

Item #6b - 19-06 Staff Report



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TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: August 18, 2021
RE: Case Analysis for PEC Complaint No. 19-06; In the matter of Annie Campbell Washington, prepared for the September 2, 2021, Public Ethics Commission Meeting

BACKGROUND:

On January 3, 2019, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer, Suzanne Doran emailed to Former City Council Member Annie Campbell Washington, the first warning “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018. On May 9, 2019, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that Campbell-Washington and her committee, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

TIMELINE OF EVENTS:

1/03/2019 PEC Filing Officer emailed a warning notice of Non-filer Non-compliance to the Respondent.

2/19/2019 PEC Filing Officer sent a formal letter and notice of Non-filer Non-compliance to the Respondent.

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- 3/05/2019 PEC Filing Officer contacted the Respondent and spoke to her by telephone regarding the Non-filer Non-compliance.
- 3/27/2019 PEC Filing Officer sent a formal letter and notice of Non-filer Non-compliance to the Respondent.
- 4/01/2019 PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.
- 5/09/2019 PEC Enforcement notified Respondent via formal letter that a Non-filer Non-compliance report was submitted for formal Enforcement Procedures.
- 6/06/2019 PEC Enforcement via formal letter offered to the Respondent an early resolution settlement offer.
- 10/30/2020 PEC Enforcement notified Respondent via formal letter in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures.

FACTUAL SUMMARY AND ANALYSIS:

In 2018, the Respondent was a candidate for Oakland City Council District 4 and established a committee for “Annie Campbell Washington for Oakland City Council 2018.” The Respondent had been an elected member of the Oakland City Council and had previously filed required campaign forms with the City, since 2015. In 2018, the Respondent abruptly ended her campaign for City Council. After ending her campaign, she failed to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018. The PEC Filing Officer made numerous attempts to gain the Respondent’s compliance, including warning the Respondent that she was subject to daily late filer fees for failing to timely file her Semi-Annual Campaign Statement. Despite PEC best efforts to gain the Respondent’s compliance, she did not submit the required campaign filing.

In May 2019, the Filing Officer referred the matter pursuant to PEC Enforcement Procedures. Enforcement notified the Respondent by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. Shortly thereafter, on June 6, 2019, PEC staff proposed that the Respondent agree to an early resolution of her matter with a small fine. The Respondent did not respond to Enforcement.

Contact Efforts

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate’s campaign.

Despite the candidate’s requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The

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PEC investigator conducted a locate search for the Respondent's address and confirmed that the address the PEC used to mail the Non-filer notice was the same as that associated with the Respondent. Staff also forwarded an additional copy of the Non-filer Non-compliance notice, certified mail. The PEC sent several email notices to the Respondent but received no response. Staff confirmed that during the same period that Staff attempted to a response from Campbell-Washington, the Respondent used the same email address to contact the PEC Executive Director, regarding an unrelated matter, that Staff used to forward copies of the Non-filer Non-compliance notice.

VIOLATION(S):

Annie Campbell Washington violated the following Oakland Municipal Code sections:

Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about February 1, 2019, Respondent, Annie Campbell Washington, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when she failed to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018.

PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty.

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As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty

Aggravating Factors

Here, the circumstances of the Respondent's conduct establish aggravating factors that should increase the severity of the penalty:

1. The Respondent was an experienced City Council Member.
2. The Respondent has demonstrated knowledge of the rule and was aware of the filing obligations.

Mitigating Factors

1. Respondent does not have prior Public Ethics Commission non-reporting violations.

RECOMMENDATION:

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends the Commission schedule this matter for formal hearing before the full Commission.