STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD

BOARD OF ETHICS	*	**DOCKET NO. 2020-9377-ETHICS-A**
	*	
IN THE MATTER OF	*	
	*	
FRANK SCURLOCK	*	**AGENCY ID NO. 5120-083**

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DECISION AND ORDER

The Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, requested a hearing to have the Ethics Adjudicatory Board determine whether Frank Scurlock failed to file a supplemental campaign finance report for the 2019 calendar year by the eleventh day after it was due, in connection with his 2017 candidacy for Mayor, City of New Orleans, Louisiana. The Louisiana Board of Ethics proved by clear and convincing evidence that Frank Scurlock failed to file the report as alleged. Pursuant to La. R.S. 18:1505.4(A)(4)(b), the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty not to exceed $10,000 against Frank Scurlock for his failure to timely file his 2019 supplemental campaign finance report.

APPEARANCES

The hearing in this matter was conducted on June 10, 2021, at the Division of Administrative Law in Baton Rouge, Louisiana, before Panel A of the Ethics Adjudicatory Board (EAB).[1] Charles E. Reeves Jr. appeared as counsel on behalf of the Louisiana Board of Ethics (BOE). Although duly noticed, Frank Scurlock (Respondent) did not appear for the hearing.[2]

[1] The Panel consisted of administrative law judges Sherlyn D. Shumpert (presiding), A. Brock Avery, and Lance B. Vinson.

[2] *See* BOE-13. The hearing notice was transmitted by U.S. mail to the last known address of Respondent on April 5, 2021, by the Administrative Hearings Clerk for the Division of Administrative Law, notifying Respondent of the hearing location, date, and time. This document is part of the record in this matter and the Board of Ethics included it as an exhibit that was admitted into evidence.

STATEMENT OF THE CASE

The BOE, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, alleged that Respondent failed to timely file a supplemental campaign finance report as required by La. R.S. 18:1495.4(D)(3)(a) for calendar year 2019, in connection with his 2017 candidacy for Mayor, City of New Orleans, Louisiana.

The BOE requested a hearing to have the EAB determine whether Respondent failed to file his supplemental campaign finance report by the eleventh day after it was due, which could subject him to an additional civil penalty not to exceed $10,000 pursuant to La. R.S. 18:1505.4(A)(4)(b).

At the hearing, counsel for the BOE offered and introduced fourteen exhibits,[3] which were admitted into evidence. Counsel presented the case on behalf of the BOE, the record was closed, and the matter was submitted for decision.

This adjudication is conducted in accordance with the Code of Governmental Ethics, La. R.S. 42:1101, *et seq*., the Campaign Financial Disclosure Act (CFDA), La. R.S. 18:1481, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the enabling legislation for the Division of Administrative Law, La. R.S. 49:991, *et seq*.

FINDINGS OF FACT

1) Respondent qualified as a candidate for the office of Mayor, City of New Orleans, Louisiana, in the October 14, 2017, primary election.[4]
2) Mayor, City of New Orleans, Louisiana is a "major office."[5]
3) When Respondent qualified as a candidate for the October 14, 2017, primary election, he

[3] The exhibits had been marked for identification as BOE-1 through BOE-14 and certified by affidavit to be true and correct copies of the BOE records. BOE-1, *Affidavit* of Carolyn Abadie Landry, Executive Secretary for the BOE executed on March 2, 2021.
[4] BOE-2.
[5] *See* La. R.S. 18:1483(11) (defining "major office").

acknowledged that he was subject to the provisions of the CFDA.[6]

4) Respondent did not qualify to participate in the 2017 general election.[7]

5) On November 16, 2017, Respondent filed a *Candidate's Report* for the period of September 25, 2017, through October 29, 2017, showing a deficit of $355,431.31.[8]

6) Respondent did not file his supplemental campaign financial disclosure report for calendar year 2019, by the February 17, 2020, deadline, and he did not file that report by February 29, 2020, the eleventh day after it was due.[9]

7) On December 30, 2020, the BOE mailed a copy of the *Request for Hearing* and *First Set of Requests for Admissions, Interrogatories and Requests for Production of Documents* to Respondent by certified mail, return receipt requested, to 7816 Breakwater Dr. #30, New Orleans, Louisiana, 70124.[10]

8) Respondent did not provide responses to the BOE's *First Set of Requests for Admissions, Interrogatories and Requests for Production of Documents*.[11]

CONCLUSIONS OF LAW

Respondent knowingly failed to file his supplemental campaign financial disclosure report for calendar year 2019 by February 28, 2020, the eleventh day after it was due. Because of this failure, the BOE, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty of up to $10,000 against Respondent pursuant

[6] BOE-2, p. 3, and BOE-4.
[7] BOE-3.
[8] BOE-5, pp. 5-6.
[9] BOE-9, *Affidavit* of Angela Newsom, establishes Respondent did not file the report by the deadline or at any point between the deadline and February 24, 2021.
[10] BOE-6. The certified mail receipt or "green card" shows that the hearing request was delivered to Respondent on January 4, 2021. In response to the COVID-19 pandemic, U.S. Postal Service mail carriers entered "C-19" in the signature field to indicate that the item was delivered without the recipient's signature.
[11] BOE-14, *Affidavit* of Carolyn Abadie Landry, Executive Secretary for the BOE, executed on June 10, 2021.

to La. R.S. 18:1505.4(A)(4)(b).

Adjudicatory hearings under La. R.S. 18:1505.4(A)(4)(a)-(b) cover two kinds of campaign finance disclosure reports candidates must file in connection with elections. La. R.S. 18:1505.4(A)(4)(a) addresses reports that candidates must file between the time the candidate qualifies for the election and the election day. La. R.S. 18:1505.4(A)(4)(b) addresses "other reports" candidates must file in connection with an election at other times. In either case, the BOE must prove by clear and convincing evidence[12] that the candidate knowingly[13] failed to file a required report within the six-day or eleven-day period following when it was due, respectively.

Respondent was a candidate for Mayor, City of New Orleans, Louisiana, which is a major office. Every candidate for a major office is required to file certain campaign finance disclosure reports by the statutory deadlines.[14] Failure to timely submit required reports constitutes a violation of the CFDA.[15]

La. R.S. 18:1495.4(D)(3)(a) provides that if the candidate is not an elected public official and their deficit or surplus is equal to or greater than $2,500, the candidate shall file annual supplemental reports with the BOE containing all the information required by La. R.S. 18:1495.5, no later than the fifteenth of February each year,[16] which shall be complete through the end of the preceding year. This report shall be filed each year for five years or until a report has been filed which shows no deficit or surplus.

On November 16, 2017, Respondent filed a Candidate's Report for the period of September

[12] La. R.S. 42:1141.5(C). "'Clear and convincing evidence', in general, means that the fact of guilt must be proven to a greater degree than by 'a mere preponderance of the evidence' but less than by 'beyond a reasonable doubt…. The standard requires that the existence of the disputed fact be [h]ighly probable, that is, much more probable than its non-existence.'" *Louisiana State Bar Ass'n v. Edwins*, 329 So. 2d 437, 442 (La. 1976).
[13] La. R.S. 18:1505.4(A)(1).
[14] La. R.S. 18:1495.4.
[15] La. R.S. 18:1505.1(B).
[16] February 15, 2020, was a Saturday; the next business day was Monday, February 17, 2020.

25, 2017, through October 29, 2017, which showed that he had a deficit that exceeded $2,500. Respondent did not file a supplemental campaign financial disclosure report for calendar year 2019 by February 28, 2020, the eleventh day after it was due.

If, after conducting an adjudicatory hearing, the EAB determines that Respondent knowingly failed to file a required campaign finance disclosure report within the applicable time period, then the BOE may impose an additional civil penalty not to exceed $10,000 against Respondent for each report that he failed to timely file.[17] Respondent's failure to file his supplemental campaign financial disclosure report for calendar year 2019 within three days after the final date for filing created a rebuttable presumption of intent to not file the report.[18] Nothing in evidence rebuts this statutory presumption.

With the benefit of the unrebutted statutory presumption of intent not to file, the BOE proved by clear and convincing evidence that Respondent knowingly violated the CFDA by failing to timely file his supplemental campaign financial disclosure report for calendar year 2019. As a result, the BOE is authorized to impose an additional civil penalty of up to $10,000 as authorized by La. R.S. 18:1505.4(A)(4)(b).

[17] LA. R.S. 18:1505.4(A)(4).
[18] La. R.S. 18:1505.1(A).

ORDER

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty not to exceed $10,000 against Frank Scurlock for his failure to file his supplemental campaign financial disclosure report for calendar year 2019 by the eleventh day after it was due.

Rendered and signed July 6, 2021, Baton Rouge, Louisiana.

Sherlyn D. Shumpert

Sherlyn D. Shumpert
Presiding Administrative Law Judge

A. Brock Avery
Administrative Law Judge

Lance B. Vinson
Administrative Law Judge

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Tuesday, July 06, 2021, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court
Division of Administrative Law

REVIEW RIGHTS

Requests for rehearing, reopening, or reconsideration are subject to the procedures, timing requirements, and legal grounds provided in La. R.S. 49:959, with the time for filing calculated pursuant to Louisiana Code of Civil Procedure (La. C.C.P.) article 5059. To determine your review rights, you should act promptly.

To request rehearing, reopening, or reconsideration, please send it to one of the addresses indicated below:

EMAIL documents to:
EABprocessing@adminlaw.la.gov

FAX documents to:
(225) 219-9820

MAIL documents to:
DAL – EAB Section
P. O. Box 44033
Baton Rouge, LA 70804-4033

If you do not request rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 42:1142(A)(1), with the time for requesting judicial review calculated pursuant to La. C.C.P. art. 5059. To determine your review rights, you should act promptly.