
Item 7

Action

Proposed Stipulation

Executive Summary: This item presents a proposed stipulation in Case No. 2019-30, *In the Matter of Courtenay Durham*.

Recommended Action: Approve the proposed stipulation as presented.

Authors: Heather Holt, Executive Director
Richard Platel, Director of Enforcement

Presenters: Richard Platel, Director of Enforcement
Stephen Colon, Senior Investigator

Proposed Stipulation

In the Matter of Courtenay Durham (Case No. 2019-30)

A. Introduction

This case involves allegations that Courtenay Durham (Durham) engaged in unauthorized outside employment. Durham, who is represented by Robert M. Kitson of the Myers Law Group, has agreed to a proposed stipulation admitting the violations, and we recommend that the stipulation be approved. A copy of the stipulation, which provides additional details and represents the agreement between the parties, is provided in Attachment A.

B. Law

To help ensure fair, equitable, and transparent government, City officials and employees are subject to laws set forth in the Governmental Ethics Ordinance (GEO). Los Angeles Municipal Code (LAMC) §§ 49.01 *et seq.*

For example, the GEO prohibits City officials from accepting payment for outside (non-City) earned income or employment without obtaining prior written approval from their general manager, chief administrative officer, or appointing authority. LAMC § 49.5.7(C)(1). Approval must be denied if the outside income or employment would conflict with the official's City duties, including when the "City official's performance of an act ... could later be subject to the control, inspection, review, audit, or enforcement of the City official's agency." LAMC § 49.5.7(C)(3)(a)(ii).

A City official is an individual who is required to file a statement of economic interests pursuant to the state's Political Reform Act. LAMC § 49.5.2(C).

C. Facts

Durham has been employed by the Los Angeles Housing and Community Investment Department (HCID) as a Rehabilitation Project Coordinator I since May 2007. In October 2015, he began managing HCID's Handyworker Program, which provides home repairs and improvements to low income seniors and disabled persons. Durham is required to file statements of economic interests as a result of his City service.

Durham is also a licensed contractor and owned his own business until July 2018. Operating under the name CND Design Builders, LLC (CND), Durham offered his clients a variety of services, including technical advice on contracts and construction documents, minor maintenance work, and general contracting.

HCID departmental policy requires employees to obtain approval for any new or continuing outside employment each fiscal year (FY). All HCID approvals granted July 1 or later expire the following June 30.

Durham received written approval for outside employment in FY 2009-10, FY 2010-11, and FY 2013-14. He did not seek approval for outside employment again until November 2017, and he stated at that time that he was not involved in any outside employment.

However, staff's investigation determined that, between December 2014 and November 2017, Durham accepted payments through CND to review contracts and construction documents, perform miscellaneous site clean-up, and install security for People Coordinated Services of Southern California, Inc. (PCS), a nonprofit social services center. Durham also accepted payments for oversight of lead and asbestos remediation efforts during the renovation of the Royal Park Motel, LP (Royal Park), a long-term residential hotel. Durham earned profits of approximately \$63,000 for his work on behalf of these two clients.

Durham did not request or obtain written approval from his general manager to engage in or receive payment for the services that he provided to PCS or Royal Park. As a result, his outside income from those companies was unauthorized during each fiscal year in which he accepted the related payments.

Furthermore, Royal Park is subject to the Rent Stabilization Ordinance (RSO). Before lead and asbestos removal can begin in properties subject to the RSO, HCID must approve a Tenant Habitability Plan. Consequently, Durham's remediation services for Royal Park would have required HCID's approval, which means that approval for his outside work with Royal Park could not have been granted.

Durham completed the Ethics Commission's training regarding the governmental ethics laws, including the restriction on outside employment, on February 1, 2016. He did not seek advice from the Ethics Commission prior to engaging in outside employment, and, when initially contacted by investigators regarding the allegations against him, Durham did not fully disclose his activities. During a subsequent meeting with investigators, Durham acknowledged his failure to comply with City law and accepted responsibility for his actions.

D. Penalty

The maximum administrative penalty for a violation of the GEO is the greater of \$5,000 for each violation or three times the amount that was improperly reported, spent, or received. Los Angeles City Charter § 706(c)(3). In this case, Durham faces a maximum penalty of up to \$25,000 (\$5,000 x 5 counts). We recommend resolving this case by approving the stipulated penalty of \$18,750.

We believe the recommended penalty is appropriate, given the relevant circumstances of the case. *See* Los Angeles Administrative Code (LAAC) § 24.27(h)(2). In mitigation, Durham cooperated with the investigation and saved Ethics Commission resources by entering into this

stipulated settlement prior to the preparation of a probable cause report, and Durham has no prior enforcement history with the Ethics Commission. *See* LAAC §§ 24.27(h)(2)(D)–(F).

In aggravation, the violations are serious. *See* LAAC§ 24.27(h)(2)(A). Staff also notes that Durham did not consult the Ethics Commission about how to comply with the law, despite knowing that the City regulates outside employment. Lastly, Durham’s conduct indicates a deliberate violation, and he initially sought to conceal his activity from investigators. *See* LAAC §§ 24.27(h)(2)(A)–(C).

The staff supports the recommended penalties, which are designed to promote the equitable treatment of similar respondents, encourage the early resolution of cases, and reflect the serious nature of the violations.

Attachments:

- A Proposed stipulation in Case No. 2019-30 (Courtenay Durham)*

RICHARD A. PLATEL, SBN 163455
Director of Enforcement
Los Angeles City Ethics Commission
200 North Spring Street
City Hall, 24th Floor
Los Angeles CA 90012
(213) 978-1960

Complainant

BEFORE THE LOS ANGELES CITY ETHICS COMMISSION

In the Matter of:

Case No. 2019-30

COURTENAY DURHAM,

STIPULATION AND ORDER

Respondent.

Richard A. Platel, Director of Enforcement of the Los Angeles City Ethics Commission (Ethics Commission), and Courtenay Durham (respondent) agree to the following:

1. This stipulation will be submitted to the Ethics Commission members for consideration at their next meeting.
2. If approved by the Ethics Commission members, this stipulation and the accompanying order will be the final disposition of this matter with respect to the respondent.
3. The respondent understands and knowingly and voluntarily waives all procedural rights under Los Angeles City Charter (Charter) §§ 706 and 709 and Los Angeles Administrative Code §§ 24.26 and 24.27. These rights include but are not limited to receiving an accusation, having the Ethics Commission members or an impartial administrative law judge hear the matter, personally appearing at an administrative hearing, confronting and cross-examining witnesses testifying at a hearing, and subpoenaing witnesses to testify at a hearing.
4. The respondent understands and knowingly and voluntarily waives all rights to seek judicial review of any action by the Ethics Commission on this matter.
5. The exhibit that is attached and incorporated by reference is a true and accurate summary of the facts in this matter. The respondent violated City law as described in the Exhibit.
6. The respondent will pay a total penalty in the amount of **\$18,750**. The payment will be held by the Ethics Commission staff until the Ethics Commission members issue the

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order in this matter. The payment will be made in the form of a cashier's check payable to the "General Fund of the City of Los Angeles."

7. If the Ethics Commission members do not approve this stipulation, it will become null and void. Within ten business days after the Ethics Commission meeting at which the stipulation is disapproved, the Ethics Commission staff will return all payments tendered by the respondent in connection with this stipulation.

8. If the Ethics Commission members do not approve the stipulation and a full evidentiary hearing becomes necessary, the stipulation and all references to it are inadmissible, and the Ethics Commission members, executive director, and staff will not be disqualified because of prior consideration of this stipulation.

DATED: 05-14-2020


RICHARD A. PLATEL
Director of Enforcement
Los Angeles City Ethics Commission
Complainant

DATED: 3-18-2020


COURTENAY DURHAM
Respondent

ORDER

The Los Angeles City Ethics Commission considered the stipulation in Case No. 2019-30 at its meeting on June 23, 2020. The members of the Ethics Commission approved the stipulation and order Courtenay Durham to pay a fine of **\$18,750** to the City of Los Angeles in accordance with the terms of the stipulation.

DATED: _____

Melinda Murray, President
Los Angeles City Ethics Commission

EXHIBIT

I. INTRODUCTION

This case arose from a whistleblower complaint. Courtenay Durham (Durham), who is represented in this matter by Robert M. Kitson of the Myers Law Group, APC, admits that he violated City law by failing to obtain prior written approval to engage in outside employment.

II. APPLICABLE LAW

To help ensure fair, equitable, and transparent government, City officials and employees are subject to laws set forth in the Governmental Ethics Ordinance (GEO). Los Angeles Municipal Code (LAMC) §§ 49.01 *et seq.*

For example, the GEO prohibits City officials from accepting payment for outside (non-City) earned income or employment without obtaining prior written approval from their general managers. LAMC § 49.5.7(C)(1). Approval must be denied if the outside income or employment would conflict with the official's City duties, including when the "City official's performance of an act ... could later be subject to the control, inspection, review, audit, or enforcement of the City official's agency." LAMC § 49.5.7(C)(3)(a)(ii). A City official is an individual who is required to file a statement of economic interests pursuant to the state's Political Reform Act (PRA). LAMC § 49.5.2(C).

III. FACTS

Durham is a licensed contractor and has been employed as a Rehabilitation Project Coordinator I with the Housing and Community Development Department (HCID) since May 27, 2007. Durham is required to file an annual statement of economic interests as a result of his City service and is, therefore, a City official.

In October 2015, Durham was assigned to manage the Handyworker Program for HCID's Finance and Development Division. The program provides up to \$5,000 in home repairs and improvements to help address basic health, safety, security, and accessibility issues for low-income seniors and persons with disabilities.

Until July 2018, Durham also owned and operated a private business called CND Design Builders, LLC (CND). Durham assisted his clients by providing technical advice on contracts and construction documents, performing minor maintenance work, and serving as a general contractor.

From December 2014 through November 2017, Durham accepted payments to perform work through CND for People Coordinated Services of Southern California, Inc. (PCS), a nonprofit social services center in the City. Durham reviewed contracts and construction documents for PCS, assisted with the installation of site security, and performed miscellaneous site clean-up work. Over the course of this business relationship, Durham earned profits of approximately \$19,000 from PCS.

From February 2015 through April 2016, Durham also accepted payments related to the rehabilitation of the Royal Park Motel, LP (Royal Park), a long-term residential hotel in the City that was damaged by fire. The owners of Royal Park paid Durham to oversee lead and asbestos remediation at the property during a renovation project. Royal Park is subject to the Rent Stabilization Ordinance (RSO), which is administered by HCID, HCID must approve a Tenant Habitability Plan before lead and asbestos removal can begin in properties subject to the RSO. Durham earned profits of approximately \$44,000 from his work for Royal Park.

HCID requires its employees to obtain approval for outside employment by submitting a form entitled "Report of Outside Employment or Business Activity". The form states, "Outside employment will be approved on a fiscal year to year basis (July 1 to June 30), and is subject to annual renewal for continuance." Durham sought and received written approval from HCID to engage in outside employment in Fiscal Years 2009-10, 2010-11, and 2013-14. Each time, HCID advised him in writing that the approval was only valid through the end of the fiscal year. His most recent approval expired on June 30, 2014. The next time he submitted a report of outside employment to HCID was on November 16, 2017, and he stated at that time that he was not involved in any outside employment.

Durham did not request or obtain written approval from the general manager of HCID to engage in or receive payment for the services that he provided to PCS or Royal Park. Therefore, Durham's outside income from those companies was unauthorized in every fiscal year during which he accepted payments from them. Furthermore, because Durham's remediation services for Royal Park required HCID's approval under a Tenant Habitability Plan, authorization for his outside work with Royal Park could not have been granted.

Durham completed the Ethics Commission's training regarding the governmental ethics laws, including the restriction on outside employment, on February 1, 2016. Durham did not seek advice from the Ethics Commission prior to engaging in outside employment and, when contacted regarding the allegations against him, did not initially provide investigators with a full disclosure of his activities. He subsequently requested a meeting with investigators, at which he provided a sworn statement acknowledging his failure to comply with City law and his willingness to take responsibility for his actions.

IV. VIOLATIONS

Durham admits that he violated City law as follows:

COUNTS 1 – 5: ACCEPTING OUTSIDE INCOME WITHOUT PRIOR WRITTEN APPROVAL

COUNT 1: Durham violated LAMC § 49.5.7(C)(1) by accepting payment for outside income from PCS in Fiscal Year 2014-15 without obtaining prior written approval from his general manager.

COUNT 2: Durham violated LAMC § 49.5.7(C)(1) by accepting payment for outside income from PCS in Fiscal Year 2015-16 without obtaining prior written approval from his general manager.

COUNT 3: Durham violated LAMC § 49.5.7(C)(1) by accepting payment for outside income from PCS in Fiscal Year 2016-17 without obtaining prior written approval from his general manager.

COUNT 4: Durham violated LAMC § 49.5.7(C)(1) by accepting payment for outside income from Royal Park in Fiscal Year 2014-15 without obtaining prior written approval from his general manager.

COUNT 5: Durham violated LAMC § 49.5.7(C)(1) by accepting payment for outside income from Royal Park in Fiscal Year 2015-16 without obtaining prior written approval from his general manager.

V. PENALTY

Los Angeles City Charter § 706(c)(3) establishes the penalty formula for administrative actions taken by the Ethics Commission. The maximum penalty is the greater of \$5,000 for each violation or three times the amount that was improperly reported, spent, or received. Based on the facts and circumstances in this case, Durham faces a maximum penalty of up to \$25,000 (\$5,000 per count).

The Ethics Commission is required to consider all relevant circumstances before assessing penalties. Los Angeles Administrative Code (LAAC) § 24.27(h)(2). In considering the penalty in this case, enforcement staff noted the following mitigating circumstances: (1) Durham cooperated with the investigation and saved Ethics Commission resources by entering into this stipulated settlement at an early stage, prior to the preparation of a probable cause report; and (2) Durham has no prior enforcement history with the Ethics Commission. *See* LAAC §§ 24.27(h)(2)(D)–(F).

However, staff also noted the following aggravating circumstances: (1) Durham did not consult the Ethics Commission about how to comply with the law, despite knowing that the City regulates outside employment; (2) the violations in this case are serious; (3) Durham initially sought to conceal his activity from investigators; and (4) Durham’s conduct indicates an intent to conceal a deliberate violation. *See* LAAC §§ 24.27(h)(2)(A)–(C).

Based on the facts and circumstances, staff recommends resolving this case by imposing a penalty of \$18,750. The recommended penalty is intended to promote the equitable treatment of respondents, encourage the early resolution of violations, and reflect the serious nature of the violations.