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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of) FPPC No. 07/040
12)
13)
CHRISTOPHER ROBLES,) DEFAULT DECISION AND ORDER
14)
15)
Respondent.) (Gov. Code §§ 11506 and 11520)
16)

17 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
18 hereby submits this Default Decision and Order for consideration by the Fair Political Practices
19 Commission at its next regularly scheduled meeting.

20 Pursuant to the California Administrative Procedure Act,¹ Respondent Christopher Robles has
21 been served with all of the documents necessary to conduct an administrative hearing regarding the
22 above-captioned matter, including the following:

- 23 1. An Order Finding Probable Cause;
- 24 2. An Accusation;
- 25 3. A Notice of Defense (Two Copies);

26
27 ¹ The California Administrative Procedure Act, which governs administrative adjudications, is
28 contained in Sections 11370 through 11529 of the Government Code.

- 4. A Statement to Respondent; and
- 5. Copies of Sections 11506 through 11508 of the Government Code.

Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a hearing on the merits of the Accusation. The Statement to Respondent, served on Respondent Christopher Robles, explicitly stated that a Notice of Defense must be filed in order to request a hearing. Respondent failed to file a Notice of Defense within fifteen days of being served with the Accusation.

Government Code Section 11520 provides that, if the respondent fails to file a Notice of Defense, the Commission may take action, by way of a default, based upon the respondent's express admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the respondent.

Respondent Christopher Robles violated the Political Reform Act as described in Exhibit 1, and accompanying declarations, which are attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This Default Decision and Order is submitted to the Commission to obtain a final disposition of this matter.

Dated: _____

Roman G. Porter
Executive Director
Fair Political Practices Commission

ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of Two Thousand Dollars (\$2,000) upon Respondent Christopher Robles, payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chairman of the Fair Political Practices Commission at Sacramento, California.

Dated: _____

Dan Schnur, Chairman
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Christopher Robles had filing obligations under the Political Reform Act (the “Act”)¹ as a candidate for public office. Respondent was a candidate on the ballot for the Los Angeles County 58th Assembly Democratic Central Committee in the 2006 election. He won the election on June 6, 2006, and was reelected in 2008 and 2010.

This matter arose out of a referral from the Los Angeles County Clerk’s Office, which had previously issued written notices to Respondent warning that he had failed to file campaign statements in connection with the 2006 election by the applicable due dates.

For purposes of this Default Decision and Order, Respondent’s violation of the Act is stated as follows:

COUNT 1: Respondent Christopher Robles failed to file a short form campaign statement, covering the reporting period January 1, 2006 through December 31, 2006, in violation of section 84206 of the Government Code.

THE RESPONDENT

This matter involves one Respondent: Christopher Robles, a candidate on the ballot for the Los Angeles County 58th Assembly Democratic Central Committee in the 2006 election.

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Fair Political Practices Commission (the “Commission”) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).² (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

Section 91000.5 provides that "[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action." (Section 91000.5, subd. (a).)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records ("Certification") filed herewith at Exhibit A, A-1 through A-6, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent in this matter by serving him with a Report in Support of a Finding of Probable Cause (the "Report") by certified mail, return receipt requested,³ on July 13, 2010. (See Certification, Exhibit A-1.) Therefore, the administrative action

³ Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

commenced on July 13, 2010, the date Respondent was served the Report, and the five year statute of limitations was effectively tolled on this date.

As required by Section 83115.5, the packet served on Respondent contained a cover letter and a memorandum describing Probable Cause Proceedings, advising that Respondent had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (See Certification, Exhibit A-2.) Respondent neither requested a probable cause conference nor submitted a written response to the Report.

B. Ex Parte Request for a Finding of Probable Cause

Since Respondent failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter, on August 17, 2010. On August 17, 2010, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-3.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, 11507.7, and 11508.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On August 17, 2010, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506 through 11508, and a cover letter dated October 25, 2010, were personally served by a registered process server from Attorney's Diversified Services, on Respondent Robles at his latest address on file. (See Certification, Exhibit A-4.) The proof of personal service for the Accusation and accompanying information was signed on November 8, 2010. (See Certification, Exhibit A-5.)

Along with the Accusation, the Enforcement Division served Respondent with a "Statement to Respondent" which notified him that he could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, he would be deemed to have waived the right to a hearing. Respondent did not file a Notice of Defense within the statutory time period, which ended on November 28, 2010.

As a result, on December 2, 2010, Commission Counsel Zachary W. Norton sent a letter to Respondent advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for January 28, 2011. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (See Certification, Exhibit A-6.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Under the Act's campaign reporting system, candidates and committees are required to file periodic campaign statements and reports disclosing their financial activities. Section 84215, subdivision (d), requires all county candidates, elected officers, and their controlled committees to file campaign statements with the elections official of the county in which the candidate or officeholder is domiciled.

Pursuant to section 84206 of the Act, a short form campaign statement, FPPC Form 470, must be filed by candidates that do not anticipate that they will raise contributions or make expenditures totaling \$1,000 or more during the calendar year.

SUMMARY OF THE EVIDENCE

Unless otherwise indicated, documents supporting the following summary of evidence are included in the attached Certification of Records filed herewith at Exhibit A, A-7 through A-9, and incorporated herein by reference.

Respondent Christopher Robles was a candidate on the ballot for the Los Angeles County 58th Assembly Democratic Central Committee in the 2006 election. As a candidate for public office, Respondent was required to file a campaign statement for the reporting period covering January 1 through December 31, but has not done so. He won the election on June 6, 2006, and was reelected in 2008 and 2010.

On or about May 15, 2006, the Los Angeles County Clerk's Office notified the Commission's Enforcement Division that Respondent Robles had not filed campaign statements. (See Certification, Exhibit A-7.)

On February 24, 2010, Political Reform Consultant Teri Rindahl of the Enforcement Division, spoke with Respondent by telephone, advising Respondent that he did not file a short form campaign statement in connection with his 2006 candidacy. She requested that Respondent file the statement by March 15, 2010. (See Certification, Exhibit A-8.)

On October 13, 2009, Commission Counsel Zachary W. Norton attempted to contact Respondent by telephone, to inform him that he had an obligation to file the delinquent campaign statement, and give him a final opportunity to participate in the streamlined program. Counsel left messages, however; Respondent did not answer or return the calls. (See Certification, Exhibit A-9.)

On June 24, 2010, Mr. Norton mailed Respondent Robles a letter, stipulation and exhibit seeking settlement of the case. (See Certification, Exhibit A-10.)

Respondent did not respond to any of the attempts to contact him, and to this date has failed to file the campaign statement as requested. (See Declaration of Teri Rindahl, attached hereto as Exhibit B.)

By failing to timely file a campaign statement in connection with his 2006 candidacy for public office, Respondent committed one violation of the Act, as follows:

Count 1

(Failure to Timely File a Short Form Campaign Statement)

As a candidate for public office, Respondent Christopher Robles had filing obligations, as specified by the Political Reform Act. Respondent Robles failed to file a short form campaign statement, covering the reporting period January 1, 2006 through December 31, 2006, in violation of section 84206 of the Government Code.

CONCLUSION

This matter consists of one count of violating Section 84206 which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Failure to file campaign statements is a serious violation of the Act because it deprives the public of important information about a candidate’s contributors and financial activities. Since none of the required statements were filed before the election, there was no information whatsoever regarding the funding received or expenditures made by the committee available to the public prior to the date of the election.

Failure to file short form campaign which are not included in the Expedited Procedures of the Streamlined Program have historically received substantial penalties varying in range up to the maximum penalty of Five Thousand Dollars (\$5,000), per count. Such penalties are warranted when the Respondent has a prior non-filing history, accompanying violations, and/or prior prosecutions.

FACTORS IN AGGRAVATION

Respondent Robles disregarded numerous notifications from the Los Angeles County Clerk’s Office, and the Commission’s Enforcement Division regarding his duty to file his campaign statements. Respondent Robles has a history of holding various public offices, and has also received several warning letters for failure to file various statements.

FACTORS IN MITIGATION

No mitigating factors have been identified.

PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the penalty of Two Thousand Dollars (\$2,000) for the Count.

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