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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11 In the Matter of) OAH No.: 2010100426
12))
13) FPPC No. 09/258
14) **REPLY BRIEF OF THE ENFORCEMENT**
15 RAYMOND N. HAYNES, JR.,) **DIVISION OF THE FAIR POLITICAL**
16 RAYMOND P. HORSPOOL, JR.) **PRACTICES COMMISSION REGARDING**
17 and HAYNES FOR ASSEMBLY) **THE PROPOSED DECISION OF**
2004,) **ADMINISTRATIVE LAW JUDGE JOANN**
) **IRWIN ESHELMAN**
)
) Respondents.)

18 The Enforcement Division respectfully submits this Reply Brief pursuant to Title 2, California
19 Code of Regulations, Section 18361.9. Section 18361.9 requires the Enforcement Division to file a
20 Reply Brief within 14 days of the receipt of a response brief. On February 7, 2011, the Enforcement
21 Division was served with the proposed decision of Administrative Law Judge Joann Irwin Eshelman,
22 which issued after a hearing in this matter on December 22, 2010, in Sacramento. The Enforcement
23 Division filed an opening brief within 14 days of receiving the proposed decision, on February 21,
24 2011. Respondents filed a response brief (Respondents incorrectly labeled their brief a “reply brief”)
25 within 14 days of receiving the opening brief from the Enforcement Division, on March 4, 2011.
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1 **SUMMARY OF CASE**

2 This matter came before Administrative Law Judge Eshelman of the Office of Administrative
3 Hearings, on December 22, 2010, in Sacramento, California. Gary S. Winuk, Chief of Enforcement
4 and Grant Beauchamp, Program Specialist, represented Complainant Roman G. Porter
5 (“Complainant”). Respondent Raymond N. Haynes Jr. (“Respondent” or “Respondent Haynes”)
6 appeared personally and represented himself, Respondent Raymond P. Horspool Jr. (“Respondent
7 Horspool”) and Haynes for Assembly 2004 (“Respondent Committee”).

8 In this matter, Administrative Law Judge Eshelman found that Respondents violated the
9 Political Reform Act (the “Act”), by failing to timely file two semi-annual campaign statements, failing
10 to timely file a statement of termination, and by making an impermissible contribution of \$2,000 to a
11 state committee, as detailed in the Enforcement Division’s opening brief.

12 Administrative Law Judge Eshelman imposed a penalty of \$2,000 per count for Counts 1-3 and
13 a \$4,000 penalty for Count 4, for a total penalty of \$10,000.
14

15 **REPLY TO RESPONDENT’S BRIEF**

16 Respondents, in their response brief of March 4, 2011, make several assertions that are factually
17 untrue, inconsistent with the evidentiary findings of the hearing before Administrative Law Judge
18 Eshelman, and, in one case, directly contradictory to testimony provided by the Respondents
19 themselves at the hearing.
20

21 **Reply to “Facts” Section of Respondents’ Brief**

22 Respondents make several contentions, in the section of their response brief labeled “facts,” that
23 are false, inaccurate or misleading.
24

25 *Respondents Have Had Prior Issues*

26 Respondents contend that Respondent Haynes spent 14 years in the Legislature without
27 complaint, issue or problem with the FPPC. However, Respondent Haynes, in addition to the campaign
28 committees at issue here, still has three other campaign committees he has not terminated (Ray Haynes

1 for Senate ID#900605; Ray Haynes for Assembly ID#1232341; Raymond N. Haynes for State
2 Assembly ID#911928), one of which has a balance in excess of \$3,000 that has not been accounted for
3 in a public campaign filing.

4
5 *Audit and Investigation*

6 Respondents contend that the FPPC didn't begin an investigation until three years after
7 Respondent Haynes left the Legislature. However, Respondents fail to mention that the committee was
8 subject to a mandatory audit by the FPPC of the Taxpayers for Haynes campaign committee, which
9 was formed for Respondent Haynes' run for Board of Equalization in 2006. This audit identified
10 numerous violations, which included violations identified for the Respondent Haynes for Assembly
11 2004 campaign committee. It was from this mandatory audit that the FPPC opened an audit of
12 Respondent Committee and ultimately identified numerous violations, above and beyond those
13 identified in the Accusation.

14
15 *Significant Unreported Activity by Respondent Committee*

16 Respondents contend that the FPPC "discovered" that Haynes had not filed reports for 2008 and
17 2009 showing that the committee has \$200.00. However, the Respondents failed to file semi-annual
18 statements for the periods of July 1, 2007 through December 31, 2007 and for January 1, 2008 through
19 June 30, 2008. The unfiled reports for 2009 were not charged by the Enforcement Division, which only
20 charged two of the six potential violations. **Also, the activity related to the campaign statement**
21 **charged in Count 1 of the Accusation contained \$3,200 in contributions and \$3,500 in**
22 **expenditures, not the \$200.00 that Respondents falsely claim.**

23
24 *Respondents Were Notified Numerous Times to File*

25 Respondents contend that no one mentioned to them that the statements needed to be filed and
26 even go so far as to outrageously accuse the FPPC Enforcement Division of "sandbagging" by
27 deliberately withholding the information that they needed to file to let Respondents commit the
28 violation. This contention is a knowingly false statement being made by Respondents. Respondents

1 were notified six times by the Secretary of State (SOS) via letter of their failure to file over the course
2 of 2008 and 2009. Starting in February of 2009 and through the time Respondents finally filed the
3 missing statements in July of 2010, FPPC staff personally notified Respondents or their representatives
4 six times that the campaign statements were not filed.

5 Given Respondents 14 years of history with campaign filing; the fact that they received 14
6 letters from the SOS State for other campaign committees for which they failed to file; the six notices
7 from SOS for Respondent Committee's failure to file; and the six oral and written notices of their
8 failure to file from FPPC staff, their assertion that somehow they were victimized by a lack of notice
9 and would have complied if only someone would have let them know there was a problem is an
10 outrageous, willful distortion of the truth. Judge Eshelman further found in her proposed decision that
11 Respondents failure to file was intentional and inexcusable after her receipt and review of all the
12 evidence presented by both parties.

13
14 *Respondents Should Have Known About Rules*

15 Respondents contend, in essence, that the rules for closing committees were new at the time of
16 the violation and that, if he knew the contribution was illegal, he would not have made it. During the
17 Administrative Hearing, Respondent Haynes was asked on cross-examination whether he supported the
18 policy of the rule, i.e. the restriction on the use of funds raised post-election for contributions to State
19 committees. Respondent Haynes said he did not. Respondent Haynes was then asked if he was aware
20 that he had, as a Member of the California State Assembly, voted to place these restrictions into the
21 Political Reform Act a mere three months before he had violated these provisions. Respondent Haynes
22 replied that he didn't think he did but, when confronted with a printout of the voting record for the bill,
23 conceded he had, in fact, voted to place the very restriction he violated into the Act. He further
24 speculated that another Member of the Legislature, perhaps his seatmate on the Floor of the Legislature
25 at the time, had pushed his voting button in his absence to cast his vote electronically for the measure
26 without his knowledge.

27 Whether or not one accepts Respondent Haynes contention that he had no knowledge of the rule
28 despite voting as a Member of the Legislature to enact it, all Respondents were sophisticated parties

1 with years of experience working with the Act and thus, at a minimum, should have known of the rules
2 or sought assistance from the FPPC Technical Assistance Division. Respondent Horspool was a
3 Certified Public Accountant (CPA) for all the 14 years he served as a campaign treasurer for
4 Respondent Haynes and Respondent Committee and should have adhered to professional standards and
5 ensured he was familiar with and compliant with any changes to the law. By making this illegal
6 contribution, Respondents provided the recipient with an unfair advantage in campaign fundraising.

7
8 **Reply to “Fine” Section of Respondents’ Brief**

9 Again, in Section 2 of their brief, Respondents have made numerous false and misleading
10 contentions.

11
12 *Seriousness of Violations*

13 Respondents again misstate the dollar amount in question in the unfiled campaign statements,
14 and accuse the Enforcement Division staff of “sandbagging” these violations. These factual
15 misstatements have already been addressed.

16 Respondents also contend there was no public harm to their actions. In truth, the public harm
17 inherent in their violations is that the public was deprived of knowledge of their approximately \$7,000
18 in expenditures and contributions received. The very heart of the Act is the disclosure of contributions
19 and expenditures. Nonetheless, the penalty proposed by Judge Eshelman remains at the low to mid
20 range of the permissible penalty amount, which is entirely consistent with how similar such violations
21 have been treated by the Commission throughout its history.

22
23 *Absence or Presence of Intent to Conceal, Deceive or Mislead*

24 Respondents contend that the finding of no intent to conceal, deceive or mislead warrants a
25 lower fine than that proposed by Judge Eshelman. However, Judge Eshelman and the Enforcement
26 Division took this into account when recommending the proposed penalties which, as to the failure to
27 timely file counts, are at the low to mid end of the penalty range.

1 *Deliberate, Negligent or Inadvertent*

2 Respondents brief falsely states that Judge Eshelman made a finding that the violations were
3 negligent. In fact, Judge Eshelman determined after considering all the evidence that the failures to file
4 were deliberate, knowing and intentional (Proposed Decision, Page 9, Item 17). She found the count
5 related to the illegal contribution to be negligent.

6 Respondents' contention that the failure to file was inadvertent is completely inconsistent with
7 all of the evidence. As detailed previously, Respondents received a dozen notifications over a two year
8 period that they needed to file. Additionally, given their level of sophistication and experience, they
9 were already aware of their obligations to file absent any notice, given their numerous previous filings.
10 Further, as found by Judge Eshelman, Respondents provided evidence that they were aware of their
11 filing obligations at the time they were due, but were simply distracted by other things and failed to
12 complete them as required, which supported her finding that the non-filings were deliberate.

13
14 *Isolated Violation or Part of a Pattern*

15 Respondents contend that their previous failures to file were "just a couple of days late to make
16 sure they were accurate." However, the three letters they reference in their response brief were not the
17 letters relied upon by Judge Eshelman and the Enforcement Division in determining a pattern of
18 misconduct. Twenty-six letters from SOS to Respondents were introduced and received into evidence.
19 Six of them related to the failure to file the statements articulated in the counts in this case and relate to
20 Respondent Committee. The other twenty relate to three other campaign committees opened by
21 Respondent Haynes and Respondent Horspool, two of which were referenced by name by Judge
22 Eshelman; Ray Haynes for Assembly and Raymond N. Haynes for State Assembly (Proposed Decision,
23 Page 5, Item 22). The three letters referenced by Respondents in their response brief related solely to
24 Respondent Committee and, because they only involved being ten days late or fewer, were not put forth
25 by the Enforcement Division as being part of a pattern, or accepted by Judge Eshelman as part of the
26 pattern of misconduct. This is evident from the Proposed Decision and it is misleading at best for
27 Respondents to assert otherwise.

28 Additionally, as mentioned previously, Respondents, to this very day, have three open campaign

1 committees, one with a balance in excess of \$3,000, that remain open. They are beyond the statute of
2 limitations for the Enforcement Division to act upon, but nonetheless are required to be considered
3 under Government Code Section 83116 (e) as part of a pattern of violations.

4
5 *Compliance After Learning of Violation*

6 Respondents contend that they complied with the Act's filing requirements as soon as they were
7 made aware of them, and as soon as Respondent Horspool returned to the United States from foreign
8 travels. However, as mentioned previously, Respondents received twelve notifications over a two year
9 period that they were not in compliance. These were all ignored until Respondents finally filed shortly
10 after the Probable Cause conference in this case was conducted in July 2010, after first receiving
11 notification in March of 2008.

12
13 **CONCLUSION**

14 Recommendation: Accept the Proposed Decision.

15 The Enforcement Division continues to recommend adoption of the Proposed Decision by
16 Judge Eshelman. If anything, Respondents' response brief aggravates the matter by making false
17 statements regarding the facts and findings of this case.

18 Respondents were found to have deliberately violated the Act by failing to file their semi-annual
19 campaign statements, failing to terminate Respondent Committee and negligently making an illegal
20 contribution. The failure to file the campaign statements were part of a pattern of late and non-filings
21 that continue to this day.

22 The proposed penalty is consistent with previous Commission penalties. It is in the low to mid
23 range for the campaign non-filings, and in the mid to high range for the illegal contribution. This
24 reflects the public harm inherent in each violation, as well as the factors articulated in Government
25 Code Section 83116.

Respectfully submitted,

Dated: _____

Gary S. Winuk
Chief of Enforcement

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