

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD**

BOARD OF ETHICS

*** DOCKET NO. 2021-5245-ETHICS-B**

IN THE MATTER OF

BOBBY HOLMES

*** AGENCY TRACKING NO. 5121-059**

DECISION AND ORDER

The Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, requested an adjudicatory hearing to have the Ethics Adjudicatory Board determine whether Bobby Holmes failed to timely file his supplemental campaign finance disclosure report for calendar year 2020, by the eleventh day after the report was due, in connection with his 2020 candidacy for the office of District Judge, Fourteenth Judicial District Court, ES 1, Division H. The Louisiana Board of Ethics proved by clear and convincing evidence that Bobby Holmes failed to timely file the report as alleged, in accordance with Louisiana Revised Statutes (La. R.S.) 18:1495.4(D)(3)(a). Pursuant to La. R.S. 18:1505.4(A)(4)(b), the Louisiana Board of Ethics is authorized to impose an additional civil penalty not to exceed \$10,000 against Bobby Holmes for his failure to timely file his supplemental campaign finance disclosure report for calendar year 2020.

APPEARANCES

An adjudicatory hearing was conducted on January 26, 2022, at the Division of Administrative Law in Baton Rouge, Louisiana, before Panel B of the Ethics Adjudicatory Board (EAB).¹ Charles Reeves appeared as counsel on behalf of the Louisiana Board of Ethics (BOE).

¹ Panel B of the Ethics Adjudicatory Board consists of administrative law judges Gregory McDonald (presiding), Anthony Russo, and Esther Redmann.

Although duly noticed, Bobby Holmes (Respondent) did not appear for the hearing.²

JURISDICTIONAL AUTHORITY

The Ethics Adjudicatory Board (EAB) is a legislatively created board, as contemplated by Article X, Section 21 of the Louisiana Constitution. The EAB has original jurisdiction under La. R.S. 42:1141.5 to determine whether violations of the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, have occurred and to conduct hearings under La. R.S. 18:1505.4 for specific violations of the Campaign Finance Disclosure Act (CFDA), La. R.S. 18:1481, *et seq.*

This adjudication is conducted in accordance with the CFDA, the Code of Governmental Ethics, 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.*

STATEMENT OF THE CASE

The BOE, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, alleged that Respondent failed to timely file his supplemental campaign finance disclosure report for calendar year 2020, as required by La. R.S. 18:1495.4(D)(3)(a), in connection with his candidacy for the office of District Judge, Fourteenth Judicial District Court, ES 1, Division H, by the eleventh day after the report was due.

The BOE requested an adjudicatory hearing to have the EAB determine whether Respondent failed to timely file his supplemental campaign finance disclosure report for calendar

² The hearing notice was mailed by U.S. mail on October 27, 2021, by the Administrative Hearings Clerk for the Division of Administrative Law to Respondent at: 1800 Ryan Street, Suite 107, Lake Charles, Louisiana, 70601. *See* BOE-10. This is the same address the BOE mailed Respondent the charges through its *Request for Hearing* and its discovery requests, by certified mail, returned receipt requested, and the BOE received the returned receipt signed by Respondent. This is the same address the BOE mailed Respondent its *Late Fee Assessment Order* and its letter scheduling a Rule 10.1 discovery conference, both by certified mail; however, the BOE did not introduce into evidence the returned receipts. The BOE did provide the United States Postal Service (USPS) tracking report, which showed the *Late Fee Assessment Order* was delivered to the “front desk, reception area or mail room” of Suite 107 at 1800 Ryan Street, Lake Charles, Louisiana, 70601. *See* BOE-4, p. 15, BOE-6, p. 3, and BOE-8, p. 7.

year 2020 by the eleventh day after it was due, which could subject him to an additional civil penalty not to exceed \$10,000, as authorized by La. R.S. 18:1505.4(A)(4)(b).

At the hearing, the BOE offered its exhibits, numbered BOE-1 through BOE-11, which were admitted into evidence. Counsel presented the case on behalf of the BOE. The record was closed, and the matter was taken under advisement for a determination of whether Respondent violated La. R.S. 18:1495.4(D)(3)(a) and would therefore be subject to an additional civil penalty pursuant to La. R.S. 18:1505.4(A)(4)(b).

FINDINGS OF FACT

Respondent was a candidate for the office of District Judge, Fourteenth Judicial District Court, ES 1, Division H, in the November 3, 2020, primary election.³ The office of District Judge, Fourteenth Judicial District Court, ES 1, Division H, is a “district” level public office.⁴ Respondent was defeated in the primary election and, as such, did not participate in the general election.⁵

The BOE is the Supervisory Committee on Campaign Finance Disclosure under the CFDA.⁶ Upon qualifying to run for office, Respondent acknowledged that he was subject to the provisions of the CFDA.⁷

On November 30, 2020, Respondent filed his final campaign finance disclosure report, referred to as the requisite “10-G” report, which showed a surplus of \$13,073.89, in connection with his November 3, 2020, candidacy.⁸ Respondent was required to file a supplemental campaign

³ See BOE-2, BOE-3, p. 5. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he was a candidate for the office of District Judge, Fourteenth Judicial District Court, ES 1, Division H, in the November 3, 2020, election. See BOE-8, p. 3.

⁴ See La. R.S. 18:1483(7); La. R.S. 18:1484(1).

⁵ See BOE-3, p. 5.

⁶ La. R.S. 18:1483(19).

⁷ See BOE-2, p. 3.

⁸ See BOE-5, p. 2.

finance disclosure report for calendar year 2020, by February 15, 2021.⁹

Respondent did not file his supplemental campaign finance disclosure report covering the 2020 calendar year by the February 15, 2021, deadline or by February 26, 2021, the eleventh day after it was due.¹⁰

On May 21, 2021, the BOE issued a *Late Fee Assessment Order* to Respondent because he had not filed his supplemental campaign finance disclosure report for calendar year 2020.¹¹ The *Late Fee Assessment Order* (a) assessed a late fee of \$2,000 and (b) ordered Respondent to file his supplemental campaign finance disclosure report for calendar year 2020 within twenty days of his receipt of the order.¹² The *Late Fee Assessment Order* was sent by certified mail, return receipt requested, to Respondent at 1800 Ryan Street, Suite 107, Lake Charles, Louisiana, 70601. The letter was delivered to the “front desk, reception area or mail room” of Suite 107 at 1800 Ryan Street, Lake Charles, Louisiana, 70601, on May 25, 2021.¹³ Respondent was notified in the letter accompanying the *Late Fee Assessment Order* that he could be subject to an additional civil penalty not to exceed \$10,000, pursuant to La. R.S. 18:1505.4(A)(4)(b), if he failed to file his supplemental campaign finance disclosure report for calendar year 2020.¹⁴

On July 30, 2021, the BOE mailed a copy of the *Request for Hearing* to Respondent and its written discovery, including *Requests for Admissions*, propounded to Respondent, by certified mail, return receipt requested, to Respondent at 1800 Ryan Street, Suite 107, Lake Charles, Louisiana, 70601; the return receipt was signed by Respondent and returned to the BOE.¹⁵ Respondent was notified in the letters accompanying the copy of the *Request for Hearing* and the

⁹ La. R.S. 18:1495.4(D)(3)(a).

¹⁰ See BOE-7 and BOE-11.

¹¹ See BOE-6.

¹² *Id.*, p. 2.

¹³ *Id.*, p. 3.

¹⁴ *Id.*, p. 1.

¹⁵ See BOE-4 and BOE-8.

discovery requests propounded to Respondent that he could be subject to an additional civil penalty not to exceed \$10,000, pursuant to La. R.S. 18:1505.4(A)(4)(b), if he failed to file his supplemental campaign finance disclosure report for calendar year 2020.

On September 8, 2021, the BOE requested Respondent participate in a Rule 10.1 Discovery Conference because Respondent did not respond to the BOE's discovery requests. The request was sent by certified mail, return receipt requested, to Respondent at 1800 Ryan Street, Suite 107, Lake Charles, Louisiana, 70601.¹⁶

As of the January 26, 2022, hearing, Respondent had not filed his supplemental campaign finance disclosure report for calendar year 2020 and had not filed responses to the *Requests for Admissions*.¹⁷

CONCLUSIONS OF LAW

The BOE proved by clear and convincing evidence that Respondent knowingly failed to timely file his supplemental campaign finance disclosure report for calendar year 2020 by the February 15, 2021, deadline, or by the eleventh day after it was due. Accordingly, the BOE is authorized to impose upon Respondent an additional civil penalty not to exceed \$10,000, as allowed by La. R.S. 18:1505.4(A)(4)(b).

In hearings under the CFDA before the EAB, the BOE must prove by clear and convincing evidence that the candidate knowingly failed to file or knowingly failed to timely file a required campaign finance disclosure report.¹⁸

Every candidate for a "district" level public office is required to file certain campaign

¹⁶ See BOE-9. The BOE did not attach a copy of the returned receipt or the U.S.P.S. tracking report to BOE-9.

¹⁷ See BOE-7 and BOE-11. Respondent admitted, by operation of La. C.C.P. art. 1467(A) that he did not file his supplemental campaign finance disclosure report for calendar year 2020. See BOE-8, p. 3.

¹⁸ See 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.'" *Louisiana State Bar Ass'n v. Edwins*, 329 So. 2d 437, 442 (La. 1976).

finance disclosure reports by the statutory deadlines.¹⁹ Failure to timely file required reports constitutes a violation of the CFDA.²⁰

La. R.S. 18:1495.4(D)(3)(a) provides that if the candidate shows a deficit or surplus equal to or greater than \$2,500 on his final report as a candidate for an election, the candidate shall file annual supplemental reports with the BOE, no later than February 15th of each year, which shall be complete through the preceding December 31st. Such reports shall be filed each year for five years or until a report has been filed which shows no deficit or surplus.²¹

As a candidate for a “district” level public office who is not an elected public official and who filed a final report showing a surplus in excess of \$2,500 in connection with the November 3, 2020, election, Respondent was required to file annual supplemental campaign finance disclosure reports for five years or until a report was filed that showed no deficit or surplus.²² The supplemental campaign finance disclosure report for calendar year 2020 was due no later than February 15, 2021, and shall be complete through the preceding December 31st.²³

Respondent did not file his supplemental campaign finance disclosure report for calendar year 2020, by the February 15, 2021, deadline, or by the eleventh day after the report was due.

Any candidate for a “district” level public office who knowingly fails to timely file a required report may be assessed a civil penalty in the amount of \$60.00 per day, not to exceed \$2,000.²⁴ “Knowingly” means conduct which could have been avoided through the exercise of due diligence.²⁵

In its May 21, 2021, *Late Fee Assessment Order*, the BOE assessed a late fee of \$2,000,

¹⁹ La. R.S. 18:1495.4(B)(5) and La. R.S. 18:1481(1).

²⁰ La. R.S. 18:1505.1(A).

²¹ La. R.S. 18:1495.4(D)(3)(a).

²² La. R.S. 18:1495.4(D)(3)(a).

²³ *Id.*

²⁴ La. R.S. 18:1505.4(A)(2)(a)(ii).

²⁵ La. R.S. 18:1505.5.

because Respondent knowingly failed to file his supplemental campaign finance disclosure report for calendar year 2020 by the eleventh day after the report was due. That assessment is not before the EAB. However, in the letter accompanying the *Late Fee Assessment Order*, the BOE notified Respondent that he could be subject to additional civil penalties not to exceed \$10,000, pursuant to La. R.S. 18:1505.4(A)(4)(b), for failing to file his supplemental campaign finance disclosure report for calendar year 2020, and the BOE ordered Respondent to file the supplemental report within 20 days of receipt of the *Late Fee Assessment Order*. By receipt of the BOE's letter and the accompanying *Late Fee Assessment Order*, Respondent knew he was required to file his supplemental campaign finance disclosure report for calendar year 2020.

Additionally, Respondent knew he was required to file certain campaign finance disclosure reports when he acknowledged he was subject to the CFDA upon qualification for candidacy. Respondent knew he was obligated to meet the CFDA filing requirements evidenced by his filing his "10-G" report. Respondent was reminded of his obligation to file his supplemental campaign finance disclosure report for calendar year 2020 by receipt of the BOE's letters accompanying the *Request for Hearing* and discovery propounded to Respondent, which notified Respondent that he could be subject to additional civil penalties if he did not file his supplemental campaign finance disclosure report for calendar year 2020.

As of January 26, 2022, Respondent had not filed his supplemental campaign finance disclosure report for calendar year 2020 and had not responded to the BOE's *Request for Admissions*.²⁶ Respondent did not file his supplemental campaign finance disclosure report for calendar year 2020 by the February 15, 2021, deadline, or by the eleventh day after the report was due.

²⁶ See BOE-7 and BOE-11.

The BOE proved by clear and convincing evidence that Respondent knowingly failed to file his supplemental campaign finance disclosure report for calendar year 2020 by the February 15, 2021, deadline or by the eleventh day after the report was due.

Additionally, Respondent's failure to file his supplemental campaign finance disclosure report for calendar year 2020 within three days after the final date for filing creates a rebuttable presumption of intent to not file the report.²⁷ Nothing in evidence rebuts this statutory presumption.

If, after conducting an adjudicatory hearing, the EAB determines that Respondent knowingly failed to file a required campaign finance disclosure report by the eleventh day after the report was due, then the BOE may impose an additional civil penalty not to exceed \$10,000, against Respondent for the report that he failed to timely file.²⁸

The BOE proved by clear and convincing evidence that Respondent, a candidate for the "district" level public office of District Judge, Fourteenth Judicial District Court, ES 1, Division H, knowingly violated the CFDA by failing to file his supplemental campaign finance disclosure report for calendar year 2020 by the February 15, 2021, due date, or by the eleventh day after the report was due.

The BOE, in its capacity as the Supervisory Committee for Campaign Finance Disclosure, is authorized to impose against Respondent an additional civil penalty not to exceed \$10,000, for the late report as authorized by La. R.S. 18:1505.4(A)(4)(b).

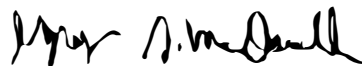
²⁷ La. R.S. 18:1505.1(A).

²⁸ LA. R.S. 18:1505.4(A)(4)(b).

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 Bobby Holmes for his failure to file his supplemental campaign finance disclosure report for calendar year 2020 by the eleventh day after the report was due.

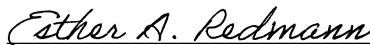
Rendered and signed on February 25, 2022, in Baton Rouge, Louisiana.



Gregory McDonald
Presiding Administrative Law Judge
Ethics Adjudicatory Board, Panel B



Anthony J Russo
Administrative Law Judge
Ethics Adjudicatory Board, Panel B



Esther A. Redmann
Administrative Law Judge
Ethics Adjudicatory Board, Panel B

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Monday, February 28, 2022, I have sent a copy of
this decision/order to all parties of this matter.



Division of Administrative Law

REVIEW RIGHTS

This decision exhausts your administrative remedies. If you are dissatisfied with this ruling, you may have the right to seek a rehearing or reconsideration of this decision or order, subject to the grounds for and time limitations provided in Louisiana Revised Statutes (La. R.S.) 49:959 and Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly.

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

EMAIL documents to:
EABprocessing@adminlaw.la.gov

FAX documents to:
EAB Section Deputy Clerk
(225) 219-9820

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

If you do not request a rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 49:964, La. R.S. 42:1142(A)(1), and La. C.C.P. art 5059. To determine your review rights, you should act promptly.