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9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of) FPPC No. 10/910
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DOREEN CEASE,)
Respondent.) (Gov. Code §§ 11506 and 11520)

Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and Order for consideration at its next regularly scheduled meeting.

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

1. An Order Finding Probable Cause;
2. An Accusation;
3. A Notice of Defense (Two Copies);
4. A Statement to Respondent; and

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

1 5. Copies of Sections 11506 through 11508 of the Government Code.

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

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

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

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16 Dated: _____

17 Gary S. Winuk, Chief of Enforcement
18 Fair Political Practices Commission
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ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of Four Thousand Dollars (\$4,000) upon Respondent Doreen Cease, payable to the “General Fund of the State of California.”

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

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Doreen Cease (“Respondent”) has been a California Mental Health Planning Council member (“Council”) since 1998. At all relevant times, Respondent was a designated employee in the Conflict of Interest Code for the Council, thereby making her a designated employee as defined in Section 82019, subdivision (a), of the Political Reform Act.

This case arose from a referral from the California Mental Health Planning Council regarding the Respondent’s failure to file multiple Statements of Economic Interests. According to records maintained by the Council, Respondent Doreen Cease has been a commissioner with the Council since she assumed office on April 15, 1998. The Conflict of Interest Code for the Council designates Council members as persons who must file annual statements of economic interest. Because Respondent was a member of the California Mental Health Planning Council, she was required to file annual statements of economic interests disclosing her reportable economic interests held during the previous calendar year. The subsequent investigation by the Enforcement Division revealed that Respondent Doreen Cease failed to file two Statements of Economic Interests as required by the Political Reform Act (the “Act”)¹. Specifically, Respondent failed to file a 2009 annual SEI with the California Mental Health Planning Council by the April 1 deadline, as well as a 2010 annual SEI with the Council by the April 1 deadline.

For purposes of this Default, Decision and Order, Respondents’ violations of the Political Reform Act are stated as follows:

- COUNT 1:** Respondent Doreen Cease failed to file a 2009 annual SEI with the California Mental Health Planning Council by the April 1 deadline, in violation of Government Code Section 87300.
- COUNT 2:** Respondent Doreen Cease failed to file a 2010 annual SEI with the California Mental Health Planning Council by the April 1 deadline, in violation of Government Code Section 87300.

THE RESPONDENT

Respondent Doreen Cease (“Respondent Cease”) was, at all times relevant to this Default Decision and Order, a commissioner with the California Mental Health Planning Council.

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.

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.)

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.

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

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-7, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against the Respondent in this matter by serving them with a Report in Support of a Finding of Probable Cause (the “Report”) by certified mail, return receipt requested,³ on July 18, 2011. (Certification, Exhibit A-1.) The original return receipt addressed to the Respondent was signed by the Respondent but not dated. It was returned to the Enforcement Division on July 25, 2011. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on July 25, 2011, the date by which the Respondent must have been 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. (Certification, Exhibit A-3.) 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 John Wallace, on February 9, 2012. (Certification, Exhibit A-4.) Respondent was sent copies of these documents.

On February 16, 2012, Executive Director John Wallace issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-5.)

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).)

³Where 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.)

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, and 11507.7.

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 February 17, 2012, the Commission's Chief of the Enforcement Division, Gary S. Winuk, 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 February 16, 2012 was personally served on Respondent Doreen Cease on March 16, 2012. (Certification, Exhibit A-6.)

Along with the Accusation, the Enforcement Division served Respondents with a "Statement to Respondent" which notified them that they 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, they would be deemed to have waived the right to a hearing. Respondents did not file a Notice of Defense within the statutory time period, which ended on March 31, 2012.

As a result, on July 17, 2012, Chief of Enforcement Gary Winuk 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 August 16, 2012. (Certification, Exhibit A-7.) A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interest may be avoided. In furtherance of this purpose, Section 87300 requires every agency to adopt and promulgate a conflict of interest code. The following reflects the Act as it was in effect at the time of the relevant violations.

Section 82019, subdivision (a), defines "designated employee" to include any member of any agency whose position is "designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest." Additionally, Section 87302, subdivision (a), provides that an agency's Conflict of Interest Code must specifically designate the positions within the agency that are required to file statements of economic interests, disclosing reportable investments, business positions, interests in real property, and sources of income. Thus, designated employees must file annual statements of economic interests under the Act.

Section 87302, subdivision (b), provides that an agency's conflict of interest code must require each designated employee of the agency to file annual statements of economic interests at a time specified in the agency's conflict of interest code, disclosing investments, income, business positions, and interests in real property, held or received at anytime during the previous calendar year. An agency's conflict of interest code may incorporate Regulation 18730, which contains a model conflict of interest code, by reference. If so, then the filing deadline is April 1. (Regulation 18730(b)(5)(C)). If not incorporated, an agency's conflict of interest code must specify a filing date. The Council's Conflict of Interest Code incorporates Regulation 18730, and thus, the filing deadline for annual statements of economic interests is April 1.

Section 87300 declares that the requirements of an agency's conflict of interest code shall have the force of law, and any violation of those requirements shall be deemed a violation of the Act.

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-8 through A-17, and incorporated herein by reference.

Respondent Doreen Cease ("Respondent Cease") has been a California Mental Health Planning Council member since 1998.

This matter arose out of referrals from the California Mental health Planning Council to the Enforcement Division which provided the following:

Certification Exhibit	Reporting Period	Filing Deadline	Written Warnings	Verbal Warnings	Statement Type
A-8, A-9, A-10	2009 Annual SEI	04/01/2010	08/09/2010, 09/01/2010, 09/08/2010		Annual
A-11, A-12	2010 Annual SEI	04/01/2011	01/04/2011, 04/07/2011	07/05/2011	Annual

Thus, the evidence shows that the California Mental Health Planning Council issued five written notices and one telephonic notice to Respondent between August 9, 2010 and July 5, 2011, warning Respondent that she had failed to file the two annual Statements of Economic Interests identified above. (Certification, Exhibits A-8 – A-12.) Michael Gardner, the filing officer for the California Mental Health Planning Council, stated that he had attempted face to face meetings, e-mails, and regular mail efforts in order to seek compliance from the Respondent. Mr. Gardner stated that all such attempts had failed and the Respondent continued to ignore all of his requests. (Certification, Exhibit A-13)

Respondent was referred to the Enforcement Division on September 21, 2010 for her failure to file the required 2009 annual SEI. (Certification, Exhibit A-13.) On or about December 13, 2010, Commission Political Reform Consultant Teri Rindahl sent a letter to the Respondent, giving her the opportunity to participate in the Enforcement Division’s streamlined program. (Certification, Exhibit A-14.) Respondent did not respond.

On or about April 29, 2011, Commission Political Reform Consultant Teri Rindahl sent another letter to the Respondent, giving her another opportunity to participate in the Enforcement Division’s streamlined program. (Certification, Exhibit A-15.) Respondent did not respond.

On or about May 23, 2011, Commission Political Reform Consultant Teri Rindahl attempted to contact the Respondent by telephone, but was unsuccessful in reaching her. Ms. Rindahl again attempted to contact the Respondent by telephone on June 10, 2011, but was similarly unsuccessful in her efforts. (Certification, Exhibit A-16.)

On or about July 5, 2011, Commission Counsel Zachary Norton contacted the Respondent by telephone, but only spoke to her briefly before Respondent said she would call back the next day. The Respondent did not return the call until July 22, 2011, and on August 19, 2011, Mr. Norton called Respondent again and discussed the case with her. (Certification, Exhibit A-17.) No further contact between the Respondent and the Enforcement Division occurred. Mr. Norton left a voicemail for the Respondent on June 15, 2012. The Respondent failed to respond.

As of June 15, 2012, Respondent has not filed any of the delinquent statements with the California Mental Health Planning Council.

By failing to properly file Annual Statements of Economic Interests, Respondent committed two violations of the Act, as follows:

Counts 1 and 2

(Failure to File Annual Statements of Economic Interest)

As a commissioner for the California Mental Health Planning Council, Respondent had a duty to file her 2009 annual Statement of Economic interests by the April 1, 2010 due date, and her 2010 annual Statement of Economic Interest by the April 1, 2011 due date. By failing to timely file her 2009 and 2010 annual Statements of Economic Interests, Respondent violated Government Code Section 87300.

CONCLUSION

This matter consists of two counts of violating the Act, carrying a maximum administrative penalty of Ten Thousand Dollars (\$10,000).

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 a statement of economic interests is a serious violation of the Act because it deprives the public of important information about a public official's economic interests which could lead to potential conflicts of interests regarding decisions they may make in their official capacity.

Similar default decisions recently approved by the Commission include:

- *In the Matter of James Corsaut*, FPPC No. 09/599. This case involved three counts, two of which concerned the failure to file annual Statements of Economic Interests. Respondent never filed the missing statements and there were no factors in mitigation. For each of these two counts, the Commission approved a \$2,000 penalty on September 17, 2010.
- *In the Matter of Armida Torres*, FPPC No. 09/816. This case involved two counts, one of which concerned the failure to file an annual Statement of Economic Interest. Respondent never filed the outstanding statement and there were no factors in mitigation. For this count, the Commission approved a \$2,000 penalty on September 17, 2010.

- *In the Matter of Susan Bury*, FPPC No. 10/289. This case involved two counts, one of which concerned the failure to file an annual Statement of Economic Interest. Respondent's violations in this case were willful and deliberate, rather than negligent, and the Respondent refused to cooperate with the Enforcement Division's prosecution of this case, so for this count, the Commission approved a \$3,000 penalty on March 15, 2012.

In this matter, Respondent Cease failed to file two consecutive annual Statements of Economic Interests, as required by the Act. Respondent Cease has failed to respond to numerous notifications from both the California Mental Health Planning Council and Enforcement Division staff. These notifications have been in numerous forms, including face to face meetings with the filing officer, e-mails, conventional mail, certified mail, and telephone calls. As the statements have yet to be filed, it is impossible to ascertain the actual interests in question. The Respondent did not demonstrate good faith in consulting with the Commission regarding this matter and did not cooperate with the Commission's investigation into this matter. The Respondent has no prior enforcement history with the Commission. The Respondent is still a member of the California Mental Health Planning Council. The Respondent has filed her 2011 Annual Statement of Economic Interests, but has made no efforts whatsoever to file the outstanding Annual Statements of Economic Interests. There is no other information that the Enforcement Division deems mitigating or exculpatory.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the presence or absence of good faith, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) per count for a total of Four Thousand Dollars (\$4,000) is recommended.