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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

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

The Enforcement Division respectfully submits this brief pursuant to Title 2, California Code of Regulations, Section 18361.9. Section 18361.9 requires the Enforcement Division to file an opening brief within 14 days of receiving a proposed decision from an administrative law judge. On February 7, 2011, the Enforcement Division was served with the proposed decision of Administrative Law Judge Joann Irwin Eshelman, which issued after a hearing in this matter on December 22, 2010, in Sacramento.

SUMMARY OF CASE

This matter came before Administrative Law Judge Eshelman of the Office of Administrative Hearings, on December 22, 2010, in Sacramento, California. Gary S. Winuk, Chief of Enforcement and Grant Beauchamp, Program Specialist, represented Complainant Roman G. Porter (“Complainant”). Respondent Raymond N. Haynes Jr. (“Respondent” or “Respondent Haynes”)

1 appeared personally and represented himself, Respondent Raymond P. Horspool Jr. (“Respondent
2 Horspool”) and Haynes for Assembly 2004 (“Respondent Committee”).

3 In this matter, Administrative Law Judge Eshelman found that Respondents violated the
4 Political Reform Act (the “Act”), by failing to timely file two semi-annual campaign statements, failing
5 to timely file a statement of termination, and by making an impermissible contribution of \$2,000 to a
6 state committee, as follows:

7
8 **COUNT 1:** Respondents Raymond N. Haynes Jr., Raymond P.
9 Horspool Jr., and Haynes for Assembly 2004 failed to
10 timely file required semi-annual campaign statements for
11 the reporting periods of July 1 through December 31,
12 2007, in violation of Government Code Section 84200,
13 subdivision (a).

14
15 **COUNT 2:** Respondents Raymond N. Haynes Jr., Raymond P.
16 Horspool Jr., and Haynes for Assembly 2004 failed to
17 timely file required semi-annual campaign statements for
18 the reporting period of January 1 through June 30, 2008, in
19 violation of Government Code Section 84200, subdivision
20 (a).

21
22 **COUNT 3:** Respondents Raymond N. Haynes Jr., Raymond P.
23 Horspool Jr., and Haynes for Assembly 2004 failed to
24 timely file a statement of termination, in violation of
25 Government Code Section 84214.

26
27 **COUNT 4:** Respondents Raymond N. Haynes Jr., Raymond P.
28 Horspool Jr., and Haynes for Assembly 2004 improperly
used funds accepted after the date of the 2004 General
Election to make a contribution of \$2,000 to a state
committee, in violation of Government Code Section
85316, subdivision (b).

Complainant maintained that a per-count penalty of \$2,000 was warranted for these violations
of the Act. In summary, Complainant argued that Respondents’ violations deprived the public of
information about the Respondents’ campaign expenditures and disclosures, and also made an
impermissible contribution to a state candidate, providing that candidate with an unfair advantage in

1 their campaign by receiving a contribution to which they were not entitled.

2 Notwithstanding Complainant’s penalty request for a penalty of \$2,000 for each count,
3 Administrative Law Judge Eshelman imposed a penalty of \$2,000 per count for Counts 1-3 and a
4 \$4,000 penalty for Count 4, for a total penalty of \$10,000. In imposing this penalty, Judge Eshelman
5 considered and applied the following factors set forth in Regulation 18361.5:

- 6
- 7 • The seriousness of the violation.
- 8 • The presence or absence of any intention to conceal, deceive, or mislead.
- 9 • Whether the violation was deliberate, negligent, or inadvertent.
- 10 • Whether Respondent demonstrated good faith by consulting Commission staff or any
11 other agency in a manner not constituting a complete defense under Section 83114,
12 subdivision (b).
- 13 • Whether the violation was isolated or part of a pattern or whether Respondent had a prior
14 record of violations of the Act or similar laws.
- 15 • Whether Respondent, upon learning of the reporting violation, voluntarily filed amendments
16 to provide full disclosure.
- 17

18 In applying these factors, Judge Eshelman determined that Complainant established that this
19 matter involved serious violations, and that the improper use of funds violation (Count 4) was more
20 serious than the other three violations. Judge Eshelman found that, with regard to Counts 1-3, there
21 were

22 “various extenuating circumstances which impacted their ability to file
23 timely, but did not justify or excuse the delay.” “Respondents’ late filings
24 were, in part, the result of an approach by respondents Haynes and Horspool
25 which accepted late filings as a cost of doing business. Although there were
26 extenuating circumstances affecting the three filings, respondent Horspool
27 knew that the campaign statements were due. By not filing timely, he
28 effectively placed a higher priority on his overseas business. Therefore, the

1 violations were deliberate or knowing and intentional.” “The violation for
2 improper use of funds was the result of negligence because respondents
3 Haynes and Horspool did not know the law and did not check it before
4 contributing to Guy Houston’s committee. “Respondent Haynes and
5 respondent Horspool’s lack of knowledge of the law is inexcusable.”
6 (Proposed Order, p.9)

7 Regarding whether the violations were part of a pattern, Judge Eshelman wrote: “The late filing
8 violations were clearly part of a pattern of late filings practiced by respondents.” (Proposed Order p.9)
9 This referenced her factual finding that “Respondents Haynes and Horspool have a history of filing
10 campaign disclosure statements after the deadline.” (Proposed Order p.5 ¶ 22)

11 **ENFORCEMENT DIVISION POSITION**

12 **A. The Law.**

13 Regulation 18361.9 requires the Enforcement Division to submit this opening brief but does not
14 mandate its contents. Rather, Regulation 18361.9 invites the Enforcement Division to address matters
15 that *may* include the following:
16

- 17 • Whether the facts stated in the proposed decision are consistent with the evidence
18 presented.
- 19 • Whether the proposed decision contains an accurate statement and/or application of the
20 law.
- 21 • Whether there is additional material evidence that could not, with reasonable diligence,
22 have been discovered and presented at the administrative hearing.
- 23 • Which of the dispositions provided for in Government Code section 11517 is
24 recommended by the Enforcement Division and why.
- 25 • Any other issue the Enforcement Division determines to be relevant.

26 (Regulation 18361.9, subd. (b).)

27 Government Code section 11517, a provision of the Administrative Procedure Act, provides
28 that within 100 days of the Commission’s receipt of Judge Eshelman’s proposed decision, the
Commission may do any of the following:

- 1 • Adopt the proposed decision in its entirety.
- 2 • Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed
- 3 decision.
- 4 • Make technical or other minor changes in the proposed decision and adopt it as the
- 5 decision. However, action by the Commission in this regard is limited to “a clarifying
- 6 change or a change of a similar nature that does not affect the factual or legal basis of the
- 7 proposed decision.”
- 8 • Reject the proposed decision and refer the case to Judge Eshelman, if she is reasonably
- 9 available, otherwise to another administrative law judge, to take additional evidence.
- 10 • Reject the proposed decision, and decide the case upon the record, including the transcript,
- 11 or upon an agreed statement of the parties, with or without taking additional evidence.

12 (Section 11517, subd. (c)(2).)

13
14 **B. Recommendation: Accept the Proposed Decision.**

15 The Proposed Decision accurately summarizes the facts and is consistent with the proffered
16 evidence. There is no additional information or evidence that the Enforcement Division should have
17 presented in this matter.

18 Guided by the options set forth in Government Code section 11517, the Enforcement Division
19 recommends that the Commission accept the Proposed Decision. As supported by the evidence and the
20 findings of the Proposed Decision, Respondents violated the Act by failing to timely file two semi-
21 annual campaign statements, failing to timely file a statement of termination and by making an
22 impermissible contribution. The failure to file represented a pattern of misconduct beyond even those
23 counts presented. The impermissible contribution was described by Judge Eshelman as inexcusable.

24 After conducting a full hearing on the merits and considering the required factors for imposing a
25 monetary penalty, Judge Eshelman made what appears to be an unbiased and thoughtful determination
26 regarding the penalty amount. For this reason the Enforcement Division supports Judge Eshelman’s
27 determination.

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Respectfully submitted,

Dated: _____

Gary S. Winuk
Chief of Enforcement