

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

BOARD OF ETHICS

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* **DOCKET NO. 2021-3500-ETHICS-B**

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IN THE MATTER OF

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TYJUANA SMITH

* **AGENCY TRACKING NO. 5121-037**

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 Tyjuana Smith failed to file her 10-G campaign finance disclosure report by the eleventh day after it was due in connection with her 2020 candidacy for the office of East Baton Rouge Parish Metro Council, District 7. The Board of Ethics proved by clear and convincing evidence that Tyjuana Smith failed to timely 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 \$10,000.00 against Tyjuana Smith for her failure to timely file her 10-G campaign finance disclosure report.

APPEARANCES

An adjudicatory hearing was conducted on October 1, 2021, 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 Board of Ethics (BOE). Although duly noticed, Tyjuana Smith (Respondent) did not appear for the hearing.²

¹ The Panel B of the Ethics Adjudicatory Board consists of Administrative Law Judges Gregory McDonald (presiding), Anthony Russo, and Esther Redmann.

² On July 2, 2021, a notice of hearing was mailed by the Administrative Hearings Clerk for the Division of Administrative Law to Tyjuana Smith at: 866 Parlange Drive, Baton Rouge, Louisiana, 70806. This is the same

STATEMENT OF THE CASE

The BOE, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, alleged that Respondent failed to file her 10-G campaign finance disclosure report, as required by La. R.S. 18:1495.4(B)(5), in connection with the November 3, 2020, primary election.

The BOE requested a hearing to have the EAB determine whether Respondent failed to file her 10-G campaign finance disclosure report by the eleventh day after it was due, which could subject her to an additional civil penalty not to exceed \$10,000.00, as authorized by La. R.S. 18:1505.4(A)(4)(b).

At the hearing, 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(B)(5) and would therefore be subject to an additional civil penalty pursuant to La. R.S. 18:1505.4(A)(4)(b).

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

FINDINGS OF FACT

Respondent was an unsuccessful candidate for the office of East Baton Rouge Parish Metro Council, District 7, in a primary election held November 3, 2020.³ The office of East Baton Rouge

address the BOE mailed Respondent the charges through its *Request for Hearing*, its *Late Fee Assessment Order*, and its letter scheduling a Rule 10.1 discovery conference, all by certified mail, returned receipt requested, and the BOE received the receipts signed by Respondent. See BOE exhibits 6, 8, 9, and 10.

³ See BOE-2; BOE-3, p. 4. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that she was a candidate for the office of East Baton Rouge Parish Metro Council, District 7. See BOE-8, p. 3.

Parish Metro Council, District 7, is a “district” level office, as it is a parish-wide elected office.⁴ Respondent was defeated in the primary election and, as such, did not participate in the general election.⁵ Respondent was required to file a campaign finance disclosure report ten days prior to the general election (also known as the 10-G report), due on November 25, 2020.⁶

The BOE is the Supervisory Committee on Campaign Finance Disclosure under the CFDA.⁷ Election candidates, when qualifying at their respective clerks of court, are provided with a *Schedule of Reporting and Filing Dates for Candidates* (Schedule).⁸ The *Schedule* informed Respondent that the 10-G report was due on November 25, 2020.⁹ Upon qualifying to run for office, Respondent also acknowledged that she was subject to the provisions of the CFDA.¹⁰

Respondent was required to file a campaign finance disclosure report no later than the tenth day prior to the general election, due on November 25, 2020. Respondent did not file the required 10-G report by the due date, November 25, 2020, or by the eleventh day after the report was due.¹¹

On March 4, 2021, the BOE issued a *Late Fee Assessment Order* to Respondent because she had not filed her 10-G campaign finance disclosure report.¹² The *Late Fee Assessment Order* (a) assessed a late fee of \$2,000.00 and (b) ordered Respondent to file her 10-G campaign finance disclosure report within 20 days of her receipt of the order.¹³ The *Late Fee Assessment Order* was sent by certified mail, return receipt requested, to Respondent at her address at 866 Parlange Drive,

⁴ See BOE-4, p. 2.

⁵ BOE-3, p. 4. A runoff of the top two candidates was held in the general election on December 5, 2020.

⁶ *Id.*

⁷ La. R.S. 18:1483(19).

⁸ See BOE-4.

⁹ *Id.*

¹⁰ BOE-2, p. 3. The Campaign Finance Disclosure Act, La. R.S. 18:1481, *et seq.*, also provides the same schedule of reports due. See La. R.S. 18:1495.4(B)(3)-(5).

¹¹ BOE-8. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that she did not file a 10-G campaign finance disclosure report in connection with the November 3, 2020, primary election for the office of East Baton Rouge Parish Metro Council, District 7. BOE-7.

¹² BOE-6, p. 2.

¹³ BOE-6, p. 1.

Baton Rouge, Louisiana, 70806.¹⁴ Respondent was notified in the letter accompanying the *Late Fee Assessment Order* that she could be subject to an additional civil penalty not to exceed \$10,000.00, pursuant to La. R.S. 18:1505.4(A)(4)(b), if she failed to file her 10-G campaign finance disclosure report.¹⁵

On June 2, 2021, the BOE propounded to Respondent written discovery, including *Requests for Admissions*, and on June 28, 2021, Respondent acknowledged that she received the discovery, in person, at the offices of the BOE.¹⁶ On July 7, 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's address at 866 Parlange Drive, Baton Rouge, Louisiana, 70806, and the return receipt was signed and returned.¹⁷

As of September 16, 2021, Respondent had not filed her 10-G campaign finance disclosure report and had not filed responses to the *Requests for Admissions*.¹⁸

CONCLUSIONS OF LAW

The BOE proved by clear and convincing evidence that Respondent, a candidate for the office of East Baton Rouge Parish Metro Council, District 7, knowingly failed to file a 10-G campaign finance disclosure report by the November 25, 2020, deadline, or by the eleventh day after the report was due. The BOE is authorized to impose upon Respondent an additional civil penalty not to exceed \$10,000.00, as allowed by La. R.S. 18:1505.4(A)(4)(b).¹⁹

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ BOE-8.

¹⁷ BOE-9.

¹⁸ BOE-7 and BOE-11. Respondent admitted, by operation of La. C.C.P. art. 1467(A) that she did not file her 10-G campaign finance disclosure report. See BOE-8 and BOE-9.

¹⁹ La. R.S. 18:1505.4(A)(4)(b) of CFDA provides that, if after conducting an adjudicatory hearing, the EAB determines that a candidate knowingly failed to file the required 10-G campaign finance disclosure report, or filed the 10-G report more than eleven days late, then the BOE, functioning as the Supervisory Committee on Campaign

In hearings under the CFDA before the EAB, the BOE must prove by clear and convincing evidence that the candidate knowingly failed to file a required campaign finance disclosure report.²⁰ Failure to timely submit required reports constitutes a violation of the CFDA.²¹

The office of East Baton Rouge Parish Metro Council, District 7, is a “district” level office, as it is a parish-wide elected office.²² The BOE proved by clear and convincing evidence that Respondent failed to timely file her 10-G campaign finance disclosure report as a candidate for that office, which was due by the tenth day prior to the December 5, 2020, general election.

Any candidate for “district” office (or her campaign treasurer), who knowingly fails to timely file a required report may be assessed a civil penalty in the amount of \$60 per day, not to exceed \$2,000.²³ “Knowingly and willfully,” means conduct which could have been avoided through the exercise of due diligence.²⁴

Respondent knew she was required to file certain campaign financial disclosure reports when she acknowledged she was subject to the CFDA upon qualification for candidacy. Respondent was provided with a *Schedule of Reporting and Filing Dates for Candidates*, which informed her that the 10-G report was due November 25, 2020.

Additionally, the EAB concludes that both the statute²⁵ and the instructions provided in the *Schedule*, require that a candidate in the primary election must file a 10-G report, even where she does not participate in the general election, and said report “shall be the final report for the

Finance Disclosure, may impose upon the candidate additional civil penalties not to exceed \$10,000.00 per report.

²⁰ 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).

²¹ La. R.S. 18:1505.1(B).

²² La. R.S. 18:1483(11); La. R.S. 18:1484(1); BOE 4, p. 2.

²³ La. R.S. 18:1505.4(A)(2)(a)(ii).

²⁴ La. R.S. 18:1505.5.

²⁵ La. R.S. 18:1495.4.

election.”²⁶ Although Respondent did not participate in the December 5, 2020, general election, she was still required to file the 10-G report.

On March 4, 2021, the BOE assessed a civil penalty of the maximum amount of \$2,000.00, as Respondent had failed to file her 10-G report by the due date, November 25, 2020. This assessment is not before the EAB. In the letter accompanying the *Late Fee Assessment Order*, the BOE notified Respondent that she could be subject to an additional civil penalty not to exceed \$10,000.00 per report, pursuant to La. R.S. 18:1505.4(A)(4), for failing to file her 10-G report. The 10-G report had not been filed as of September 16, 2021. Therefore, the Respondent’s 10-G report is more than eleven days late.

By knowingly failing to file the required 10-G report, Respondent violated the CFDA, and the BOE may assess an additional civil penalty against her not to exceed \$10,000.00 for the late report.²⁷

The BOE proved by clear and convincing evidence that Respondent, a candidate for a “district” level office, knowingly failed to file her 10-G campaign finance disclosure report by November 25, 2020. As of September 16, 2021, she had not filed her 10-G report. Respondent is more than eleven days late in filing her 10-G campaign finance disclosure report. The BOE, in its capacity as the Supervisory Committee for Campaign Finance Disclosure, is authorized to impose against Respondent an additional civil penalty under authority of La. R.S. 18:1505.4(A)(4)(b), not to exceed \$10,000.00 for the late report.

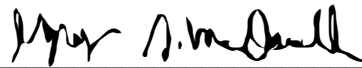
²⁶ La. R.S. 18:1495.4(B)(5).

²⁷ La. R.S. 18:1505.4(A)(4).

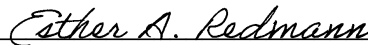
ORDER

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 \$10,000.00 against Tyjuana Smith for her failure to file her 10-G campaign finance disclosure report for calendar year 2020 by the eleventh day after the report was due.

Rendered and signed on October 13, 2021, in Baton Rouge, Louisiana.



Gregory McDonald
Presiding Administrative Law Judge



Esther A. Redmann
Administrative Law Judge



Anthony J Russo
Administrative Law Judge

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Thursday, October 14, 2021, 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 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.