meeting at which your appeal is scheduled to be heard.

Please take note of the following information in the attached formal meeting notice:

As I have indicated, you should be prepared to present on your appeal at the October 6th meeting (or have a representative do so on your behalf) in the event that your request [for postponement] is denied.

In the event that you wish to submit any additional documents in support of your appeal or your request for postponement, the deadline for receipt in the Commission office is 5:00 p.m. on Tuesday, September 30, 2014 (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). [...]

All calendared items will be heard and resolved at this time unless postponement is granted. Therefore, it is important that you or an authorized representative attend the hearing on your appeal in the event that your request for postponement is denied. Should your request be denied and you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department.

You may email me with any procedural questions you may have.

Sincerely,

Jennifer Johnston
Executive Director
Civil Service Commission

2014 SEP 29 PM 4:21
EX-100
CIVIL SERVICE COMMISSION
ST. FRANCISCO, CALIF.

City and County of San Francisco
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto:_____n]
Sent: Wednesday, September 24, 2014 2:11 PM
To: Johnston, Jennifer (CSC); rwilliams@cov.com
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD)
Subject: Re: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

I need it postponed till after the court case with the city is resolved.

Thanks
Gus

-----Original Message-----

From: Johnston, Jennifer (CSC) (CSC) <jennifer.johnston@sfgov.org>
To: a <_____n>; rwilliams@cov.com
Cc: Kotake, Donna (HRD) (HRD) <donna.kotake@sfgov.org>; Bushman, Jennifer (Maglalang) (CSC) (Maglalang) (CSC) <jennifer.bushman@sfgov.org>; Eng, Sandra (CSC) (CSC) <sandra.eng@sfgov.org>; Buick, Jeanne (HRD) (HRD) <jeanne.buick@sfgov.org>
Sent: Wed, Sep 24, 2014 10:19 am
Subject: RE: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

Dear Mr. Fallay:

So that I am clear, is it your intent by this most recent communication to request indefinite postponement of your appeal pending the resolution of your litigation, or is it your intent to withdraw your appeal?

Please clarify.

Sincerely,

Jennifer Johnston
Executive Director
Civil Service Commission
City and County of San Francisco
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

From: a [mailto:_____n]
Sent: Tuesday, September 23, 2014 12:00 AM
To: Johnston, Jennifer (CSC); rwilliams@cov.com
Cc: Kotake, Donna (HRD); Bushman, Jennifer (Maglalang) (CSC); Eng, Sandra (CSC); Buick, Jeanne (HRD)
Subject: Re: Response to May 13, 2014 Email from Augustine Fallay re: the Scheduling of His Appeal before the Civil Service Commission

September 22, 2014

Jennifer Johnston J
Executive Director
Civil Service Commission
City and County of San Francisco
Phone: (415) 252-3247
Fax: (415) 252-3260
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
www.sfgov.org/Civil_Service

Dear Ms. Johnston:

As I have made it clear to you in the last couple of weeks, this serves as a reaffirmation of my stance that I will not take part in the Civil Service Commission hearing scheduled on an appeal that was made on March 6, 2006. This decision is reached because I have an active case against the City in court dealing with the same issues and evidence that have been presented to you verbatim by the same City. You would acknowledge that I did promise two months ago to appear before the Commission, however, earlier this month, while I was preparing to present my case before the Commission, the City presented to the Court the same evidence that they have presented to you. It is therefore my position that any hearing before you on those issues will be given the city a double dip.

My position to not attend the hearing is also based on your own caveat in a letter to me dated March 11, 2014, in which you warned that "...a representative from the City Attorney's Office has informed me that all outstanding litigation on the issue of your separation has been resolved (while you apparently believed the City Attorney, it turned out to be a blatant lie). If that is incorrect (you went on, and it was incorrect), and if the issue under litigation is your underlying separation from the City, then I must await the resolution of that matter prior to scheduling your appeal before the Commission, since a ruling requiring your reinstatement would render the appeal moot." Based on this caveat vis-a-vis the latest evidence proffered in the 9th Circuit, you must agree with me that appearing and giving evidence, which you have also warned, would be a public record, would give the city an undue advantage, won't you think?

Again, although you had assured me in the past that the hearing would be de novo, with reference to no prior decisions, yet you are now making innuendos in your latest letters to the decisions of that substandard representation the Union made in my arbitration hearing. This forces me to strongly believe that the City working with your Commission wants to lure me into a hearing only to rubber-stamp the arbitration decision. Lastly you keep writing that I am only interested in monetary damages and not in employment. Please be advised that no such representation has been made to you or to anyone else. My position is that I have taken the city to court for series of Constitutional Right violations, including unlawful termination/separation and nothing is off the table.

Very truly yours

Augustine Fallay

*Dennis Yan (SBN 257854)
Augustine Fallay JD, LL.M
SF Land Use Law & Consulting
425 Market Street, Suite 2200
San Francisco, CA 94105*

Telephone: (510) 214 - 7324
Facsimile: (415) 397-6309
Email:
Cell Phone:

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STATE OF CALIFORNIA
EXAMINER OF JUDGES
CIVIL SERVICE COMMISSION
SAN FRANCISCO

Dear Ms. Johnston:

2014 SEP 29 PM 4: 24

I have requested, per your advice, that my hearing before your Commission be postponed until I finish my court cases because it has now become very clear that those court cases are dealing with the same issues that you will be taking up at the Commission hearing. And since your hearing is a public record, again per your clarification, it will be accessible to anybody including and especially the City Attorney's Office thereby giving them an undue advantage. You have asked me for documents, if any to support my request. The only document to look at is the City's Exhibit A."

The City Attorney's "Exhibit A" in their brief to the 9th Circuit is the Union's Arbitration decision on the allegations before your Commission and is a major reason for my request. While I was legally not a Party to that Arbitration as I was told that I did not even have a standing to appeal it, I appealed it anyway just for the records to register my dissatisfaction with the whole process. However, you have made a couple of backhanded references to that decision. This leaves me convinced that your Commission's intent is to rubberstamp that decision to give it some credence. I just simply cannot afford two political decisions with an active case before the courts. After all, it is the same City Attorney's Office that would represent you if you get sued.

And before anybody swallows the Arbitration decision hook, line and sinker, one needs to look at those facts in the public domain which are the reasons why most people familiar with this case laugh when you mention that Arbitration decision. First, as mentioned above, the Arbitration was between the Union and the Department of Building Inspection as the title of the case clearly states: "CITY OF SAN FRANCISCO, DEPARTMENT OF BUILDING INSPECTION Vs. INTERNATIONAL FEDERATION OF PROFESSIONAL ENGINEERS."

Second, the Union Lawyer for some reason never presented any evidence to show a pattern of conduct and disparate treatment policy the City exhibits, and of course the Arbitrator never knew of them. Most of these records are available through the sunshine Ordinance rights. Due diligence would have made the Arbitrator take into consideration (assuming that he was not bent on making a political decision) the testimony of Ms. Mabel Ng, the Deputy Executive Director of San Francisco Ethics Commission responsible for regulating City staff conduct on ethics, testified in court that she told the FBI, DA's and the City's Investigators that "... Government Code Sec. 1090 prohibits public employees from entering into Contracts where they have financial interest. However, the Contracts which are the subject of these laws are Contracts between the City and a private firm. The loan agreement was between Mr. Fallay in his capacity as an individual person and Mr. Yan in his capacity as an individual person. Mr. Fallay thus did not violate these laws by taking the loan from Mr. Yan."

Note that Mr. Yan also testified that I did not work on any of his project after the loan. (Mr. Fu bought this loan at the request of the FBI in 2004, he converted it into a gift to set me up, which the FBI and the City used to obtain search and arrest warrants, but when the City lost the case, Mr. Fu turned around and sued me to repay his loan. I could not appear for the hearing, so there was a default judgment against me).

The Arbitrator could have also looked at the Declaration of the former Deputy Director that confirms the existence of an implicit policy in the City, especially building Dept. against African Americans (as I write this piece and since they got rid of me, there is no Black employee in the major Divisions of BBI, except the clerks). Obviously you can access my personnel file which has not a single complaint, much less a record of any disciplinary action against me. What you will find is a series of commendation letters.

But don't take my word or the former Deputy Director's word for it just look at some of the violations that were going on within the same time as the conducts I am alleged to have engaged in. They make my so called violations a picnic when compared to what people of other races did. There are a lot more, and I am still working on some others like a very high City Attorney staff who allowed an Engineer to prepare and file permit applications for constructions on his house, while the Engineer was under indictment by his office, and at the time when the Engineer's license was suspended through a complaint by his office.

- 1....., Deputy Director:
 - A. borrowed \$58, 000.00 from a Construction Company doing business in San Francisco and has rental properties in San Francisco. There was never as much as a promissory note for the loan much less an interest. She also received a new dishwasher from the owner of this Company This Loan and gift were never reported on the SEI. Fallay took a \$50,000.00 loan with a promissory note and interest (the FBI and the DA's Office were made of it all, they ignored the latter, but charged Fallay with felonies and terminated him while they promoted Amy to an Acting Director)
 - b. She received gifts for the birth of her child from Contractors and other friends doing business with the City; some had projects in the city at the time of the gifts. These gifts were never reported on the SEI.
 - c. She had contractors, Architects, and Engineers doing business with the City add a story to her house in San Francisco which she sold for approximately \$ 749,000.00, she only disclosed it when I was charged with similar violations
 - d. She lived in a Condo owned by the President of the Residential Builders Association rent- free and again never reported it to SEI (she is Asian)
2. Jersey Street Associate, LLC: Owned by a Senior Building Inspector, this Inspector had a private Company in the City, they condemned the house at 838 Alabama

EXAMINER
CIVIL SERVICE COMMISSION
SAN FRANCISCO

2014 SEP 29 PM 4: 24

Street, he turned around and bought it through his Company, wiped off the City liens, reconstructed it without proper permits, and sold it. Was brought to the attention of everybody, but no action was taken. (He is a Caucasian).

3. The Case of: A Senior Building Inspector (Asian) after receiving \$2000.00 from an elderly lady, prepared drawings for alterations on her building, brought the plans to the Building Dept., filed, reviewed, and approved the Plans. He then reduced the estimated amount for the work from \$25K to \$7K so that she less in fees to the City. The Deputy Director who terminated Fallay then wrote in a memo that her only worry was that the conduct might be discovered by others.

4. Sexual Harassment: A couple of Inspectors (a Caucasian and an Asian) had sexual harassment cases brought against them on numerous occasions and were only warned and relocated to other Divisions with promotions. Yet when (Black) was reported for sexual harassment, he was summarily fired.

5. The Capp Street Building: According to the former Director of Building Inspection, Senior Building Inspector (.....) Head of Code Enforcement joined with a Deputy City Attorney (.....)to condemn a property on Capp Street and turned around and bought it. The case then disappeared from the City Attorney's Office.

6. 1446 Shelby Street Case: A property at 1449Shelby Street owned by Rev..... church, a respected Black Pastor and a Community worker in the City was condemned under questionable activities by Senior Inspector..... It was then sold and on information and belief, the same Senior Inspector became the main beneficiary of that sale. The \$1M judgment to the City vanished, and the Deputy City Attorney,, received \$40K, as they put it "... for settlement that she obtained working with all parties involved." Note that she is a City Employee doing her duty.

7. 524 28th Avenue: Two Senior Building Inspectors (Asians) bought a City condemned building, illegally demolished it without permit, reconstructed it and sold. Their punishment: Three (3) day suspension.

I can go on and on with dates and names. These are recorded and known by few City staff.
Thanks

**Commissioners'
Announcements!
Request**

Adjournment
