

1
2 ETHICS COMMISSION
3 CITY AND COUNTY OF SAN FRANCISCO
4

5
6 In the Matter of Charges Against
7 ROSS MIRKARIMI,
8 Sheriff, City and County of San Francisco.
9

**FINDINGS OF FACT AND
RECOMMENDATION TO BOARD OF
SUPERVISORS**

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11 Pursuant to Section 15.105 of the Charter of the City and County of San Francisco, the
12 Ethics Commission hereby makes the following findings of fact and transmits the following
13 recommendation to the Board of Supervisors.

14 PROCEDURAL HISTORY

15 On March 21, 2012, Mayor Edwin M. Lee transmitted to the Ethics Commission charges
16 of official misconduct relating to Sheriff Ross Mirkarimi. The Mayor amended these charges on
17 June 1, 2012 to specify six separate counts of alleged official misconduct.

18 Under Charter Section 15.105, the Ethics Commission is mandated to hold a hearing on
19 such charges. After the hearing, the Charter requires the Ethics Commission to transmit the full
20 record of the hearing to the Board of Supervisors with a recommendation as to whether the
21 charges should be sustained.

22 Charter Section 15.105(e) defines “Official Misconduct” as follows:

23 Official misconduct means any wrongful behavior by a public officer in
24 relation to the duties of his or her office, willful in its character, including any
25 failure, refusal or neglect of an officer to perform any duty enjoined on him or her
26 by law, or conduct that falls below the standard of decency, good faith and right
27 action impliedly required of all public officers and including any violation of a
28 specific conflict of interest or governmental ethics law. When any City law
provides that a violation of the law constitutes or is deemed official misconduct,
the conduct is covered by this definition and may subject the person to discipline
and/or removal from office.

1 This matter presents the first time that the Mayor has presented the Ethics Commission
2 with charges of official misconduct under Charter section 15.105. To carry out its duties under
3 the Charter, the Ethics Commission took the following actions.¹

4 On April 23, 2012, the Commission met and heard from counsel for the Sheriff and the
5 Mayor regarding, among other things, proposed procedures for the Commission to follow in
6 conducting the hearing.

7 On May 29, 2012, the Commission again met and heard from counsel for the Sheriff and
8 the Mayor about procedural issues. The Commission decided:

- 9 • The Mayor had the burden of demonstrating by a preponderance of the evidence that
10 the Sheriff engaged in official misconduct.
- 11 • The rules of evidence would not be strictly applied. Some hearsay evidence might be
12 admitted, although hearsay alone would not be permitted to establish a fact. The
13 Commission might choose to exclude some hearsay evidence on a case by case basis.
- 14 • All direct testimony would come in by declaration, unless the witness was outside of
15 a party's control and refused to provide a declaration.
- 16 • Either party, upon request, would be given the opportunity to cross examine witnesses
17 who provided direct testimony via declarations.
- 18 • If a witness provided direct testimony via declaration but did not appear upon request
19 for cross-examination, the Commission would give that witness's declaration the
20 weight it deemed appropriate.
- 21 • Upon receipt of declarations and objections, the Commission would decide whether
22 declarations (or parts thereof) would be admitted.
- 23 • A majority vote by the members of the Commission would be sufficient for the
24 Commission to send its recommendations to the Board of Supervisors.

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27 ¹ This is a summary of the Commission's actions and is not meant to be exhaustive. All
28 of the Commission's actions were taken during public meetings, are detailed in transcripts from
those meetings, and are reflected in minutes of those meetings.

1 The Commission also set a schedule for the submission of declarations, objections,
2 requests for subpoenas, and other matters.

3 On June 19, 2012, the Commission made interim rulings with respect to the admissibility
4 of declarations filed by the Mayor's and the Sheriff's witnesses as follows:

- 5 • Admitted into evidence the following declarations submitted by the Mayor: Interim
6 Sheriff Vicki Hennessey, San Francisco Chief Probation Officer Wendy Still (in
7 part), SFPD Inspector Richard Daniele (in part), Callie Williams (in part), and Mayor
8 Edwin M. Lee.
- 9 • Declined to admit into evidence the following declaration submitted by the Mayor:
10 Deputy Chief of Staff Paul Henderson.
- 11 • Admitted into evidence the following declarations submitted by the Sheriff: Emin
12 Tekin, Lenilyn DeLeon (in part), Linnette Peralta Haynes, and Sheriff Ross
13 Mirkarimi (in part).

14 The Commission also made interim rulings regarding the admissibility of some of the
15 documentary evidence submitted by the parties and set a schedule for remaining sessions of the
16 hearing.

17 On June 28, 2012, the Commission made additional interim rulings with respect to the
18 admissibility of declarations filed by the Mayor's and the Sheriff's witnesses as follows:

- 19 • Admitted into evidence the following declarations submitted by the Mayor: Ivory
20 Madison (in part), Abraham Mertens (in part), and San Diego Chief of Police William
21 Lansdowne.
- 22 • Admitted into evidence the following declaration submitted by the Sheriff: Former
23 Sheriff Michael Hennessey (in part).
- 24 • Admitted into evidence a videotape of statements by Eliana Lopez.

25 The Commission also made interim rulings regarding the admissibility of some of the
26 documentary evidence submitted by the parties.

27 In addition, at the request of the parties, the Commission began hearing live witness
28 testimony of witnesses the parties wished to cross-examine. The Sheriff declined to cross-

1 examine any witnesses except the Mayor. The Mayor cross-examined all witnesses he wished to
2 cross-examine, with the exception of former Sheriff Michael Hennessey, who did not make
3 himself available for cross-examination. The first witness was the Sheriff.

4 On June 29, 2012, the Commission made additional interim rulings with respect to the
5 admissibility of declarations filed by the Mayor's and the Sheriff's witnesses as follows:

- 6 • Admitted into evidence the following declaration submitted by the Mayor: Nancy
7 Lemon (in part).
- 8 • Admitted into evidence the following declaration submitted by the Sheriff: Eliana
9 Lopez (in part).

10 The Commission also made interim rulings regarding the admissibility of some of the
11 documentary evidence submitted by the parties and heard testimony from the Sheriff, the Mayor,
12 and the Mayor's expert witness, San Diego Chief of Police William Lansdowne. In addition, the
13 Commission and both parties discussed the procedure for drafting the Commission's
14 recommendation to the Board of Supervisors.

15 On July 18, 2012, the Commission made additional interim rulings and heard testimony
16 from Linnette Peralta Haynes and Eliana Lopez.

17 On July 19, 2012, the Commission made additional interim rulings including

- 18 • Determined that it would not be necessary to receive live testimony from the Mayor's
19 proposed rebuttal witness, Inspector Mike Becker, SFPD.
- 20 • Denied the Sheriff's request for the issuance of subpoenas for four witnesses to testify
21 about two collateral issues: (1) whether the Mayor sought the advice of a Supervisor
22 prior to taking action against the Sheriff, and (2) whether someone potentially
23 associated with the Mayor offered the Sheriff a lower-ranking position in exchange
24 for his resignation.

25 The Commission also heard additional testimony from Eliana Lopez, and established a
26 schedule for closing briefs and arguments.

27 On August 16, 2012, the Commission heard closing arguments, deliberated and voted on
28 findings of fact and recommendations as discussed below.

FINDINGS OF FACT

The Ethics Commission unanimously finds that the Mayor proved the following facts by a preponderance of the evidence:

1. Between November 8, 2011, and January 8, 2012, Ross Mirkarimi had the duty and the power in his official capacity as Sheriff-Elect to work with the Sheriff's Department and its officials to prepare himself to assume the full duties of Sheriff. Sheriff Mirkarimi also had the duty and the power as Sheriff-Elect to represent the Sheriff's Department to the public. Sheriff Mirkarimi exercised those official powers.

2. On January 8, 2012, Ross Mirkarimi ceased to be a member of the Board of Supervisors and assumed all powers and duties of the Sheriff of the City and County of San Francisco. Sheriff Mirkarimi exercised those official powers.

3. On or about December 31, 2011, during the time he was incumbent Supervisor and Sheriff-Elect, Ross Mirkarimi committed acts of verbal and physical abuse against his wife, Eliana Lopez. Among other things, Mr. Mirkarimi grabbed Ms. Lopez with such force that he bruised her upper right arm.

4. During that incident Mr. Mirkarimi restrained Ms. Lopez and violated her personal liberty.

5. On January 8, 2011, Sheriff Mirkarimi took the oath of office.

6. On or about January 8, 2011, Sheriff Mirkarimi resigned from the Board of Supervisors.

7. On March 12, 2012, Sheriff Mirkarimi pled guilty to the crime of false imprisonment of his spouse.

RECOMMENDATION

Based on the foregoing findings of fact, the evidence presented to the Ethics Commission over the course of the hearing, the applicable legal authorities and the arguments of counsel for the Sheriff and the Mayor, the Ethics Commission – by a vote of 4-1 (Chairperson Hur dissenting) – makes the following recommendation to the Board of Supervisors:

1 The Board should sustain the charges of Official Misconduct against Sheriff Ross Mirkarimi
2 based on the seriousness of the incident that occurred on December 31, 2011, and the subsequent
3 conviction as reflected in counts Four and Five of the amended charges of official misconduct
4 filed by the Mayor. The Sheriff's conduct, as described in the foregoing findings of fact, "falls
5 below the standard of decency, good faith and right action impliedly required of all public
6 officers." In addition, this conduct relates to the duties of the office of Sheriff within the City
7 and County of San Francisco, and in particular, relates to the Sheriff's responsibilities as a top
8 law enforcement officer of the City and in administering the City's domestic violence programs.
9 While there may be some room for disagreement under the Charter regarding whether "conduct
10 that falls below the standard of decency" must be "in relation to the duties" of a specific office,
11 any such ambiguity is irrelevant here because the Commission finds that the Sheriff's conduct
12 did relate to the duties of his office. Moreover, the Commission believes that the phrase "in
13 relation to the duties of office" should be interpreted broadly enough to uphold the voters' intent
14 when they placed this language in the Charter. If the voters had intended for the standard to be
15 narrowly defined, more limiting language could have been used. Furthermore, the Sheriff's
16 reliance on *Mazzola v. City and County of San Francisco*, 112 Cal.App.3d 141 (1980) is
17 unpersuasive because the Charter at that time did not include the "standard of decency" clause
18 that is at issue in our case. Because the *Mazzola* Court did not evaluate this specific clause, its
19 reasoning is not controlling here.

20 Commissioner Hur dissented, arguing that while the Sheriff had clearly engaged in
21 misconduct, it was not "official" misconduct because it was not committed in "relation to the
22 duties of his or her office." The parties agreed that Section 15.105 assumes a difference between
23 "official" and "personal" misconduct, and Commissioner Hur argued that public policy and case
24 law supported a narrow, bright-line delineation between them. Accordingly, he interpreted the
25 phrase "in relation to the duties of his or her office" to mean wrongful conduct while performing
26 the duties of office or purporting to perform the duties of office. He asserted that without this
27 clear definition, the City risked confusion and ad-hoc future interpretations of "official"
28 misconduct. Moreover, while the parties identified no case law specifically interpreting Section

1 15.105(e), Commissioner Hur argued that the California Court of Appeal had interpreted the key
2 language at issue—“in relation to the duties of his office”—consistent with this narrow, bright
3 line rule. *Mazzola v. City and County of San Francisco*, 112 Cal.App.3d 141, 149 (1980).²

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26 ² The parties agreed that under Section 15.105(e), “conduct that falls below the standard of
27 decency, good faith and right action impliedly required of all public officers” must be “in
28 relation to the duties of his or her office.” (Mayor’s Closing Brief at 6-7; Sherriff’s Closing
Brief at 6). Accordingly, Commissioner Hur argued that although *Mazzola* did not interpret the
“conduct” clause of Section 15.105(e), it is limited by the same “in relation to the duties” clause
that the *Mazzola* Court interpreted.