

ELECTIONS COMMISSION
Meeting Minutes
July 14, 2010

ROLL CALL

PRESENT: Chair de Funiak, Vice Chair Smith, Commission Members Louie and Shepard

ABSENT: Commission Member Cosgrove

STAFF: Senior Deputy City Attorney Lisa Herrick, City Clerk Lee Price, Evaluator Michael Moye, Assistant City Clerk Dennis Hawkins, and Deputy City Clerk Nora Pimentel

ORDER OF BUSINESS

I. Call to Order

The members of the San Jose Elections Commission convened at 5:50 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

II. Hearings on Complaint

- A. Hearing on the complaint filed on June 1, 2010 by Peter and Jan Soule alleging that David Clancy violated San Jose Municipal Code campaign finance regulations.

Documents Filed: (1) Memorandum with attachments from Hanson Bridgett LLP to San Jose Elections Commission dated July 9, 2010 regarding a Citizen Complaint alleging potential violations of the Campaign Ordinance: Filing Inaccurate/Incomplete Campaign Reports. (2) Transcript of Hearing dated July 14, 2010, Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services, No. Pages 2 through 19.

Chair de Funiak, summarized hearing procedures and opened the public hearing. Evaluator Mike Moye summarized the Independent Evaluator's Report and Recommendations. Testimony was presented by David Clancy. (See transcript for complete testimony)

The Commission deliberated.

Action: Upon motion by Commissioner Cosgrove, seconded by Commissioner Shepard, and unanimously passed, the Commission unanimously accepted the Evaluator's Report and Recommendations and closed the matter without further action. Vote 5-0

Each Commissioner affirmed their findings.

Action: Upon motion by Commissioner Smith, seconded by Commissioner Louie, the Commission directed the City Attorney to prepare a resolution of findings made and authorized the Chair to sign it. Vote 5-0

- B. Hearing on the complaint filed on May 19, 2010 by Robert Sandoval alleging that Minh Duong violated San José Municipal Code Campaign finance regulations.

Documents Filed: (1) Memorandum with attachments from Hanson Bridgett LLP to Elections Commission dated July 12, 2010 regarding Citizen Complaint alleging potential violations of the Campaign Ordinance: Filing inaccurate/incomplete campaign reports. (2) Supplemental Memorandum with additional attachments from Hanson Bridgett LLP to Elections Commission dated July 12, 2010. (3) Transcript of Hearing dated July 14, 2010, Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services, No. Pages 20 through 142.

Evaluator Mike Moyer summarized the Independent Evaluator's Report and Recommendations. Testimony was presented by Minh Duong, Robert Sandoval, and Michael Luu. (See transcript for complete testimony)

The Commission deliberated.

Action: Upon motion by Commissioner Louie, seconded by Commissioner Shepard, and unanimously passed, the Commission found the following: (1) that Minh Duong failed to file an accurate first pre-election statement to report two installment payments under the Memorandum of Understanding with Imprenta Communications Group as accrued expenses; and (2) failed to file campaign disclosure statements that would have been required had respondent not inappropriately terminated the "Minh Duong for Council" committee. Vote 5-0

Action: Upon motion by Commissioner Smith, seconded by Commissioner Cosgrove, the Commission imposed a \$500 penalty. Vote 3-2 (Shepard and Louie Opposed)

Action: Upon motion by Commissioner Smith, seconded by Commissioner Cosgrove, and unanimously passed, the Commission directed the City Attorney to include statement in the resolution of findings that reflects that the Commission was concerned about the timing of the Complaint relative to the 2010 election cycle. Vote 5-0

Each Commissioner affirmed their findings.

Action: Upon motion by Commissioner Smith, seconded by Commissioner de Funiak, the Commission directed the City Attorney to prepare a resolution of findings made and authorized the Chair to sign it. Vote 5-0-0

III. Public Comment

Minh Steven Dovan, Bertha Ward and Robert Sandoval provided additional comments relative to the Minh Duong Complaint (see transcript for complete testimony).

IV. Adjournment

The meeting was adjourned at approximately 8:43 p.m.

FRED DE FUNIAK, CHAIR

ATTEST:

LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION

Attachment: Transcript of Hearings dated July 14, 2010, Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services

SAN JOSE ELECTIONS
COMMISSION
SPECIAL MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Date: Wednesday, July 14, 2010
Time: 5:48 p.m.
Location: San Jose City Hall
200 E. Santa Clara Street
2nd Floor Wing
San Jose, CA 95113
Reported By: Noelia Espinola, CSR
License Number 8060

#36802

Advantage *ARs* Reporting
Services, LLC

1083 Lincoln Avenue, San Jose, California 95125, Telephone (408) 920-0222, Fax (408) 920-0188

A P P E A R A N C E S

San Jose Elections
Commission:

FRED de FUNIAK, Chair
MICHAEL SMITH, Vice Chair
LEON LOUIE
ERICA COSGROVE
BOB SHEPARD

LISA HERRICK, Office of the
City Attorney

LEE PRICE, Office of the
City Clerk

The Reporter:

ADVANTAGE REPORTING SERVICES
BY: NOELIA ESPINOLA,
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1083 Lincoln Avenue
San Jose, CA 95125
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REPORTERS TRANSCRIPT OF PROCEEDINGS

SAN JOSE ELECTIONS
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 SPECIAL MEETING--

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Page 3

1 PROCEEDINGS:
 2
 3 CHAIRMAN de FUNIAK: All right. Good
 4 evening. We are all here, so I'm going to call the
 5 meeting to order.
 6 We have two items of business tonight. Both
 7 of them the result of citizen complaints. And this is
 8 a hearing on the results of the investigation.
 9 We're going to start in just a minute with
 10 Mr. Clancy's case. But before we do, I just want to --
 11 I want to remind you of a couple of things.
 12 First of all, there will be on tape -- this
 13 is an audiotape procedure. And so first of all, we
 14 would ask that if you are addressing the Commission, to
 15 please state your name so that we know who you are.
 16 And if you wish a copy of the tape afterwards, you just
 17 need to talk to the city clerk Lee Price, and she will
 18 be able to get a copy for you.
 19 The other thing you should be aware of is if
 20 you're going to address the Commission, I will be
 21 swearing you in. So don't be surprised if I ask you to
 22 stand up and raise your right hand and we'll go through
 23 that procedure.
 24 So with that we'll start with Mr. Clancy's
 25 case. I will ask from Hanson Bridgett, Mike Moye to,

Page 2

1 APPEARANCES
 2
 3 San Jose Elections FRED de FUNIAK, Chair
 4 Commission: MICHAEL SMITH, Vice Chair
 5 LEON LOUIE
 6 ERICA COSGROVE
 7 BOB SHEPARD
 8
 9 LISA HERRICK, Office of the
 10 City Attorney
 11 LEE PRICE, Office of the
 12 City Clerk
 13
 14 The Reporter: ADVANTAGE REPORTING SERVICES
 15 BY: NOELIA ESPINOLA,
 16 CSR #8060
 17 1083 Lincoln Avenue
 18 San Jose, CA 95125
 19 (408) 920-0222
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 21 --o0c--
 22
 23
 24
 25

Page 4

1 if you would, Mike, good evening, and take us briefly
 2 through your report on the Clancy issue.
 3 MR. MOYE: Okay. Thank you, Mr. Chair. The
 4 complaint involving David Clancy concerns the 2010
 5 primary. There were three allegations in the complaint
 6 that the respondent had failed to file the Statement of
 7 Organization Form 410 in a timely fashion.
 8 The second allegation is that the further
 9 forms filed by the respondent failed to report income
 10 that had been received by the candidate in a timely
 11 fashion.
 12 And then the third allegation was that the
 13 Form 460 was filed by the respondent failed to report
 14 expenditures that were made by the campaign with regard
 15 to a -- expenses related to the establishment of a web
 16 site.
 17 In the course of reviewing the complaint and
 18 some of the evidence, we also determined that there was
 19 an additional violation regarding -- or additional
 20 potential violation regarding the issue of the filing
 21 of a personal funds declaration, the San Jose City Form
 22 502, that was not filed timely as well, too. The
 23 evidence indicated that at the outset of the campaign,
 24 the respondent had not intended to raise either more
 25 than a thousand dollars or make expenditures more than

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 5

1 a thousand dollars. The significance being that if a
2 campaign states under those limits, it's not required
3 to file the 410 -- the Form 410 or 460 reporting
4 campaign expenditures and contributions.

5 Mistakenly the respondent believed that the
6 requirement only existed with respect to whether or not
7 the campaign was going to spend more than a thousand
8 dollars as opposed to raising more than a thousand
9 dollars in contributions. It was the respondent's
10 understanding that to the extent that he did not accept
11 contributions from the outside, that so long as he
12 spent less than a thousand dollars, that he would not
13 be required to file the Statement of Organization or
14 the Form 460.

15 About March 10th of this year, the respondent
16 had deposited a thousand -- more than a thousand
17 dollars into his campaign account. At that point the
18 obligation to file a 410 actually arose.

19 On about April 16th, the respondent had
20 expended more -- or was just at the point of expending
21 more than a thousand dollars. And at that point he
22 determined that he was going to have to file the form.
23 So he contacted the city clerk and made arrangements to
24 file both of the 410 and the 4 -- excuse me -- and a
25 supplemental 470 indicating that his campaign had

Page 7

1 cover the first \$300 that they had deposited to his
2 campaign account. There were subsequent deposits of
3 \$700 -- or taking them over the thousand dollar limit,
4 he did not file a 502 with respect to those for
5 additional deposits of -- those two additional
6 deposits.

7 It was his understanding that he was only
8 required to file the 502 one time with regard to that
9 first deposit that he had made into his account.

10 However, he was required to file that 502 any time he
11 deposited his own personal funds into the account.
12 That form was subsequently filed on June 18th, and so
13 it was filed, but filing was untimely. It should have
14 been made at the time deposits were made into the
15 campaign account.

16 With regard to the Form 410, the Statement of
17 Organization, which is required to be filed at the time
18 a campaign committee either does or anticipates
19 receiving more than a thousand dollars in contributions
20 or expending more than a thousand dollars, the time for
21 filing of that extends to the point at which the
22 contributions exceeded the thousand dollars, which was
23 March 10th. And there's a ten-day window in which the
24 Form 410 can be filed. We knew that the Form 410
25 should have been filed by March 20th. In this instance

Page 6

1 switched from a nonreporting campaign committee to a
2 reporting campaign committee.

3 He subsequently filed a preelection report.
4 The second preelection report which was due to be filed
5 for the period covering March 17th through May 18th.
6 And on that second preelection report he disclosed the
7 contributions that he had received, which in effect
8 were the personal funds that he contributed to his
9 campaign and the expenditures that he had made up to
10 that point in the campaign as well, too.

11 The Form 460 -- for the Form 460 that he
12 filed did not include an expense of \$20, which
13 represented costs that had been incurred with regard to
14 establishing his campaign web site. And those costs
15 consisted of just under \$10 for purchasing a domain
16 name for the web site and an additional \$10, which was
17 considered to be the fair value of additional services
18 that were going to be available to the web site. Based
19 upon the manner in which it had been obtained, it was
20 still a third party who already had an account with
21 that web host.

22 Our determination -- or we determined -- you
23 know, first with regard to the San Jose Form 502, the
24 personal funds declaration, that that had not been
25 timely filed. The respondent initially filed a 502 to

Page 8

1 the Form 410 was not filed until April 16th, and was
2 filed on April 16th because the candidate at that time
3 realized that he had made -- or was going to make
4 expenditures that exceeded a thousand dollars. So the
5 Form 410 was not timely filed. It should have been
6 filed by March 20th.

7 With regard to whether or not the campaign
8 should have filed a first preelection statement, that
9 first preelection statement would have covered the
10 period January 1st through March 17th, we determined
11 that there was no obligation to file the first
12 preelection statement.

13 The campaign 410 was due on March 20th, which
14 was outside that window for the period covered by the
15 first preelection statement. And so there was no
16 obligation.

17 We determined that the file Form 460, the
18 first preelection report for that first period, there
19 was the obligation to file the Form 460 for the second
20 preelection period, and that was timely filed. It was
21 later amended to capture the expenditures for the web
22 site, which had not been included in the original
23 filings.

24 So there was the -- the form was filed timely
25 initially. It was incorrect in that it did not

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 9

1 disclose that \$20 expenditure, but the subsequent
 2 filing on June 18th did capture or correct that error.
 3 So at this point the camp -- all its filings are all in
 4 compliance with the code.
 5 So those were the facts. And our analysis of
 6 the -- of the compliance, you know, with the relevant
 7 portions and the Municipal Code. As we said, we
 8 determined that there was evidence of a violation in
 9 terms of the untimely filing of the Form 502. There
 10 was evidence of a violation in terms of the untimely
 11 filing of the Statement of Organization. And there was
 12 also evidence of a violation in terms of the initial
 13 filing of 460 that did not include the expenditures,
 14 the \$20 expenditures. However, all of those violations
 15 have been corrected as of the time that we filed this
 16 report.
 17 CHAIRMAN de FUNIAK: Okay. Thank you. I'm
 18 going to attempt to summarize what you just said in
 19 about 30 seconds.
 20 There was evidence that some violations were
 21 committed. It appears that the violations were
 22 inadvertent. And that when Mr. Clancy found out about
 23 that, he made efforts to rectify the problems.
 24 MR. MOYE: Yes.
 25 CHAIRMAN de FUNIAK: Is that a fair summary?

Page 10

1 MR. MOYE: Yes.
 2 CHAIRMAN de FUNIAK: Okay. Mr. Clancy, I
 3 have a few questions for you, but I think what I'm
 4 going to do is start, however, by swearing you in.
 5 If you would stand up and raise your right
 6 hand, please. And do you promise that everything you
 7 will tell the Commission this evening is the truth, the
 8 whole truth and nothing but the truth.
 9 MR. CLANCY: I do.
 10 CHAIRMAN de FUNIAK: Okay. Would you state
 11 your name for the record.
 12 MR. CLANCY: David Clancy.
 13 CHAIRMAN de FUNIAK: Okay. I am trying to
 14 get a mindset --
 15 MR. CLANCY: Sure.
 16 CHAIRMAN de FUNIAK: -- with what you were
 17 doing. This, I believe, was your first attempt at
 18 running for elective office.
 19 MR. CLANCY: It was.
 20 CHAIRMAN de FUNIAK: Okay. And you went into
 21 it, it appears, thinking that you would finance
 22 yourself, that you weren't going to ask for
 23 contributions from anybody, at least not monetary
 24 contributions.
 25 MR. CLANCY: And I did. I paid for

Page 11

1 everything myself.
 2 CHAIRMAN de FUNIAK: Right. Okay. And you
 3 did not think -- and Mr. Moye just said, apparently
 4 didn't think that you were going to spend more than a
 5 thousand dollars.
 6 MR. CLANCY: Excluding the candidate
 7 statements, originally, no.
 8 CHAIRMAN de FUNIAK: Okay. Originally, no.
 9 But at some point it seemed to become evident that in
 10 fact you would spend more.
 11 MR. CLANCY: Yeah. At some point I realized,
 12 well, you're not really -- or at least I came to the
 13 conclusion, you're not really running unless you have
 14 lawn signs. After that I came to the conclusion you
 15 can get bombarded by e-mails from people who want you
 16 to do mailers and all sorts of thing. And I ended up
 17 doing one. I decided that, well, you're not really
 18 running unless you do something.
 19 So the day that I was going to make that
 20 expenditure that would bring me over a thousand
 21 dollars, I went into the city clerk's office.
 22 The reasoning behind why I didn't think the
 23 personal contributions bring me above a thousand
 24 dollars made it so I had to file a PAC was that -- my
 25 understanding was that there was no separate campaign

Page 12

1 account requirement until you had a PAC. So my
 2 thinking was, well, how can -- how can you, you know,
 3 surpass the personal contribution limit of a thousand
 4 dollars if there's no -- if you haven't made the
 5 expenditure? You know what I mean? If there's no
 6 separate campaign account requirement and I was just
 7 paying out of my personal account, then, you know,
 8 there wouldn't have been a violation there. Does that
 9 make sense?
 10 CHAIRMAN de FUNIAK: Yes. I understand what
 11 you're saying.
 12 MR. CLANCY: I was wrong, you know.
 13 CHAIRMAN de FUNIAK: Well, no, you were
 14 responsive to the question. As I say, I'm just trying
 15 to get a mindset for where you were, where you started,
 16 where you were coming from and, again, the end result.
 17 MR. CLANCY: Sure.
 18 CHAIRMAN de FUNIAK: When did you -- when did
 19 it come to your attention that you had some corrections
 20 to make and how?
 21 MR. CLANCY: Once the complaint was reported.
 22 Really, I didn't -- I didn't think -- up until really
 23 until I talked to Mr. Moye, I didn't think I had made a
 24 mistake about the personal contributions. You know,
 25 it -- it still seems sort of ambiguous to me. I

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 13

1 recognize I'm wrong, but it just -- it still seems
 2 ambiguous.
 3 CHAIRMAN de FUNIAK: Okay. Commission
 4 members, any questions for Mr. Clancy?
 5 MR. SHEPARD: I think you just touched on it.
 6 You actually were not aware of any potential violations
 7 until a complaint was formed?
 8 MR. CLANCY: Exactly.
 9 MR. SHEPARD: It's not as if the city clerk
 10 took the initiative to call you -- well, she wouldn't
 11 have any reason to do that, I suppose. And you just
 12 weren't aware that what was happening was a problem?
 13 MR. CLANCY: Correct. Yeah, I -- I don't
 14 want -- the city clerk did a great job.
 15 MR. SHEPARD: Yeah, I gotcha.
 16 MR. CLANCY: No. The \$20 for the web site, I
 17 should have remembered. You know, it's just that by
 18 the time I thought I needed to file for a PAC, that
 19 was, you know, four months after that. So it was -- it
 20 just eluded me.
 21 CHAIRMAN de FUNIAK: Any other questions?
 22 MR. SMITH: I have a small question for
 23 Mr. Moye actually --
 24 CHAIRMAN de FUNIAK: Okay.
 25 MR. SMITH: -- or maybe for Ms. Herrick.

Page 14

1 But I was a little bit surprised -- just a
 2 clarification -- regarding the requirement to file
 3 within ten days of March 10th, which puts you at March
 4 20th. I guess your interpretation is that the
 5 requirement to file is based on the end of -- not when
 6 the transaction actually occurred, but the end of the
 7 ten-day reporting period. That sort of surprised me.
 8 I thought that the report would be based on when the
 9 activity occurred rather than -- is that our general
 10 interpretation of what has to be reported?
 11 MR. MOYE: Well, it is when the act occurs.
 12 And in terms of coming to the conclusion that we did,
 13 because the 410 had not been filed, it was a question
 14 of when might the 410 have been filed.
 15 So, for example, if the -- you know, the
 16 deposit was made on March 10th and the Form 410 had
 17 been filed on, you know -- you know, sometime between
 18 March 17th, then there would have been an obligation to
 19 file the first preelection statement.
 20 However, if the deposit occurred on March
 21 10th and the Form 410 was filed on March 19th, there
 22 would not have been an obligation -- the Form 410 would
 23 have been timely filed, because it was within the
 24 ten-day window. And there would not have been an
 25 obligation to file the first preelection statement,

Page 15

1 because that filing of the 410 did not occur during the
 2 period.
 3 MR. SMITH: So the preelection report, the
 4 requirement to have something in there is tied to when
 5 the 410 is --
 6 MR. MOYE: Exactly.
 7 MR. SMITH: -- not when the transaction
 8 occurred.
 9 MR. MOYE: Exactly.
 10 MR. SMITH: I didn't realize that.
 11 MS. COSGROVE: I have one question, too. Did
 12 you attend the -- I forget what it's called -- the
 13 candidate education quorum --
 14 MS. PRICE: Candidate treasurer workshop.
 15 MR. CLANCY: I did not.
 16 MS. COSGROVE: Would this have been covered?
 17 Is this kind of information covered? Because I know
 18 it's really detailed about how you have to file all of
 19 these forms and who does what.
 20 MS. PRICE: Yes. Yes. We cover the filing
 21 of the Form 410 and relevant information regarding
 22 filing a Form 460. So those are covered in the
 23 candidate workshop.
 24 MS. COSGROVE: Okay. I was just curious.
 25 Did you just not know about this candidate education

Page 16

1 workshop?
 2 MR. CLANCY: I was out of town, I think.
 3 Literally -- because they asked me -- or Mr. Moye asked
 4 me what I did to, I guess, prepare. Really all I
 5 did -- I brought it. I just read a book and I ran.
 6 You know, I happen to run into another
 7 candidate, Don Barich, the second day I was out just
 8 going door-to-door. And he gave me some pointers. But
 9 literally that's the only contact with other, you know,
 10 people that gave me advice.
 11 MS. COSGROVE: Right. Okay. Thanks.
 12 CHAIRMAN de FUNIAK: So safe to say, you know
 13 more now than you did then?
 14 MR. CLANCY: It's been educational,
 15 certainly.
 16 CHAIRMAN de FUNIAK: If there are no other
 17 questions, if I understand, Mr. Moye, your
 18 recommendation is that there were violations committed.
 19 That they had been rectified and that the Commission
 20 needs to take no further action at this point.
 21 MR. MOYE: That's correct.
 22 CHAIRMAN de FUNIAK: That's your
 23 recommendation. If that's the case, then what we would
 24 need would be a motion to that effect and then take a
 25 vote.

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 17

1 MS. COSGROVE: I move that we close the
 2 matter without further action and accept the report --
 3 accept and concur with the report of the independent
 4 evaluator.
 5 CHAIRMAN de FUNIAK: Okay. Is there a
 6 second?
 7 MR. SHEPARD: Right here.
 8 CHAIRMAN de FUNIAK: Move is seconded. Any
 9 discussion, commission members? Okay. All in favor.
 10 MR. SMITH: Aye.
 11 MR. LOUIE: Aye.
 12 MS. COSGROVE: Aye.
 13 MR. SHEPARD: Aye.
 14 CHAIRMAN de FUNIAK: Aye.
 15 Any opposed?
 16 (No response.)
 17 CHAIRMAN de FUNIAK: Okay. Appears to carry
 18 unanimously.
 19 MS. HERRICK: Mr. Chair, if we can please
 20 have the certification.
 21 CHAIRMAN de FUNIAK: Yes. I am aware of it.
 22 Thank you.
 23 MS. HERRICK: Jumping the gun.
 24 CHAIRMAN de FUNIAK: I can always use a
 25 reminder.

Page--19

1 All in favor.
 2 MR. SMITH: Aye.
 3 MR. LOUIE: Aye.
 4 MS. COSGROVE: Aye.
 5 MR. SHEPARD: Aye.
 6 CHAIRMAN de FUNIAK: Aye.
 7 MR. De FUNIAK: Any-opposed?
 8 (No response.)
 9 CHAIRMAN de FUNIAK: There's your motion.
 10 Okay. Mr. Clancy, thank you for appearing
 11 here.
 12 MR. CLANCY: Of course.
 13 CHAIRMAN de FUNIAK: And we wish you well.
 14 MR. CLANCY: Thank you. Do I need to do
 15 anything else?
 16 CHAIRMAN de FUNIAK: No. There's no -- you
 17 are free to stay. You're free to go, whichever you
 18 choose.
 19 MR. CLANCY: Thank you so much.
 20 MS. HERRICK: Mr. Clancy, you'll get a copy
 21 of the resolution that the city attorney's office will
 22 prepare. We'll send -- our office will send that to
 23 you.
 24 MR. CLANCY: Okay. Thank you.
 25 CHAIRMAN de FUNIAK: Thank you.

Page 18

1 We need commissioners to certify that we have
 2 thoroughly read all the information at hand in the
 3 investigation. Mr. Smith.
 4 MR. SMITH: So certified.
 5 MR. De FUNIAK: I so certify.
 6 MR. SHEPARD: Certify.
 7 MS. COSGROVE: Certify.
 8 MR. LOUIE: Yes, certify.
 9 CHAIRMAN de FUNIAK: Okay. All right. Does
 10 that con -- that concludes this part of it. So,
 11 Mr. Clancy --
 12 MS. HERRICK: Excuse me, Mr. Chair. You
 13 might like to direct the attorney's office to prepare a
 14 resolution for the Chair that reflects the action of
 15 the Commission.
 16 CHAIRMAN de FUNIAK: I'm sorry. Yes, we do
 17 wish to do that.
 18 MR. HERRICK: Very good.
 19 MS. PRICE: If we can have a motion to that
 20 effect.
 21 CHAIRMAN de FUNIAK: Okay. All right. Can
 22 we have a motion to that effect.
 23 MR. SMITH: So moved.
 24 MR. LOUIE: Second.
 25 CHAIRMAN de FUNIAK: Okay. Any discussion?

Page 20

1 Before we continue, I want to ask these two
 2 gentlemen to please take your chairs and move over to
 3 that side of the room. Thank you.
 4 Okay. The next matter is the complaint
 5 against Minh Duong and the Minh Duong Campaign. And we
 6 have that report as well. And so, Mr. Moye, we'll ask
 7 you to take us through that report as well. And for
 8 the sake of my old ears, if you can speak up just a
 9 little bit, it would be helpful.
 10 MR. MOYE: Okay. The second matter involves
 11 actions related to the 2008 campaign -- 2008 election,
 12 City Council Election. The complaint essentially
 13 alleged that there was a debt outstanding for the
 14 respondent's campaign that had not been resolved in
 15 accordance with the Municipal Code.
 16 And the Municipal Code requires that debts be
 17 resolved within six months of the election. If a debt
 18 is not resolved in accordance within six months of an
 19 election, it may be treated as a contribution to the
 20 campaign dating back to the time that the debt was
 21 incurred.
 22 The issue was raised by the filing of a
 23 lawsuit in Santa Clara County Superior Court by a
 24 vendor against the respondent's campaign committee,
 25 alleging that there were unpaid expenses that related

REPORTERS TRANSCRIPT OF PROCEEDINGS

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| <p style="text-align: center;">Page 21</p> <p>1 back to services that were provided to the committee 2 during the 2008 campaign.</p> <p>3 We determined, you know, by way of, you know, 4 background facts that in January of 2008 the respondent 5 and the respondent's committee had entered into an 6 agreement with the vendor ICG, Imprenta -- Imprenta 7 Communications Group. And the agreement provided for 8 campaign consulting services be provided to ICG to the 9 respondent's campaign. And there was a scope of 10 services which laid out the particular items that were 11 encompassed by the campaign consulting services that 12 would be provided to the respondent's campaign.</p> <p>13 The agreement provided for a payment of 14 \$15,000 for these consulting services. And the payment 15 schedule required the first payment to be paid on 15 -- 16 February 15 of 2008, and then there were two subsequent 17 installments of \$5,000 each on April 1st of 2008 and 18 May 1st of 2008. For a total of \$15,000.</p> <p>19 The agreement also provided that certain 20 expenses that were arguably incidental to providing the 21 campaign consulting services, printing, postage and the 22 like, would not be covered by the fee and would be 23 separate expenses that were due to the campaign 24 consultant -- or due to ICG.</p> <p>25 The first payment -- or the first installment</p> | <p style="text-align: center;">Page 23</p> <p>1 services received, and some concerns over whether or 2 not ICG was providing the services that the respondent 3 expected. And the respondent indicates that as a 4 result of the concerns about what they were receiving 5 from ICG, that the agreement was terminated. There was 6 no written notice given of the termination, and the 7 agreement called for written notice if it was going to 8 be terminated before it came to its conclusion. But 9 from the respondent's standpoint, the agreement was 10 terminated in May of 2008 with that telephone call to 11 ICG expressing these concerns.</p> <p>12 The candidate filed a second preelection 13 statement. The second preelection statement did not 14 make reference to any payments or obligations to ICG. 15 In the second preelection statement covered the period 16 from March 18 through May 17th.</p> <p>17 The next statement that was filed by the 18 candidate was a June 30th termination statement. And 19 June 30th is the date that the Form 460 is typically 20 filed as a semiannual report, and at the conclusion of 21 the election. But this statement was filed as a 22 termination statement. There was also a 410 that was 23 filed in conjunction with that 460 indicating that the 24 campaign committee was being terminated as of June 25 30th.</p> |
| <p style="text-align: center;">Page 22</p> <p>1 of payment of \$5,000 was made, and that \$5,000 was also 2 reported as an expense on the Form 460 that was filed 3 by the campaign for the first preelection period, 4 January 1st to March 17th.</p> <p>5 Subsequently, there were no further payments 6 made by respondent to ICG for either the campaign 7 consulting, the two further installments, the April 1st 8 installment or the May 1st installment.</p> <p>9 There is also evidence that there were 10 additional costs incurred by ICG that ICG, you know, 11 intended to invoice to the respondent's campaign. 12 There was an invoice in May of 2008 in the amount of 13 \$5,250. And then there was a second invoice in June of 14 2008 that was for the amount of \$17,209. There is -- 15 at least initially there was some question or dispute 16 as to whether or not the campaign actually received 17 those invoices, and I'll come back around to that in a 18 minute. But in terms of the money that ICG states that 19 it was owed by the respondent's campaign consisted of 20 the \$15,000 in consulting fees and then the \$22,459 in 21 matters that were invoiced separately from the 22 consulting fees. The payments all together for the 23 respondent to ICG totaled \$5,000.</p> <p>24 There was a communication between the 25 respondent and ICG in May regarding the quality of the</p> | <p style="text-align: center;">Page 24</p> <p>1 The Form 460 for June 30th indicated a 2 payment to ICG in the amount of \$18,834. It was listed 3 on Schedule E as an expenditure. And with that \$18,834 4 payment, the campaign had expended, according to the 5 form that was filed, all of the money that it had in 6 its account. The termination statement indicated that 7 there was a little over \$33,000 in cash on hand at the 8 beginning of the period and through the expenditure. 9 There were no additional contributions taken in during 10 the period covered by the report. And with the \$18,834 11 expenditure and other expenditures that were made 12 during the period that equaled the amount of cash on 13 hand, and that left the campaign with a balance of zero 14 at the time it was terminated as of June 30th of 2008.</p> <p>15 In our discussions with the, you know, 16 representatives of ICG, I -- we sought to determine, 17 you know, the figure of \$18,834, what that related to. 18 And ICG had indicated that that essentially was a 19 compromise figure that had been arrived at in 20 discussion between respondent and ICG in a meeting that 21 occurred in the first part of June of -- about June 22 12th of 2008. And apparently there was a meeting to 23 discuss the amount of money that was outstanding to 24 ICG.</p> <p>25 There was some discussion -- you know,</p> |

REPORTERS TRANSCRIPT OF PROCEEDINGS

| Page 25 | Page 27 |
|---|---|
| <p>1 perhaps agreement reached that the payment of \$18,834</p> <p>2 would satisfy respondent's obligations to ICG. There</p> <p>3 was a check tendered in that amount either at that</p> <p>4 meeting or in conjunction with that meeting.</p> <p>5 And the respondent indicated that, you know,</p> <p>6 he later stopped payment on that check, you know. From</p> <p>7 his perspective he felt that he had not actually</p> <p>8 received any services from ICG. That ICG had not</p> <p>9 actually demonstrated to him that they had incurred</p> <p>10 costs on his behalf because they did not provide any</p> <p>11 documentation. He did not receive the invoices. And</p> <p>12 even if he had received the invoices, he did not</p> <p>13 receive any backup documentation indicating where the</p> <p>14 money was spent, what it was actually spent on, beyond</p> <p>15 just the description on the invoice of how much the</p> <p>16 expenditures and who they were made to. And so he</p> <p>17 indicated that he agreed in that meeting as a means of</p> <p>18 trying to resolve the matter, but, you know, upon</p> <p>19 reflection decided to stop payment on the check.</p> <p>20 And so the \$18,834, you know, was not</p> <p>21 actually paid to ICG and, you know, it's -- you know,</p> <p>22 we're not clear of the exact date that the stop payment</p> <p>23 occurred, but it's clear that the -- that no payment</p> <p>24 was made in the period from that meeting to June 30th,</p> <p>25 which is the end of the period that was covered by the</p> | <p>1 \$5,000 of those consulting fees, the first installment,</p> <p>2 was paid during that period, and that was disclosed on</p> <p>3 Schedule E, which is the actual expenditures.</p> <p>4 But we have concluded that a Schedule F</p> <p>5 should have been filed as well, too, to show the</p> <p>6 \$10,000 in installments that were still outstanding.</p> <p>7 And the Schedule F, you know, specifically provides</p> <p>8 for, you know, reporting those and also commenting, you</p> <p>9 know, providing any additional clarification, which is</p> <p>10 required with regard to those potential expense in</p> <p>11 order to clarify when it might be due and any other</p> <p>12 information that might be relevant to it.</p> <p>13 Because the consulting fee issue did not come</p> <p>14 to a particular conclusion, it was also our view that</p> <p>15 Schedule F should have -- there was an obligation to</p> <p>16 continue filing the Schedule F until the consultant fee</p> <p>17 issue was resolved in one fashion or another, whether</p> <p>18 by paying the debt, by the debt being forgiven or, you</p> <p>19 know, in -- you know, there is also a possibility that</p> <p>20 to the extent that the debt -- that the debt is</p> <p>21 disallowed all together, then that might be grounds</p> <p>22 for, you know, essentially writing that off. But there</p> <p>23 would have been an obligation to disclose, you know,</p> <p>24 the fact of that happening, not simply not reporting</p> <p>25 it.</p> |
| Page 26 | Page 28 |
| <p>1 report.</p> <p>2 So in looking at the issues here, the -- you</p> <p>3 know, the one allegation of the complaint is that there</p> <p>4 had been an unresolved debt. However, in looking at,</p> <p>5 you know, the facts that related to the initial</p> <p>6 agreement with ICG and the subsequent transactions that</p> <p>7 had occurred, we have determined that there was some</p> <p>8 additional issues that were raised as well, too.</p> <p>9 The first issue concerned the payments that</p> <p>10 were due under the consulting agreement for the</p> <p>11 consulting fee. We had concluded that on -- when the</p> <p>12 agreement was concluded -- or entered into with ICG,</p> <p>13 that created an obligation from respondent to ICG. And</p> <p>14 although the payments under that agreement were not due</p> <p>15 to be paid at that time, but at future times, we</p> <p>16 concluded that there was an obligation to report that</p> <p>17 obligation as an accrued expense. Schedule F for the</p> <p>18 Form 460 is the mechanism whereby a campaign, you know,</p> <p>19 discloses expenses that it anticipates but had not yet</p> <p>20 become due.</p> <p>21 And so to the extent with the filing of the</p> <p>22 first preelection statement, since that covers the</p> <p>23 period January 1st to March 17, the agreement was</p> <p>24 entered into in that period. The first preelection</p> <p>25 statement should have addressed those consultant fees.</p> | <p>1 So that obligation to file a Schedule F</p> <p>2 continued for the period of time which then sort of,</p> <p>3 you know, brought us to the issue of terminating the</p> <p>4 campaign on June 30th, because under the Political</p> <p>5 Reform Act, the campaign cannot be -- campaign</p> <p>6 committee cannot be terminated if it is not expendable</p> <p>7 all the contributions that have been received or</p> <p>8 accounted for all the contributions that were received</p> <p>9 if there are debts outstanding. Debts outstanding</p> <p>10 would include not only debts by way of obligations of</p> <p>11 third parties, but also loans to the campaign as well,</p> <p>12 too.</p> <p>13 And the evidence indicated that there were</p> <p>14 not only the issue of fees and potentially costs</p> <p>15 outstanding for ICG, but an additional issue that</p> <p>16 should come up is that on the second preelection report</p> <p>17 there had been a loan of \$20,000, which was disclosed.</p> <p>18 The termination statement did not address that loan. A</p> <p>19 Schedule B was filed. Schedule B simply showed that</p> <p>20 the zeroes in the amount of loan activity. But there</p> <p>21 was no indication of whether or not the loan had been</p> <p>22 repaid or the loan had been forgiven or how that loan</p> <p>23 had been disposed of.</p> <p>24 So with respect to the ability to actually</p> <p>25 terminate the campaign in accordance with the Political</p> |

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 29

1 Reform Act, there was the issue of the outstanding
 2 loans which had not been resolved, there was the
 3 potential issue with the expenditures which had not
 4 been resolved. And then the additional issue which
 5 came into play was to the extent it was clear that that
 6 \$18,834 payment had not actually been made, as reported
 7 on the 460, that essentially left a balance of \$18,834
 8 in the campaign account as of June 30th as well, too.
 9 So -- and it wasn't -- you know, there were obviously
 10 some -- you know, some clear indications of how that
 11 amount might have been resolved, but none of that was
 12 indicated either in the Form 460s or the termination
 13 report itself or any of the other filings that were
 14 made.

15 So we also determined that that was a
 16 potential issue, because to the extent that a campaign
 17 is not terminated, there is a continuing obligation to
 18 file a Form 460, and that sort of makes sense. You
 19 can't terminate the committee if there's contribution
 20 that have not been resolved -- or accounted for. If
 21 there is expenditures which have not been resolved and
 22 if there is debts that have not been resolved, so
 23 obviously there would be this obligation to continue
 24 filing Form 460s until all of those issues have been
 25 taken up.

Page 31

1 the respondent had told us.

2 But there -- the agreement, you know, did
 3 provide that even if the agreement is terminated, there
 4 would be an obligation of ICG to pro rata share of
 5 whatever amount it was due under the agreement. And
 6 there clearly had been no additional payment made.
 7 And, you know, the issue at that point was whether or
 8 not, you know, ICG was due anything else because
 9 respondent, you know, believed that ICG had not
 10 actually performed as part of the agreement, so
 11 therefore nothing was due.

12 Regardless of how that issue -- you know,
 13 that underlying issue of what is owed simply was
 14 resolved, in our view there was an obligation to report
 15 in the Form 460 one thing or another with respect to
 16 that. And so, for example, if in fact, you know, the
 17 Schedule F had been filed earlier indicating \$10,000,
 18 then Schedule F, you know, would have been, you know,
 19 filed indicating that the amount had been discharged or
 20 the amount had been withdrawn, but something to show
 21 what had happened to those fees so that you can track
 22 it through the disclosures. And there was nothing that
 23 was on file to address whatever the disposition was,
 24 you know, from the respondent's viewpoint.

25 It was also -- you know, the same conclusion

Page 30

1 So we went back and looked at, you know, each
 2 of these items, and we have concluded that, you know,
 3 the loan had not been properly addressed by the forms
 4 that were filed and that, you know, there was a
 5 requirement for additional or continued filing to
 6 indicate what exactly happened in terms of that loan.
 7 Was it repaid, was it forgiven or how that was going to
 8 be addressed.

9 With regard to the issue of ICG and the money
 10 that may or may not have been due and owing to them, we
 11 looked first at the \$10,000 in accrued -- of the
 12 consulting fee, the two consulting fee installments.
 13 We believe that there was evidence -- or that the
 14 evidence indicated that the agreement had been
 15 terminated. And we came to this conclusion based upon
 16 what the respondent had told us in terms of his act to
 17 terminate the agreement.

18 And in looking at the invoices that ICG --
 19 that represented the amounts that ICG said were due and
 20 owing to them, there was only an additional \$5,000 that
 21 had been invoiced for consulting fees. There was not
 22 two \$5,000 invoices for consulting fees, which
 23 suggested that ICG was not expecting that third
 24 installment, you know, because of the fact that the
 25 contract had been terminated in accordance with what

Page 32

1 that we drew with regard to the other money due and
 2 owing or alleged to be due and owing to ICG. And there
 3 was clearly some unclear facts with respect to the --
 4 to what that figure was. Whether it was \$22,459,
 5 whether it was \$18,834 or whether it was nothing at all
 6 because of whatever defense might be raised with
 7 respect to whether or not there was any obligation to
 8 pay anything additional. But in our view the fact that
 9 there had been an attempt to make that payment, and a
 10 reporting of a payment, you know, was sufficient
 11 evidence to indicate that there was some understanding
 12 by the respondent that there was some obligation to
 13 ICG, and that there was an obligation to ensure that
 14 that obligation was correctly reported.

15 And it's clear that the entry on the
 16 termination 46 -- Form 460 wherein an expenditure was
 17 reported that had not actually occurred, that that
 18 essentially invalidated that Form 460 and that there
 19 was a need to go back and correct the record with
 20 respect to that, as well as all of the other things
 21 that, you know, flowed from that, you know, revising
 22 what the actual status of the campaign account was in
 23 terms of the money expended and those types of things.

24 So -- and then the final issue, you know, got
 25 back do what was, you know, essentially the original

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 33

1 issue of the complaint and that being whether or not
2 there had been a violation of the Municipal Code
3 provisions with respect to resolution of debts within
4 timeframe set by the Municipal Code -- of the six-month
5 timeframe set by the Municipal Code.

6 And it was our conclusion that, you know,
7 there was clearly an obligation to ICG of -- there was
8 clear evidence of an obligation to ICG based upon a
9 number of different factors, whether it be the
10 invoices, you know, which were alleged to be due and
11 outstanding. Whether it was the amount of money which,
12 you know, appeared to have been acknowledged as some
13 obligation to ICG with respect to those invoices. And
14 then the matter of the -- whatever amount might be due
15 and owing with respect to the consulting fees.

16 It was our conclusion that it was some amount
17 that was outstanding or had not been resolved at the
18 end of the campaign that constituted the debt of the
19 campaign. Plus there was the loan to the campaign
20 which had not been resolved within six months, at least
21 not resolved by way of, you know, accurate reporting.
22 So we were able to conclude that there was some issue
23 of violation of, you know, Part 7 of Chapter 6 of Title
24 12.

25 The one issue that, you know, remains unclear

Page 35

1 respondent's campaign.

2 Also, the issue of whether or not the
3 campaign stayed within the voluntary spending limits as
4 well, too. The campaign spent a little over \$82,000 in
5 the campaign. To the extent it's \$18,000 that were to
6 be -- or \$22,000 were to be added back in to the
7 campaign as the contribution, that would take their
8 contribution over \$100,000, which would then bring into
9 play the question regarding voluntary spending limits.

10 So with respect to the issue of disposition
11 of that part of the allegation -- disposition of that
12 part of the allegation in the complaint, we are
13 recommending that that matter be deferred until the
14 litigation is resolved as between ICG and respondent.

15 Alternatively, it's possible that, you know,
16 correcting some of the filing that should have been
17 made to track what actually has happened with these
18 obligations might also resolve that issue as well, too.

19 So just to summarize, failure to file the
20 accrued expenses report with regard to the consulting
21 fees; the incorrect filing of a determination
22 statement; incorrect information on the termination
23 statement, and the issue related to the failure to
24 resolve a debt within six months of the campaign, those
25 were the violations that we believe were supported by

Page 34

1 is the question of, to the extent that there was some
2 obligation, the Municipal Code does have a specific
3 requirement in terms of how you treat that outstanding
4 obligation. And that outstanding obligation if it, you
5 know, has not been resolved, is to be treated as a
6 contribution.

7 But, you know, we're not able to determine at
8 this point what amount that might be for two reasons --
9 or one primary reason, and that being that there is
10 litigation ongoing between respondent and ICG over
11 money owed to ICG. And in our view, to the extent
12 that, you know, there's a possibility that a court
13 might find that, you know, respondent owes nothing to
14 ICG, or the court might find that respondent owes
15 \$22,459 to ICG, or a court might find something in
16 between with respect to that outstanding amount, it
17 would seem that that's the amount that would have to be
18 treated as a contribution under the Municipal Code, if
19 in fact it got to that point.

20 That does raise questions to the extent that
21 the amount deemed to be a contribution, because of it
22 not being resolved, raises issue of potential violation
23 of the campaign contribution limits, both the
24 individual contribution limits to the extent that that
25 is considered to be a contribution of ICG to the

Page 36

1 the evidence.

2 And then the additional issue of how to treat
3 that debt, that's the matter that we recommended be
4 deferred until the litigation is concluded between
5 respondent and ICG.

6 CHAIRMAN de FUNIAK: Well, one thing I'm not
7 going to do is try to summarize this.

8 MR. MOYE: Okay.

9 CHAIRMAN de FUNIAK: This is a very
10 complicated issue.

11 MR. SHEPARD: Excuse me. Did he have a
12 recommendation? Before you had a recommendation not to
13 do anything on the other case. I didn't hear your
14 recommendation here.

15 MR. MOYE: Well, that's a good point. We did
16 not -- you know, our recommendations go -- specifically
17 address the question of what the evidence shows in
18 terms of violation or not violations. You know, we
19 did -- we refrain from making any further
20 recommendations because there are a couple of sort of
21 overlapping issues here.

22 First, to the extent, you know, the accrued
23 expense or the issue of failing to filing the accrued
24 expense report, that overlaps to some extent with the
25 issue related to the filing of the termination

REPORTERS TRANSCRIPT OF PROCEEDINGS

1 statement. Because, for example, if the termination --
2 if that \$18,000 payment had been made, then that would
3 essentially make moot the issue of, you know, those
4 other expenses. There are also some issues that go to,
5 you know, the question of -- you know, the other sort
6 of overlapping issue is the timing of some of these
7 things.

8 And some of these things could be corrected
9 by just simply going back and filing a report. And we
10 felt that's something the Commission was going to want
11 to decide in terms of, you know, whether -- what sort
12 of violation that constitutes, whether or not they
13 determine that to be something that they would
14 characterize as not inadvertent and that sort of thing.
15 Because it was difficult for us to make that judgment
16 because there is a number of different factors and felt
17 that, you know, you all would probably be in a better
18 position to assess because you have to decide which of
19 these things you want to find initially and then put
20 them all together at that point.

21 CHAIRMAN de FUNIAK: Does that respond?

22 MR. SHEPARD: Yeah. I had more questions,
23 but I assume we can go around.

24 CHAIRMAN de FUNIAK: We'll get plenty of
25 opportunity.

1 MR. SHEPARD: Right.

2 CHAIRMAN de FUNIAK: I just -- it's probably
3 premature, but I'm concerned about arriving at a
4 resolution tonight given the investigation and your
5 summary, because it sounds like, at least in part, we
6 need to wait for the litigation to run its course and
7 find out what the courts decide may or may not be owed
8 by Minh Duong to -- or Minh Duong to ICG. Is that --
9 am I understanding that?

10 MR. MOYE: Well, in our view the issues
11 relating to the consulting fees, you know, we sort of
12 looked at those as being somewhat separate issues
13 from -- the issues related to the -- excuse me. The
14 issues relating to the reporting -- to the potential
15 reporting violations, we viewed those as separate from
16 the issue of the disposition of the debt after a
17 campaign.

18 The question of how much money is or is not
19 owed to ICG does not affect the question of whether or
20 not Schedule F should have been filed with the first
21 and second preelection statements. It doesn't affect
22 the question of whether or not the termination
23 statement was filed, was, you know, prepared properly.
24 It doesn't matter what the court decides on those
25 because the facts that relate to those potential

1 violations are separate.

2 The -- the one issue, though, where that, you
3 know, disposition by the court or whatever happens in
4 the court case, the one issue that does, you know,
5 impact is simply the question of the -- you know, the
6 allegation -- or the potential violation of Part 7,
7 which relates to the debt. So the reporting violations
8 could be, in our view, resolved separate and apart from
9 the issue of the debt -- compliance with the debt
10 requirements.

11 CHAIRMAN de FUNIAK: And could we put a
12 number on both of those? I'm counting -- using your
13 chart, I counted no fewer than 20 violations. That's
14 in total, which if -- if that's all true, that's a
15 pretty big deal. But we can separate out which ones we
16 can deal with tonight and those that we need to wait
17 on.

18 MR. MOYE: And I'm assuming when you say 20
19 violations, you're going from the standpoint to the
20 extent the Schedule F should have been filed at one
21 point and that sort of continues on is a violation
22 perhaps for some period. And, yes, I mean, it's clear
23 that -- you know, for example, with respect to -- you
24 know, let's take the loan, which I think is one of the
25 more obvious things. It's clear that the disposition

1 of the loan should have been reported on semiannual
2 statements at the end of, you know, June of 2008, the
3 end of 2008, the two reports for 2009, and then the
4 report for 2010. And the question is if a -- if an
5 amended 460 is filed, you know, to address that issue
6 then, you know, that might impact the question of, you
7 know, what you would see as violations as well, too.

8 CHAIRMAN de FUNIAK: Okay. I have some
9 questions for Minh Duong. And I'm sure that the
10 Commissioners do as well.

11 So I think I need to swear you in. If you
12 would stand up, please. Raise your right hand. And do
13 you promise that all the information that you give us
14 this evening is the truth, the whole truth and nothing
15 but the truth?

16 MR. DUONG: Yes.

17 CHAIRMAN de FUNIAK: Thank you. Please have
18 a seat.

19 There may be others here who wish to address
20 the Commission. There are two different ways to do
21 that. One at the end, they'll be time for public
22 comment if you just want to make a brief statement.

23 If there is someone here that thinks that he
24 or she has information that's vital to the Commission,
25 I will consider hearing that testimony. I would have

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 41

1 to swear you in at that point, just so you know.
 2 So, Mr. Duong, concerning your Memorandum of
 3 Understanding with ICG and having read through all of
 4 this information several times over, including your
 5 summary which you provided for us, it appears to me
 6 that you believed that Mr. Wong, who is an ICG owner or
 7 president, you seem to believe that he was going to
 8 provide financial reporting assistance to you. Am I
 9 understanding that right?
 10 MR. DUONG: Oversight.
 11 CHAIRMAN de FUNIAK: How so?
 12 MR. DUONG: Because -- if I may state the
 13 overall context of everything. And in addition to my
 14 closing statement, which is -- I would like to be here
 15 to present you my personal spiel on this.
 16 CHAIRMAN de FUNIAK: We'll give you that --
 17 plenty of opportunity to do that.
 18 MR. DUONG: Yes. And I just wanted to say
 19 that, you know, when I ran for public office and I
 20 was -- I was at the age of 29. And I came in with a
 21 notion of -- you know, the more ideal notion of public
 22 service, the genuine sincerity of providing and --
 23 running for office to be a public servant. So
 24 obviously my intention was not to mislead the public or
 25 reporting agency or the city clerk in anyway. That was

Page 43

1 without -- you know, simply with the will to just
 2 compete and try to win. So I was counting a lot on the
 3 professional knowledge of this company.
 4 CHAIRMAN de FUNIAK: Did --
 5 MR. DUONG: But I was -- I was basically
 6 shoved a piece of paper to sign. Basically said, Hey,
 7 sign this.
 8 CHAIRMAN de FUNIAK: Did you have a campaign
 9 organization?
 10 MR. DUONG: To be honest, no. I was a loner.
 11 During my previous campaign I was pretty much a loner.
 12 CHAIRMAN de FUNIAK: Well, I noticed on some
 13 of the forms that you did provide -- whether or not
 14 they were timely or not is not my point here. But you
 15 signed some of those, which is your obligation. And
 16 then there's another signature on some of those forms.
 17 Whose signature is the other one?
 18 MR. DUONG: The treasurer, who is my friend,
 19 who is also first time.
 20 CHAIRMAN de FUNIAK: So you did have a
 21 treasurer?
 22 MR. DUONG: I did have a friend as a
 23 treasurer, who was also like me, kind of trying to feel
 24 the process. We worked together on this. But the
 25 understanding was that the consultant would provide

Page 42

1 not my intention, you know, from the get-go.
 2 Now, with that being said, being in that age
 3 you -- may it be signing a Memorandum of Understanding
 4 with a company, consulting company or whatnot, I was
 5 inexperienced. I'll admit it today. I should have
 6 done more consulting with perhaps with an attorney.
 7 Even during the process, as Mr. Moyer said, during the
 8 time when I found that the consultant was not doing his
 9 job by having his planned vacation during critical peak
 10 campaign time, I would have -- I should have had an
 11 attorney come in and terminated with a written contract
 12 against that company so that I would not have to bear
 13 the -- all of the other stuff that are not
 14 substantiating a considered -- considered
 15 non-substantiating charges, which I'm still -- up to
 16 this day I'm still contesting. And I'm still
 17 questioning why they have not simply just provided the
 18 receipts of the people or the name of the companies
 19 which they tried to get services from on my behalf in
 20 addition to my authorization. Because in the Memo of
 21 Understanding, you know, my impression was -- it was
 22 the first time. You know, I mean, I was -- I was
 23 referred by somebody to this firm, who I never met and,
 24 you know, with -- going into this election process, I
 25 had no understanding of how this whole process worked

Page 44

1 oversight in the process.
 2 CHAIRMAN de FUNIAK: I read through the
 3 Memorandum of Understanding. I frankly didn't see that
 4 in there.
 5 MR. DUONG: Which also relates -- goes back
 6 to the point of at that time when I signed this piece
 7 of paper, it was -- a lot of it was verbal. And to be
 8 very honest with you, the state of mind -- the thing I
 9 want to bring our Commission here to is that state of
 10 mind -- the frame of mind at that time being a
 11 29-year-old and coming into this campaign, and really
 12 being all dependent on a professional organization. So
 13 when I -- at that time, to my ignorance -- and I admit
 14 it, it was a mistake on my part to not read it through.
 15 And to have -- relying on verbal explanation on
 16 Mr. Wong. And he did say that he would provide
 17 oversight in terms of the structure, as well as how to
 18 run the whole campaign himself, you know. So I was
 19 relying on his professionalism the whole time.
 20 Not until the point where one day it reached
 21 a critical point when I called him and I said, Ron, you
 22 know, you set a timeline for us to send out these
 23 mailers and these designs. Where are they? And -- and
 24 why aren't we executing these?
 25 And he -- and he told me -- he said, Can't

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 45

1 you see that I'm on vacation with my wife.
 2 And I said, Well, I didn't know you had a
 3 vacation.
 4 What I should have done at that time was
 5 called an attorney and said terminate my contract at
 6 that time. And I wouldn't have all of these
 7 intricacies.
 8 CHAIRMAN de FUNIAK: Well, you did terminate
 9 the contract, however, correct, verbally?
 10 MR. DUONG: Yes. But like Mr. Moyer said, I
 11 did not tell him that, you know, we're going to
 12 terminate, which -- again, the lack of my -- not very
 13 wise handling. But --
 14 CHAIRMAN de FUNIAK: So what did you say to
 15 him?
 16 MR. DUONG: Well, I was upset. I hung up.
 17 And he didn't do anything else. You know, at that time
 18 it should have been terminated. But I just want to say
 19 clearly, I was relying on heavily on this consulting
 20 company. And I just want to put you in this -- you
 21 know, I want to explain to you my mindset at that time
 22 in that I was totally dependent on this company. I was
 23 young. I could have been -- I could have done this a
 24 much wiser way. And --
 25 CHAIRMAN de FUNIAK: What did you do in your

Page 47

1 Is all the paperwork that Mr. Moyer mentioned
 2 that having been filed and all the different
 3 transactions that should have been -- and I -- forget
 4 the fact of the debate about the -- you know, what they
 5 did or didn't do for you. Someone else will resolve
 6 that. But has all that paperwork been up to speed
 7 going up 2010? In other words, you're not delinquent
 8 on anything going back to 2008? Everything that was
 9 cited on the document has now been resolved from a
 10 paperwork perspective?
 11 MR. DUONG: For the 2 --
 12 MR. SHEPARD: 2008.
 13 MR. DUONG: For the 2008 campaign, I actually
 14 did not find out about all of this until there was a
 15 complaint filed and I met Mr. Moyer (sic) that I have
 16 to do this Schedule F or approved expenditures --
 17 MR. SHEPARD: So that's not all resolved yet
 18 because you weren't aware of all of that until you got
 19 the --
 20 MR. DUONG: Until now.
 21 MR. SHEPARD: -- until you got the -- okay.
 22 MR. DUONG: Until now.
 23 MR. SHEPARD: All right.
 24 MR. DUONG: And the other thing I also would
 25 like to point out to kind of touch lightly -- brush by

Page 46

1 recent campaign efforts, 2010? Did you have a
 2 consultant or a firm or something?
 3 MR. DUONG: Yes, I did. And I did have a
 4 consultant. And he did try to, in his effort, to help
 5 me along the way with the reporting. Although, you
 6 know, we had to try a few times. You know, he's also
 7 new starting his company, but he's -- you know, he's a
 8 great man. I would never discredit him in any way.
 9 But he did try to help me. And we have been complying
 10 with our reporting.
 11 CHAIRMAN de FUNIAK: Did you not get a memo
 12 from Lee Price, the city clerk?
 13 MR. DUONG: Yes, I did.
 14 CHAIRMAN de FUNIAK: Listing several areas
 15 where you were remiss on your reporting?
 16 MR. DUONG: Yes, I did. And I -- I made my
 17 best attempt to correct those in a timely manner, and
 18 which I have.
 19 CHAIRMAN de FUNIAK: Commissioners, questions
 20 for Mr. Duong.
 21 MS. COSGROVE: We can go in order.
 22 CHAIRMAN de FUNIAK: Okay. Go ahead, Bob.
 23 Commissioner Shepard.
 24 MR. SHEPARD: I think I have three, but I'm
 25 not sure.

Page 48

1 lightly is the fact that there's a political, I guess,
 2 interest in this that brought this issue -- you know,
 3 that this issue came about. And so I also want to
 4 bring your attention to the fact that I'm currently
 5 running this campaign. And there are members of my
 6 opponent supporter, supporting group, you know, filing
 7 this and bringing -- and trying to exploit this. I
 8 just want to touch that on a very lightly.
 9 But other than that, to answer your question,
 10 not until now that I find out that I have to do all of
 11 these filings, which apparently seems to be in sort of
 12 a some sort of a domino effect where I have to file
 13 this and that and all the others.
 14 MR. SHEPARD: I would like to explore one
 15 other item for a bit. The \$18,000 check that
 16 apparently was created -- I mean, from what I read, you
 17 wrote a check and handed it to somebody on day one.
 18 And then day two you stopped payment on the check. And
 19 to me that just, you know, raises an issue. If you --
 20 if you had a fund issue, why would you give the guy a
 21 check to begin with and then cancel it the next day?
 22 MR. DUONG: I appreciate your question,
 23 because that -- during that time -- if I may explain
 24 the way that these -- these persons handled me at the
 25 end was not -- how do I say? It was very coerced, very

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 49

1 aggressive. Where I felt -- you know, I wasn't sure
 2 how to handle it.
 3 You know, knowing what I know today, I would
 4 have just stood, you know, very hard and say, you know,
 5 I don't believe I owe you, and therefore I'm not going
 6 to make a payment.
 7 But at that time it was a different
 8 mentality. I was devastated after a campaign. It was
 9 the first time -- first time in my life I ran for
 10 office. Running a serious campaign. I lost a lot of
 11 money. I loaned my campaign a lot of money. And I was
 12 devastated.
 13 During that time that fragile mindset that I
 14 was in, they took advantage of me, in my opinion. And
 15 trying to get out I had to, you know, write that check.
 16 With the expressed understanding that please provide me
 17 those receipts. You know, if you actually did -- you
 18 know -- now, number one, they did not make -- they did
 19 not have my authorization to do any of that that they
 20 billed.
 21 But I asked them -- because I knew they
 22 didn't do it. I asked them, Can you provide me the
 23 receipts of the name of these companies, you know, if
 24 you tell me that there was X number -- X company making
 25 X number of phone calls identifying the yeses for my

Page 50

1 campaign, then who -- what's the name of the company?
 2 How many callers and how many yeses did you get out of
 3 that?
 4 He was -- even up to this moment, he has not
 5 been able to provide me any receipts, which it's
 6 very -- it begs the question of why can't they simply
 7 provide me with the receipts.
 8 MR. SHEPARD: You must have cancelled the
 9 check fairly quickly, right? By the time you gave it
 10 to them, it couldn't have been a month later.
 11 MR. DUONG: No. Actually, I did not until
 12 later on. I did send -- perhaps there's an e-mail in
 13 there. I tried to be very polite. I used other
 14 reasons to try to buy more time, because at that time I
 15 was counting on them to give me more receipts. So I
 16 gave them all kinds of reasons.
 17 I said, you know, I'm desperate -- you know,
 18 I tried to give them all scenarios where, Look, I'm in
 19 a very fragile state of mind and I'm not in good shape,
 20 you know, blah, blah. Trying to tell them, Hey, hold
 21 on. Hold on. Don't cash those yet.
 22 But I did ask them, you know, Provide me
 23 those receipts. And until the point where I realized
 24 they wouldn't never would just -- just wouldn't provide
 25 me those receipts, I stopped the check. And I -- I

Page 51

1 basically said, hey, they are not living up to what I
 2 asked.
 3 MR. SHEPARD: Okay.
 4 MR. DUONG: They are not providing me these
 5 receipts. I can't imagine why, if I asked my friend --
 6 even just my friend to go to the supermarket and go to
 7 Target and buy something for me, he would have had a
 8 receipt. And say, I bought this at Target and here is
 9 how much it is.
 10 Well, this clearly is a lot of money, and
 11 they cannot -- they could not provide me the receipts.
 12 And it's so strange up to this moment that we have
 13 consistently asked them, Can you please provide me the
 14 receipts.
 15 Number two, also is if you look at my report,
 16 there were charges for these printing and the mailing
 17 provided by a company called NMS, National Mailing
 18 Services. So I did have these printing companies and
 19 mail house to send out my mailers. So it's not like
 20 I'm depending on them to have all of these services
 21 sent out which, you know, hopefully that is -- you
 22 know, it gives you -- it gives me the benefit of the
 23 doubt by saying, Look, Minh did spend the money, and
 24 these guys could not provide the receipts.
 25 CHAIRMAN de FUNIAK: Okay. Thank you.

Page 52

1 MR. SHEPARD: Okay.
 2 CHAIRMAN de FUNIAK: Is that it?
 3 MR. SHEPARD: I have a question for
 4 Mr. Sandoval. Is he here today?
 5 MR. SANDOVAL: Right here.
 6 MR. SHEPARD: Okay. When his turn comes, we
 7 can cover this. So I'll wait.
 8 CHAIRMAN de FUNIAK: Okay. Commissioner
 9 Cosgrove.
 10 MS. COSGROVE: So regarding the stop payment
 11 of the \$18,834 check, when you made the decision to
 12 stop payment on that check that you had written, in
 13 your mind, then, did you tell this company that you
 14 were stopping payment because they couldn't provide you
 15 with receipts, or how did you leave it resolved?
 16 Because you must have thought, wow, next thing is they
 17 can sue me because they think I owe them this money.
 18 I'm just trying to figure out at what point you thought
 19 that you did not owe them money anymore.
 20 MR. DUONG: I appreciate the question in that
 21 it goes back to the point where -- you know, just the
 22 same state of mind when I was about to write that
 23 check. I should have -- knowing what I know now, I
 24 should have just said I'm not cutting you this check.
 25 MS. COSGROVE: Uh-huh.

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 53

1 MR. DUONG: And I did not, you know, do the
2 same task. I should have told them I stopped the
3 check, you know, because you did not provide me with a
4 receipt. So it's the same line of thinking.

5 MS. COSGROVE: Right. So but in thinking
6 about it from the point of view of the city or the
7 public, who is concerned about following the rules with
8 elections about who can contribute and how much they
9 can contribute to campaigns, this idea that you would
10 have debt even though -- even if you dispute the debt,
11 if you -- if your campaign owes someone money, that is
12 the same as that company making a contribution to you
13 for that money if the debt is never resolved. That's
14 why -- that's the only reason I'm curious about you
15 thinking that was resolved. Because if that -- if ICG
16 really did think that you owed them money, then at the
17 end of the campaign, that money you owed them would
18 become like they had contributed to your campaign
19 almost.

20 MR. DUONG: It was a genuine ignorance on my
21 part. In that I was thinking, you know, I loaned my
22 campaign a lot of money. Since I'm not paying that
23 company, it's still my money that I loaned to myself.
24 It's still my money. And so knowing that, you know,
25 just logically and I should have known better that I

Page 54

1 still have to file the proper paperwork.

2 And it still -- it was doable perhaps that I
3 would -- if I filed -- you know, the clearing of this
4 debt and all of that money would have gone back to me
5 and everything -- you know, and I wouldn't be here.

6 MS. COSGROVE: Right.

7 MR. DUONG: But with the genuine ignorance
8 of -- and just going by genuine logic -- you know, just
9 simple logic, I should say, well, this is the money --
10 I loaned them a whole lot more than this. And said,
11 you know, I'm not paying this company. It's still my
12 money, so I just take it back. So without, you know,
13 knowing that I had to file this paperwork which has
14 caused --

15 MS. COSGROVE: One last question. When you
16 loaned yourself -- when you loaned your campaign the
17 \$20,000, you had to take \$20,000 from your personal
18 account and put it in a campaign account, correct?

19 MR. DUONG: Uh-huh.

20 MS. COSGROVE: And then when you wrote the
21 18,000 plus -- \$18,834 check to ICG and then cancelled
22 it, that would have come from that campaign account,
23 right?

24 MR. DUONG: Yes.

25 MS. COSGROVE: So at some point there was

Page 55

1 then still at least \$18,834 sitting in the campaign
2 account, but then you terminated the campaign and left
3 the money there?

4 MR. DUONG: I took it out.

5 MS. COSGROVE: You took it out to stop --
6 when you terminated.

7 MR. DUONG: Because with the simple logic,
8 it's my money. I loaned a lot more than that. It's --
9 you know, it's like putting my money in my right pocket
10 and now putting it in my left pocket.

11 MS. COSGROVE: Okay.

12 MR. DUONG: Still my money. And -- but I
13 admit that I did not know better. That I should have
14 filed this paper. And I think that's what got me here
15 today.

16 And I just want to tell the Commission, you
17 know, my genuine -- my just genuine thought on this is
18 that I should have followed through with the filing. I
19 should have known better. At that age, I also hope
20 that you will give me the benefit of the doubt and cut
21 me some slack for a 29-year-old first time ever running
22 for office.

23 CHAIRMAN de FUNIAK: I -- you are making a
24 final statement that might be a little more premature,
25 and we'll give you a chance to do that.

Page 56

1 What I would like to do is ask a question of
2 Lee Price, the city clerk. Madam City Clerk, what
3 ordinarily do you do in the way of education to people
4 who are candidates and running a campaign, and
5 specifically what kinds of things did you do in 2008 or
6 in that -- for that campaign?

7 MS. PRICE: Yeah. Mr. Chair, initially when
8 candidates come forward and our office issues
9 nomination papers. We provide each of the candidates
10 with a binder, and it essentially looked the same in
11 2008 as it does in 2010. We give them a binder that
12 looks like this (indicating), and it's full of a lot of
13 resource information.

14 It includes the city's charter. It includes
15 the city's Municipal Code, all of the ethics ordinances
16 that the Commission is very familiar with, particularly
17 campaign finance regulation.

18 And it also includes the FPPC manual for
19 campaign reporting for local candidates. I wanted to
20 show you real quick because it's -- hang on a second.
21 It is a large manual, but we make photocopies of it
22 available to the candidates, and we provide copies if
23 they want for their treasurers so that they have the
24 information.

25 And we go through about an hour orientation

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 57

1 with the candidates. So we discuss more than just what
 2 the necessary steps are to run for office, but we also
 3 go over some basics as it relates to campaign finance.
 4 And then we -- each cycle, election cycle, we
 5 host a candidate and treasurer workshop -- Ms. Cosgrove
 6 has mentioned that earlier -- generally in April. And
 7 we invite all of the candidates and their treasurers to
 8 attend this workshop. And the FPPC consultant comes
 9 and does a full on PowerPoint presentation. And does
 10 real basic training, but goes over all of the
 11 requirements for running their campaign committee.
 12 What to look for, how to fill out the forms, answers
 13 their questions, et cetera.
 14 CHAIRMAN de FUNIAK: Were you aware of that
 15 meeting?
 16 MR. DUONG: To be honest, sir, no. Because I
 17 had a friend as a treasurer. He read the book. He did
 18 that, but the end -- toward the end when I -- when I
 19 did the --
 20 CHAIRMAN de FUNIAK: So you weren't aware of
 21 the meeting? It sounds like you didn't attend it.
 22 MR. DUONG: I did not attend it.
 23 CHAIRMAN de FUNIAK: But were you aware of
 24 it?
 25 MR. DUONG: I don't recall it, sir. Because

Page 58

1 a lot of the information -- part of the reason why that
 2 I did not know everything is because I had to run this
 3 whole campaign A through Z by myself.
 4 CHAIRMAN de FUNIAK: All I want you to do was
 5 answer the question. Thank you.
 6 I'm sorry. Continue with what you were
 7 saying, please.
 8 MS. PRICE: Thank you. Included in the
 9 materials for the candidates, one of the first things
 10 we go over is the important dates for candidates. And
 11 included in that timeline of events, if you will, we
 12 include the date for which we have the
 13 candidate/treasurer workshop. So it is in the
 14 information that we provide the candidates.
 15 It's also on the web site. So we make every
 16 effort to put this information available to the
 17 candidates, to the treasurers, to anybody on their
 18 committee.
 19 You also asked, Mr. Chair, if I could
 20 continue, what else I do to tell, inform, educate
 21 candidates. I respond to questions daily. Frequently
 22 either myself or my assistant, Dennis Hawkins, during
 23 an act of busy campaign cycle we receive a number of
 24 phone calls and a number of e-mails asking for
 25 clarification. Sometimes I consult with Lisa Herrick's

Page 59

1 office. Most of the times we are able to answer the
 2 questions.
 3 Most candidates want to do the right thing
 4 and will call and ask for clarification. And I keep
 5 very good notes about candidates and their phone calls
 6 and the kind of questions that they ask of us.
 7 MR. DUONG: I just wanted to make a
 8 clarification in that I have full respect and I always
 9 thought, you know, city clerk has done a wonderful job.
 10 I just want to make a clarification that it may have
 11 happened. I did not know about it, but -- you know,
 12 knowing the caliber of service that the city clerk has,
 13 it probably did.
 14 It's just that because I had to run the whole
 15 campaign pretty much during this whole time, I was --
 16 you know, I guess my mind slipped and I was counting on
 17 my treasurer. So I'm not saying -- no comment about
 18 the caliber of work. I've always had full respect for
 19 city clerk and always praise the office over the years.
 20 CHAIRMAN de FUNIAK: Yes, Mr. Smith.
 21 MR. SMITH: One thing that kind of --
 22 troubled is probably too strong a word -- concerns me a
 23 little bit is you were notified of the complaint, as I
 24 understand it, almost two months ago. The complaint
 25 was filed on May 19th, and I got a copy of a letter

Page 60

1 from Mr. Moyer to you on May 21st. Yet in that
 2 intervening two months you made no effort to go back
 3 and correct any of those forms from 2008, which I sort
 4 of would have expected now that you're two years older
 5 and wiser, and would hopefully want to impress upon us
 6 that you take this seriously, et cetera.
 7 MR. DUONG: If I may answer you, sir, in
 8 this -- the same answer goes to another gentleman on
 9 the Commission in that I did not know about the actual
 10 forms that I had to fill out, Schedule F and accrued
 11 expenses, until I got the report about two days ago or
 12 so. This whole report --
 13 MR. SMITH: When did you talk to Mr. Moyer?
 14 MR. DUONG: I talked to Mr. Moyer (sic) last
 15 -- I believe last Wednesday.
 16 MR. SMITH: That was your first contact other
 17 than the letter on May 21st?
 18 MR. DUONG: Yes. Yes. That was my first
 19 contact with Mr. Moyer was last Wednesday, and I didn't
 20 get the report until -- I mean, with wonderful work
 21 from Mr. Moyer. He's done a wonderful job. It was a
 22 thick report, a lot of work. But I didn't, you know,
 23 know about the forms until about two days ago.
 24 MR. SMITH: And who -- there is someone at
 25 ICG named Joe, who has an e-mail address -- it looks

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 61

1 like his last name is Zago or something like that.
 2 MR. DUONG: Joe Zago (phonetic).
 3 MR. SMITH: Who is he?
 4 MR. DUONG: He is sort of the partner of the
 5 two. And they take turns, you know, kind of helping me
 6 during the campaign.
 7 MR. SMITH: As you probably know, there is
 8 two of your e-mails that are attached to Mr. Moye's
 9 supplemental report that we just received today. And
 10 maybe you addressed this in your earlier comments. But
 11 the tone of these letters is certainly not consistent
 12 with somebody who is unhappy and doesn't intend to pay.
 13 It keeps saying things like, "I will take care of you.
 14 I need time."
 15 In fact the one on July 12th even goes so far
 16 as to say, "Anyhow, regardless of how it turned out,
 17 thanks for showing me the world of politics and giving
 18 me a hand in the process."
 19 MR. DUONG: With this --
 20 MR. SHEPARD: Earlier -- just a second. Let
 21 me finish, please.
 22 It says, "I can make payments in increments
 23 of about \$2,000 a month until payoff."
 24 But the one thing I want to focus in on,
 25 aside from just kind of the general tone of these

Page 62

1 letters which doesn't seem consistent with somebody who
 2 is really angry and is going to cancel payment because
 3 they didn't do their work. There's a sentence in here
 4 that I would like your interpretation of.
 5 It says -- "I'll just read from a couple of
 6 sentences here. It says, "I will take care of you,
 7 however, I need time to get things through. I was
 8 going to further explain on this that you need to leave
 9 early, so I figure I should explain to you through
 10 e-mail about this. Please don't deposit just yet.
 11 Please hang on and bear with me." Now the critical
 12 sentence. "Thanks, Joe, for the proof."
 13 Now, you used the term "proof" in your
 14 response to us today in terms of "I assume that the
 15 debt is not owed for lack of proof." What kind of
 16 proof were you thanking Mr. Zago or Mr. Zago
 17 (pronunciation) for in your e-mail?
 18 MR. DUONG: What I meant was it was the
 19 invoice that they gave me. The invoice at the point of
 20 when I wrote the check. It wasn't -- I misused that
 21 word. It was more of thanks for the invoice.
 22 MR. SMITH: You were looking -- you were
 23 looking -- and what you're saying now you never
 24 received the backup for that invoice?
 25 MR. DUONG: The backup. The invoices to

Page 63

1 substantiate the charges.
 2 MR. SMITH: Okay. Thank you.
 3 Oh, can I get -- one quickie. What was -- if
 4 you can recall, what was the date that you actually
 5 wrote that check and what was the date when you stopped
 6 payment? Do you remember?
 7 MR. DUONG: I --
 8 MR. SHEPARD: Stop payment, I assume, must
 9 have been in July, because the last e-mail we've got
 10 here --
 11 MR. DUONG: Yeah.
 12 MR. SHEPARD: -- was July 2nd, I think.
 13 MR. DUONG: It was sometime in July, I think.
 14 It was after that e-mail. And I think I wrote the
 15 check about a couple of weeks before that. I don't --
 16 MR. SMITH: So it was like two weeks?
 17 MR. DUONG: -- have the exact dates.
 18 Probably two weeks or so.
 19 MR. SHEPARD: Okay. Sorry.
 20 MS. HERRICK: I just want to remind everyone
 21 that we do have a court reporter here, and it is really
 22 helpful for people to only speak one at a time. So do
 23 your best not to talk over each other, please.
 24 CHAIRMAN de FUNIAK: Okay. Did you have a
 25 question, Mr. Louie?

Page 64

1 MR. LOUIE: Yes, I do have a question. You
 2 mentioned with one of the other Commissioners that you
 3 wrote an e-mail. I believe these are one of the two.
 4 And you said that you were looking for the reason --
 5 the receipt to back up the invoice, but that these
 6 e-mails don't say anything about that.
 7 MR. DUONG: I think -- I think what happened
 8 was the state of mind that I had, just for the same --
 9 you know, it's like I wrote the check to somebody and I
 10 wanted -- I wanted that person to be still, you know,
 11 in good terms, but I just wanted to give -- you know,
 12 polite reasons to hold on, you know, I need more time.
 13 But I have to have a good reason: So I tried to give
 14 them all of these reasons so that they can hold on to
 15 the check and not -- you know, because it's a large
 16 amount. I have to have good, solid reasons, you know,
 17 strong reasons for them to keep holding on to it. And
 18 I had to weigh it out for them until they provided me
 19 the evidence, these receipts.
 20 MR. LOUIE: Why didn't you ask for the
 21 receipts? It's not in the e-mail. You mentioned you
 22 wrote --
 23 MR. DUONG: When I wrote the check, obviously
 24 I said, you know, Can you kindly please provide my the
 25 receipt. You know, will you provide me the names of

REPORTERS TRANSCRIPT OF PROCEEDINGS

| | |
|--|---|
| <p style="text-align: center;">Page 65</p> <p>1 the provider, the service provider and the details, 2 along with these services. 3 MR. LOUIE: So it's all-verbal is what you're 4 saying? 5 MR. DUONG: Yes. And it was obvious, because 6 when I wrote the check, I was really shocked and 7 surprised. You know, it's not a small amount. So 8 obviously naturally a person would ask can you provide 9 me proof. 10 MR. LOUIE: When did you write that check 11 again? 12 MR. DUONG: I think it was a couple of weeks 13 before the e-mail. 14 MR. LOUIE: Because I heard you say July. 15 MR. SMITH: I think July is when he said he 16 stopped payment. 17 MR. LOUIE: Okay. So about a month later you 18 stopped payment? 19 MR. DUONG: Probably not a whole month. 20 MR. LOUIE: So this is June 12th. So if you 21 wrote the check early June, you're talking early July. 22 That's a month. 23 MR. SMITH: There is e-mails -- if I may 24 interject for a moment. There is an e-mail dated June 25 12th, which is obviously after the check was written.</p> | <p style="text-align: center;">Page 67</p> <p>1 CHAIRMAN de FUNIAK: Thank you. For the 2 record, would you -- have a seat, if you wish. 3 MR. SANDOVAL: Thank you. 4 CHAIRMAN de FUNIAK: For the record, please 5 state your name. 6 MR. SANDOVAL: My name is Robert Sandoval. 7 CHAIRMAN de FUNIAK: Go ahead with the 8 question. 9 MR. SHEPARD: I have two questions. One, the 10 issue here we're talking about 2008 issues. And the 11 complaint was filed in May of 2010. So my question is: 12 Why did you wait two years to file the complaint? 13 MR. SANDOVAL: First of all, he ran in 14 District 8 in 2008. Of course when he ran in District 15 7, 2010, I was working on my web -- on the computer. I 16 looked into the state court of Santa Clara and punched 17 it in and, boom, it comes out. The lawsuit that I 18 called Lee Price on that was filed on superior court. 19 Anyway, I made a copy of it, and I called Lee 20 Price to find out if Mr. Minh had -- had resolved 21 his -- the debtness of this issue before he could run 22 in 2010. 23 And she said, Send me a copy. And I sent her 24 a copy. And then she turned it over to our mayor, 25 Chuck Reed. And then of course Mr. Mayor Chuck Reed</p> |
| <p style="text-align: center;">Page 66</p> <p>1 And another one on July 2nd. 2 MR. LOUIE: Right. 3 MR. SMITH: So the check must have been 4 written before June 12th and stopped payment sometime 5 after July 2nd. 6 MR. LOUIE: Which is a month. 7 CHAIRMAN de FUNIAK: Pay attention. Don't 8 talk over each other. 9 Do you have anything else Commissioner Louie? 10 I'm going to back up for a second. 11 Commissioner Shepard, you said you had a question for 12 Mr. Sandoval. 13 MR. SHEPARD: I didn't know if he was going 14 to speak. Can I just ask a question? 15 CHAIRMAN de FUNIAK: You may ask a question 16 of him if you think he has information for us. 17 MR. SHEPARD: Yes, I was interested -- 18 CHAIRMAN de FUNIAK: I need to swear him in, 19 though. 20 MR. SHEPARD: Be my guest. 21 CHAIRMAN de FUNIAK: Okay. Mr. Sandoval, do 22 you promise that all the information you give the 23 Commission this evening will be the truth, the whole 24 truth and nothing but the truth? 25 MR. SANDOVAL: Yes.</p> | <p style="text-align: center;">Page 68</p> <p>1 turned it over to San Jose attorney, Rick Doyle. And I 2 received a letter from Mr. Rick Doyle that there was 3 enough evidence, after investigating, that he was going 4 to hire a firm, which happens to be him over there at 5 the end. And I forget his name. 6 CHAIRMAN de FUNIAK: Mr. Moyer. 7 MR. SANDOVAL: Mr. Moyer (sic). Mr. Moyer. 8 MS. HERRICK: Moyer. No R. 9 MR. SANDOVAL: Mr. Moyer. And I received a 10 letter from Mr. Moyer that said that there was enough 11 evidence to conduct an investigation. And all of this 12 time I -- I believe I called him again about a week ago 13 finding out what happened to this investigation. 14 And in the meantime, I made further 15 researches, and Mr. Minh -- and there's about two other 16 lawsuits in here against him and some more complaints. 17 I know this doesn't concern this, but this is what I 18 have here. 19 CHAIRMAN de FUNIAK: I'm not sure we can -- 20 MR. SANDOVAL: Right. 21 CHAIRMAN de FUNIAK: -- discuss that at this 22 point. It's not relevant to what we're talking about. 23 MR. SANDOVAL: Right. But you will be 24 receiving this. 25 CHAIRMAN de FUNIAK: Understood.</p> |

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 69

1 MR. SHEPARD: I guess my other question is,
 2 not that it's necessarily relevant but just
 3 interesting, motivation so to speak. I'm not sure what
 4 your relationship is, whether it be to the ICG or
 5 whether it be to an opponent that's running against
 6 Mr. Duong. Right?
 7 MR. DUONG: Minh.
 8 MR. SHEPARD: Minh. I'm sorry. Again, are
 9 you part of the opposition?
 10 MR. SANDOVAL: I am a very special supporter
 11 of Councilmember Madison Nguyen. I have supported her
 12 for many years and the great work she has done in
 13 District 7. That's the reason I took this on.
 14 CHAIRMAN de FUNIAK: Thank you. You've been
 15 responsive to the question. Thank you, Mr. Sandoval.
 16 I appreciate it.
 17 MR. SANDOVAL: Am I dismissed?
 18 CHAIRMAN de FUNIAK: Yes. I don't think we
 19 have any -- any further questions for Mr. Sandoval?
 20 No, thank you, sir.
 21 I have a couple more questions for you,
 22 Mr. Duong. You have stated that there are two invoices
 23 from ICG that you did not receive. They claim to have
 24 sent them to you, and you say you never saw them. Is
 25 that correct?

Page 70

1 MR. DUONG: Two invoices?
 2 CHAIRMAN de FUNIAK: They -- I don't have the
 3 dates right here in front of me. The invoices were --
 4 MR. DUONG: No, I have not. The 5,000 --
 5 CHAIRMAN de FUNIAK: Based on the MOU, you
 6 made one payment of \$5,000. And then apparently they
 7 invoiced you two more times and you said you did not --
 8 MR. DUONG: No, I haven't until recently.
 9 CHAIRMAN de FUNIAK: Until recently.
 10 MR. DUONG: And I noticed why they don't add
 11 up to the 18,000 still.
 12 CHAIRMAN de FUNIAK: Okay. That's not my
 13 question. You also at one point stated that there was
 14 some information that you had that you no longer have
 15 because there was -- something was lost in a move of
 16 some sort after your campaign.
 17 MR. DUONG: Yes.
 18 CHAIRMAN de FUNIAK: Can you explain that to
 19 me a little bit, please.
 20 MR. DUONG: After District 8 raise, I moved
 21 back home where, you know, I lived for a long time.
 22 And during that move, you know, it was -- that thought
 23 of -- you know, I was retired. Never going to run for
 24 office again, that mentality. And so, you know, I
 25 don't know what happened. It was lost in the move.

Page 71

1 CHAIRMAN de FUNIAK: When you moved because
 2 you had changed residences from one district to
 3 another?
 4 MR. DUONG: Yes.
 5 CHAIRMAN de FUNIAK: And then somehow or
 6 another when you moved back to District 7, this
 7 material --
 8 MR. DUONG: Yeah, I lost it --
 9 CHAIRMAN de FUNIAK: -- disappeared?
 10 MR. DUONG: -- in the move. Which is why I'm
 11 very surprised I received these two. And I only got --
 12 I got these two only recently in the report.
 13 CHAIRMAN de FUNIAK: You know, I have -- I
 14 have to say that it's very possible that you did not
 15 receive the invoices. I will grant you that. It's
 16 very possible that this information went missing in the
 17 move. I will grant you that. But I have to tell you
 18 that it's a little bit of a stretch for me to accept
 19 all of that. But I want to make sure that you
 20 understand me, what you're saying is possible. Okay?
 21 But I just -- something is nagging at me. I'm just not
 22 so sure. Okay?
 23 Do we have any other questions?
 24 Let's back up a second, Mr. Moye, if we may
 25 then. If I understand what your recommendations are, if

Page 72

1 the Commission decides to take some action, whatever it
 2 might be. It can be no action. Can be a letter of
 3 reprimand. Could be a fine. We understand that. We
 4 haven't decided that yet.
 5 However, if it's anything beyond taking no
 6 action, then part of what we're doing is waiting to see
 7 the result of the litigation. There are other things
 8 that we -- if we so decide that we can act on this
 9 evening; is that correct?
 10 MR. MOYE: Yes.
 11 MS. COSGROVE: Can I ask a question,
 12 Mr. Chair?
 13 CHAIRMAN de FUNIAK: Certainly.
 14 MS. COSGROVE: Is there any estimate of the
 15 timeline for the litigation to be completed?
 16 MR. MOYE: No, you know, I asked the -- you
 17 know, I spoke with the attorney who is representing
 18 ICG, who is actually with -- has indicated that he's
 19 going to be withdrawing from the case and some new
 20 attorney will be taking over the case for him. So, you
 21 know, he was not able to give me a sense of, you know,
 22 what he thought in terms of the timeline for it.
 23 And I believe that they -- you know, I
 24 believe that they had gone through the initial
 25 mandatory ADR, but discovery I don't think had actually

REPORTERS TRANSCRIPT OF PROCEEDINGS

| Page 73 | Page 75 |
|--|--|
| <p>1 started in the case, if I understand correctly. 2 MR. SHEPARD: I have a question, too. I have 3 a question. 4 CHAIRMAN de FUNIAK: Hang on one second. I'm 5 sorry. Mike, I didn't fully understand that. 6 MR. MOYE: Yeah, I was just saying that the 7 attorney for ICG -- the current attorney for ICG is 8 going to be leaving the case and someone will be taking 9 over. So he wasn't sure what the timeline would be. 10 And it's my understanding that they have not engaged in 11 or started discovery in the case yet. So it seemed 12 like there's -- you know, there will be some time 13 before the case will be moving toward a resolution. 14 CHAIRMAN de FUNIAK: I know this would be 15 speculation, but based on the type of case that it is, 16 what would be your best guess or, Lisa, your best guess 17 as an attorney on -- I know it's a difficult question, 18 but there's a reason for me asking. Once it starts, is 19 it something that is going to take two days, two weeks, 20 two months? 21 MR. MOYE: By statute, you know, the cases 22 are supposed to be resolved within a year of the 23 filing. But that's the standard of which is not often 24 met. So, you know, I don't really have any basis to 25 even --</p> | <p>1 710. And I'm just hesitating for a moment. 2 And let me just go -- you know, if I could 3 invite your attention to page -- page 17. At the 4 bottom of page 17, there is Municipal Code Section 5 12.06.710, which is the deadline for debt requirement. 6 And the -- the subsection C, "Campaign related debt, 7 including any loan, which remains unpaid for more than 8 six months after the election is deemed to have been a 9 campaign contribution which was accepted at the time 10 the debt was incurred." 11 And, you know, we viewed this as, you know, 12 either a subpart or separate part of the allegation of 13 not resolving the debt. There is first the question of 14 whether or not the debt was resolved -- 15 MR. SHEPARD: Right. 16 MR. MOYE: -- within in the course of a 17 particular timeframe. 18 And then there is the separate question of 19 whether or not there -- because that debt was not 20 resolved, whether or not there is some additional acts 21 or some additional implication with respect to the rest 22 of the Municipal Code. 23 So, for example, if in fact there was a debt 24 and if that debt, you know, for example, exceeds \$250, 25 then it potentially raises an issue of a contribution</p> |
| Page 74 | Page 76 |
| <p>1 CHAIRMAN de FUNIAK: Okay. 2 MS. HERRICK: I was going to guess a year -- 3 it seems like it will probably be close to a year 4 before this is resolved. 5 CHAIRMAN de FUNIAK: Well, the reason I'm 6 asking, commission members, we need to make some 7 determinations. And I'm assuming that there is no more 8 questions for anybody at this point. 9 MR. SHEPARD: I have a question. 10 CHAIRMAN de FUNIAK: You have a question. 11 MR. SHEPARD: For Mr. Moye. 12 CHAIRMAN de FUNIAK: I'm sorry. Go ahead. 13 THE WITNESS: I kind of think from everything 14 I've heard and what you've said -- correct me if I'm 15 wrong -- that the civil suit, I guess, between ICG and 16 Minh is really a separate discussion. 17 In other words, there's an issue here of 18 campaign violations. So whether it took a hundred 19 years for the civil suit to be resolved, I'm not sure 20 why that's even relevant versus the issue of just 21 filing -- lack of filing proper documents on a timely 22 basis with the city. 23 MR. MOYE: Yeah, in our view the one issue 24 that the resolution of the lawsuit, you know, 25 potentially goes to is the question of what to do about</p> | <p>1 in violation of the campaign limits. If the amount of 2 that debt is sufficient to exceed the campaign 3 voluntary spending limits, that's another potential 4 issue which arises. 5 And those are the issues which, you know, in 6 our view are not determinable until -- well, on one 7 level they may be determinable, but our concern is that 8 there is the potential for an inconsistent result. If 9 the Commission were to find there's a debt of X number 10 of dollars and then the court, for example, were to 11 find that the agreement was, you know, void from the 12 outset, that might present, you know, a potentially 13 inconsistent result. So that's why we're 14 recommending -- 15 MR. SHEPARD: Oh, I got that. I'm with you 16 on that. But leaving that aside, the ultimate 17 decision, there still seems to be a myriad of filing 18 violations -- 19 MR. MOYE: Yes. 20 MR. SHEPARD: -- regardless of what the 21 outcome of the case is. 22 MR. MOYE: Yes. 23 MR. SHEPARD: And my question goes to that. 24 In terms of -- and I don't have a counter or a 25 scorecard here. But based on that issue of filing</p> |

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 77

1 violations -- forget the money issue here -- is it 10
2 violations? Is there 15 violations?

3 MR. MOYE: Well, first there's the question
4 of failure to file the Schedule F with the second-
5 preelection report that relates to the contingent
6 consulting fees. That's one issue. And then the
7 question of whether or not that would be viewed as a
8 separate issue each time an obligation arose to file a
9 form.

10 There would also be the issue with respect to
11 the termination Form 460 was filed is that clearly
12 that -- you know, because that \$18,834 was not paid,
13 that form would have to be amended. And then the
14 question of each time that form -- you know, if that's
15 not amended, each time that form was due to be filed,
16 you know, that might be viewed as a separate violation.

17 MR. SHEPARD: Gotcha.

18 MR. MOYE: Depending upon what the amendment
19 says. Because, for example, the amendment -- if you
20 file an amendment, which basically showed -- and this
21 is what I had laid out for you in -- on page 24.

22 I mean, if you go back and amend, for
23 example, the June 30th Form 460 -- Form 460 that was
24 filed, arguably that could be amended to delete the
25 \$18,834 from the Schedule E to revise the Schedule B

Page 79

1 MR. MOYE: Yes. And part of it will be how
2 the -- I think the conditions -- you know,
3 determination of whether or not they want to treat each
4 unfiled statement as a separate violation, or if it
5 just simply a violation -- the first violation itself
6 or if -- you know, would choose to treat a -- for
7 example, oftentimes an amendment can be filed to
8 correct a report. And that might lead the Commission
9 to determine that there is no violation if it was
10 inadvertent, you know, that whole type of thing.

11 CHAIRMAN de FUNIAK: Yes, hang on one second.
12 That goes to the heart of the matter, but I'm going to
13 have a suggestion when we get there.

14 Yes, sir.

15 MR. LUU: Yes. I'm the attorney for Minh for
16 the lawsuit, and I would really like to be given an
17 opportunity to make some comments and some rebuttal on
18 this case.

19 CHAIRMAN de FUNIAK: Okay. I still need to
20 swear you in. You swear that the information that you
21 give us tonight is the truth, the whole truth and
22 nothing but the truth.

23 MR. LUU: Yes.

24 CHAIRMAN de FUNIAK: Okay. Please state your
25 name for the record.

Page 78

1 for the loan and show that the loan was repaid --
2 and the loan was repaid from that \$18,834 and that the
3 remainder of the loan was written off, for example.
4 And that would, you know, potentially, you know,
5 resolve all of the issues with respect to that piece of
6 the filing.

7 And the other question that would remain at
8 that point is whether or not, you know, you felt that
9 there was sufficient evidence of an ongoing obligation
10 such that there would still be a need to file a
11 Schedule F to deal with, for example, the part of the
12 consulting fees that might have been due on a pro rata
13 basis, because the contract was terminated, you know.
14 And, again, there is some dispute, you know, as to, you
15 know, whether or not there is anything owed there. But
16 I think that's a little bit different of a dispute, you
17 know, from the invoices, in that there's an agreement,
18 there's an obligation to pay back --

19 MR. SHEPARD: Because it's so -- if I can
20 summarize that. Because of the uncertainty or the
21 ramifications of that decision ultimately being made,
22 it's hard to say there were five violations of this
23 code, three violations of this code and two violations
24 of this code, for a total of ten violations of
25 something?

Page 80

1 MR. LUU: My name is Michael Luu. I'm the
2 current attorney that is handling the case for Minh
3 Duong at the superior court. I just want to give a
4 little background very quick. And I'll come back to
5 2008.

6 Obviously there's a campaign that has been
7 initiated 2010. Immediately after the paper was
8 declared to run -- I believe, there's a statement of
9 intention to run. The lawsuit was practically filed
10 overnight the next day. So number one.

11 And on the lawsuit when it was initiated,
12 there wasn't a whole lot of exhibit other than monies
13 owed. And so I think that's the first time that Minh
14 is aware that ICG is going after some past debt.

15 Having said that, as the case progresses
16 along and Minh still have the intent to run in 2010,
17 and he is willing to challenge the lawsuit, I took the
18 case on. I put my answer out there. Just basically
19 denying, you know, all these allegations. And there
20 was a subsequent production document motion, and that's
21 the first time in April that the two invoices were
22 produced as a back up. There wasn't any documentation
23 to back up the 18,000.

24 But more on point, there was -- there was
25 several -- how can I say? Candidate forum where Minh

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 81

1 is trying to get endorsement, and the first one would
2 be obviously be the Chamber of Commerce, which he won.
3 And he got the endorsement. And the second one was
4 Mercury News endorsement. And we thought he did well
5 in endorsement for Mercury News. But immediately after
6 that, the lawsuits were circulating in cyberspace
7 everywhere by the opponent's camp on— and just the
8 complaint. Doesn't address the answer, doesn't address
9 anything —

10 CHAIRMAN de FUNIAK: This needs to be all
11 relevant to what we're doing tonight?

12 MR. LUU: Yes, it is. Yes, it is. And then
13 obviously right now we're in front, speaking on the
14 2008 campaign when he's running — you know, he's in a
15 heated runoff for the 2010 campaign.

16 Now, let's go backward and let me address
17 Mr. Moyer (sic). We just basically found out about
18 this recently, and I just sat in with him last
19 Wednesday with Mr. Moyer. And we just received the
20 report Monday night. And we're right in front of you
21 for a special session. So we didn't have any
22 opportunity to prepare.

23 But having said that, I want to comment on
24 this one issue now and I'll back up. It's a domino
25 effect. And two — relevant to baseball. You know,

Page 83

1 round? Those are argument that we need to keep, you
2 know, litigated rather than being tried today.

3 So if Mr. Moyer (sic) on his report is saying
4 there's at least a \$5,000 that's owed and needs to
5 be — a Schedule F needs to be amended right now, then
6 we have a problem because that issue hasn't been
7 resolved yet. — So — and on top of that he's not given
8 opportunity to flush out.

9 And the third one is, yes, if the court find
10 that \$18,000 is owed, there's two ways to go at it.
11 Number one is go back and make some amendment.

12 Number two is just go back and say, yes, we
13 should have filed Schedule F. We should have not
14 terminate earlier.

15 There's so many variables that I urge the
16 members of the commission to at least take a step back
17 and saying one domino effect, you touch one and
18 everything just roll. I rather urge you to be
19 reasonable and look at on a big scope why we're here,
20 you know, politically.

21 So give the chance for a 2008 campaign to be
22 addressed on a 2008 campaign, and have not — have a
23 2008 issue campaign being used as a yo-yo for a 2010
24 campaign as we're sitting right here. And I'll end
25 with that.

Page 82

1 there's many — you know, there's many paths here. If
2 you go the wrong path — you know, there's multiple
3 factors right here.

4 Number one, if the lawsuit was given its
5 lifetime — and I'm hearing from Mr. Moyer that the
6 attorney is subbing out. In my perspective, the
7 lawsuit was done intentionally just basically to
8 embarrass him for 2010 campaign and it's serve its
9 useful purpose, because we have all the news media
10 here. But I'm digressing.

11 The point I'm trying to make is, if the
12 lawsuit has a chance to be litigated, you know, on its
13 own merit, three findings can happen. No money owed.
14 If no money is owed, then Minh's report initially just
15 need to be amended to basically treat the 18,000 as no
16 debt. And we wouldn't be here, other than maybe some
17 additional reporting — additional reporting.

18 Number two, there may be some money owed and
19 Mr. Moyer — Mr. Moyer is a little bit strong in his
20 opinion regarding there may be, you know, a second
21 payment that's due just because of the MOU stated that
22 there is some timeline and there is lapses and second
23 payment is due. Well, you know, if you contract
24 somebody for service, and they don't do the job even
25 for the first round, so why you even do the second

Page 84

1 CHAIRMAN de FUNIAK: Thank you.
2 Commissioner Smith, do you have a question?

3 MR. SMITH: Yeah. Back to the invoices. I'm
4 a little confused. Your attorney — Mr. Duong, your
5 attorney just said that first you saw these invoices
6 was in April related to the lawsuit. I believe you
7 said earlier that the first time you saw them was when
8 you got the report from Mr. Moyer, but then — because I
9 was sitting here listening to your attorney, I
10 remembered when I asked you a question earlier about
11 the use of the word "proof" and the e-mail back in
12 2008. And you said what you were referring to when you
13 said "proof" was the invoices and not the underlying
14 supporting documentation.

15 So I believe you told me that you in fact had
16 seen the invoices in 2008. But then subsequently I've
17 been told that you didn't see them until 2010. So I'm
18 confused.

19 MR. DUONG: I did tell the truth in that when
20 I wrote the e-mail, I said, thanks for the proof, it
21 meant the \$18,834, that invoice that they gave me at
22 the time of signing that check.

23 MR. SMITH: Okay. We don't have a copy of
24 that invoice.

25 MR. LUU: And neither is the exhibit

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 85

1 available in the courts.

2 MR. DUONG: I don't see it here. And to be
3 very honest, the 5,200 something and the 17,000
4 something, I only saw in the recent report. Even
5 though maybe my attorney might have gotten it, he's
6 handling my case. I have been running my campaign.
7 I'll be very straight up with you, I've been running my
8 campaign. He handles my case, and he's going back and
9 forth with the other side.

10 But since I'm coming from this Commission,
11 I'm trying to learn the material, the facts and looking
12 at everything and that's the first time I see the 5,000
13 something and 7,000.

14 MR. MOYE: Mr. Chair, I can just --

15 CHAIRMAN de FUNIAK: Yes.

16 MR. MOYE: -- further one point just to
17 clarify. The -- there is no invoice, to my knowledge,
18 for \$18,834. The -- ICG stated that that was a
19 compromise amount of the \$22,459. And the two invoices
20 that are attached to the report I got those from the
21 respondent. They provided those to me, along with a
22 copy of the agreement. So just to be clear on what the
23 invoices there are and where those figures come from.

24 MR. DUONG: If I may add a little bit.

25 CHAIRMAN de FUNIAK: Gentlemen, let me

Page 87

1 something or not?

2 MR. DUONG: Yes, they did. They gave me an
3 invoice, which the gentleman asked me what it meant
4 when I said proof. It was the actual --

5 CHAIRMAN de FUNIAK: He gave it to you and
6 then showed it --

7 MR. DUONG: And took it back.

8 CHAIRMAN de FUNIAK: -- and took it back, is
9 that what you're saying?

10 MR. DUONG: And actually, you know, they
11 might have given one to me and I lost it to my --
12 during the move, to my bad in that I could not provide
13 it.

14 CHAIRMAN de FUNIAK: So you might have
15 received it?

16 MR. DUONG: Yes.

17 CHAIRMAN de FUNIAK: And you might have lost
18 it?

19 MR. DUONG: I think I did, to be fair.
20 Because I would not have written a check and walked
21 away without hanging on to a piece of paper. So I
22 might have gotten a copy of that, but I lost it.

23 But I'm intrigued by the fact that why isn't
24 he providing that \$18,000 invoice, but instead coming
25 back with two invoices that don't even add up to

Page 86

1 just -- I'm going to give you every chance. But you
2 get to go last, if you wish to. So I'm going to ask
3 your attorney to please be brief, but you wanted to
4 followup.

5 MR. LUU: The invoices doesn't match. The
6 two invoices was due in discovery in April, April 25th.
7 So the original complaint has no attachment to any
8 invoices other than MOU. So to discovery there's two
9 invoices fresh for the first time. They add up to 22
10 something thousand. And if -- to correct Mr. Moyer, it
11 was a negotiated effort. I found it hard to believe
12 that the -- we're going to negotiate 22,800 and
13 something down to \$18,834 and change. Why we just
14 don't round it off to 18,000? So we have a little bit
15 of an issue as far as, you know, the conflicting
16 evidence also.

17 MR. DUONG: I find this -- when I saw the two
18 invoices, I found something strange about it, because
19 if you think about it logically, I would not have
20 written the 18,000 something dollar check if he didn't
21 hand me the actual invoice and tell me that's how much
22 it is. How would I know the number? And all of a
23 sudden he's not providing that particular invoice
24 corresponding to that amount.

25 CHAIRMAN de FUNIAK: So did he show you

Page 88

1 anything?

2 CHAIRMAN de FUNIAK: Well, that's something
3 that is going to be litigated. That's not for us to
4 determine. But if I understood you, you said that --
5 in fairness, you said you probably did receive the
6 invoice and may have lost it in the move.

7 MR. DUONG: Yes.

8 CHAIRMAN de FUNIAK: Because standard
9 operating business procedure with an invoice is that
10 both parties has a copy.

11 MR. DUONG: Has a copy, yes.

12 CHAIRMAN de FUNIAK: And --

13 MR. DUONG: That's --

14 CHAIRMAN de FUNIAK: And if -- if you make a
15 payment based on the invoice, in writing a check,
16 giving it to the other party, generally they will write
17 on the invoice "paid," with an amount and a check
18 number and a date, but you now don't have that.

19 MR. DUONG: I do not have that. And I'm also
20 intrigued by the fact that why that person, like you
21 said, by the same practice if they had written on
22 their -- they would have also written on their receipt
23 that I paid it. And I don't know why they're not
24 providing that copy.

25 MR. LUU: It looks like it was prepared from

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 89

1 some type of an accounting software like QuickBooks.
2 So one of the question I'd like to ask is: Can you
3 send out two invoices and there's an 18,000? Let's go
4 back and look at the history of all the invoices on
5 your QuickBook computer. But, again, I'm flushing out
6 issue that I'm hoping the Commission would give me some
7 consideration. These are issues to be litigated.

8 CHAIRMAN de FUNIAK: I would agree that there
9 are some issues to be litigated. But I would also
10 state that there are some other reporting issues that
11 aren't part of the litigation, and that's what the
12 Commission can deal with tonight.

13 MR. DUONG: Sir, with respect to that, with
14 the recent understanding and knowledge of this that I
15 have --

16 CHAIRMAN de FUNIAK: Just so you know, I'm
17 going to -- this -- this will be your final statement.
18 So take your time. Okay? We'll give you whatever time
19 you need. But if you have anything final for the
20 Commission to hear, now would by the time. Okay?

21 MR. DUONG: I just want to say that, yes -- I
22 mean, there's a lot of intriguing points here. A lot
23 of intricacies and unknown factors. And there are
24 evidence showing these unknowns. And I think the
25 benefit of the doubt goes to me.

Page 91

1 I sacrifice my family, my work, in one belief-is that
2 to run for office for the betterment of the community.
3 It's not for my personal gain. You know, I--I am
4 already well. I live a happy life. I have a happy
5 family, you know, and -- but I grew up from a very poor
6 family, and this community, our society, has afforded
7 me so many opportunities. And you-know-what, I live --
8 I go to bed being very thankful for that. And I see
9 that our community needs help, and particularly my
10 district, it needs help. It's on a deteriorating-basis
11 and I see --

12 CHAIRMAN de FUNIAK: Excuse me. I'm not
13 going to put up with that kind of stuff back there.
14 I'll ask you to leave. You understand me?
15 Go ahead.

16 MR. DUONG: And I see that our community
17 needs help, and that's why I run. I come to this, you
18 know, with very -- all sincerity and genuine. With
19 somebody digging up a lot of stuff and throwing me with
20 this case, with all the other case, whatever it is.
21 You know, I'm a businessman. Maybe if somebody
22 disagrees with me, they can go to court. File a small
23 claims. Only 50 bucks. I can have all the lawsuits,
24 whatever it is in the world. Anybody can. Anybody who
25 has done business, there's always disagreement. And

Page 90

1 But I do admit the fact that with the recent
2 knowledge of having to file Schedule F, or at least in
3 these accrued expenses, you know, I will try to come
4 back if the Election Commission will allow me the
5 chance to learn more and try to correct this. And I do
6 have every intention to strictly comply with our codes
7 and ordinance to be, you know, a good steward in this.
8 I do not have any intention whatsoever to mislead the
9 public, nor the reporting agency.

10 And I just wanted to say in closing, in
11 that -- please, I ran because I had a genuine concern
12 for the community. And I think, you know, for
13 anybody -- even as young as me, I think -- you know, I
14 had genuine guts, you know, to run and failed once, and
15 then run again and being able to get into a runoff and
16 put up serious campaigns, being serious contenders.

17 And I think that what you decide today also
18 sends out a message to the future potential candidates.
19 Because, you know, if candidates have to go through all
20 of these other things and through all of these hurdles
21 and be discouraged, you know, I think our society, you
22 know, would not have too many genuine good heart
23 candidates who want to contribute -- genuinely want to
24 contribute.

25 And I just want to say that I come to this.

Page 92

1 we're a society of law, and anybody can dispute it in
2 any court.

3 And it's -- and they always try to play it in
4 the wrong way, spin it in the wrong way to discourage
5 any candidates, genuinely good candidates, to run for
6 office to serve, genuinely to serve.

7 I'm not here -- I wouldn't be here. Why
8 would I sacrifice, my time, my effort and opportunity
9 costs to be sitting here and being scrutinized and
10 being -- and bothering you, the Commission? You know,
11 I have better things to do. But why? Because I want
12 to sacrifice. I want to give back to the community.
13 And if you give me a chance, you know, I just -- all I
14 want to do is serve. That's it.

15 I've been telling Lee Price -- Ms. Lee Price,
16 I don't make -- I don't make a living filing reports.
17 You know, I don't know how to file these things. For
18 all I know, I hand it to somebody else who can do
19 better for me, you know. But I don't live by filing
20 reports. And I do make mistakes. I'm a human, you
21 know, I make mistakes.

22 But you know what, I am willing to learn. If
23 you show me and give me a chance, I will do it. And I
24 just want to say, give me a chance.

25 I'm in the midst of running a campaign

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 93

1 against an incumbent which I believe -- who I believe,
2 you know, has done a lot of damage to our community.
3 And I just pledge to unite the community. To provide
4 something of my talent and my ability to the community.
5 That's all it is.

6 CHAIRMAN de FUNIAK: This can't be a -- this
7 can't be a campaign speech. It has to deal with the --

8 MR. DUONG: And I just -- and I just want an
9 opportunity from the Commission, you know, today with
10 all of this, if you would fine me or if you would --
11 you know, punish me harshly, you know, the next person
12 who looks at this, the next 29-year-old candidate who
13 cares deeply about the community who is able to
14 contribute, he will be so discouraged to run -- to get
15 into public service.

16 And all I want to say is, you know, this is a
17 land of opportunity. Let's give it to the best -- may
18 the best serve, you know, give them a chance. Just the
19 same way that I have given -- been given the chance.

20 But you know what, I do have some hurdles
21 now, and all I ask is for you to give my some
22 understanding. Cut me some slack for being a
23 29-year-old trying my very best to serve. And that's
24 all I want to tell the Commission.

25 CHAIRMAN de FUNIAK: Okay. Thank you.

Page 95

1 of --

2 CHAIRMAN de FUNIAK: We need to determine --

3 MR. SMITH: -- of violations or just that we
4 don't need to try to tie that number to directly to an
5 amount?

6 CHAIRMAN de FUNIAK: Correct that's what I
7 mean.

8 MR. SMITH: The latter.

9 CHAIRMAN de FUNIAK: The latter. Everybody
10 understand that? Okay.

11 Yes, Erica.

12 MS. COSGROVE: I think that's an interesting
13 proposal. And I -- my -- I guess where I am thinking
14 on this is a little bit different but kind of similar.
15 Which is that the lack of clarity about what did or
16 didn't happen between the respondent and ICG makes it
17 difficult to find by a yes or no on some of the
18 violations just because some of those answers won't
19 come out until the litigation is resolved.

20 However, if we want to give the respondent
21 the benefit of the doubt, you -- even if you want to do
22 that, even under the very most optimistic scenario on
23 the part of the Election Commission, which is any
24 mistakes the respondent made were simply errors or
25 indiscretions, were not intentional. And if you

Page 94

1 Well, now we have some decisions to make.
2 And I'm going to offer a solution -- or a possible
3 solution, I should say, just to get us started.

4 It is my feeling that Minh Duong has been a
5 little bit more than remiss in his lack of reporting to
6 the point that I think the Commission needs to issue a
7 fine. I'm not going to suggest that we try to
8 determine an exact number, which we can do. But we can
9 also just make a flat fee fine based on all of this
10 evidence.

11 And Mr. Duong has made an appeal to us. So
12 part of what I might offer as a solution would be we
13 set a fine, and then instruct Mr. Duong to fix the
14 reports that he needs to fix. And if that happens by a
15 date to be determined by us, that the fine we issue can
16 be reduced. Not forgiven, but at least reduced.

17 Now, that's just a possible solution and that
18 gets us to the talking point. But I need to know how
19 each of you feels at this point.

20 Mr. Smith.

21 MR. SMITH: Could I ask a question. I like
22 what you're saying. I'm not sure that we have the
23 authority to have a fine and then reduce it, but we can
24 talk about that later. Are you suggesting that we
25 don't need to necessarily determine an absolute number

Page 96

1 concede the fact that any mistakes or problems with ICG
2 could be completely resolved by the litigation,
3 therefore leaving no outstanding problem. Even if you
4 do all of that, there is still violations.

5 The first one being that Schedule F, when you
6 file that first preelection statement, Schedule F
7 indicates anticipated expenses. And under the
8 Memorandum of Understanding, the candidate, regardless
9 of -- before ICG had done a lick of work or hadn't done
10 a lick of work still had to anticipate, having signed
11 the MOU, I will owe two more tranches, two more
12 payments of \$10,000 and neglected to disclose that in
13 his Schedule F. So there's one that, independent of
14 anything that did or didn't happen with ICG, was a
15 problem.

16 And the Form 460 showing no cash on hand as
17 of 6-30 as a result of the \$18,834 check he wrote.
18 When he stopped payment on the check, that also was
19 never dealt with in the filing. Again, whether ICG did
20 or didn't do anything, that -- still at some point
21 there was \$18,834 sitting in a campaign account which
22 wasn't -- the paperwork was not filed properly for.

23 And then the termination of the campaign
24 committee also just was done incorrectly. And I could
25 see that, based on a layperson's knowledge, you might

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 97

1 not understand what you had to do to terminate a
2 campaign committee correctly. But I also have to give
3 a lot of credence to the city clerk's office that you
4 could --if you were in any doubt when you're
5 terminating your campaign, a simple phone call to the
6 city clerk's office to say, I'm terminating, what are
7 the outstanding issues that I may or may not need to
8 deal with? Those -- that's where I would say --
9 without getting into any of the issues surrounding the
10 litigation, I myself saw three pretty obvious
11 violations.

12 And in light of all the circumstances around
13 this and the fact that we have someone who is currently
14 involved in a campaign, I like your approach, which is
15 fix everything you can. Make the effort to fix all the
16 paperwork, because there's a lot of problems with the
17 paperwork regardless of the litigation. And then you
18 can kind of show good faith in that effort, and maybe
19 there's a way that we, as a commission, could -- you
20 know, say we see you show good faith.

21 CHAIRMAN de FUNIAK: Okay. Yes, I
22 understand.

23 MR. SHEPARD: Question for you. Are you
24 excluding the fine potential or just -- in other words,
25 slapping a wrist of sloppy paperwork?

Page 99

1 MR. COSGROVE: -- something with it. I just
2 rolled all of that up to improper termination in my
3 thinking, rather than coming out with so many
4 violations. Because I agree with Mr. Moyer that -- and
5 with other commissioners. It's very hard to count the
6 number of violations that may or may not have occurred,
7 because they are so much contingent upon what was the
8 situation with regard to monies owed to ICG or not.

9 And so I was just looking for something more
10 simple where I thought violations very clearly did or
11 did not occur. And also trying to -- based on what the
12 respondent said, go a little ways towards giving the
13 benefit of the doubt, but not all the way because there
14 was so many problems with the paperwork here.

15 CHAIRMAN de FUNIAK: Okay. Thank you.
16 Commissioner Shepard.

17 MR. SHEPARD: I think we need to be careful
18 here because -- and I assume that somebody reporting
19 this from the newspaper or something, I believe, who is
20 here.

21 CHAIRMAN de FUNIAK: Doesn't matter.

22 MR. SHEPARD: I understand that. But I think
23 we need to be careful because our decision obviously
24 has a direct impact, potentially, on the upcoming
25 election. And that shouldn't change our position on

Page 98

1 MS. COSGROVE: No.

2 MR. SHEPARD: But you're not excluding --

3 CHAIRMAN de FUNIAK: I --

4 MR. SHEPARD: I just want to make sure I
5 understood it.

6 CHAIRMAN de FUNIAK: Okay. I think your
7 statement on that -- three areas --

8 MS. COSGROVE: Yeah.

9 CHAIRMAN de FUNIAK: -- where the Commission
10 can act tonight one way or the other.

11 MS. COSGROVE: That is --

12 MS. HERRICK: Excuse me. Everyone please
13 speak one at a time. Don't talk over each other.

14 CHAIRMAN de FUNIAK: Okay. I'm sorry.

15 Okay. Thank you. Mr. Smith.

16 MR. SMITH: Question for Commissioner
17 Cosgrove. Do you consider the fact that the \$20,000 --
18 disposition of the \$20,000 loan wasn't addressed part
19 of the improper termination, or is that a fourth one?

20 MS. COSGROVE: I was rolling it all up into
21 improper termination. To give a first time candidate
22 the benefit of the doubt and say the \$20,000 was a loan
23 from yourself to yourself, and you didn't understand
24 that you had to do --

25 MR. SMITH: Okay.

Page 100

1 any result, I certainly agree with that.

2 But I must say I do have a problem with
3 something that occurred two years ago primarily, that
4 suddenly comes up two years later on the verge of the
5 election. And I really -- that thing sticks with me,
6 the timing, even though it may be perfectly accurate,
7 the accusation and the sloppy paperwork. But I do have
8 some concern about a conviction, so to speak -- that
9 may be the wrong word -- associated with the paperwork
10 when there is still a lot of issues and a lot of
11 sloppiness involved in the process, no question about
12 that. But I have a problem with this issue coming up
13 literally a two-year-old issue a month before an
14 election.

15 CHAIRMAN de FUNIAK: Let me see if I can
16 resolve that. Madam City Clerk, would Minh Duong have
17 been aware in 2008 that these reports were not filed
18 properly? Would he have received information somehow?

19 MS. PRICE: Yes. Mr. Chair, actually. In
20 the 2008 cycle, Mr. Duong had numerous problems with
21 his campaign statements, as he knows. We met several
22 times. And it took nearly a year for him to make the
23 minimum amendments required to at least satisfy me that
24 he had made every effort to complete all of the forms
25 and provide all of the information.

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 101

1 Now, as you know, as a clerk, I'm the
2 elections official. I accept the statements. I do a
3 prima facie review. I am looking for certain things to
4 make sure that the statement is complete.

5 I don't audit the statements. And certainly
6 there are things that I would never know. For
7 instance, I did not of this contract that Mr. Duong had
8 with the consultant.

9 But having said that, I generally take a good
10 close look. And if I see inconsistencies or
11 inaccuracies, I put the candidate on notice. And I did
12 that on May 22nd when the candidate filed his second
13 preelection. There were problems. I sent him an
14 e-mail a few days later notifying him of the
15 requirements -- the amendments that he needed to make.
16 We had a number of opportunities where he came to the
17 office and met with my assistant city clerk, Dennis
18 Hawkins, and later I met with him.

19 Months went by -- literally months went by
20 from June 3rd, when I put him on notice that amendments
21 were necessary, all the way until June 18th of the next
22 year, when he finally filed amendments making the
23 corrections. And my notes even indicated that I
24 wasn't -- I wasn't clear -- well, my notes says, "May
25 be incomplete," because I was not satisfied that

Page 102

1 everything had been completed.

2 CHAIRMAN de FUNIAK: Okay. One second. So I
3 ask that question for a reason. Commissioner Shepard,
4 I understand your concern. It does appear that someone
5 may be trying to undo Minh Duong's candidacy for 2010.
6 But unless someone -- unless there's some wrongdoing
7 there or comes to us in a complaint, we can't deal with
8 it.

9 But I think what we heard was a response that
10 he, Minh Duong, did not first find out about this until
11 a few weeks ago. He was aware of it way back when, and
12 I think that makes a difference.

13 I have another question -- you have a
14 question.

15 MR. SMITH: I have a followup with the city
16 clerk.

17 CHAIRMAN de FUNIAK: Okay.

18 MR. SMITH: I take it that in doing your
19 review, you did not notice or point out to Mr. Duong
20 that he had identified a \$20,000 loan early on that
21 didn't get resolved in the final paperwork. That
22 wouldn't be -- you wouldn't have found that unless you
23 did a complete audit, I presume?

24 MS. PRICE: That's correct. I look for
25 things like that. For instance, many candidates do

Page 103

1 loan themselves money, particularly to kick start the
2 committee. So I do look to be sure when they terminate
3 that they have satisfied that debt. And generally I
4 advise the candidate, if the loan is still outstanding,
5 then to convert it to a contribution.

6 MR. SMITH: Apparently you didn't catch it.

7 MS. PRICE: That's true. I did not catch
8 that.

9 CHAIRMAN de FUNIAK: Now, I have a question
10 for Lisa Herrick. I've made a suggested possibility.
11 I don't know if the Commission is going to buy that or
12 not. But the question was raised, can we even do it in
13 the first place?

14 MS. HERRICK: And the question is whether or
15 not you can impose a penalty -- a civil penalty that
16 would be conditioned -- well, I guess in effect you'd
17 be considering two separate penalties. One would be
18 satisfy -- one would be the ultimate result if some
19 conditions were satisfied and if not then there would
20 be another.

21 CHAIRMAN de FUNIAK: Yes.

22 MS. HERRICK: I actually don't see anything
23 that would tell you that you can't do that. It looks
24 like the language in the ordinance is broad enough to
25 impose -- the language is specifically "The Commission

Page 104

1 may impose penalties of up to \$5,000 for each violation
2 or three times the amount which a person or respondent
3 failed to report properly or unlawfully contributed,
4 expended, gave or received, whichever is greater."

5 And so it seems that there is a great deal of
6 latitude in what you can impose.

7 CHAIRMAN de FUNIAK: Okay. So it sounds like
8 it can be done. Whether we want to do is that is
9 something else. So, again, I need to know where we are
10 with this and how each of you feels about it where we
11 go from here. Mr. Smith.

12 MR. SMITH: I'll say something. I would
13 propose that we go with the idea brought forth by
14 Commissioner Cosgrove that there are at least three
15 violations. I'm not trying to enumerate beyond that.
16 And that we then adopt your approach to associated
17 penalties and just figure out what those numbers are.
18 And associated -- well, I don't -- I'm not going to say
19 any more.

20 CHAIRMAN de FUNIAK: Okay. But what you just
21 suggested was that Commissioner Cosgrove has enumerated
22 three areas that specifically, if we decide to, we can
23 deal with tonight.

24 MR. SMITH: Yeah.

25 CHAIRMAN de FUNIAK: Okay. So where do we go

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 105

1 from here then? We can -- do you have a suggestion,
2 Mr. Shepard?

3 MR. SHEPARD: I'm not sure if I have a
4 suggestion. But can a fine be also caveated -- in
5 other words, I think there was some sloppy paperwork
6 and it should have been done personally. And you
7 probably should pay a fine for not doing it. But I
8 wouldn't -- I can't come to the conclusion that, other
9 than the fact that you're not particularly good on
10 paperwork, that you did anything that was fraudulent or
11 criminal or some bad words associated with that.

12 And so if I was going to vote for some type
13 of fine, whether it's a thousand dollars or 500,
14 whatever, I would want to have some kind -- my thought
15 is I would want to have some kind of caveat, because
16 people are reading or will be reading about our view.

17 And my personal view is he may have violated
18 the paperwork rules and should pay a fee for doing
19 that, but I don't think there should be a black cloud
20 put on top of his head that indicates that, you know,
21 he's done some terrible thing that can potentially sway
22 the election. Because I don't think there's enough
23 evidence here to warrant that. But I think he
24 certainly needs a class from Lee and maybe he deserves
25 a fine. But I don't think he should be castigated for

Page 106

1 it.

2 And as a matter of fact, I think the
3 publication of whatever the result is should be
4 indicated that it's a sloppy paperwork and he has to
5 get caught up and pay a fine for that, but he hasn't
6 committed some capital offense. I know I'm using the
7 wrong words there.

8 CHAIRMAN de FUNIAK: No, but you're making a
9 point.

10 MR. SHEPARD: That's the point I'm trying to
11 make.

12 CHAIRMAN de FUNIAK: Understood.

13 Mr. Louie.

14 MR. LOUIE: Can I ask the city clerk a quick
15 question. You mentioned that you had to do followups.
16 Did Minh fulfill his requirements based on your
17 concerns of what you knew back then? Did he fulfill
18 that paperwork?

19 MS. PRICE: Yes.

20 MR. LOUIE: It took awhile, but yes.

21 MS. PRICE: It took awhile. I was pretty
22 exacerbated by that point, to be perfectly honest with
23 you. So when Minh finally came in and filed the last
24 batch of amendments, I just felt it was time to close
25 the file.

Page 107

1 Frankly, I considered bringing a complaint
2 forward to the Commission. But Minh tried to make it
3 right and he brought in his paperwork, and I accepted
4 it. And I just decided that personally I just needed
5 to close that file.

6 MR. LOUIE: So basically what you said is he
7 made an effort.

8 MS. PRICE: Yes.

9 MR. LOUIE: He did make a good faith effort.
10 So I have to agree with Commissioner Shepard that it's
11 sloppy paperwork. I don't think it was any malicious
12 wrongdoing, I don't think. I agree with what
13 Commissioner Shepard that -- I don't think we should
14 affect a new election for something that we think is
15 just sloppy paperwork.

16 CHAIRMAN de FUNIAK: We have other options,
17 too. It doesn't have to be a fine, which you're aware
18 of.

19 MR. LOUIE: We can wait until after the
20 election.

21 CHAIRMAN de FUNIAK: We need to discuss this
22 part of it. We essentially have three options: We can
23 take no action. We can issue a letter of reprimand, or
24 we can issue a fine. Those are the three choices that
25 we have.

Page 108

1 MR. SMITH: Could I suggest that we determine
2 what we think the number of violations is, and then
3 resolve that. And then move on to what we think the
4 penalty is, rather than mixing them.

5 CHAIRMAN de FUNIAK: All right.

6 MR. SMITH: And in that line, I'll make a
7 motion that we find three violations, specifically the
8 three that were enumerated earlier by Commissioner
9 Cosgrove.

10 CHAIRMAN de FUNIAK: We have a second?

11 MR. SHEPARD: I'd like to hear more about
12 the -- what was the second option where you said we
13 cannot castigate -- what was the second --

14 CHAIRMAN de FUNIAK: We can't discuss it
15 until we have -- we have a motion.

16 MS. PRICE: Did we have a second?

17 MR. SMITH: Not yet.

18 CHAIRMAN de FUNIAK: We do now. I'll second
19 it.

20 MR. SHEPARD: On a fine?

21 CHAIRMAN de FUNIAK: No.

22 MS. COSGROVE: No. Do you want to repeat --

23 CHAIRMAN de FUNIAK: Just on enumerating
24 three areas where Mr. -- where he was remiss. Not
25 saying what we're going to do about it, just saying

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 109

1 these are the three areas.

2 MR. SHEPARD: Three areas where there was a
3 problem with the paperwork.

4 CHAIRMAN de FUNIAK: Right. Where there were
5 violations. From there we can then decide what, if
6 anything, we're going to do. Okay?

7 So we have a motion and a second that we use
8 the three areas that Commissioner Cosgrove enumerated.
9 And you can go through them one more time if you would.

10 MS. COSGROVE: The first area is failure to
11 file a Schedule F with the first preelection statement
12 that would indicate anticipated expenses to a vendor,
13 anticipated election expenses that the candidate had
14 agreed to.

15 The second is the Form 460 showing no cash on
16 hand as of 6-30 as a result of the payment of \$18,834.
17 That was very incorrect, I think.

18 And then the termination of the campaign
19 committee, the paperwork on that just generally having
20 a lot of errors.

21 MR. SMITH: And perhaps being premature.

22 MS. COSGROVE: The timing of it as well.
23 Although you could have filed it at that time. A
24 candidate could have filed it -- the respondent could
25 have filed it at that time and said there is this --

Page 110

1 there is either outstanding debts or there's an
2 unresolved loan to myself. So the timing could have
3 been okay, had the respondent revealed the real, you
4 know, financial status.

5 MR. SMITH: Clarification. I think the city
6 clerk can tell me. I don't think you can terminate if
7 you have outstanding debts or outstanding loans.

8 MS. COSGROVE: Oh.

9 MR. SMITH: So I think --

10 MS. COSGROVE: So this -- in general, the
11 termination was done incorrectly.

12 MR. SMITH: Yes, the termination.

13 MS. HERRICK: Excuse me. And actually -- I'm
14 sorry. And Mr. Moye has just clarified it and reminded
15 me that we should really clarify that what the
16 Municipal Code talks about is the reporting obligation
17 that's consistent with the termination. Our Municipal
18 Code doesn't really address termination per se. It's
19 the reporting obligations that follow that.

20 And so what the violation that you're
21 finding -- well, obviously your jurisdiction relates to
22 Title 12 of our Municipal Code. And so what you're
23 talking about is the attended reporting violation as a
24 result of the improper termination. I think I've
25 articulated that okay, anyway.

Page 111

1 MS. COSGROVE: Thank you for clarifying that.
2 Because it is, it's the reporting surrounding the
3 termination that seems to be problematic for a few
4 different reasons.

5 CHAIRMAN de FUNIAK: Okay. Yes.

6 MR. LOUIE: I have a question on Form 460.
7 You mentioned right here saying, "As of 6-30, there was
8 no cash on hand."

9 Well, if -- what I heard in evidence was that
10 he canceled the check in July. So on 6-30 that check
11 was still valid. And if it was valid, therefore, he
12 did not have any money on hand on 6-30. He canceled it
13 after that --

14 MS. COSGROVE: Right.

15 MR. LOUIE: -- which means the money would
16 then go back into his account.

17 MS. COSGROVE: Right.

18 MR. LOUIE: He canceled it in July. So if
19 this is a correct statement for the Form 460.

20 MR. SMITH: But it should have been amended.

21 MR. LOUIE: I understand it should be
22 amended. So the question is how are you going to state
23 it that way versus saying there was no cash at hand?
24 There was no cash at hand.

25 MS. COSGROVE: Right. You're right. We

Page 112

1 would have to -- I think it would make sense to amend
2 the motion and possibly -- because that gets into the
3 very complicated issues related to ICG payments or not.
4 Perhaps find violations only related to the Schedule F
5 and to the reporting requirements related to the
6 termination.

7 MR. SHEPARD: Two areas.

8 MS. COSGROVE: So we can amend the motion to
9 find only violations related to two areas.

10 CHAIRMAN de FUNIAK: Okay.

11 MS. COSGROVE: If we accept that the check
12 was --

13 MR. LOUIE: Well, I'm just going by what the
14 evidence is.

15 CHAIRMAN de FUNIAK: If that's what you're
16 suggesting, we need to ask the maker of the motion.

17 MR. SMITH: I would say as long as we say at
18 least two, as opposed to flat out two, and enumerate
19 what those two are. Because I think there is more than
20 two, but I don't think we need to get into that.

21 CHAIRMAN de FUNIAK: And I made the second,
22 and I can agree with that also. So we have an amended
23 motion with two items. But what you're wanting to say
24 is at least two and list those two?

25 MR. SMITH: Yeah.

REPORTERS TRANSCRIPT OF PROCEEDINGS

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| <p style="text-align: center;">Page 113</p> <p>1 CHAIRMAN de FUNIAK: Is that okay with 2 everyone? 3 All right. So if you -- if we vote for that, 4 we're not voting the penalty. We're just voting for 5 those two items. 6 MR. LOUIE: We're not stating why. We're 7 stating -- could be because of -- we're just saying 8 there are two violations. 9 CHAIRMAN de FUNIAK: That's right. We're 10 just saying that there are violations. Not why or how. 11 MR. SHEPARD: For 2008. 12 CHAIRMAN de FUNIAK: Yes, for 2008. Any 13 other questions? Okay. All in favor of the motion. 14 MR. SMITH: Aye. 15 MR. LOUIE: Aye. 16 MS. COSGROVE: Aye. 17 MR. SHEPARD: Aye. 18 CHAIRMAN de FUNIAK: Aye. 19 Any opposed? 20 (No response.) 21 CHAIRMAN de FUNIAK: So that motion carries. 22 So the next step is what, if anything, do we 23 do? And we're back to three options. Take no 24 action -- no further action, a letter of reprimand or a 25 fine. You have a suggestion or a question?</p> | <p style="text-align: center;">Page 115</p> <p>1 something that got corrected right away. You heard -- 2 we heard the city clerk say that it took well over a 3 year to get him from one point to another, which I 4 don't think should have happened. So I think still 5 that we're -- well, let me leave it at that point 6 because we're -- for right now anyway. Mr. Smith. 7 MR. SMITH: I basically agree with what the 8 two of you have said. You know, I'm conflicted also. 9 I think this is -- you know, the timing of the lawsuit, 10 the timing of the complaint, et cetera, it looks like 11 there is certainly some politics behind it. 12 But on the other hand, characterizing these 13 as minor paperwork, which I have a problem with because 14 again back to what the city -- you know, there's a 15 number of issues in here which are beyond the two that 16 are in the complaint. Plus the city clerk has told us 17 as Commissioner de Funiak said a lot of other stuff 18 resolving the paperwork. To me it may not be 19 intentional, it may not be evil, or whatever the right 20 word is, but it's part of an ongoing pattern. It's not 21 just a couple of sloppy pieces of paper. It's an 22 ongoing pattern of inaccurate paperwork as required 23 under our campaign laws. I think a small -- I don't 24 know about the number, but I think some sort of a small 25 fine would be appropriate.</p> |
| <p style="text-align: center;">Page 114</p> <p>1 MS. COSGROVE: I basically just have a 2 comment. One is that I'm conflicted. And where I'm 3 conflicted is that partly I agree with Commissioner 4 Shepard and Louie that shoddy paperwork from two years 5 ago should not derail a current campaign. However, 6 shoddy paperwork is a charitable view of what happened. 7 And from the perspective of being elections 8 commissioners, and when I think about the fair 9 political practices laws in the state and our code in 10 the city, I think it's important to do the paperwork 11 well, because the paperwork reflects what you've 12 actually done, such as fundraising, paying debts, 13 receiving loans improperly that could, you know, 14 inflate your campaign coffers. 15 I'm just saying that the paperwork is not a 16 trifle, and so that's -- those are the two things that 17 I'm personally weighing, and that's what I want to say. 18 CHAIRMAN de FUNIAK: Well, I agree on being 19 conflicted. What I have heard from Mr. Duong is that 20 he didn't have any bad intentions in doing all of this. 21 That may or may not be, but let's give him the benefit 22 of the doubt that he was not ill intentioned in this. 23 He is still doing a disservice to everybody. 24 And I think I agree that -- and it wasn't -- 25 it wasn't just a little bit. It wasn't -- it wasn't</p> | <p style="text-align: center;">Page 116</p> <p>1 MR. SHEPARD: I would -- I would respectfully 2 disagree with that. I wouldn't do a fine at all. I 3 think the paperwork is sloppy. I think the timing of 4 the allegation is interesting. I think a fine says 5 something very specific that I don't think should be 6 said in this case. You should go to paperwork school. 7 MR. DUONG: I will. 8 MR. SHEPARD: And I think we should cite the 9 fact that you did lousy paperwork. And I would leave 10 it at that. 11 MR. DUONG: I'm willing to go to school. 12 MR. LOUIE: I just have a big concern on the 13 timing. 14 MR. SHEPARD: Yeah, I think the timing is 15 dubious. 16 MR. LOUIE: I'm really concerned about the 17 timing. I understand he did something wrong, but again 18 it's the still a timing issue. And even the city clerk 19 said he made a best effort. It may have taken him a 20 long time, but he did complete the paperwork that was 21 required. Took a long time, but it was done to her 22 satisfaction per se. Maybe not timely, but the 23 paperwork was done. 24 You know, some people have to learn things 25 four times before they get -- you know, get kicked in</p> |

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 117

1 the head a couple of times and they realize it. That's
 2 my opinion.
 3 CHAIRMAN de FUNIAK: Then we need a
 4 suggestion or perhaps a motion. My suggestion, by the
 5 way, seems to be moot at this point since he in fact
 6 has to your minimal satisfaction corrected things from
 7 the past. So I don't think we can say if you go back
 8 and correct it some more, we'll reduce the fine or not
 9 take this action or whatever it might be. I don't
 10 think that works any longer.
 11 So what it still gets us back to, then, is
 12 what do we do? We've heard different opinions. We can
 13 take no action. We can do a letter of reprimand. We
 14 can do a fine. Those are the choices. Mr. Smith.
 15 MR. SMITH: I move that we impose a \$500
 16 fine.
 17 MS. COSGROVE: I second.
 18 CHAIRMAN de FUNIAK: Okay. Moved and
 19 seconded that a \$500 fine be imposed. Any further
 20 discussion?
 21 I will tell you that I can -- I can live with
 22 that motion. Although I still think I'd like to make
 23 it clear that I don't like the timing of this, and I
 24 think there was a motivation behind it. And I think
 25 the fine is justified. But I think we also perhaps can

Page 118

1 make a statement, if we wish, that we don't like the
 2 timing of how this came forward. I don't have a
 3 problem with that either. Anyway --
 4 MR. SHEPARD: I'm not in favor of the fine.
 5 I may be outvoted, so be it. But if I was outvoted on
 6 it, I would want -- or if I could be satisfied to some
 7 degree that if a fine was made, I would want something
 8 very specific in writing associated with the edict, or
 9 however the thing officially gets published, that says
 10 the fine is strictly 100 percent associated with sloppy
 11 paperwork and has nothing to do with the integrity of
 12 the candidate or that he's done anything that should be
 13 looked at as harmful in trying to beat the political
 14 process or whatever.
 15 And, again, I'm not in favor of the fine.
 16 But I want to have something very explicit that would
 17 state that the fine is for the sloppy paperwork, not
 18 for the integrity of the candidate's position.
 19 CHAIRMAN de FUNIAK: I think what we need to
 20 do -- I understand what you're saying. I think we need
 21 to vote on the motion. Depending on which way it falls
 22 out, if somebody has a further suggestion on action the
 23 Commission should take, then we can entertain it at
 24 that time.
 25 MR. SHEPARD: Well, the only reason I say

Page 119

1 that now is just based on what I just heard, there's
 2 going to be three votes on the \$500 fine. It appears
 3 to be that way. I mean, maybe I misconstrued that, but
 4 I heard you say it. You agreed. You agreed. But it
 5 looks like it's going to be at least three to two for a
 6 \$500 fine.
 7 CHAIRMAN de FUNIAK: And if that's the way it
 8 happens, and that's an if --
 9 MR. SHEPARD: So be it.
 10 CHAIRMAN de FUNIAK: -- you'll have the floor
 11 again if you want and make a suggestion --
 12 MR. SHEPARD: Well, on the assumption that
 13 that vote will pass, which it appears to be. I'm not
 14 that good in math, pretty good. I'd like to amend that
 15 motion to state that -- so we can get a universal vote
 16 perhaps, that we're going to two violations, a \$500
 17 fine for the sloppy paperwork. Get the right words.
 18 But some type of caveat that is clear to the public
 19 that it was not the Commission's view that the
 20 candidate was trying to beat the system and impugn his
 21 integrity. I would want to see that written in the
 22 newspaper -- not the newspaper, written in the edict.
 23 So if that can be combined --
 24 CHAIRMAN de FUNIAK: We can only control what
 25 we're going to do.

Page 120

1 MR. SHEPARD: Gotcha. I'm with you. But if
 2 that can be combined, the two violations, the \$500 fine
 3 with the statement that we did not believe that there
 4 was any integrity issues associated with the
 5 candidate's position, then I could be okay with that.
 6 CHAIRMAN de FUNIAK: Mr. Smith.
 7 MR. SMITH: As the maker of the motion, I'm
 8 certainly willing to put something in there that the
 9 Commission is concerned about the timing of the
 10 complaint. But I'm not willing at this point, without
 11 further discussion, to go so far as to totally write it
 12 off. Because if we had no concerns at all and it was
 13 just, quote, sloppy paperwork, I wouldn't be proposing
 14 a \$500 fine. I think it's a little more than that.
 15 So I'm willing to say -- I think we all
 16 agree, from what I heard, that the timing is a concern.
 17 And I don't know what word "suspicious" or whatever.
 18 But a concern is probably as far as it can go. But I
 19 personally wouldn't go any further than that. I don't
 20 know. We may not want to amend this motion. We may
 21 want to do it as a separate motion. Because I don't
 22 think I can -- I can't support what you're saying at
 23 all.
 24 MR. SHEPARD: That's fine. I won't vote for
 25 the \$500 fine without that statement. I will not vote

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 121

1 for that.

2 CHAIRMAN de FUNIAK: Okay. Commissioner

3 Cosgrove, yes.

4 MS. COSGROVE: So what you would -- what you

5 would be wanting to say, though, is that in issuing the

6 this fine, the Election Commission is unanimously

7 concerned about the timing of the filing of this

8 complaint and related lawsuits, or something along

9 those lines.

10 MR. SMITH: Relative to the 2010 --

11 MS. COSGROVE: Relative to the current

12 campaign.

13 MR. SMITH: Current campaign in District 7.

14 I would be okay with that.

15 MS. COSGROVE: If you amend, I will too.

16 CHAIRMAN de FUNIAK: Okay. Let me ask a

17 question then, because our city attorney's office will

18 need to draft a letter somehow. If that's where we get

19 to, I would be happy to work with you on that, Lisa and

20 Lee. Is that a possibility?

21 MS. HERRICK: I think the Commission can do

22 whatever it wants to do.

23 CHAIRMAN de FUNIAK: Yes.

24 MS. HERRICK: I think, honestly, you can do

25 it within the resolution. I mean, the Commission

Page 122

1 findings -- essentially this section on Commission

2 findings states that the Commission shall issue a

3 decision by resolution that this is a part of your

4 decision. I think that can be articulated within the

5 resolution.

6 CHAIRMAN de FUNIAK: Say that again, please.

7 MS. HERRICK: I think that anything -- I'm

8 not sure that you need to do a separate letter. I

9 think that you can say whatever you want to say in the

10 resolution --

11 CHAIRMAN de FUNIAK: Okay.

12 MS. HERRICK: -- of your findings.

13 CHAIRMAN de FUNIAK: Right. Okay.

14 MS. HERRICK: And the attendant penalties

15 goes with that penalties that goes with the findings.

16 CHAIRMAN de FUNIAK: Okay. The question

17 would be what goes into that resolution.

18 MR. SHEPARD: Perhaps an adjustment that

19 accommodates both of us would be appropriate. That the

20 \$500 fine for the two transactions, number one, there

21 is an issue -- there was a concern about the timing of

22 the document being brought forth.

23 And number two -- and, again, I come back to

24 my point that there was nothing that we found -- that I

25 found in this whole discussion that impugns the

Page 123

1 integrity of the candidate. And I -- I just feel

2 somewhat strongly that that -- that should be stated

3 somewhere. If you want to say that, you know, the fine

4 is -- the point that you wanted to raise on the thing,

5 that's fine. But I think there should be something in

6 there that states we did not find any issues with the

7 candidate's integrity.

8 MR. SMITH: That sounds like apologizing for

9 what we're doing.

10 MR. SHEPARD: No, I'm not.

11 MR. SMITH: Well, it sounds like it to me.

12 MR. SHEPARD: Well, okay. Fair enough. But

13 from my view, he violated the paperwork, and he did a

14 lousy job and deserves to be fined. I agree, fine.

15 \$500, okay. So be it.

16 But I don't see where he -- because of the

17 combination of the timing and the lack of anything that

18 I've heard that says he's, you know, doing some illegal

19 activity or, you know, really under the table stuff

20 that would question his integrity. I haven't heard

21 that. And I just would hate to see the announcement go

22 out that would appear that he -- you know, he was

23 trying to jerry-rig the election or do something to

24 that effect.

25 CHAIRMAN de FUNIAK: Again, all -- we can't

Page 124

1 control -- you're talking about controlling the media.

2 We can't control --

3 MR. SHEPARD: I don't want to control the

4 media. I want to control what we do.

5 CHAIRMAN de FUNIAK: Well, that's all that we

6 can do.

7 MR. SHEPARD: Right. And like I said, that's

8 pretty much where I'm coming from.

9 CHAIRMAN de FUNIAK: Okay. I have a little

10 bit of a conflict, too, in that I don't know that we

11 need to broker a deal here --

12 MR. SHEPARD: I gotcha.

13 CHAIRMAN de FUNIAK: -- among the five of us.

14 MR. SHEPARD: I understand.

15 CHAIRMAN de FUNIAK: And I would not want to

16 ask you or anyone else --

17 MR. SHEPARD: Sure.

18 CHAIRMAN de FUNIAK: -- to change your mind

19 or change your vote if we do this.

20 You know, we thought this through. We talked

21 about it. And when we get to the vote, you need to

22 cast your vote the way your conscious dictates. I

23 don't think any of us wants anything less than that.

24 And at some point we need to call to question

25 and vote on the motion. I'm not sure how far we're

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 125

1 going to get with this.
 2 MR. SMITH: Can we modify the motion to add
 3 anything at all, or are we still talking about this?
 4 CHAIRMAN de FUNIAK: I don't think we have
 5 modified it yet.
 6 MR. SMITH: I'm not sure. I agree to put
 7 something in there, but I don't know --
 8 CHAIRMAN de FUNIAK: What's going to go --
 9 what that would be is -- it's now in dispute, I think.
 10 MR. SMITH: Yeah.
 11 MR. SHEPARD: I don't have a problem with --
 12 MR. SMITH: Maybe it would be good to --
 13 MS. HERRICK: Excuse me. I'm going to --
 14 this is an administrative hearing. I would suggest
 15 that people speak after they're recognized. We're not
 16 sitting in someone's living room having a conversation.
 17 I really need to emphasize that.
 18 MR. SHEPARD: Okay.
 19 CHAIRMAN de FUNIAK: Okay.
 20 MS. PRICE: Mr. Chair, from a parliamentary
 21 procedure standpoint, I think it would be appropriate
 22 for you to ask if the maker of the motion, Commissioner
 23 Vice Chair Smith, seconded by Commissioner Cosgrove, if
 24 they accept Bob Shepard's amendment. That the
 25 resolution include some kind of language that would

Page 126

1 portray the Commission's concern about the timing of
 2 the complaint. So we just need to know if that
 3 amendment was accepted to the motion.
 4 CHAIRMAN de FUNIAK: I don't think it was.
 5 And I don't think that I would be in favor of it.
 6 MR. SHEPARD: Of what?
 7 CHAIRMAN de FUNIAK: Of adding it as an
 8 amendment. I -- I don't have a problem with doing
 9 something separately that would indicate that, but I
 10 think we're going to have a problem just even then.
 11 MR. SHEPARD: You're talking about the timing
 12 issue?
 13 CHAIRMAN de FUNIAK: Yes.
 14 MR. SHEPARD: You're even questioning whether
 15 that's appropriate?
 16 CHAIRMAN de FUNIAK: Yeah. I guess I am.
 17 MR. SHEPARD: Well -- sorry to interrupt. If
 18 the issue is that that's not even appropriate to put in
 19 the timing issue, and the only thing that we have is a
 20 vote that we've already taken that there is two
 21 violations and now we're only voting on whether it
 22 should be a \$500 fine, if that's the only issue on the
 23 table, then I would vote against it.
 24 CHAIRMAN de FUNIAK: Understood.
 25 Yes.

Page 127

1 MR. SMITH: But you are allowing for the fact
 2 that after that motion we can have a separate motion to
 3 discuss perhaps some kind of a statement to be included
 4 in the resolution; is that right?
 5 CHAIRMAN de FUNIAK: That's what I think.
 6 MR. SMITH: Okay.
 7 MS. PRICE: As the motion maker, if you
 8 choose not to accept the amendment, then perhaps you
 9 should go ahead and vote on the original motion.
 10 MR. SMITH: I think we should vote on the
 11 original motion.
 12 CHAIRMAN de FUNIAK: That's -- that's where I
 13 think we are. And the original motion is a \$500 fine
 14 to Minh Duong based on the two items that we have
 15 listed.
 16 And we've talked about it enough. I think we
 17 need to take a vote. So all in favor of the \$500 fine.
 18 Aye.
 19 MR. SMITH: Aye.
 20 MS. COSGROVE: Aye.
 21 CHAIRMAN de FUNIAK: Opposed.
 22 (Commissioner Shepard and Commissioner Louie
 23 raised their hand.)
 24 CHAIRMAN de FUNIAK: So that's three to two.
 25 And you got who voted which way, I'm sure.

Page 128

1 MS. PRICE: I did. Thank you.
 2 CHAIRMAN de FUNIAK: Okay. Now, is there
 3 something that we would like to do as a Commission that
 4 deals with the issue of the timeliness?
 5 Mr. Smith, I'll start with you.
 6 MR. SMITH: I'll start out simple. I would
 7 propose that we include in the resolution a statement
 8 that the Commission is concerned about the timing of
 9 this complaint relative to the election cycle or the
 10 2010 election cycle. And I wouldn't go any farther
 11 than that.
 12 MR. SHEPARD: Again, I would disagree --
 13 MR. SMITH: We need a second before we talk
 14 about it.
 15 MR. SHEPARD: Oh.
 16 MR. SMITH: Or lack thereof.
 17 CHAIRMAN de FUNIAK: Was that the form of a
 18 motion?
 19 MR. SMITH: Yeah, I move that. I'm sorry.
 20 Yes, that's a motion.
 21 MS. PRICE: We got it.
 22 CHAIRMAN de FUNIAK: All right. Is there a
 23 second?
 24 MS. COSGROVE: I second the motion.
 25 CHAIRMAN de FUNIAK: Okay. All right. Now,

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 129

1 Commissioner Shepard, do you want to address that?
 2 MR. SHEPARD: Yeah, I'll vote against that,
 3 too. And I'll vote against that because I think it is
 4 absolutely essential. I sat here for two hours
 5 listening to the gentleman here. And the timing issue
 6 is an absolute issue to me. And I think in the world
 7 of people who care about this stuff, okay, I think the
 8 issue of the integrity of the candidate is ultimately
 9 what makes people decide to vote for someone or not.
 10 And I think we would be doing an injustice if we didn't
 11 make a statement, unless we felt there was a lack of
 12 integrity, if we thought that there was, then fine,
 13 let's vote on that.
 14 But if we don't think there's a lack of
 15 integrity, I don't think want to give any inference
 16 that we're impugning the character of the candidate by
 17 just leaving it, well, you know, it is questionable
 18 with, you know, the opposition brought this forward in
 19 the 11th hour and that the timing is questionable.
 20 Well, that's true and I agree with that.
 21 But I also agree we should make it clear
 22 that, unless someone has some documentation or some
 23 proof here, that we should make some statement that
 24 there seems to be no issue with the character -- not
 25 the character -- the integrity of the candidate who is

Page 130

1 before the Commission.
 2 CHAIRMAN de FUNIAK: Mr. Smith.
 3 MR. SMITH: I don't think there's been any
 4 concrete evidence brought forward regarding making
 5 statements -- negative statements about the character
 6 or integrity of Mr. Duong. But having said that, in
 7 reading the reports, reading the material that he
 8 submitted this morning, there's a little bit too much
 9 of my dog ate the homework kind of stuff in there to
 10 make me feel completely comfortable. That's why I'm
 11 not willing to go on record with something that might
 12 be viewed an endorsement of his character because I
 13 don't really know. I won't say that he's a -- I'm not
 14 going to say he's a bad guy. But I'm just a little
 15 uncomfortable with, you know, didn't receive this,
 16 things were lost in moving, my bank closed down.
 17 Just -- just a little too much of that to make me
 18 completely comfortable with a ringing endorsement.
 19 MR. SHEPARD: I'm not -- or I'm not sitting
 20 here --
 21 MR. SMITH: Or what I interpret as a ringing
 22 endorsement.
 23 CHAIRMAN de FUNIAK: Easy. Be recognized.
 24 MR. SHEPARD: I'm not sitting here as a
 25 ringing endorsement. I'm not sure what district you're

Page 131

1 in, 5, 7 or whatever. It's not my district.
 2 CHAIRMAN de FUNIAK: Well, I can go as far as
 3 agreeing to some kind of statement that talks about the
 4 timing of the complaint, but I can't go beyond that.
 5 MS. COSGROVE: I -- Mr. Chair.
 6 CHAIRMAN de FUNIAK: Yes.
 7 MS. COSGROVE: I can -- I support making a
 8 statement that we have concerns about the timing of the
 9 complaint related to the 2010. I have similar concerns
 10 to you all about why it took -- Commissioners Smith and
 11 de Funiak as to why I wouldn't go further.
 12 But in the big picture of why I wouldn't go
 13 further is that we're not asked to really look into the
 14 integrity or lack of integrity of people who come here.
 15 We are asked to find violations or not. Now, we can't
 16 divorce that from the fact that there's an election and
 17 that's what we're saying.
 18 But to say that we find or don't find
 19 anything about the integrity, that has to be left to
 20 the people to decide. If you run a shoddy campaign,
 21 that says something about you. Says something to you
 22 or not to you, but that's for other people to decide.
 23 And then, you know, if you don't take care of your
 24 paperwork, that says something, and people have to
 25 judge for themselves what that does or doesn't say.

Page 132

1 It's not for me to say.
 2 It's for us to look at a report that's been
 3 done, very detailed report by an independent person,
 4 find violations or not. I think we try to be very
 5 careful not to enter into areas that we weren't
 6 comfortable with by really ignoring a lot of potential
 7 violations that were disputed and trying to focus on
 8 the ones that really were black or white. And I think
 9 going too far into making value judgments about the
 10 people who come here is absolutely not in our remit.
 11 CHAIRMAN de FUNIAK: Commissioner Shepard.
 12 MR. SHEPARD: Are we making a judgment even
 13 when we say there's a questionable timing? Isn't that
 14 a judgment?
 15 MS. COSGROVE: But not about any person or
 16 candidate. That's all --
 17 MR. SHEPARD: It's making a statement. It
 18 sure is -- it sure is making a statement about the
 19 candidate. Making a statement about the other
 20 candidate potentially. If you're going to sit here and
 21 make a statement that the timing of this charge is
 22 dubious or questionable, that's a judgment. It's a
 23 judgment.
 24 CHAIRMAN de FUNIAK: Mr. Louie.
 25 MR. LOUIE: Let's reverse this a little, so

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 133

1 maybe we can have some peace here. We're fining the
2 candidate based on the paperwork. Can we just state
3 that the fine is based on the paperwork.

4 MR. SHEPARD: I don't have a problem with
5 that.

6 MR. LOUIE: I mean, and then everything else
7 alone. That's factual. So reverse it that way.

8 MS. HERRICK: Excuse me, Mr. Chair. I think
9 the first motion is listing the basis of the violations
10 -- I mean, the Municipal Code really is about reporting
11 and disclosure.

12 CHAIRMAN de FUNIAK: Yes.

13 MS. HERRICK: So I think that that's implied
14 in the first motion.

15 CHAIRMAN de FUNIAK: Right. Okay. We still
16 have a motion on the floor. And so we're going to need
17 to address that motion. That motion was to make a
18 statement --

19 MS. HERRICK: That the Commission is
20 concerned about the timing of the complaint relative to
21 the 2010 election cycle.

22 CHAIRMAN de FUNIAK: So now I don't think I
23 want to vote for it. I think we've got our answer in
24 the fact that we've made a fine and could be made clear
25 that it's based strictly on incomplete paperwork.

Page 135

1 election cycle.

2 MR. SHEPARD: And that's going to be the
3 final motion of the night basically?

4 MR. LOUIE: Can I ask question --

5 CHAIRMAN de FUNIAK: Hold on. Too many
6 people talking.

7 It doesn't have to be the final motion. I
8 hope it is, but it doesn't have to be.

9 Commissioner Louie, you have a statement.

10 MR. LOUIE: The city attorney mentioned that
11 it's still going to be stated in the fine that it was
12 based on sloppy paperwork or incorrect or late
13 paperwork.

14 MS. HERRICK: That's not what the motion is.

15 MR. LOUIE: The original. The original --
16 the penalty.

17 MS. HERRICK: The first motion that Vice
18 Chair Smith was the Commission makes a finding that
19 there are at least two violations, including failure to
20 file a first preelection statement that should have
21 accounted for the installment, basically Schedule F.

22 And then as I understand the second is the
23 filing -- failure to file appropriate reports
24 associated with the termination of the committee. As I
25 understood, those were the two violations.

Page 134

1 Done.

2 MR. SHEPARD: Right. If it's perfectly
3 clear, you might have me on that one. If it's
4 perfectly clear that the fine is a result of improper
5 or inadequate paperwork, which created two paperwork
6 violations in 2008, and as a result of that there's a
7 \$500 fine, that's it, case closed. Move on.

8 CHAIRMAN de FUNIAK: As was pointed out,
9 that's essentially what our job is.

10 MR. SHEPARD: Paperwork, right.

11 CHAIRMAN de FUNIAK: So, a point of order.
12 Can the motion be withdrawn, or do we vote on it
13 anyway?

14 MS. PRICE: Of course it can be withdrawn by
15 the motion maker or you can go ahead and call for a
16 vote.

17 MR. SMITH: I'd rather -- as the maker of the
18 motion, I'd rather vote on it.

19 CHAIRMAN de FUNIAK: Okay. Can we repeat the
20 motion that will be voted on. And I think it's a
21 statement from the Commission that we're concerned
22 about the timing of the complaint. Is that the motion?

23 MS. HERRICK: Relative to the 2010 election
24 cycle.

25 CHAIRMAN de FUNIAK: Relative to the 2010

Page 136

1 You took away -- the third was the violation
2 about dealing with the cash on hand, because there was
3 some discussion about that instead -- because of the
4 cashing of the check.

5 CHAIRMAN de FUNIAK: Okay. As the maker of
6 the motion, you want the motion to be voted on.

7 MR. SMITH: I prefer that, yes.

8 CHAIRMAN de FUNIAK: Okay. Does everybody
9 understand the motion?

10 MR. SHEPARD: Go ahead. What is it?

11 MS. HERRICK: The motion is that the
12 resolution will include a statement that the Commission
13 is concerned about the timing of the complaint relative
14 to the 2010 election cycle.

15 CHAIRMAN de FUNIAK: That would be part of
16 the --

17 MS. HERRICK: Resolution.

18 CHAIRMAN de FUNIAK: -- part of the
19 resolution.

20 MR. SHEPARD: That's in addition to the
21 paperwork discussion?

22 CHAIRMAN de FUNIAK: Yes.

23 MS. HERRICK: I don't have a motion that -- I
24 am not intending to --

25 MR. SMITH: Use the word "paperwork."

34 (Pages 133 to 136)

REPORTERS TRANSCRIPT OF PROCEEDINGS

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| <p style="text-align: center;">Page 137</p> <p>1 MS. HERRICK: I'm not intending to use the 2 word "paperwork" when I draft the resolution. The 3 motions have -- 4 CHAIRMAN de FUNIAK: Yes. That's understood. 5 MR. SHEPARD: Use the right words. 6 CHAIRMAN de FUNIAK: That will be -- 7 eventually we will direct you to do the right language, 8 regardless of the words we're using. 9 MS. HERRICK: Well, the motions have been 10 made and approved, so I'm going to go based on those 11 motions in terms of -- to reflect the Commission's 12 action. 13 CHAIRMAN de FUNIAK: Yes. 14 MR. SHEPARD: Can I just make one comment? 15 MR. De FUNIAK: Okay. 16 MR. SHEPARD: One quick one. Since it 17 doesn't look like what I would like to add in addition 18 that will happen, that's fine. But I also do agree 19 that the timing is dubious at a minimum. And I will be 20 prepared to vote for that. Because if I'm going -- if 21 we're going to have the paperwork in there which we 22 pass, then I just as soon have this other line here 23 that says that the raising of the issue is dubious to 24 begin with. 25 CHAIRMAN de FUNIAK: Okay.</p> | <p style="text-align: center;">Page 139</p> <p>1 evidence on the record. 2 CHAIRMAN de FUNIAK: Yes. Thank you. Okay. 3 All right. Mr. Smith. 4 MR. SMITH: Is it certified or affirmed? 5 MS. HERRICK: Certified. 6 MR. SMITH: I certify. 7 CHAIRMAN de FUNIAK: Okay. I so certify. 8 MR. SHEPARD: Certify. 9 MS. COSGROVE: I certify. 10 MR. LOUIE: I certify. 11 CHAIRMAN de FUNIAK: And we need to direct 12 the city attorney to put this together. And do you 13 have any questions? I'll be happy to work with you on 14 that. 15 Public comment. 16 MS. PRICE: We need a motion, Mr. Chair. 17 MS. HERRICK: A motion for the city 18 attorney's office to prepare the -- 19 CHAIRMAN de FUNIAK: Oh, I'm sorry. We need 20 to do that in the form of a motion. Okay. 21 MR. SMITH: So moved. 22 CHAIRMAN de FUNIAK: I'll second. Okay. 23 That's to direct the city attorney to put this 24 together. All in favor. 25 MR. SMITH: Aye.</p> |
| <p style="text-align: center;">Page 138</p> <p>1 -MR. SHEPARD: So I guess I would rather have 2 that in there. 3 CHAIRMAN de FUNIAK: All right. 4 MR. SHEPARD: And leave it at that. 5 CHAIRMAN de FUNIAK: Any other questions -- 6 MR. SHEPARD: And I'll concede the -- I'll 7 concede the -- what you don't agree with me on. 8 CHAIRMAN de FUNIAK: Any other questions or 9 comments? 10 All right. The motion is now being called 11 for. All in favor say aye. 12 MR. SMITH: Aye. 13 MR. LOUIE: Aye. 14 MS. COSGROVE: Aye. 15 MR. SHEPARD: Aye. 16 CHAIRMAN de FUNIAK: Aye. 17 Any opposed? 18 (No response.) 19 CHAIRMAN de FUNIAK: That passes unanimously. 20 And we need to affirm that we have read 21 and -- all the documentation and acted on it 22 appropriately. 23 MS. HERRICK: And heard any testimony. 24 CHAIRMAN de FUNIAK: And heard any testimony. 25 MS. HERRICK: And reviewed the entire</p> | <p style="text-align: center;">Page 140</p> <p>1 MR. LOUIE: Aye. 2 MS. COSGROVE: Aye. 3 MR. SHEPARD: Aye. 4 CHAIRMAN de FUNIAK: Aye. 5 Okay. That passes. 6 Now, public comment. Two minutes each. 7 Anybody would like to say anything, now is the time. 8 MS. PRICE: And only relative to tonight's 9 agenda items. 10 CHAIRMAN de FUNIAK: Yes. Only relative to 11 tonight's agenda. 12 Hearing no public comment -- yes, sir. State 13 your name, please. 14 MR. DOVAN: Minh Steven Dovan. I came in 15 late, but I caught maybe about 45 minutes of the 16 discussion. 17 I think that of the three possible options, I 18 think in a compromise the midterm -- I mean, the 19 midrange, the second option should have been used. And 20 I agree wholeheartedly with Mr. Shepard. 21 I think as a compromise -- obviously you got 22 one, two and three. One being the lightest, three 23 being the harshest. The moderate position should have 24 been a reprimand. Because I think it's excusable 25 neglect, mistake and inadvertence. I don't think</p> |

REPORTERS TRANSCRIPT OF PROCEEDINGS

Page 141

1 there's any, like Mr. Shepard indicated, malice.
 2 CHAIRMAN de FUNIAK: Thank you.
 3 Any other public comment. State your name.
 4 MS. WARD: My name is Bertha Ward, and I am
 5 resident of District 7. I think that if you parked at
 6 a parking meter and you get a fine for running over,
 7 whether it was inadvertent or whatever, you can pay a
 8 fine for that and it doesn't mean you're a criminal.
 9 So you pay a fine for paperwork, I put it in the same
 10 category. And I don't think it means a lot. It
 11 doesn't mean that you're able if you get a parking
 12 ticket and pay a fine or if you pay a fine because of
 13 paperwork. Thank you.
 14 MR. De FUNIAK: Thank you.
 15 Mr. Sandoval.
 16 MR. SANDOVAL: I disagree with Robert
 17 Shepard. I believe that it was neglect on his part.
 18 He did not follow the rules of the election and he
 19 is - I know you fined him, but I disagree with
 20 Mr. Shepard.
 21
 22
 23 ///
 24 ///
 25 ///

Page 143

1 I, NOELIA ESPINOLA, do hereby certify:
 2 That the foregoing special meeting was taken
 3 down by me in shorthand at the time and place therein
 4 named, and thereafter reduced to computerized
 5 transcription under my direction.
 6 And I hereby certify the foregoing transcript
 7 is a full, true and correct transcript of my shorthand
 8 notes so taken.
 9 I further certify that I am not interested in
 10 the outcome of this special meeting.
 11
 12
 13 Dated: _____
 14
 15
 16 _____
 17 NOELIA ESPINOLA
 18 CSR #8060
 19
 20
 21
 22
 23
 24
 25

Page 142

1 CHAIRMAN de FUNIAK: Thank you. Any other
 2 comment?
 3 All right. Hearing no other public comment,
 4 I think our business is conducted. So the meeting is
 5 now adjourned. Thank you all very much.
 6 (At 8:43 p.m. the hearing concluded.)
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