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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
November 19, 2009
9:34 a.m.

Reported By:
Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 ELECTIONS COMMISSION, convened at 9:34 a.m. on November
 2 19, 2009, at the State of Arizona, Clean Elections
 Commission, 1616 W. Adams, Conference Room, Phoenix,
 3 Arizona, in the presence of the following Board members:

4 Mr. Gary Scaramazzo, Chairperson
 Ms. Royann Parker
 5 Ms. Lori Daniels
 Mr. Louis Hoffman

6 OTHERS PRESENT:

7 Todd Lang, Executive Director
 8 Colleen McGee, Deputy Director
 Rita Azcona, Administrative Assistant III
 9 Michael Becker, Voter Education Manager
 Daniel Ruiz, II, Campaign Finance Manager
 10 Tanja Shipman, Attorney General's Office
 Montgomery Lee, Attorney General's Office
 11 Nancy Read, Office of the Secretary of State
 Jim Barton, Perkins Coie Brown & Baine
 12 Katherine DeStefano, Perkins Coie Brown & Baine
 Michael Brewer, Brewer Campaign
 13 Jose Rivera, Haralson Miller Pitt Feldman &
 McAnally PLC
 14 Sara Larson, Haralson Miller Pitt Feldman &
 McAnally PLC
 15 Peter Limperis, Haralson Miller Pitt Feldman &
 McAnally PLC
 16 Christian Palmer, AZ Capitol Times

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P R O C E E D I N G

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 3 CHAIRPERSON SCARAMAZZO: All right. If we
 4 could, let's go ahead and call to order this meeting of
 5 the Citizens Clean Elections Commission if we can.
 6 It's Thursday, November 19th, 2009. It's
 7 9:34 a.m. Welcome everyone today. Hope everyone is
 8 lined up for a good Thanksgiving.
 9 And with that in mind, that will take us to
 10 Item No. II, seeking approval of the October 22nd, 2009,
 11 Commission meeting minutes.
 12 COMMISSIONER DANIELS: So moved, Mr. Chairman.
 13 COMMISSIONER PARKER: Second.
 14 CHAIRPERSON SCARAMAZZO: It has been moved by
 15 Commissioner Daniels, seconded by Commissioner Parker,
 16 to approve the meeting minutes from October 22nd, 2009.
 17 Any discussion on this item?
 18 All those in favor say "aye."
 19 (Chorus of ayes.)
 20 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 21 carries.
 22 I might mention, Commissioner Fairman got
 23 called out on business at the last minute. That's why
 24 he's not here today.
 25 So, that will bring us to Item No. III,

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4

1 Executive Director report. Todd?
 2 MR. LANG: Thank you, Mr. Chair. Good morning,
 3 Commissioners. I'm not going to repeat anything in
 4 my -- in my report except to mention that the work --
 5 candidate workshops went well last night. Mike and
 6 Daniel said it was an active crowd, and we had quite a
 7 number of folks on the computer appearing via the chat
 8 room.
 9 CHAIRPERSON SCARAMAZZO: Okay.
 10 MR. LANG: So, that -- that new, you know, that
 11 new aspect of it has really been popular. I would also
 12 mention in addition to the appearances I mentioned
 13 there, I also had the opportunity to debate Senator
 14 Patton regarding Clean Elections before the Phoenix
 15 Chamber of Commerce last week. Mike and I went there,
 16 and it was very a cordial group.
 17 Obviously, there's a few folks there who are
 18 not fans of Clean Elections but they could not have
 19 treated me better, and I certainly enjoyed my discussion
 20 with Senator Patton. He's very sharp and very witty,
 21 and it was fun. So, I really appreciated the
 22 opportunity to -- to speak to the group before they made
 23 their decisions, so that went well.
 24 CHAIRPERSON SCARAMAZZO: Good.
 25 MR. LANG: But unless you have questions, that

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5

1 concludes my report.
 2 CHAIRPERSON SCARAMAZZO: Anything for Todd?
 3 Okay, thanks.
 4 Let's move on, then, to Item No. IV, seeking
 5 consideration and possible final action on the following
 6 rule changes. There are two rule of them. The first
 7 (A), R2-20-113(A)(1), (B), B(1)(i), (F), calculation of
 8 equalizing funds. Todd?
 9 MR. LANG: Thank you, Mr. Chair. And for
 10 purposes of the discussion, Agenda Item IV(B) is related
 11 to the same policy decision.
 12 CHAIRPERSON SCARAMAZZO: Correct.
 13 MR. LANG: It's a different rule but the same
 14 policy decision.
 15 As you know, this was up for notice and
 16 comment; in fact, we extended it to get further
 17 feedback. And other than an additional e-mail from the
 18 same person who commented before, we received no
 19 additional feedback from either party, though we
 20 directly contacted both -- representatives of both
 21 parties. One representative is here today, so he may
 22 want to speak, I don't know.
 23 But, what this would do is basically give
 24 candidates a choice who are running as a slate or a
 25 team. If you trigger matching funds to someone on your

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6

1 team, that's fine, but that teammate, that participating
 2 candidate who received the matching funds, has to make a
 3 choice: Either they accept the matching funds and no
 4 longer coordinate; or, they refuse the matching funds
 5 and continue to coordinate. The theory being matching
 6 funds are intended to help you correct the record, to
 7 respond, to provide both sides of the story; basically,
 8 to compete. And if you're going to use that money to
 9 actually work with that person with whom you're
 10 allegedly competing, the theory is matching funds are
 11 not necessary.

12 And so this rule was drafted at the request of
 13 a Commissioner to address that issue.

14 CHAIRPERSON SCARAMAZZO: Okay. Questions for
 15 Todd? Louis?

16 COMMISSIONER HOFFMAN: The comment that we
 17 received, Mr. Lang, related to the situation where
 18 there's a participating candidate who might be getting
 19 matching funds who is opposed by two non-participating
 20 candidates, one of which is a teammate and one of which
 21 is not. In that scenario, is -- was the intent to allow
 22 the opposing non-partici- -- participating candidate who
 23 is not a teammate to be able to trigger matching funds?

24 MR. LANG: That was the intent, yes.

25 COMMISSIONER HOFFMAN: I had some concerns over
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8

1 joint campaign expenditure.

2 So, it does refer to the participating
 3 candidate triggering the match. But, then, what it says
 4 is that after there is that joint expenditure, the
 5 Commission shall decline to issue equalizing funds. And
 6 I was concerned that that was -- would be an absolute
 7 bar to issuing equalizing funds during the period in
 8 question after that event occurred. And I was -- I
 9 scratched out some language that would add to the end
 10 that just said: "On account of expenditures by or
 11 contributions to the non-participating candidate with
 12 whom the participating candidate made the joint
 13 expenditure during the period," in order to try to
 14 address that point.

15 MR. LANG: I see your -- your -- Mr. Chair. I
 16 see your point, and I still think this would work the
 17 way we intend it, but I agree that your language would
 18 make it clearer. So, I'm -- whatever the -- the
 19 Commissioners would like to do.

20 COMMISSIONER PARKER: Can you repeat that
 21 language?

22 COMMISSIONER HOFFMAN: Okay. This would add to
 23 the end: "On account of expenditures by or
 24 contributions to" --

25 COMMISSIONER DANIELS: Slow down just a little,
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7

1 whether we have correctly implemented that intent
 2 because I share that -- the viewpoint that that should
 3 be the way the rule works, that if your teammate -- your
 4 teammate cannot trigger matching funds, but that
 5 matching funds cannot be -- are not barred entirely if a
 6 different candidate were -- with whom you are not
 7 coordinating were to trigger matching funds.

8 MR. LANG: I understand the concern,
 9 Commissioner, but I think the rule makes it clear that
 10 it's the candidate who triggers matching funds who is
 11 barred. I understand that we could be very specific and
 12 address the scenario you're discussing and we could make
 13 that change, but I think that this rule would provide
 14 for that policy result anyway. And if someone tried to
 15 argue otherwise, I think we have both the record from
 16 today and clear instruction during our training on how
 17 it would work. I don't think there would be
 18 misunderstandings regarding that.

19 COMMISSIONER HOFFMAN: The one Agenda Item
 20 IV(A) that I was particularly concerned about was part
 21 (F). I agree with you with regard to part (A)(1) and
 22 (B), but I was concerned about part (F) which said that
 23 the Commission shall decline to issue equalizing funds
 24 after a participating candidate and the
 25 non-participating candidate triggering the match made a
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9

1 please.

2 COMMISSIONER HOFFMAN: Okay. "On account of
 3 expenditures by or contributions to the
 4 non-participating candidate with whom the participating
 5 candidate made the joint expenditure during the period."

6 MR. LANG: Given that that's clarifying
 7 language and not a substantive change that, in my view,
 8 will not delay implementation of the rule, I -- I'm fine
 9 with that suggestion.

10 COMMISSIONER PARKER: During the what?

11 COMMISSIONER HOFFMAN: During -- "on account of
 12 expenditures by or contributions to the
 13 non-participating candidate with whom the participating
 14 candidate made the joint expenditure during the period."

15 COMMISSIONER DANIELS: Mr. Chairman, do you
 16 want a motion on the -- do you want a motion on the rule
 17 so then he can amend it?

18 CHAIRPERSON SCARAMAZZO: Yeah. That we should.

19 COMMISSIONER HOFFMAN: Would you like that or
 20 would you like me just to make a motion that -- fix it.

21 CHAIRPERSON SCARAMAZZO: You can make a motion
 22 to go ahead and add that to the -- to the language.
 23 That will be fine.

24 COMMISSIONER DANIELS: Okay.

25 CHAIRPERSON SCARAMAZZO: Okay?
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10

1 COMMISSIONER DANIELS: You want to make the
 2 motion?

3 COMMISSIONER HOFFMAN: Motion to add it or a
 4 motion to pass it as read?

5 CHAIRPERSON SCARAMAZZO: No. Add it and then
 6 we'll come back and --

7 COMMISSIONER HOFFMAN: Okay.

8 CHAIRPERSON SCARAMAZZO: -- pass, if that's so
 9 desired by the Commission.

10 COMMISSIONER DANIELS: Okay.

11 COMMISSIONER HOFFMAN: Okay. Like to move that
 12 we insert the language that I just read to the end of
 13 our proposed R2 -- R2-20-113, part (F), after a comma.

14 CHAIRPERSON SCARAMAZZO: After the comma?

15 COMMISSIONER HOFFMAN: After a comma. In other
 16 words, a comma and then the language I just read.

17 CHAIRPERSON SCARAMAZZO: Okay.

18 COMMISSIONER HOFFMAN: And, further, that we
 19 delete the word "which" in (A)(1), because I think
 20 that's just a typo.

21 MR. LANG: That's putting it kindly.

22 CHAIRPERSON SCARAMAZZO: So you're --

23 COMMISSIONER HOFFMAN: A minor error.

24 CHAIRPERSON SCARAMAZZO: -- saying "which are"
 25 or "which"?

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12

1 COMMISSIONER HOFFMAN: Mr. Chair, I would like
 2 to move passage of R2-20-113 as amended.

3 COMMISSIONER DANIELS: Second.

4 CHAIRPERSON SCARAMAZZO: It's been moved by
 5 Commissioner Hoffman, seconded by Commissioner Daniels,
 6 to approve R2-20-113 as amended. Any discussion on this
 7 item?

8 Go ahead, Louis.

9 COMMISSIONER HOFFMAN: Mr. Chair, I would just
 10 like to comment that the notion that the rule change
 11 would constitute a prohibition of shared messages or
 12 govern what a -- or tell candidates what they are
 13 allowed to say or somehow tell candidates that they
 14 can't associate freely with other candidates on campaign
 15 messages are simply not true. And I would like to ask
 16 the staff to make sure that rule interpretations and
 17 candidate trainings make it quite clear to candidates
 18 that there's no such intent by the -- by the Commission.

19 CHAIRPERSON SCARAMAZZO: Okay. That's fine.
 20 We do appreciate receiving comments, though, that have
 21 anything to do with policy, and we do want to express
 22 our gratitude for that.

23 COMMISSIONER HOFFMAN: I actually, also, wanted
 24 to express gratitude, because the change that I just
 25 proposed was as a direct result of thinking about the

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11

1 COMMISSIONER HOFFMAN: Just the word "which."
 2 COMMISSIONER DANIELS: Which.

3 CHAIRPERSON SCARAMAZZO: Okay. Is there a
 4 second to that?

5 COMMISSIONER DANIELS: Second.

6 CHAIRPERSON SCARAMAZZO: Okay. It's been moved
 7 by Commissioner Hoffman, seconded by Commissioner
 8 Daniels, to add -- or insert language in paragraph (F)
 9 of the motion under consideration, and if you would read
 10 that one more time for the record, Louis.

11 COMMISSIONER HOFFMAN: It would strike the
 12 "which" on (A)(1) and it would amend (F) by adding a
 13 comma and then the phrase -- on ac- -- the clause: "On
 14 account of expenditures by or contributions to the
 15 non-participating candidate with whom the participating
 16 candidate made the joint expenditure during the period."
 17 CHAIRPERSON SCARAMAZZO: Okay. Any discussion
 18 on this item?

19 All those in favor say "aye."
 20 (Chorus of ayes.)

21 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 22 carries.

23 So we've added that language in, so we're back
 24 to going ahead and considering possible final action on
 25 (A).

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13

1 comment and the core parts of it that were, you know,
 2 raising particular situations that may occur and whether
 3 the rule was correctly worded to operate in that and
 4 told candidates what the correct situation was. And so
 5 I was grateful for the comment, but I did want to make
 6 a -- the point that all rhetoric aside, it -- it really
 7 is not the Commission's intent to have anything to do
 8 with controlling the way campaigns are run or messages
 9 prepared in campaigns, and I -- I think that that needed
 10 to be said. And so I -- I wanted to get an opportunity
 11 to say that, and I appreciate the opportunity.

12 CHAIRPERSON SCARAMAZZO: You bet. I certainly
 13 agree with you. Any other comments?

14 All those in favor of the rule change -- or
 15 final adoption of R2-20-113, say "aye."
 16 (Chorus of ayes.)

17 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 18 carries.

19 That will bring us to (B), R2-20-702(C)(5), use
 20 of campaign funds.

21 MR. LANG: Thank you, Mr. Chair.
 22 Commissioners, this is simply the same policy
 23 implemented in a different rule regarding how --
 24 instructing candidates on how they may use campaign
 25 funds. And I think the language addresses some of the

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14

1 concerns raised by Commissioner Hoffman regarding
 2 clarity and intent. So I'd ask you to approve this rule
 3 as well.

4 COMMISSIONER HOFFMAN: Mr. Chair, Mr. Lang, was
 5 it -- I wanted to ask whether it is possible for a
 6 candidate in -- or should it be possible for a candidate
 7 to -- a participating candidate to refuse matching funds
 8 from a partner -- from a particular non-participating
 9 candidate, perhaps with -- from whom he expects he may
 10 cooperate in the future?

11 MR. LANG: I think -- I think -- I think
 12 there's always that option. The Commission is required
 13 to award the matching funds, but if the -- if the
 14 campaign declines them, that is certainly their
 15 prerogative, in my view, and I think this would be
 16 that -- that situation. If you want to do and
 17 coordinate a campaign, if you have some of the concerns
 18 raised by the -- the person who gave us the comments,
 19 this is how you would do it.

20 COMMISSIONER HOFFMAN: So if you were to -- if
 21 you were a participating candidate and you were in
 22 negotiations, say, with a non-participating candidate to
 23 be a teammate, non-participating candidate spends enough
 24 or has enough to trigger matching funds, then the
 25 participating candidate can, you know, refuse the
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16

1 that, if a candidate were willing to return matching
 2 funds and, you know, in order to be permitted to team
 3 with a particular candidate and -- should they be
 4 allowed to spend money of uncoordinated expenses after
 5 that point, provided that they had returned them?

6 MR. LANG: Again, I think that's a policy
 7 decision up to the Commissioners. In my view, though,
 8 we've provided enough latitude by allowing them to
 9 decide whether or not to accept. In my experience, and
 10 I would be happy to be corrected on this, most
 11 candidates who are running as a slate or team know it
 12 well before matching funds are triggered.

13 COMMISSIONER HOFFMAN: I would think that would
 14 be true in most cases.

15 MR. LANG: And so I -- I don't know that
 16 your -- your accommodation is necessary.

17 CHAIRPERSON SCARAMAZZO: Royann.

18 COMMISSIONER PARKER: Just from a practical
 19 viewpoint, when they get their matching funds, those are
 20 usually spent fairly quickly afterwards and they
 21 wouldn't necessarily have the cash on hand to pay back
 22 because then if they were getting money to pay that
 23 back, isn't that a violation also? If -- if I'm
 24 understanding you correctly.

25 COMMISSIONER HOFFMAN: Well, I assume if it
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15

1 allocation pending the complete -- completion of the
 2 negotiation and this rule would not, in your view, apply
 3 to prevent that matching fund -- matching funds from
 4 being applied?

5 MR. LANG: That's right. I think internally
 6 what we'll do is staff will -- will put together a form
 7 that candidates can put -- can file with us advising us
 8 of their -- their desire, whether they would like to
 9 have matching funds or -- they can let us know basically
 10 when they do not want to accept matching funds from a
 11 particular candidate.

12 COMMISSIONER HOFFMAN: Okay. One more question
 13 on that. Suppose somebody accepted matching funds
 14 triggered from -- on -- triggered by a non-participating
 15 candidate but later decided to cooperate with that
 16 candidate, would it be possible for the candidate -- the
 17 participating candidate to return those matching funds?

18 MR. LANG: In my view, right now, no, because
 19 once they have accepted them, the rule trigger is -- is
 20 implemented and the prohibition on coordinated
 21 activities is in place.

22 We -- I mean, the -- the policy decision, of
 23 course, is yours. But that's my view of how the rule is
 24 currently structured.

25 COMMISSIONER HOFFMAN: What do you think of
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17

1 were unspent that it would be -- that would be the only
 2 case in which they would be able to return.

3 CHAIRPERSON SCARAMAZZO: Todd.

4 MR. LANG: Mr. Chair, I think Commissioner
 5 Parker raises a valid issue, though, that we'd have to
 6 then look and see whether it's been spent and, you know,
 7 where did the money come from, and we -- I don't think
 8 we want to get into that. I don't think the campaigns
 9 want us getting into that, and I don't think we want to
 10 be getting into that. So I think's a laudable idea to
 11 accommodate that situation, but I don't think it will
 12 arise that often and I think it's more trouble than
 13 it -- than benefit.

14 COMMISSIONER HOFFMAN: Uh-huh.

15 CHAIRPERSON SCARAMAZZO: Okay. Thank you.
 16 Anything else? We need a motion.

17 COMMISSIONER DANIELS: Mr. Chairman, I move the
 18 adoption of Rule R2-20-702(C)(7) [sic] be adopted.

19 COMMISSIONER PARKER: Second.

20 CHAIRPERSON SCARAMAZZO: Moved by Commissioner
 21 Daniels, seconded by Commissioner Parker, to approve
 22 R2-20-702.7 [sic], use of campaign funds. Any further
 23 discussion on this item?

24 COMMISSIONER HOFFMAN: Mr. Chair, I'd just like
 25 to state my views that if -- that I -- I support the
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18

1 rule and I would like to have it understood that the
 2 term "previously triggered matching funds" refers to
 3 both the funds having been justified under the statute
 4 and also actually paid and not refused by the
 5 participating -- the participating candidate. I do
 6 believe it says that, but I wanted to make clear that my
 7 support is based on the interpretation that Mr. Lang
 8 gave and that -- that that's the intended -- intent of
 9 -- intended meaning of the phrase "previously triggered
 10 matching funds," so that it would allow candidates to
 11 decline to accept them if they were -- if there was a
 12 need to or plans to cooperate with that candidate.
 13 CHAIRPERSON SCARAMAZZO: Okay.
 14 COMMISSIONER HOFFMAN: Don't want anyone to get
 15 caught, in other words.
 16 CHAIRPERSON SCARAMAZZO: Duly noted. Thank
 17 you. Any further discussion?
 18 All those in favor say "aye."
 19 (Chorus of ayes.)
 20 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 21 carries.
 22 Move on to Item No. V, consideration and
 23 possible action on the following proposed rule change:
 24 R2-20-109, (G)(3) and (a), reporting requirement dealing
 25 with transportation expenses.

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20

1 on that official business, then the portion of the trip
 2 that can be allocated to campaign stops must be paid for
 3 at \$150 an hour.
 4 It seemed to have worked in 2006, and -- and so
 5 we anticipate that this would be the right policy to use
 6 for this election cycle as well.
 7 CHAIRPERSON SCARAMAZZO: Royann?
 8 COMMISSIONER PARKER: Mr. Chairman, Todd, what
 9 happens if they fly to Lake Havasu City, for instance,
 10 on official state business, and while they do the state
 11 business during the daytime, maybe that evening there's
 12 a fundraiser or some campaign type of thing? They
 13 haven't traveled to another city, so how do you allocate
 14 what part of that trip is campaign versus what part is
 15 business?
 16 Do you do it on the time of the, you know, how
 17 much time they spent doing state business versus how
 18 much time they spent doing campaign? Or, you know, how
 19 are we going to police that and...
 20 CHAIRPERSON SCARAMAZZO: Pro rate.
 21 COMMISSIONER PARKER: I hate pro rating.
 22 MR. LANG: Well, we didn't get into the
 23 micromanaging issue, and I think you raise a valid
 24 question, Commissioner. The way -- my understanding is
 25 the way it worked in the past is it would be by

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19

1 I cringed when I saw something about airplanes,
 2 you know.
 3 MR. LANG: Mr. Chair, Commissioners, as you
 4 know, we went through quite a bit of machinations and
 5 work regarding the travel rules, in particular with
 6 regard to airplanes. After that was all said and done,
 7 we then changed the rules to simplify them. We found in
 8 trying to accommodate everyone, the rules became too
 9 complex for the candidates to be comfortable with, and
 10 so we simplified everything. This is a simple fix to
 11 that simplification.
 12 It occurred to us that because of security
 13 issues, officeholders on occasion must travel through
 14 state aircraft. They're required to do so. And so we
 15 need to account for that by placing it effectively on
 16 equal -- and our policy recommendations to place on
 17 equal footing with private aircraft that pay \$150 an
 18 hour.
 19 While state aircraft may well cost more than
 20 that, the fact is that that candidate has no choice
 21 because of the requirements of the security detail.
 22 This came up in the 2006 election. And -- and so we
 23 thought that that policy was a good one and a fair one.
 24 And simply what it says is: If you're on official
 25 business, you're fine; but, once you do a campaign stop

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21

1 basically, events. If you do three official business
 2 meetings and one campaign event, then it would be
 3 one-fourth. Arguably, though, if you're on one official
 4 business trip and you do one campaign stop, it should be
 5 50/50.
 6 Again, this would be something that the
 7 Commissioners could let us know how you would like us to
 8 handle the policy, but the way we wrote the rule is they
 9 have to reimburse for the portion allocable and then
 10 we'd leave that -- we leave that up to them and their --
 11 their judgment. If someone tries to abuse the rule,
 12 then we would -- we would raise that issue with them and
 13 ask them to correct it.
 14 COMMISSIONER PARKER: But how does the
 15 Commission know what their calendar is? So, you know,
 16 are we going to require them to give us their
 17 out-of-town itineraries and all that kind of stuff?
 18 MR. LANG: No. That would only -- I suppose
 19 that would happen if someone filed a complaint, we would
 20 then ask for the itinerary. My guess is there won't be
 21 that many trips that fall under this rule and when they
 22 do, we hope to work closely with those campaigns before
 23 the -- before the reports are filed so that everyone's
 24 on the same page so we don't have those problems.
 25 COMMISSIONER PARKER: About how much was

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22

1 reimbursed from the last gubernatorial election?

2 CHAIRPERSON SCARAMAZZO: If you recall.

3 MR. LANG: You know, I don't recall. I could

4 look that up for you, but I -- I don't --

5 COMMISSIONER PARKER: Because -- because this

6 rule was not in place at that time?

7 MR. LANG: Not this particular rule, but we had

8 a -- a different rule that had a complex travel formula

9 and I'd have to review it.

10 COMMISSIONER PARKER: Okay.

11 COMMISSIONER HOFFMAN: Mr. Chair?

12 CHAIRPERSON SCARAMAZZO: Louis.

13 COMMISSIONER HOFFMAN: Mr. Lang, following

14 Commissioner Parker's question, if it were determined

15 that the portion allocable was 50 percent, could you

16 carry out the calculation a little further? Does that

17 mean that you would take \$150 an hour of flying time up

18 to Lake Havasu City and back and then multiply that by

19 50 percent or --

20 MR. LANG: That -- that is -- that's what we

21 intend. You -- half the flying time would be allocated

22 to the campaign event, half the flying time would be

23 allocated to the official event.

24 COMMISSIONER HOFFMAN: Thank you.

25 CHAIRPERSON SCARAMAZZO: Okay. Any further

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1 we post for comment and as a proposed rule the

2 amendments as written to R2-20-109.

3 COMMISSIONER DANIELS: (G)(3).

4 COMMISSIONER HOFFMAN: Part --

5 COMMISSIONER PARKER: (G)(3)(a)(b).

6 CHAIRPERSON SCARAMAZZO: Part (G).

7 COMMISSIONER HOFFMAN: Part (G)(3).

8 COMMISSIONER PARKER: (b).

9 MR. LANG: (G)(3).

10 COMMISSIONER HOFFMAN: (b).

11 COMMISSIONER DANIELS: (G)(3).

12 CHAIRPERSON SCARAMAZZO: Second.

13 COMMISSIONER DANIELS: Just as a comment,

14 Mr. Chairman, I --

15 CHAIRPERSON SCARAMAZZO: Let me get that on the

16 floor --

17 COMMISSIONER DANIELS: Okay.

18 CHAIRPERSON SCARAMAZZO: -- okay? Thank you.

19 It's been moved by Commissioner Hoffman,

20 seconded by Commissioner Daniels, to approve the

21 proposed rule change, R2-20-109(G)(3). Okay.

22 COMMISSIONER DANIELS: Mr. Chairman, I -- and I

23 do hope we get some comment from the people that this

24 would affect just to see if -- if they're comfortable,

25 if they understand what it's saying, you know, the

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23

1 questions?

2 What's the Commission's desire on this one?

3 COMMISSIONER PARKER: Have we gotten feedback

4 from other people on this proposed rule?

5 COMMISSIONER DANIELS: Nobody's --

6 COMMISSIONER PARKER: Or has it been sent out

7 to anybody?

8 MR. LANG: No. This is the first step. This

9 is not the final rule. We'll send it out for notice and

10 comment and we'll, obviously, send it to all the

11 statewide officeholders --

12 COMMISSIONER PARKER: Okay.

13 MR. LANG: -- as well as their opponents.

14 COMMISSIONER PARKER: Okay.

15 COMMISSIONER HOFFMAN: So, this is one where

16 you need a motion to put this out for public comment?

17 CHAIRPERSON SCARAMAZZO: Yeah.

18 COMMISSIONER HOFFMAN: Okay. So, let me be

19 more specific.

20 CHAIRPERSON SCARAMAZZO: Okay.

21 COMMISSIONER HOFFMAN: Since I see Ms. --

22 Commissioner Parker glaring at me.

23 COMMISSIONER PARKER: I didn't glare at you.

24 MR. LANG: She was listening intently.

25 COMMISSIONER HOFFMAN: Anyway, so I move that

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1 fairness of it, that type of thing. I'd really like to

2 hear a comment back.

3 CHAIRPERSON SCARAMAZZO: And, Todd, if you can

4 make sure we kind of put that out for people so that it

5 gets their attention prior to that coming back to us,

6 okay?

7 MR. LANG: Will do.

8 CHAIRPERSON SCARAMAZZO: Okay. Any further

9 discussion on this item?

10 All those in favor say "aye."

11 (Chorus of ayes.)

12 CHAIRPERSON SCARAMAZZO: Opposed? Motion

13 carries.

14 Brings us to Item No. VI, consideration and

15 possible action on the administrative law judge decision

16 in matter of MUR 08-0035, Mr. Doug Quelland, House of

17 Representatives, District 10.

18 Todd and Tanja, need to recuse themselves from

19 this.

20 I have a question for the Commission and

21 whether it deems it necessary to go into executive

22 session for legal advice. Personally, I'm comfortable

23 with sitting out here, but it's, you know, whatever the

24 Commission's pleasure is.

25 COMMISSIONER DANIELS: Mr. Chairman, I'm fine

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1 right now. If I feel like I need a legal question for
 2 executive I'd ask at that time, but right now I'm fine
 3 talking. Just...
 4 CHAIRPERSON SCARAMAZZO: Okay. Sounds good
 5 then.
 6 Welcome, gentlemen. We appreciate you being
 7 here today. And, excuse me, I -- if you could -- one
 8 more time.
 9 MR. LEE: Mr. Chairman, members of the
 10 Commission, my name is Montgomery Lee. I'm an assistant
 11 Attorney General. Because of the position of your
 12 normal assistant Attorney General, I'll be here to
 13 provide procedural advice if you need any.
 14 CHAIRPERSON SCARAMAZZO: Thank you. And --
 15 MS. MCGEE: Mr. -- just -- before you is the
 16 administrative law judge's decision regarding the Doug
 17 Quelland matter in MUR 08-0035. Jose Rivera represented
 18 the Commission in the hearing, and Mr. Rivera will go
 19 over any questions that you have.
 20 CHAIRPERSON SCARAMAZZO: You bet. Welcome.
 21 MR. RIVERA: Thank you, Chairman, Commission.
 22 I also want to introduce part of my -- my team. Peter
 23 Limperis, who helped co-counsel and co-ried this case
 24 with me, and Sara Larson who was the paralegal who put
 25 everything together who we couldn't have done anything

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1 decision that he'd up-spent his -- his campaign funds to
 2 \$15,000 both in the primary and the general. The Judge
 3 determined that -- that there really was no provisions
 4 within the law to go on the general as opposed to the
 5 primary.
 6 We think he's -- we think that our position was
 7 correct, but I don't think it's big enough to appeal it,
 8 so we're willing to go along with the -- we've
 9 recommended you go along with the administrative judge's
 10 feelings on that.
 11 He -- he also -- we also had a cash-on-hand
 12 issue, where we made a determination that there was --
 13 that we thought there was cash on hand the minute he
 14 signed the contract and that that was a violation. He
 15 made a determination that although there was a cash on
 16 hand, that A.R.S. does not prohibit and does not provide
 17 any penalties for that.
 18 So, the total fines that he came out with were
 19 \$31,000, a little below our 40-some -- I think it was
 20 \$47,000, because of that \$15,000 violation. And he also
 21 recommended that he forfeit his office.
 22 There's one error in his -- that we do want to
 23 point out in his order. If you look at Page 30 there on
 24 Paragraph 12, it says: "A.R.S. 16-941(A) does include
 25 such a prohibition." It should say, "Does not include

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1 without.
 2 CHAIRPERSON SCARAMAZZO: Did the heavy -- heavy
 3 lifting.
 4 MR. RIVERA: Yes, she did. Although she is as
 5 small as she looks, she does a lot of heavy lifting.
 6 CHAIRPERSON SCARAMAZZO: Okay.
 7 MR. RIVERA: I have very little to say, I mean,
 8 you -- you have the -- the -- the order by the
 9 administrative judge. Basically, the procedure that
 10 went through is after your decision was reached,
 11 Representative Quelland requested a settlement
 12 conference, which the Chair and I attended. No
 13 settlement was -- was even attempted to be reached at
 14 that point in time. Then we went to -- in front of a
 15 hearing -- in front of a judge. We thought it was going
 16 to be a two-day hearing and would be done fairly
 17 quickly. It ended up, with all the testimony and all
 18 the exhibits that were introduced, it took until four
 19 days.
 20 The Judge reached a decision and entered his
 21 order on November 9th, and it, basically, essentially
 22 for a few changes that I'll just -- I'll talk about in a
 23 few minutes, affirmed what your main decision was.
 24 The changes that the -- the changes he made
 25 were really minor. We -- the Commission had reached a

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1 such a prohibition." And when you reach this decision,
 2 if you wish to affirm and enter an order affirming the
 3 Judge's decision, we'd ask that you make that change.
 4 It does not -- if you look at the -- I mean, I
 5 can go through all the factual circumstances in terms of
 6 what he made the determination on. I think they're
 7 pretty well written, they're pretty thorough.
 8 Essentially, he found that Mr. -- that
 9 Representative Quelland was not credible and that the
 10 evidence was overwhelming, demonstrating that he, in
 11 fact, had taken and signed into that contract and had
 12 entered those services, and a significant portion of the
 13 services had been undertaken.
 14 His -- his findings of fact -- his findings of
 15 fact and conclusions of law start on Page 30 of his
 16 decision, and his recommended order starts on Page 32.
 17 You know, I don't believe there's anybody else,
 18 Mr. Casey or Representative Quelland are here, or
 19 anybody else is here. I would like to reserve some time
 20 if they raise any issues on it. Otherwise, I think
 21 unless the Commission has some questions, I'm here to
 22 answer any questions.
 23 We do have a recommended order that we would
 24 like to pass out to you at the conclusion of this, but
 25 I'm open to any questions you may have.

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1 CHAIRPERSON SCARAMAZZO: Thank you. Lori?

2 COMMISSIONER DANIELS: Mr. Chairman,
3 Mr. Rivera, I don't -- I don't know that it's exactly a
4 question, but I know we really struggled with how much
5 to fine him and -- and line by line. And Commissioner
6 Parker at the time wanted to see if we couldn't get all
7 the money back that we had given him, which would be
8 even more at this point. And so I'm -- I'm just a
9 little hesitant. I -- I realize you spent four days and
10 you've spent hours upon hours of your time. We can
11 uphold our original fine; is that not correct?

12 MR. RIVERA: That is correct.

13 COMMISSIONER DANIELS: Okay. I don't know if
14 I'm the only one feeling that way, and I would like to
15 hear from other Commissioners what -- what you all are
16 thinking because I just feel like he really cheated. We
17 spent a lot of time going through this point by point on
18 where we wanted him fined and what we didn't; and so if
19 we're out of -- if -- if we're out of line in what we
20 did, then I would like to hear that from you, too.

21 MR. RIVERA: Your Honor, I -- Your Honor --
22 Commissioner, again, with the caveat that you have
23 independent legal counsel and you would to have -- he
24 would be the arbitrator of this and you should ask him
25 those questions, is, you know, obviously, I took your

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1 first as to what he argued and what his opinion is of
2 the -- or what his arguments were with regard to the two
3 points in which --

4 MR. RIVERA: Sure. Commissioner Hoffman, if
5 you look at the -- the -- starting point would be a
6 good -- Page 30, if you look at Page 30, in
7 Paragraph 12. Our argument succinctly on this issue was
8 that once he signed the contract, since the \$15,000 was
9 due and owing at that point in time, that was cash on
10 hand. So, he received the cash on hand the minute he
11 signed it, which was -- March 2007? 2007. And we felt
12 that the support for that was in A.R.S. 941(A), and so
13 that's the argument that we made.

14 The Judge, from what I understand from reading
15 this is -- and our argument was based on -- on the
16 section -- on 941. It doesn't -- specifically says
17 that -- that he cannot have that cash on hand, but
18 that -- that he cannot -- let's see. That -- while it
19 does not specifically state that the intent of the
20 statute was to consider that as cash on hand, he
21 determined that it wasn't a violation of the A.R.S.
22 statute because it wasn't specifically worded, but that
23 it was a violation of the administrative statute of
24 Clean Elections.

25 COMMISSIONER HOFFMAN: So the 16-941(A)(3) says
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1 position, I'm an advocate for you.

2 I reviewed your -- your initial order and I
3 thought it was very well thought out, thoughtful; and,
4 in fact, a significant portion of that -- of our case
5 was introducing the decisions that you made and how you
6 reached the decision, both documentary evidence and
7 through your -- through Todd Lang -- through Todd and
8 through Daniel.

9 So, yeah, I think that it's very thoughtful. I
10 thought -- I think -- I thought it was really well
11 brought out. Obviously, it brings some legal issues,
12 though, if -- if we continue on that. The safest course
13 and the -- would be to affirm the Commission -- the
14 administrative judge's order, but it's your decision,
15 it's your reasoning however way you want to do that.

16 CHAIRPERSON SCARAMAZZO: Louis.

17 COMMISSIONER HOFFMAN: Mr. Chair. I'd like to
18 understand, and in deference to Commissioner Daniels,
19 also, and the valid points she makes, I would like to,
20 you know, understand the specifics of the two cases in
21 which the calculation of the administrative law judge
22 differed from the previous ruling of the Commission and
23 then make a decision of, you know, whether we should go
24 along with that rather than simply trying to wing it.

25 So I'd appreciate some feedback from Mr. Rivera
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1 that a participating candidate shall not make
2 expenditures in the primary election period in excess of
3 the adjusted primary election spending limit; and, so
4 before a candidate receives his allocation of funds, the
5 question is whether the adjusted primary election
6 spending limit is zero or whether it's still the normal
7 amount identified in the statute?

8 MR. RIVERA: He -- let me see if I understand.
9 He basically says -- he says that the -- right. That
10 the statute itself does not prohibit that specific --
11 does not state a specific prohibition. We think that in
12 general it does.

13 COMMISSIONER HOFFMAN: So, there's no specific
14 words in 16-941(A) that say a participating candidate
15 shall not make expenditures in excess of cash on hand?

16 MR. RIVERA: Right. Right.

17 COMMISSIONER HOFFMAN: What it instead says is
18 that -- what it does say, however, is that they -- you
19 can't make expenditures in excess of the adjusted
20 primary election spending limit.

21 MR. RIVERA: Which would be zero, right.

22 COMMISSIONER HOFFMAN: Well, that's the
23 question, right? The question is: Is the primary
24 election spending limit zero at the time before he gets
25 his allocation, or is the primary election spending

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1 limit the normal allocation?
 2 MR. RIVERA: Right.
 3 COMMISSIONER HOFFMAN: And -- okay. So, do you
 4 have any -- do you have any argument for why the --
 5 well, I guess we can look. Primary election spending
 6 limit means for a candidate, for a legislator, some
 7 fixed amount of money that is a positive number. And it
 8 says: Adjusted spending limit means the original
 9 spending limit as further adjusted to account for
 10 reported overages pursuant to 16-952, which is the
 11 matching funds.

12 So, according to 16-961, it looks like the
 13 adjusted primary spending limit is a positive number.
 14 Do you disagree with that conclusions or what argument
 15 did you make on that -- on that subject?

16 MR. RIVERA: Oh. Well, the argument that we
 17 made was that he had no money at all. That -- that --
 18 and the money -- and you look at this, I mean, he had
 19 absolutely no money in his funds at that point in time.

20 COMMISSIONER HOFFMAN: Right.

21 MR. RIVERA: And that -- that he expended money
 22 beyond the cash that he had in hand. It really doesn't
 23 go beyond in terms of what -- what he's been allocated
 24 or not allocated. It's just the fact that he expended
 25 \$15,000 at that point in time when he had zero in his

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1 account.
 2 COMMISSIONER HOFFMAN: Okay. Shall we move on
 3 to the other one or?

4 CHAIRPERSON SCARAMAZZO: Let's go ahead.
 5 Any -- any other --

6 COMMISSIONER DANIELS: No, thanks.

7 CHAIRPERSON SCARAMAZZO: -- comments in this?

8 I'd just like -- I guess from a personal
 9 standpoint, I look at this and -- and the money aspect
 10 according to the administrative law judge isn't as
 11 important to me, you know, whether there's a \$15,000
 12 discrepancy that -- that he views differently than we
 13 view. I guess that -- that -- that doesn't rub me the
 14 wrong way, and I think that the intent of -- of the
 15 Commission is still valid in -- in his recommendation.
 16 And that's where I'm kind of coming from on this.

17 Lori?

18 COMMISSIONER DANIELS: Well, Mr. Chairman, I
 19 don't disagree with you. I mean, I -- obviously, the
 20 administrative law judge upheld for the most part what
 21 we did. My -- I just kind of go a little bit further in
 22 the thought that candidates sometimes violate the law or
 23 violate our rules on accident. It wasn't purposeful, it
 24 wasn't deceitful. And at that point, I -- I feel like
 25 leniency is the way that I want to go because it was an

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1 honest mistake.
 2 To me this was out and out fraud. And I guess,
 3 to me, one of the statements that I was making, it's not
 4 only forfeiting your office, but it's going to cost you
 5 a whole lot of money if you're going to lie, cheat and
 6 steal, which is basically kind of the way I felt this
 7 whole case went.

8 And so for me, I'm fine to do whatever the
 9 Commission wants to do if it's an easier route -- and
 10 I'm sure it is -- to adhere to what the administrative
 11 law judge wanted. And I -- and I also have to take into
 12 account the amount of attorney's hours and the cost that
 13 that takes, but I still feel like it needs to be a huge
 14 hammer that we're hitting with at this point.

15 CHAIRPERSON SCARAMAZZO: Okay.

16 MR. RIVERA: The other -- if I can continue?

17 CHAIRPERSON SCARAMAZZO: Certainly.

18 MR. RIVERA: You know, it's -- it's -- he
 19 picked -- the administrative judge, I mean, unless there
 20 was specific language that explicitly stated this, he
 21 was not going to interpret it any other way.

22 The other -- the other provision is -- is in
 23 terms of primary and general, if you look at Page 31.

24 And if you look at Paragraph 24, it specifically shows
 25 his reasoning. He says that basically you get one crack

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1 at it. You get it for the primary or for the general,
 2 and he gave us the violation for the -- for the -- for
 3 the general -- the primary and not for the general. I
 4 still believe that if you look at it, it -- it violates
 5 both the general and the primary but in short, distinct
 6 terms.

7 So, he basically gave it to us for the primary
 8 and not for the general. And those are the two major
 9 points that --

10 COMMISSIONER HOFFMAN: What was your -- what
 11 was your argument for the -- for the fact showing that
 12 both -- that there was a violation for both?

13 MR. RIVERA: Well, the violation is because he
 14 exceeded both -- both the primary and the general
 15 limitations. It doesn't really make any difference
 16 where he spends it or how he spent it. We believe he
 17 expended at the very beginning, but if you look at him,
 18 you cannot look at an isolated -- one specific
 19 incidence.

20 The -- the assisted that it gave -- the
 21 assistance that it gave to him in the violation still
 22 benefitted him both in the general and the primary
 23 campaigns, and that was our argument, and we still feel
 24 pretty strongly about that. We think that that's
 25 correct. You can't isolate and say, gee, it only helped

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1 you in the primary; because, much of the benefit and
2 much of the gain you gained from the primary, obviously,
3 flows into your general election.

4 COMMISSIONER HOFFMAN: Well, 16-941(A)(4) says
5 that: "A participating candidate shall not make
6 expenditures in the general election period in excess of
7 the adjusted general election spending limit." Your
8 argument was that the expenditure occurred during the --
9 before the general election period, right, it occurred
10 at the time he signed the contract?

11 MR. RIVERA: That's correct. So any
12 expenditures beyond that going into the general is still
13 in excess. Unless he stops at the primary and stays it
14 within the general, any -- any dollar he spends in the
15 general election is now in violation of that, because
16 he's gone beyond that because he was at the \$15,000 to
17 the very beginning of it, it's --

18 COMMISSIONER HOFFMAN: Well, how much did --
19 did he expend in the general election period?

20 MR. RIVERA: If -- we can get it for you in a
21 second.

22 CHAIRPERSON SCARAMAZZO: Okay.

23 COMMISSIONER HOFFMAN: Well, let me ask you
24 this. The contract's \$15,000 --

25 MR. RIVERA: That's correct.

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1 COMMISSIONER HOFFMAN: -- was not an
2 expenditure in the general election period; is that a
3 true statement?

4 MR. RIVERA: There -- the money -- if you
5 consider the money earned at the very -- at the very
6 beginning of the primary, which we argued, the monetary
7 expenditure was not made in that; although, it was paid
8 over the time period that included the general, and
9 services were made up and -- up until including the
10 general.

11 COMMISSIONER HOFFMAN: So, you do agree that
12 the expenditure, if it's made at the time of the
13 contract is signed, you can't double count it, right,
14 and then also make the same expenditure -- then also
15 consider the actual transfer of the funds to be an
16 expenditure as well, correct?

17 MR. RIVERA: That's -- that's correct, sir.
18 That's correct.

19 COMMISSIONER HOFFMAN: Has to be one or the
20 other.

21 MR. RIVERA: It's one or the other. However,
22 once you -- once you go over it in the primary, any
23 money you spend in the general is still exceeding
24 whatever amount of money you are being allowed to spend
25 during that period of time.

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1 CHAIRPERSON SCARAMAZZO: But it can also -- I
2 guess you could also look at it in a double jeopardy
3 type of process here, where, you know, you messed up
4 here and we're going to get you on both ends.

5 MR. RIVERA: Right. And I think that --

6 CHAIRPERSON SCARAMAZZO: I guess that's where I
7 can see the --

8 MR. RIVERA: Yeah. I -- I don't, you know, I
9 can see the reasoning why the administrative judge said
10 that. I wasn't asked that question, I was asked how I
11 argued it.

12 CHAIRPERSON SCARAMAZZO: Right. I understand.
13 I understand.

14 MR. RIVERA: Yeah. But, yeah, I can understand
15 how the administrative judge says, okay, you caught him
16 in the primary; now -- now, well, but I'm not going to
17 let you double catch him in the general.

18 CHAIRPERSON SCARAMAZZO: Right.

19 MR. RIVERA: I mean, I think that that was the
20 administrative judge's reasoning. On the other hand, I
21 mean, you could argue that although he spent that money
22 in the primary --

23 CHAIRPERSON SCARAMAZZO: It benefited him in
24 the general also.

25 MR. RIVERA: -- it benefited him in the

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1 general, and every dollar that you spend in the general
2 is still a violation because he's already over the
3 limit.

4 CHAIRPERSON SCARAMAZZO: Lori.

5 COMMISSIONER DANIELS: Mr. Chairman, I'd
6 actually like to ask Mr. Lee a question that I'm sure
7 Mr. Rivera, you could answer, but as our legal
8 representative, if we do not affirm the administrative
9 law judge's order, what are the next steps?

10 MR. LEE: You would have to either reject it
11 completely and call for another hearing, you could
12 modify and then you would have to make specific changes
13 to the administrative law judge's recommendations. If
14 there are changes to any of the findings of fact, have
15 to be supported by an examination of the record and you
16 would have to cite where in the record you have facts
17 that would dispute what you're changing. If it's in the
18 area of conclusions of law or the recommended order,
19 then that detailed review of the record is not required.
20 You can simply draw conclusions as long as they're
21 supported in the findings of fact that have already been
22 set out by the administrative law judge.

23 COMMISSIONER DANIELS: Then my -- so, then,
24 does it go to the next level of the courts, or does it
25 go back to the administrative law judge if we -- if we

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42

1 change it?

2 MR. LEE: If you make modifications, it does

3 not go back to the administrative law judge. You will

4 issue your own order and you would have to notify the

5 Office of Administrative Hearings that you've made the

6 modifications and explain in a letter the justifications

7 for those changes. If you reject it completely, then

8 you can send it back to the administrative law judge,

9 but it does not advance to a Superior Court review if

10 there is a rejection.

11 COMMISSIONER DANIELS: I appreciate that.

12 CHAIRPERSON SCARAMAZZO: Still waiting for --

13 COMMISSIONER HOFFMAN: May I ask --

14 CHAIRPERSON SCARAMAZZO: Sure.

15 COMMISSIONER HOFFMAN: -- does anyone have

16 readily available the calculation that the Commission

17 used in determining the amount of the fine?

18 MR. RIVERA: Yeah. It -- it -- well, we

19 have -- we it in our -- it was introduced in the

20 administrative hearing file. I have an exhibit here,

21 only one copy, unfortunately, but you can pass it on.

22 COMMISSIONER HOFFMAN: No, I just wanted to

23 take a quick look if it were possible.

24 (Whereupon a discussion was held off the

25 record.)

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44

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2 COMMISSIONER HOFFMAN: Thank you.

3 CHAIRPERSON SCARAMAZZO: Is there any

4 information there that needs to be shared with the group

5 that you think is valid?

6 COMMISSIONER HOFFMAN: I just want to make a --

7 have a clear memory of what we did and whether -- in

8 reviewing the changes, I wanted to make sure that the --

9 that I recalled our -- our reasoning the first time,

10 based on the little grid that Mr. Lang had provided us

11 when we first voted on this matter, to make sure I

12 remembered which was which --

13 CHAIRPERSON SCARAMAZZO: Okay.

14 COMMISSIONER HOFFMAN: -- in terms of which

15 violation. And so it was kind of a, I don't know, just

16 the way my mind worked, I needed to see that. But, no,

17 I think the answer to your question is no.

18 CHAIRPERSON SCARAMAZZO: Okay.

19 MR. RIVERA: If I may, just to clarify the

20 record, it was -- it was Exhibit 23 of the

21 administrative -- administrative hearing, Page 16, off

22 of that that gave a recap in terms of how the Commission

23 reached the decision based upon violation, the amount

24 and the penalty that was reviewed at this point in time.

25 You know, we've got a proposed -- we've got a

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43

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2 MR. RIVERA: If we can have a minute.

3 COMMISSIONER HOFFMAN: Sorry.

4 (Whereupon a discussion was held off the

5 record.)

6

7 COMMISSIONER HOFFMAN: This one, not this one.

8 No, it's this one, not that one.

9 MR. RIVERA: We'll get it right one of these

10 days.

11 COMMISSIONER PARKER: It's not this one, but

12 that one, but not that one.

13 MR. RIVERA: This kind of basically sets out

14 the violations.

15 COMMISSIONER HOFFMAN: Yeah, this --

16 MR. RIVERA: And this is -- in terms of

17 response, this would have been the primary and the

18 general.

19 CHAIRPERSON SCARAMAZZO: Please, if anyone in

20 the audience wants to participate or see what they're --

21 we don't have copies of this. You are more than welcome

22 to come up and take a look at that, of what's being

23 analyzed right now. We're making copies, okay.

24 (Whereupon a discussion was held off the

25 record.)

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45

1 proposed findings of fact and conclusions of law and

2 order that we would like to pass out to the Commission

3 at this point in time, if we may.

4 We -- I think that I -- I'm ready for any other

5 questions.

6 You, obviously, will reach the decision that

7 you -- that you want. If we reject this, it will cause

8 a huge delay, as we all know, which I as a lawyer

9 probably am happy about that, but I don't think the

10 Commission would like that.

11 I don't believe that anybody for Representative

12 Quellan is here to make any arguments, but maybe the

13 Chair might want to ask.

14 CHAIRPERSON SCARAMAZZO: Is there anyone

15 specifically wishing to address anything in this

16 discussion item?

17 MR. RIVERA: Just for the record, Your Honor.

18 He was given notice by letter, by fax and telephone

19 conversations we had with Mr. Limperis concerning this;

20 so, he was aware of the hearing, the date, and that it

21 was going to be discussed today.

22 CHAIRPERSON SCARAMAZZO: Lori.

23 COMMISSIONER DANIELS: Mr. Chairman,

24 Mr. Rivera, I know there's been a lot in the -- in the

25 press and lot have been said about his retirement that

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1 starts in January. Even if we go along with this, this
 2 is not going to be resolved by January, is it?
 3 MR. RIVERA: No. Okay. We actually -- I
 4 actually did a whole time line on this because I -- it
 5 depends, Commissioner. What happens after this is, once
 6 the order is entered, there's a -- a request for
 7 forfeiture. He is supposed to resign in 10 days -- he
 8 has 10 days until the entry of the order. He can move
 9 for a stay of that decision; so, theoretically, if he
 10 doesn't move for the stay, if he doesn't appeal, this
 11 can be over in 10 days.

12 If -- if he -- if he appeals, which is what the
 13 consensus I think is out there, he obviously will
 14 move -- make a move for a stay and the Court may or may
 15 not grant it to him, you know. I don't think I can
 16 guess what judges do. Stays are -- there are certain
 17 criteria for stays to be granted, certain criteria for
 18 stays not to be granted, so that's up to the Court, so
 19 he might get -- might get a stay.

20 I timed it all out if it went on normal --
 21 obviously, we would move for expedited, but if -- you
 22 want me to go through this kind of or do you want a
 23 bottom line?

24 COMMISSIONER DANIELS: Mr. Chairman, bottom
 25 line is fine.

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1 is that the 120 days may be shortened, because if you
 2 request a stay, then he's got to serve us before that
 3 120 days. So we can press -- we'd save 120 days off of
 4 that if he serves us requesting a stay and, you know, if
 5 he's going to stay in, he's got to ask for that stay.
 6 If he doesn't ask for the stay, and he has 120 days,
 7 he's no longer in office during that period of time.

8 CHAIRPERSON SCARAMAZZO: And I understand the
 9 concern and the questions. On the other hand, you
 10 know --

11 COMMISSIONER DANIELS: It's not an issue.

12 CHAIRPERSON SCARAMAZZO: -- I don't feel it's
 13 any of my business, you know. The process is set in
 14 place for a reason.

15 COMMISSIONER DANIELS: And Mr. Chairman, the
 16 only reason I bring it up as an issue is that this took
 17 a long time for us to go through and I thought -- and in
 18 hindsight if we could have expedited on the front end,
 19 then we might not even -- this wouldn't be an issue.

20 It's not an issue we should be dealing with, but if we
 21 had been a little bit more timely, I -- I think it was
 22 more important that we were deliberative than -- than
 23 hastening and so I, you know, I understand that too.

24 I'm not criticizing us. I'm just looking at
 25 what we did and our timing.

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1 COMMISSIONER PARKER: Bottom line.
 2 CHAIRPERSON SCARAMAZZO: Bottom line.
 3 MR. RIVERA: Bottom line is after we serve him,
 4 he's got 120 -- after we file -- after he files his
 5 complaint in state court, he's got 120 days unless a
 6 judge reduces that, so that takes it beyond in January.

7 COMMISSIONER DANIELS: That's my --
 8 COMMISSIONER HOFFMAN: What is the January
 9 date? Remind me.

10 COMMISSIONER DANIELS: It would be the opening
 11 day of session and it's the second Tuesday but -- or
 12 first Monday, rather -- second Monday after so and so,
 13 but -- yeah, I'll get that out -- because that's when
 14 his retirement would kick in because he would be vested

15 at that point in time. Because he's in his 50 or --
 16 COMMISSIONER HOFFMAN: Oh, his retirement
 17 payments.

18 COMMISSIONER DANIELS: Yes. Well --
 19 COMMISSIONER PARKER: He would qualify to get
 20 retirement under the elected --

21 COMMISSIONER HOFFMAN: The state requirement
 22 [sic] program, yeah.

23 COMMISSIONER PARKER: -- officials retirement
 24 program.

25 MR. RIVERA: I was reminded by -- by -- by Todd
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1 CHAIRPERSON SCARAMAZZO: Fair analysis.
 2 MR. RIVERA: I believe that's all I have unless
 3 there's other questions.

4 COMMISSIONER HOFFMAN: Yes. I have one other
 5 question, Mr. Chair.

6 CHAIRPERSON SCARAMAZZO: Please.
 7 COMMISSIONER HOFFMAN: Is -- would you explain
 8 the document you've handed out that says: Findings Of
 9 Fact, Conclusions of Law and Order. How does --

10 MR. RIVERA: How does that differ?

11 COMMISSIONER HOFFMAN: Is that simply a repeat
 12 of the ALJ decision or are there changes?

13 MR. RIVERA: No. It's essentially a repeat of
 14 the ALJ decision with one exception where we put a "not"
 15 rather than a "does."

16 COMMISSIONER HOFFMAN: So it's identical but
 17 with the word "not" inserted?

18 MR. RIVERA: Yes. Right. Yes.

19 COMMISSIONER HOFFMAN: Okay.

20 MR. RIVERA: Well, you -- you know, the other
 21 thing is, I mean, the preface, I mean, if you look at
 22 the preface of the A -- AL judge's decision, it's
 23 different than ours.

24 COMMISSIONER HOFFMAN: The which?

25 MR. RIVERA: The preface, you know, before he
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50

1 starts getting into the meat of it, because...

2 COMMISSIONER PARKER: In other words --

3 COMMISSIONER HOFFMAN: Oh, the -- just the part

4 above the words "stipulated facts."

5 MR. RIVERA: Right. Right.

6 COMMISSIONER PARKER: Yeah.

7 COMMISSIONER HOFFMAN: The introduction.

8 MR. RIVERA: After "stipulated facts," it's all

9 the same.

10 COMMISSIONER HOFFMAN: Thank you. Mr. Chair, I

11 would like to go into executive to discuss -- to ask our

12 lawyers about some matters related to legal advice and

13 upon -- on procedure and related to our decision.

14 CHAIRPERSON SCARAMAZZO: Okay. We need a --

15 COMMISSIONER PARKER: I'll second that.

16 CHAIRPERSON SCARAMAZZO: Second that. Put that

17 in a motion?

18 COMMISSIONER HOFFMAN: So moved.

19 CHAIRPERSON SCARAMAZZO: Okay. It's been moved

20 and seconded to recess into executive session.

21 All those in favor say "aye."

22 (Chorus of ayes.)

23 MR. RIVERA: May I say one more thing before we

24 leave? The other thing is, it's a small thing.

25 Obviously, there's still a right to appeal an

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52

1 sorry, Mr. Chair.

2 COMMISSIONER HOFFMAN: Move we take a

3 five-minute break, or a two-minute break.

4 CHAIRPERSON SCARAMAZZO: For him?

5 COMMISSIONER HOFFMAN: And I need a minute too.

6 CHAIRPERSON SCARAMAZZO: You need a minute too.

7 Oh, let's just relax here.

8 COMMISSIONER HOFFMAN: We don't need to break.

9 CHAIRPERSON SCARAMAZZO: No.

10 COMMISSIONER HOFFMAN: We just don't do

11 anything.

12 CHAIRPERSON SCARAMAZZO: Just called us back

13 into regular session. We don't need to ping-pong this

14 thing. I'll note for the tape: Todd Lang is getting

15 Colleen McGee.

16 (Whereupon a discussion was held off the

17 record.)

18

19 CHAIRPERSON SCARAMAZZO: Okay. Wait for

20 Royann. Sorry to hold everybody up here.

21 (Whereupon a brief recess is taken at 10:47

22 a.m.)

23

24 CHAIRPERSON SCARAMAZZO: Okay. We are back in

25 regular session. We have everybody back that's going to

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51

1 administrative judge's order. There is a right to

2 appeal contained within the proposed order at the last

3 page.

4 COMMISSIONER HOFFMAN: There's a notice of the

5 right.

6 CHAIRPERSON SCARAMAZZO: Okay. It's been moved

7 to move into executive session.

8 Please, if we could have Mr. Rivera and Mr. Lee

9 stay in here with us, we'd appreciate that, okay.

10 (Whereupon the public retires from the meeting

11 room.)

12

13 (Whereupon the Commission is in executive

14 session from 10:32 a.m. until 10:44 a.m.)

15

16 (Whereupon all members of the public are

17 present and the Commission resumes in general session.)

18

19 CHAIRPERSON SCARAMAZZO: We'll reconvene this

20 regular session of the Citizens Clean Elections

21 Commission back into regular session at 10:45.

22 And we're back on Item No. VI, consideration

23 and possible action of the administrative law judge's

24 decision in matter MUR 080035. Todd.

25 MR. LANG: May I go get Colleen McGee? I'm

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53

1 be here, so let's go ahead and consider what the

2 Commission wants to do with Item No. VI. Royann?

3 COMMISSIONER PARKER: Mr. Chairman, I make a

4 motion that we accept the decision of the administrative

5 law judge.

6 COMMISSIONER DANIELS: I'll second it.

7 CHAIRPERSON SCARAMAZZO: Okay. It's been moved

8 by Commissioner Parker, seconded by Commissioner

9 Daniels, to accept the recommendation of the

10 administrative law judge in the matter MUR 08-0035. Any

11 discussion on this item?

12 COMMISSIONER HOFFMAN: Yes, Mr. Chair. I

13 support generally the -- the motion; however, I'm

14 concerned about including in our conclusions of law

15 statements about previous Commission assertions and

16 believe that it would be rather simple to trim down a

17 little of the conclusions of law to avoid any issue that

18 might apply in future cases and bind us more than we

19 need to.

20 So, I'd like to move -- I'd like to amend the

21 motion to adopt the findings of fact and conclusions of

22 law and order with a few pieces deleted that relate to

23 previous Commission positions, which I can run through

24 if that's necessary.

25 CHAIRPERSON SCARAMAZZO: Royann.

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54

1 COMMISSIONER PARKER: Mr. Chairman, I have a
 2 question maybe to Mr. Lee: If we do that, what does
 3 that do to the whole process?
 4 CHAIRPERSON SCARAMAZZO: The findings of fact.
 5 MR. LEE: You would need to redraft your
 6 findings of fact, conclusions and order into a different
 7 document than the proposed one submitted by counsel.
 8 You would then show the -- not show, but it would be
 9 modified in the sense that whatever strikes you were
 10 doing would be reflected in the new document. You would
 11 have to communicate by letter to the Office of
 12 Administrative Hearings that you are, in fact, modifying
 13 the order. You would have to write in justifications
 14 for the modifications.
 15 COMMISSIONER DANIELS: Mr. Chairman, Mr. Lee,
 16 then it's my understanding if we just strike what
 17 previous Commissions have done in that language, it's --
 18 if the previous Commission said this, that's why the law
 19 judge found it, I mean, would it -- is it that important
 20 to do?
 21 And I -- and, Commissioner Hoffman, I'm not
 22 giving you a hard time about it --
 23 COMMISSIONER HOFFMAN: No.
 24 COMMISSIONER DANIELS: -- I just -- I just
 25 think whatever a previous Commission has done, it's a
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56

1 through, in terms of some of what the appealable issues
 2 may be. I mean, I'm saying that in general, because I
 3 don't know what the specific changes are.
 4 COMMISSIONER HOFFMAN: Mr. Chair, I just wanted
 5 to clean up the wording of the order to not refer to
 6 things that -- that are conditional or that we
 7 previously asserted but no longer assert. And, in other
 8 words, if I could, if it would be in order, I would like
 9 to just sort of point out the places I'm talking about
 10 and perhaps that might make it a little less abstract.
 11 COMMISSIONER PARKER: Which document are you
 12 in?
 13 COMMISSIONER HOFFMAN: I'm in the -- the
 14 findings of fact, conclusions of law and order document
 15 that was handed out to us just -- at this meeting -- or
 16 at this --
 17 COMMISSIONER PARKER: And which page?
 18 COMMISSIONER HOFFMAN: -- hearing. Page --
 19 starts on Page 34.
 20 So, the first -- the first thing I would like
 21 to do is strike the second sentence which says: The
 22 Commission asserts that the rental amount was \$6,000,
 23 since I don't believe based on accepting the Judge's
 24 order, that we are any longer asserting that.
 25 The next item was to -- on -- strike the
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55

1 matter of law now. It's a matter of record, and once
 2 it's there, it's out there. We can't -- we can strike
 3 it, but it still doesn't mean that a law judge in the
 4 future isn't going to go back and do the same thing,
 5 correct?
 6 MR. LEE: I believe that you are correct. It
 7 just makes more work for whoever wants to raise it in
 8 the future, they'd have to search back in the prior
 9 Commission's decision and order versus being able to
 10 pull one document up and saying here's the evidence of a
 11 prior Commission.
 12 COMMISSIONER HOFFMAN: If this -- if this is
 13 communicated back to the administrative office that you
 14 described, is that just a report? Our order would still
 15 stand as of today, would it not?
 16 MR. LEE: Yes.
 17 COMMISSIONER HOFFMAN: So it wouldn't delay the
 18 appeal process should Representative Quelland choose to
 19 do that?
 20 MR. LEE: No, it would not.
 21 MR. RIVERA: May I?
 22 CHAIRPERSON SCARAMAZZO: Certainly.
 23 MR. RIVERA: The only comment I wanted to say
 24 is, not knowing the changes that are going to be made,
 25 they may have an effect on appeal if any appeal goes
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57

1 portion of Paragraph 6 that starts with -- on line 9
 2 through 19, that says: Moreover, if the Commission were
 3 to do this and if the Commission were not to do this,
 4 since that's not relevant.
 5 On page -- on Page 36 and 37, I'd like to
 6 strike Paragraphs 10, 12 and 13 which, again, are things
 7 that are referring to matters that we have previously
 8 asserted but no longer, you know, are doing.
 9 On Page 38 and 39, I'd like to strike
 10 Paragraphs 23, 24 and 25 which, again, refer to previous
 11 assertions.
 12 And on Page 22 -- I mean, Paragraph 22, Page
 13 38, I'd like to change the word "request" to "order."
 14 That's it.
 15 COMMISSIONER PARKER: Mr. Chairman, Louis,
 16 I'm -- not being an attorney, I don't quite understand
 17 the significance of what you're trying to accomplish,
 18 and I would like to be able to understand that.
 19 COMMISSIONER HOFFMAN: Sure -- no. My thinking
 20 was this: The -- in our previous assertion, we asserted
 21 certain things and ordered certain penalties -- and made
 22 some arguments for certain penalties.
 23 COMMISSIONER PARKER: Uh-huh.
 24 COMMISSIONER HOFFMAN: Based on your motion,
 25 we're no longer doing that. We're -- we're -- we're not
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58

1 asserting that the rental amount was \$6,000, we're
 2 saying it's \$4,000. We're not asserting that the --
 3 CHAIRPERSON SCARAMAZZO: I don't think that's
 4 the case, though.
 5 COMMISSIONER HOFFMAN: Sorry?
 6 CHAIRPERSON SCARAMAZZO: I don't believe that's
 7 the case. We're not asserting anything. We're
 8 accepting the fact that the administrative law judge
 9 looked at our recommendations, looked at our decisions,
 10 and has found something that goes ahead and changes that
 11 somewhat. It doesn't change the fact that the
 12 Commission moved in a -- in a -- in a direction.
 13 COMMISSIONER HOFFMAN: I'm not trying to --
 14 to -- to rewrite history. What I'm trying to do is
 15 simply have a clean order that says what we are now
 16 asserting and only what we are now asserting.
 17 CHAIRPERSON SCARAMAZZO: And not being -- and,
 18 again, not being a lawyer, I'm -- I'm comfortable with
 19 the direction the process has moved --
 20 COMMISSIONER HOFFMAN: I agree.
 21 CHAIRPERSON SCARAMAZZO: -- and with the
 22 corrections -- with the stipulations the administrative
 23 law judge has set in place, and -- and I'm not
 24 comfortable with going ahead and changing this, from a
 25 personal standpoint.

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60

1 in this, what's your opinion?
 2 MR. RIVERA: Your Honor, you know, I think
 3 that --
 4 CHAIRPERSON SCARAMAZZO: And I'm not on Honor,
 5 okay?
 6 MR. RIVERA: I'm sorry, sir. A lot of thought
 7 has been put into this; and, basically, the reason we've
 8 drafted -- it was drafted this way was to minimize the
 9 possible appealable issues. For instance, in
 10 Paragraph 2, we did assert that the \$6,000 was for rent.
 11 I mean, the Judge determined that it was only \$4,000.
 12 This has been our assertion. It has been our assertion
 13 forever.
 14 If you look at paragraph -- Page 36, Paragraph
 15 10, that was what our position was. I mean, that's not
 16 what it is. I mean, it's a simple fact that that's what
 17 we asserted and that's what the notice of hearing stated
 18 at that point in time.
 19 COMMISSIONER HOFFMAN: That's not true of it
 20 any longer.
 21 CHAIRPERSON SCARAMAZZO: Lori.
 22 Thank you.
 23 COMMISSIONER DANIELS: Mr. Chairman, I want
 24 to -- I don't want to do what Mr. Hoffman wants to do
 25 for one reason. I want it to be known on appeal because

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59

1 COMMISSIONER HOFFMAN: Okay. Mr. Chair, let
 2 me respond to that. The -- I agree with you. I am
 3 perfectly comfortable with what the administrative law
 4 judge found. I've looked at it very closely. I don't
 5 want to have contrary assertions in the final order. In
 6 other words, things that we -- we may have asserted last
 7 time but no longer are willing to stick by.
 8 So, when it says, for example, the Commission
 9 asserts that, you know, 16-941(A), also prohibits a
 10 candidate from making expenditures in excess of cash on
 11 hand, we're not asserting that any longer, because the
 12 administrative law judge pointed out that that's not
 13 correct. So, I -- I'd rather not have something in a
 14 final order that says we're asserting that. It -- it's
 15 just a cleanup thing. I'm actually wanting to have a
 16 very clean order on which -- which could form the basis
 17 of an appeal.
 18 That's -- that was the only reason I'm making
 19 the suggestion. So we don't have two -- we don't have
 20 our own order saying, well, we assert this, but we don't
 21 agree with ourselves. I mean, that's -- that format
 22 just seems strange to me.
 23 CHAIRPERSON SCARAMAZZO: Mr. Rivera. From --
 24 MR. RIVERA: Your Honor.
 25 CHAIRPERSON SCARAMAZZO: -- being our litigator

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61

1 I want them to be able to look at what we asserted and
 2 what the administrative law judge came back, because the
 3 next round -- the Judge doesn't have to go along with
 4 this, am I wrong in that? I mean, they -- they could
 5 put back our original assertions, couldn't they?
 6 COMMISSIONER HOFFMAN: No, no.
 7 MR. LEE: No.
 8 COMMISSIONER DANIELS: Okay. I still think
 9 that we made -- we made a deliberative effort, and even
 10 though we may be saying now, all right, we're going to
 11 go along with the administrative law judge, I would
 12 still kind of like it to be known that we asserted one
 13 thing at one point, we're going to go along with this,
 14 it's not necessarily what our position was to begin
 15 with. So I don't have a problem with it being written
 16 the way it was written.
 17 CHAIRPERSON SCARAMAZZO: Excuse me. Go ahead,
 18 Tanja.
 19 Royann, are you fine?
 20 COMMISSIONER PARKER: Yeah.
 21 CHAIRPERSON SCARAMAZZO: Go ahead.
 22 MS. SHIPMAN: Thank you, Mr. Chair. I just
 23 want to say I -- I understand Commissioner Hoffman's
 24 concerns with things not being under the right category,
 25 and it's something we noted that perhaps statements of

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62

1 fact were put under conclusions of law and perhaps vice
 2 versa, that it wasn't necessarily under, you know, the
 3 way it was categorized. But I agree with your
 4 conclusion that that is the way it's written, that's
 5 apparently the way a lot of administrative law judge
 6 decisions are written, and my recommendation as having
 7 participated in the prosecution of this is to remain
 8 with what the administrative law judge wrote as close as
 9 you can.

10 CHAIRPERSON SCARAMAZZO: Thank you.

11 COMMISSIONER DANIELS: And Mr. Chairman, just
 12 to have it on the record, I would prefer that the
 13 administrative law judge went along with us a hundred
 14 percent, but I also understand that compromise is part
 15 of the process and findings are findings. And, so,
 16 I'm -- I'm fine with accepting this the way it is.

17 CHAIRPERSON SCARAMAZZO: Louis, and you have
 18 certainly the right as a Commissioner to put that in the
 19 form of a motion and see if there's a second.

20 COMMISSIONER HOFFMAN: Well, I did and it
 21 apparently dies for lack of second, so it's a --

22 CHAIRPERSON SCARAMAZZO: Well, I didn't hear
 23 a -- hear that put in a motion, but that's fine. We
 24 can -- we can do that formally.

25 COMMISSIONER HOFFMAN: No, I -- I had done it

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64

1 MR. LEE: Page 37.

2 COMMISSIONER DANIELS: On Page 37.

3 MR. LEE: Paragraph 12 at Line 14, I believe it
 4 is.

5 COMMISSIONER DANIELS: Page 37, if I can get to
 6 it.

7 CHAIRPERSON SCARAMAZZO: Paragraph 12.

8 COMMISSIONER DANIELS: Paragraph 12, Line --

9 COMMISSIONER PARKER: Line 13. It's in between
 10 13 and 14.

11 COMMISSIONER HOFFMAN: I -- Mr. Chair, I --
 12 I've got to say: I don't see why we would -- we
 13 would -- why it helps us to include in a finding of fact
 14 and conclusions of law a statement there's no violation
 15 of a particular statute. I'm not going to reopen the
 16 whole thing again, but I just -- I just simply don't see
 17 that. And this is a perfect example in the paragraph
 18 that says that, you know, Mr. -- that there is no such
 19 prohibition in 941(A), and that there is no violation of
 20 that statute. And I don't know why we're -- we're
 21 saying that.

22 But, in any event, shouldn't the motion be
 23 to -- to pass the finding of fact and conclusion of law
 24 and order as handed out to us rather than to adopt the
 25 administrative law judge's decision?

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63

1 originally.

2 CHAIRPERSON SCARAMAZZO: Okay.

3 COMMISSIONER HOFFMAN: So there's -- I haven't
 4 heard anyone indicating support for it or second, so
 5 that -- I still believe that that should be done, but
 6 I'm obviously not going to prevail on this point. So,
 7 let's move on.

8 CHAIRPERSON SCARAMAZZO: Okay. Appreciate
 9 that. Thank you. Further discussion on this item?

10 There is a motion on the floor to accept the
 11 administrative law judgment decision in the matter of
 12 MUR 08-0035.

13 All those in favor -- excuse me. Go ahead,
 14 Mr. Lee.

15 MR. LEE: Just a point for clarification. The
 16 motion is to accept the administrative law judge's
 17 recommendation. Your counsel had recommended one
 18 change, and that was the addition of the word "not."

19 CHAIRPERSON SCARAMAZZO: Not.

20 MR. LEE: And I just wondered if you wanted to
 21 address that.

22 CHAIRPERSON SCARAMAZZO: Go ahead.

23 COMMISSIONER DANIELS: Mr. Chairman, I would
 24 amend the motion to include the word "not" and I
 25 don't -- I wrote it down but I can't find the page.

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65

1 MR. LEE: It could be done either way.

2 COMMISSIONER DANIELS: And -- and Mr. Chairman,
 3 my only point would be that if an administrative law
 4 judge thinks that A.R.S. 16-941, does not include such a
 5 prohibition, then I think it is our responsibility as
 6 Commissioners, if we believe there is a prohibition, to
 7 clarify the law. And I think that's, you know, go to
 8 the legislature to change the statute or to rewrite our
 9 rules if it's in our rules, because if someone is
 10 finding this, then the future could too. And I think
 11 it's our responsibility, if we believe it is there and
 12 it should have been written that way, to change the law.
 13 So --

14 COMMISSIONER HOFFMAN: Right. I mean, my point
 15 is -- Mr. Chair, Commissioner Daniels, the point is:
 16 Why do we want to pass something in this hearing that
 17 says that this statute does not include a certain
 18 prohibition when that's the argument we made previously,
 19 and that's my only point. I agree with you that that
 20 is, in fact, what the law says. And we can change the
 21 law if we want to, that's apparent, but I don't see how
 22 it helps us to change it that way.

23 MR. LEE: Mr. Chairman, if I may comment on
 24 that?

25 CHAIRPERSON SCARAMAZZO: Certainly.

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66

1 MR. LEE: Not having actually looked at the
 2 notice of charges, if there were no comment about one of
 3 the charges that were contained in the complaint, if you
 4 will, there will be a question as to whether or not the
 5 Commission actually addressed it. So, to the extent
 6 there are charges in the complaint or notice of hearing,
 7 all of those should be addressed. And so Paragraph 12,
 8 in some respect, would have to be addressed in that it
 9 would have to show either that there was a finding of a
 10 violation as charged or there was no finding of
 11 violation as charged. So I think a complete omission of
 12 Paragraph 12, would be possibly an error.

13 COMMISSIONER HOFFMAN: We could, however, put
 14 in a sentence -- a single sentence at the end all the
 15 charges dismissed.

16 MR. LEE: That could be done.

17 COMMISSIONER PARKER: Shouldn't we amend our
 18 motion to include this one since it included the word
 19 "not," and the administrative law judge's didn't.

20 CHAIRPERSON SCARAMAZZO: Go ahead. One more
 21 time.

22 COMMISSIONER PARKER: My motion said to accept
 23 the administrative law judge decision. It didn't have
 24 the word "not" in there; whereas, this one has the word
 25 "not." So, should I amend my motion to be the findings

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68

1 Commissioner Daniels, to accept the findings of fact
 2 conclusions of law and order in case number 08-0035,
 3 Mr. Doug Quelland, MUR08-0035. Further discussion on
 4 this item?

5 All those in favor say "aye."
 6 (Chorus of ayes.)

7 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 8 carries.

9 Thanks, everyone.

10 All right. That brings us to Item No. VII.

11 MR. LEE: Mr. Chairman, just to make sure that
 12 your staff understands, because there is a modification
 13 between the ALJ's recommendation and the order just
 14 adopted by the Board, the word "not," your staff needs
 15 to send a letter to the Office of Administrative
 16 Hearings indicating that very slight modification and
 17 the reason for it. It has to be done within five days.

18 CHAIRPERSON SCARAMAZZO: Okay. Thank you.

19 COMMISSIONER HOFFMAN: Thanks.

20 CHAIRPERSON SCARAMAZZO: Thanks for all your
 21 help, okay?

22 MR. RIVERA: Thank you.

23 COMMISSIONER PARKER: Mr. Chairman, that just
 24 directing the staff to look into that statute to make
 25 sure that in the future it reads the way we need it to.

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67

1 of fact, conclusions of law and order rather than the
 2 administrative law judge's?

3 COMMISSIONER DANIELS: You could withdraw your
 4 motion and make another one.

5 COMMISSIONER PARKER: Let's do that.

6 CHAIRPERSON SCARAMAZZO: Okay. You wish to
 7 withdraw your motion and second, okay.

8 COMMISSIONER HOFFMAN: Well, that -- that was
 9 my other question and I -- I -- it could be done either
 10 way.

11 COMMISSIONER PARKER: Okay.

12 COMMISSIONER HOFFMAN: Either you could simply
 13 approve the administrative law judge's decision with the
 14 addition of the word "not," which would correct the
 15 typo. Or you could --

16 COMMISSIONER PARKER: I'll make a new motion,
 17 Mr. Chairman, if I may --

18 CHAIRPERSON SCARAMAZZO: Okay.

19 COMMISSIONER PARKER: -- to accept the findings
 20 of fact, conclusions and order in the matter of Doug
 21 Quelland, MUR 08-0035.

22 CHAIRPERSON SCARAMAZZO: Okay.

23 COMMISSIONER DANIELS: Second.

24 CHAIRPERSON SCARAMAZZO: Second. It's been
 25 moved by Commissioner Parker and seconded by

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69

1 CHAIRPERSON SCARAMAZZO: We'll take that on,
 2 okay? Sounds good.

3 Item No. VII deals with public comment. Seeing
 4 as how the room is emptying very quick, it might be a
 5 little light, but anyone is certainly welcome to address
 6 the Commission on any items of concern.

7 Help us out here, okay? Hearing none, we'll go
 8 to Item No. VIII, then. Welcome back, Tanja.

9 MS. SHIPMAN: Thank you.

10 COMMISSIONER PARKER: Have a seat for 30
 11 seconds.

12 CHAIRPERSON SCARAMAZZO: We'll move to adjourn.

13 COMMISSIONER DANIELS: Mr. Chairman, I'll move
 14 we adjourn.

15 COMMISSIONER PARKER: Second.

16 CHAIRPERSON SCARAMAZZO: Moved and seconded.
 17 All those in favor say "aye."
 18 (Chorus of ayes.)

19 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 20 carries.

21 COMMISSIONER DANIELS: Happy Thanksgiving,
 22 everybody.

23 CHAIRPERSON SCARAMAZZO: Happy Thanksgiving.
 24 (Whereupon the proceeding concludes at 11:08
 25 a.m.)

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1 C E R T I F I C A T E

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I, Angela Furniss Miller, Certified Reporter,
do hereby certify that the foregoing pages numbered 1
through 69, inclusive, constitute a full and accurate
printed record of my stenographic notes taken at said
time and place, all done to the best of my skill and
ability.

DATED, at Phoenix, this 23rd day of November,
2009.

Angela Furniss Miller, RPR
Certified Reporter (AZ50127)

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