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

11 In the Matter of) FPPC No. 14/299
12)
13)
14 FRED GARCIA, FRED GARCIA FOR) **STIPULATION, DECISION and ORDER**
SHERIFF 2014, and JEFF DAVIS)
15)
16 Respondents.)

17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondents Fred Garcia, Fred Garcia for Sheriff 2014, and Jeff Davis, hereby agree that this
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
21 regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by
23 this matter and to reach a final disposition without the necessity of holding an additional administrative
24 hearing to determine the liability of Respondents.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Government Code Sections 83115.5, 11503 and 11523, and in California Code of
27 Regulations, title 2, Sections 18361.1 through 18361.9. This includes, but is not limited to the right to
28 personally appear at any administrative hearing held in this matter, to be represented by an attorney at

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act as
5 described in Exhibit 1: Fred Garcia, Fred Garcia for Sheriff 2014, and Jeff Davis: failed to file an
6 amended statement of organization to redesignate Fred Garcia for Sheriff 2010 for the 2014 election,
7 violating Government Code Sections 84103, subdivision (a) (1 count); failed to timely file a semi-
8 annual campaign statement and a preelection campaign statement by the applicable 2014 due dates,
9 violating Government Code Sections 84200, subdivision (a), 84200.5, subdivision (a), and 84200.7,
10 subdivision (a) (1 count); failed to maintain supporting records for contributions and loans received and
11 expenditures made, violating Government Code Section 84104 (1 count); Garcia: failed to timely file a
12 statement of intention prior to the solicitation or receipt of any contribution or loan, violating
13 Government Code Sections 85200 (1 count).

14 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein.
15 Exhibit 1 is a true and accurate summary of the facts in this matter.

16 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
17 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
18 Eight Thousand Five Hundred Dollars (\$8,500). A cashier's check from Respondents in said amount,
19 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
20 payment of the administrative penalty, and shall be held by the State of California until the Commission
21 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
22 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
23 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
24 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
25 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full
26 evidentiary hearing before the Commission becomes necessary, neither any member of the
27 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
28 Stipulation.

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Dated: _____

Galena West, Chief, on Behalf of the Enforcement Division
Fair Political Practices Commission

Dated: _____

Fred Garcia, Respondent, individually and on behalf of Fred
Garcia for Sheriff 2014, Respondent

Dated: _____

Jeff Davis, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Fred Garcia, Fred Garcia for Sheriff 2014, and Jeff Davis," FPPC Case No. 14/299, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Fred Garcia was an unsuccessful candidate for Monterey County Sheriff in the June 3, 2014 election. Respondent Fred Garcia for Sheriff 2014, also known as Committee to Elect Fred Garcia Monterey County Sheriff, 2014 (the Committee), was his candidate controlled committee. At all relevant times, Respondent Jeff Davis was the treasurer of the Committee.

The Enforcement Division received an anonymous complaint alleging that Garcia, the Committee and Davis failed to file campaign statements.

The Political Reform Act (the "Act")¹ requires candidates and committees to timely file and amend campaign statements and reports, including statements of organization and statements of intention, and to maintain detailed campaign records. Garcia, the Committee and Davis violated these provisions of the Act.

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act's provisions as they existed in 2013 and 2014.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² To that end, the Act must be liberally construed to achieve its purposes.³

There are many purposes of the Act. One purpose 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.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."⁵

Definition of Controlled Committee

A "committee" includes any person or combination of persons who receives contributions totaling \$1,000 or more in a calendar year,⁶ commonly known as a "recipient committee." A recipient committee which is controlled directly or indirectly by a candidate, or

¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² § 81001, subd. (h).

³ § 81003.

⁴ § 81002, subd. (a).

⁵ § 81002, subd. (f).

⁶ § 82013, subd. (a).

which acts jointly with a candidate in connection with the making of expenditures, is a "controlled committee."⁷

Duty to File Campaign Statements and Reports

Recipient committees are required to file certain specified campaign statements and reports.⁸

Duty to File Statement of Organization

Every committee must file a statement of organization within ten days after it qualifies as a committee.⁹ So a recipient committee must file a statement of organization within ten days after its total amount of contributions received reaches \$1,000 or more.¹⁰ The committee must file the original of the statement of organization with the Secretary of State (SOS) and a copy with the local filing officer.¹¹

Whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within ten days to reflect the change.¹² The committee must file the original of the amendment with the SOS and a copy with the local filing officer.¹³

Duty to File Statement of Intention

Prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for an elective office must file an original statement of intention to be a candidate for a specific office, signed under penalty of perjury.¹⁴

Redesignation of Controlled Committee

A controlled committee established for a specific local office may be redesignated for a future local election if:

- 1) The future election is for the same elective office;
- 2) The committee funds are not considered "surplus campaign funds" as defined in Government Code section 89519;
- 3) The candidate amends the statement of organization for the committee to reflect the redesignation for the future election;
- 4) The candidate files a new statement of intention to be a candidate for the specific future election, signed under penalty of perjury; and

⁷ § 82016, subd. (a).

⁸ See §§ 84200 – 84225.

⁹ § 84101, subd. (a).

¹⁰ § 82013, subd. (a).

¹¹ §§ 84101, subd. (a); and 84215.

¹² § 84103, subd. (a).

¹³ §§ 84103, subd. (a); and 84215.

¹⁴ § 85200.

5) Redesignation of the committee is not otherwise prohibited by law.¹⁵

No Monterey County rule prohibits such redesignation.¹⁶

Duty to File Semi-Annual Campaign Statements

The Act requires all candidates and committees pursuant to Section 82013, subdivision (a), to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.¹⁷ All filing obligations continue until the recipient committee is terminated by filing a statement of termination with the SOS and a copy with the local filing officer receiving the committee's original campaign statements.¹⁸

Duty to File Preelection Campaign Statements

All candidates for offices voted upon in the June 3, 2014 election and their controlled committees were required to file preelection statements as follows:

- 1) For the period ending March 17, the statement must have been filed no later than March 24;
- 2) For the period ending May 17, the statement must have been filed no later than May 22.¹⁹

All candidates voted upon in the election for which the statement was filed and their controlled committees must have filed the preelection statements due on May 22 by guaranteed overnight delivery service or by personal delivery.²⁰

Where to File Campaign Statements

Candidates for county elected offices and their controlled committees must file the original and one copy of their statements of organization with the SOS.²¹ And candidates for county elected offices and their controlled committees must file the original and one copy of all other campaign statements and reports required by the Act with the elections official of the county.²²

Duty to Maintain Campaign Records

To ensure accurate campaign reporting, the Act imposes a mandatory duty on each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills and receipts

¹⁵ Reg. 18521, subd. (b).

¹⁶ https://www.municode.com/library/ca/monterey_county/codes/code_of_ordinances?nodeId=16111.

¹⁷ § 84200, subd. (a); Reg. 18116, subd. (a).

¹⁸ § 84214; Reg. 18404, subd (b) – (e).

¹⁹ §§ 84200.5, subd. (a), and 84200.7, subd. (a); Reg. 18116, subd. (a).

²⁰ § 84200.7, subd. (a)(2) and (b)(2).

²¹ § 84215 subd. (a).

²² § 84215.

necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to comply with the campaign provisions.²³ This requirement includes a duty to maintain detailed information and original source documentation for all contributions and expenditures.²⁴

Candidate and Treasurer Liability

Every committee must have a treasurer.²⁵ It is the duty of a committee's candidate and treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds.²⁶ A committee's candidate and treasurer may be held jointly and severally liable with the committee for any reporting violations.²⁷

SUMMARY OF THE FACTS

The Committee reported receiving contributions totaling approximately \$51,167, and making expenditures totaling approximately \$48,408. The Enforcement Division found that Garcia, the Committee, and Davis did not comply with several of the Act's campaign requirements.

Statement of Organization

The Committee filed an initial statement of organization with the Monterey County Registrar of Voters on March 7, 2013, but the Committee stated that it had not yet qualified as a committee. According to the Committee's available records, the Committee qualified in or about November 2013. But the Committee failed to file a statement of organization with the SOS, and never received a Committee ID number.

Instead, the Committee used on its campaign statements the ID number for Fred Garcia for Sheriff 2010, Garcia's controlled committee for his campaign for election to Monterey County Sheriff in 2010. Fred Garcia for Sheriff 2010 had no funds as of March 7, 2013, and although the Committee filed a terminating statement of organization with the Monterey County Registrar of Voters, no terminating statement of organization was filed with SOS. As such, Fred Garcia for Sheriff 2010 was an active committee on March 7, 2013, and Garcia, the Committee, and Davis should have amended the statement of organization to redesignate Fred Garcia for Sheriff 2010 for the 2014 election.

Statement of Intention

Garcia filed his statement of intention on March 7, 2014 with the Monterey County Registrar of Voters. But the evidence shows that Garcia, the Committee, and Davis held

²³ § 84104.

²⁴ Reg. 18401.

²⁵ § 84100.

²⁶ § 84100; Reg. 18427.

²⁷ §§ 83116.5 and 91006; Reg. 18316.6.

fundraising events as early as September 2013, as well as in December 2013, but they failed to provide documentation for any contributions received during those fundraisers. And Garcia, the Committee, and Davis opened a committee bank account on November 27, 2013, with an opening deposit of \$3,923. Garcia, the Committee, and Davis failed to produce copies of deposit slips, contributor checks or other supporting documentation for those deposits, so the Enforcement Division could not determine a more precise date for qualification. But Garcia received contributions at least as of November 27, 2013, and he should have filed his statement of intention sometime before that date.

Campaign Statements

Garcia, the Committee, and Davis filed the following campaign statements:

| Type | Period Ending | Reported Contributions Received | Reported Expenditures Made | Filing Deadline | Date Filed | # of Days Late |
|-------------|---------------|---------------------------------|----------------------------|-----------------|------------|----------------|
| Semi-Annual | 12/31/2013 | \$12,664.00 | \$8,666.10 | 01/31/2014 | 04/07/2014 | 66 |
| Preelection | 03/17/2014 | \$2,000.00 | \$4,111.00 | 03/24/2014 | 04/07/2014 | 16 |
| Preelection | 05/17/2014 | \$35,779.00 | \$32,710.00 | 05/22/2014 | 05/21/2014 | 0 |
| Semi-Annual | 06/30/2014 | \$724.00 | \$1,750.00 | 07/31/2014 | 07/31/2014 | 0 |
| Semi-Annual | 12/31/2014 | \$0.00 | \$1,170.78 | 02/02/2015 | 02/02/2015 | 0 |

Thus, Garcia, the Committee, and Davis filed the first two campaign statements late, which prompted the complaints leading to the Enforcement Division's investigation of this case. For the period ending 12/31/2013, Garcia, the Committee, and Davis failed to report 25% of the total contributions received and 18% of the expenditures made for the campaign. For the period ending 03/17/2014, Garcia, the Committee, and Davis failed to report 4% of the total contributions received and 8% of the expenditures made for the campaign.

Garcia, the Committee, and Davis filed the late campaign statements shortly after contact by the Enforcement Division and before the June 3, 2014 election. Garcia, the Committee, and Davis filed the rest of the Committee's campaign statements timely.

Recordkeeping

Garcia, the Committee, and Davis failed to keep pertinent records of all contributions and loans received and all expenditures made. The Enforcement Division requested copies of all supporting documentation for contributions, loans and expenditures, but Garcia, the Committee, and Davis did not provide complete records. Additionally, Garcia and Fred Garcia for Sheriff 2010 received a warning letter from the Enforcement Division in FPPC Case No. 12/426 for failure to maintain campaign records during Garcia's 2010 campaign for Monterey County Sheriff.

VIOLATIONS

Count 1: Failure to Amend Statement of Organization

Garcia, the Committee, and Davis failed to file an amended statement of organization to redesignate Fred Garcia for Sheriff 2010 for the 2014 election, violating Government Code Sections 84103, subdivision (a).

Count 2: Failure to Timely File Statement of Intention (Garcia only)

Garcia failed to timely file a statement of intention prior to the solicitation or receipt of any contribution or loan, violating Government Code Sections 85200.

Count 3: Failure to Timely File Campaign Statements

Garcia, the Committee, and Davis failed to timely file a semi-annual campaign statement and a preelection campaign statement by the applicable 2014 due dates, violating Government Code Sections 84200, subdivision (a), 84200.5, subdivision (a), and 84200.7, subdivision (a).

Count 4: Recordkeeping

Garcia, the Committee, and Davis failed to maintain supporting records for contributions and loans received and expenditures made, violating Government Code Section 84104.

CONCLUSION

This matter consists of four counts of violating the Act, which carries a maximum administrative penalty of \$20,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission considers the facts and circumstances of the violation in the 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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether respondent voluntarily amended.

The Commission also considers penalties in prior cases involving similar violations. Recent similar cases involving the failure to amend a statement of organization (Count 1) include:

- *In the Matter of Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor committee and Chris Lee*; FPPC No. 10/973. Respondents, a primarily

formed committee and its treasurer, failed to file an amended statement of organization within 10 days to disclose that the committee was controlled by a candidate, violating Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a) (1 count). On November 20, 2014, the Commission approved a \$2,500 penalty for this count.

Recent similar cases involving the failure to timely file a statement of intention (Count 2) include:

- *In the Matter of David Margrave*; FPPC No. 06/1149. Respondent, an unsuccessful candidate for re-election to the South Pasadena City Council, failed to file a Statement of Intention to become a candidate prior to the expenditure of campaign funds, violating Section 85200 (1 count). On January 14, 2010, the Commission approved a \$1,000 penalty for this count.

Recent similar cases involving the failure to timely file campaign statements (Count 3) include:

- *In the Matter of Virginia Mari Goodman, Mari Goodman for Assembly 34-2012, and Joan Slater*; FPPC No. 13/1327. Respondent, an unsuccessful candidate for State Assembly, her controlled committee and its treasurer, failed to file two preelection campaign statements for the November 2012 election, violating Sections 84200.5, subdivision (a), and 84200.7 (1 count). During 2012, Mari Goodman for Assembly 34-2012 received contributions totaling \$20,466 and made expenditures totaling \$16,673. On June 18, 2015, the Commission approved a \$2,500 penalty for this count.
- *In the Matter of Familias por Maywood, Veronica Guardado, and Ana Rosa Rizo*; FPPC No. 14/356. Respondents failed to timely file semi-annual campaign statements in 2008 and 2009, violating Section 84200, subdivision (a) (2 counts). During these semi-annual campaign statement periods, the respondents received contributions totaling approximately \$22,797, and made expenditures totaling approximately \$24,169. On June 19, 2014, the Commission approved a \$2,500 penalty per count.

Recent similar cases involving the failure to maintain records (Count 4) include:

- *In the Matter of Steven A. Pappas, Steve Pappas for 3rd District Supervisor 2012, and Trent J. Benedetti*; FPPC No. 14/598. Respondents failed to maintain detailed accounts, records, bills, and receipts that were necessary to prepare campaign statements for the reporting periods January 1, 2009 through June 30, 2012, violating Section 84104 (1 count). On April 16, 2015, the Commission approved a penalty of \$1,500 for this count.
- *In the Matter of Andrew M. Cohen and Elect Andy Cohen for Supervisor 2012*; FPPC No. 14/329. Respondents, an unsuccessful candidate for the San Mateo County Board of Supervisors and his controlled committee, failed to maintain the detailed accounts,

records, bills, and receipts that were necessary to prepare campaign statements for reporting periods occurring from January 1 through June 30, 2012, violating Section 84104 (1 count). On February 19, 2015, the Commission approved a penalty of \$1,000 for this count.

In the present case, the actions of Garcia, the Committee, and Davis overall led to a lack of timely disclosure. Garcia was an experienced candidate, having run previously for the same office. By failing to amend the Committee's statement of organization to redesignate Fred Garcia for Sheriff 2010 for the 2014 election, SOS had no information showing that Garcia had a currently active campaign committee. Contributing to this lack of information is the fact that Garcia's statement of intention and the Committee's first two campaign statements were filed late. Until these statements were filed, the public had no way of obtaining any information regarding the campaign's activity. Additionally, their failure to maintain all required records made tracking and accounting for campaign funds difficult to impossible, and it is unclear whether Garcia, the Committee, and Davis further violated the Act's requirements. Garcia should have known the recordkeeping requirements because he and his 2010 campaign for Monterey County Sheriff received a warning letter from the Enforcement Division in FPPC Case No. 12/426 for failure to maintain campaign records.

In mitigation, Garcia, the Committee, and Davis cooperated with the Enforcement Division investigation. They filed the late campaign statements shortly after contact by the Enforcement Division and nearly two months before the June 3, 2014 election. Garcia, the Committee, and Davis filed the rest of the Committee's campaign statements timely.

PROPOSED PENALTY

The factors listed in Regulation 18361.5, prior similar cases, and other relevant facts, a total penalty of \$8,500 is recommended:

| Count | Description | Penalty per count Total |
|----------------------------------|---|----------------------------|
| 1 | Failure to Amend Statement of Organization | \$2,500 |
| 2 | Failure to Timely File Statement of Intention | \$1,500 |
| 3 | Failure to Timely File Campaign Statements | \$2,500 |
| 4 | Recordkeeping | \$2,000 |
| Total Agreed Upon Penalty | | \$8,500 |

* * * * *