

Item #8 - Staff Report



Michael MacDonald, -Chair
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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: October 6, 2021
RE: Case Analysis for PEC Complaint No. 19-13; In the matter of Matt Hummel 4D4 2018 Committee, Matt Hummel (Candidate) and Donna Smithey (Treasurer), prepared for the November 1, 2021, Public Ethics Commission Meeting

BACKGROUND:

On September 27, 2018, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer, Suzanne Doran called the Respondent candidate Matt Hummel to warn that he would receive a “Notice of Non-filer Non-compliance” for his Matt Hummel 4D4 2018, committee’s failure to file a Semi-Annual Campaign Statement, failure to file an accurate Campaign Statement and Failure to file Termination. On November 11, 2018, Staff emailed the first in a series of communications that the Respondents, including the committee, candidate Matt Hummel, and Treasurer Donna Smithey, were in violation of the Campaign Reform Act. In April 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 the Respondents, despite multiple warnings and offers of assistance, did not electronically file the required campaign filings 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 this matter for formal hearing before the full Commission.

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.

O.M.C. § 3.12.320 OCRA provides:

A. *Liability*: In addition to a committee itself, persons who qualify under the California Political Reform Act as principal officers of the committee are jointly and severally liable for violations by the committee. For committees controlled by a candidate, the candidate and the committee's treasurers are deemed to be principal officers.

B. In addition to a person whose conduct is required or prohibited under this Act, an agent acting on behalf of that person is jointly and severally liable for a violation that arises out of the agent's actions. There is a rebuttable presumption that the following persons are agents of a committee:

1. A current or former officer of the committee;
2. An employee of the committee;
3. A person who has received compensation or reimbursement from the committee; and
4. A person who holds or has held a position within the committee organization that reasonably appears to be able to authorize expenditures for committee activities.

C. This Section does not limit potential liability for persons who cause another person to violate this Act or who aids and abets another person in a violation.

TIMELINE OF EVENTS:

9/27/2018	PEC Filing Officer contacted the Respondent with a warning notice of Non-filer Non-compliance.
10/02/2018	PEC Filing Officer telephoned the Respondent and gave him notice of Non-filer Non-compliance.
10/26/2018	PEC Filing Officer telephoned the Respondent regarding his Non-filer Non-compliance status.
11/07/2018	PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.
2/19/2019	PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.
2/21/2019	PEC Filing Officer telephoned the Respondent regarding his Non-filer Non-compliance status.

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- 2/27/2019 PEC Filing Officer emailed an amended Non-filer Non-compliance letter to Respondent.
- 3/04/2019 PEC Filing Officer emailed letter to Respondent detailing potential fines.
- 3/05/2019 PEC Filing Officer telephoned the Respondent's Treasurer, Donna Smithey.
- 3/27/2019 PEC Filing Officer emailed a 10-day notice to the Respondent that the matter of the Non-filer Non-compliance report would be submitted for formal Enforcement Procedures.
- 4/19/2019 Respondent contacted the Filing Officer and acknowledge receipt of the Non-filer Non-compliance notice.
- 4/23/2019 PEC Filing Officer spoke with Treasurer, Donna Smithey regarding the amendments that were required in the Respondent's filings.
- 4/25/2019 PEC Filing Officer contacted the Respondent to reiterate that the filings must be amended and the remining forms must be submitted electronically.
- 4/30/2019 PEC Filing Officer emailed the Respondent expressing continued concern about his non-responsiveness.
- 5/09/2019 PEC Filing Officer provided technical assistance to the Respondent and notified him that the campaign could not Terminate with a remaining balance.
- 7/24/2019 PEC Enforcement via formal letter offered to the Respondent an early resolution settlement offer.
- 9/17/2019 PEC Enforcement notified Respondent and his Treasurer Donna Smithy via formal engagement letter and warned that in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures. Mailed certified mail.
- 11/16/19 PEC received a signed copy of the certificate of receipt from the USPS verifying the letter was received and signed confirmation.

FACTUAL SUMMARY AND ANALYSIS:

In 2018, Matt Hummel was a candidate for Oakland City Council District 4 and established a committee for "Matt Hummel 4D4 2018." Donna Smithey was the campaign Treasurer. The Hummel had run a previous campaign for City Council in 2016 and Smithey was also the Treasurer for that campaign. In 2018, the Respondent candidate's campaign for City Council was unsuccessful. After the conclusion of the election season, the committee, Hummel, and Smithey failed to file the following:

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1. Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018;
2. (Accurate) Campaign Statement for the period of January 1, 2019 through June 30, 2019; and
3. Termination Form

The PEC Filing Officer made multiple attempts to gain the Respondent's compliance, including imposing daily late fees (\$280). Despite PEC best efforts to gain the Respondent's compliance, neither the candidate nor his campaign treasurer submitted the required campaign filings.

In July 2019, the Filing Officer referred the matter pursuant to PEC Enforcement Procedures. Enforcement notified the Respondent and Treasurer Donna Smithey by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. The Respondent candidate 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 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 USPS returned proof of delivery and a signed copy of the certification card. The PEC sent several email notices and the Filing Officer spoke to the Respondent and his Treasurer multiple times in an attempt to assist Hummel in submitting his required filings. The Respondent acknowledged to Staff that he had received the Non-filer notices. He failed to file the outstanding forms or amend the incorrect forms he had filed with the PEC.

In September 2021, Treasurer Donna Smithey responded to Staff and affirmed that she received the PEC early resolution letter.

VIOLATION(S):

The Respondent and his Campaign Treasurer 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, Matt Hummel and his Campaign Treasurer, Donna Smithey, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he/she failed to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018.

Count 2: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

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On or about August 1, 2019, Respondent, Matt Hummel and his Campaign Treasurer, Donna Smithey I, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he/she failed to file an accurate Annual Campaign Statement for the period of 01/01/2019 through June 30, 2019.

Count 3: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

Around September 30, 2019, Respondent, Matt Hummel and his Campaign Treasurer, Donna Smithey, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he/she failed to file a campaign Termination form.

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. 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 Respondents' conduct establish aggravating factors that should increase the severity of the penalty:

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1. The Respondent candidate and his Campaign Treasurer had experience with a campaign for elected office.
2. The Respondent candidate and his Campaign Treasurer has demonstrated knowledge of the rule and was aware of the filing obligations.

Mitigating Factors

1. Neither Respondent candidate nor his Treasurer have prior Public Ethics Commission Violations.

RECOMMENDATION:

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