

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

BOARD OF ETHICS

*** DOCKET NO. 2021-8054-ETHICS-A**

IN THE MATTER OF

HERBERT A. CADE

*** AGENCY TRACKING NO. 5121-068**

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 Herbert A. Cade failed to file four supplemental campaign finance reports for the 2020 calendar year by the eleventh day after they were due, in connection with: (1) his 1999 campaign for State Senate, District 3; (2) his 2002 and 2008 campaigns for Judge, Civil District Court, Division K; and (3) his 2011 campaign for Judge, Traffic Court, Division A. The Louisiana Board of Ethics proved by clear and convincing evidence that Herbert A. Cade failed to file the reports as alleged. Pursuant to Louisiana Revised Statutes (La. R.S.) 18:1505.4(A)(4)(b), the Louisiana Board of Ethics is authorized to impose additional civil penalties not to exceed \$10,000 for each of the four violations against Herbert A. Cade for his failure to timely file his 2020 supplemental campaign finance reports.

APPEARANCES

The hearing in this matter was conducted October 12, 2022, 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, Herbert A.

¹ The Panel consisted of administrative law judges Lance B. Vinson (presiding), Michele L. Staggs, and Anthony J. Russo.

Cade (Respondent) did not appear for the hearing.²

JURISDICTIONAL AUTHORITY

The 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, imposed *Late Fee Assessment Orders* against Respondent for failing to timely file supplemental campaign finance reports as required by La. R.S. 18:1495.4(D) for 2020, in connection with his 1999 campaign for State Senate, District 3; his 2002 and 2008 campaigns for Judge, Civil District Court, Division K; and his 2011 campaign for Judge, Traffic Court, Division A.³

The BOE then requested a hearing to have the EAB determine whether Respondent failed to file these supplemental campaign finance reports within the eleven-day periods after they were due, which could subject him to an additional civil penalty not to exceed \$10,000 pursuant to La.

² See BOE-28 (The *Conference Report and Order* setting the hearing was transmitted by U.S. mail to the last known address of Respondent on August 1, 2022, by the Administrative Hearings Clerk for the Division of Administrative Law, notifying Respondent of the hearing date and time. This document is part of the record in this matter, and the BOE included it as an exhibit that was admitted into evidence.).

³ In its original *Request for Hearing*, the BOE also alleged that Respondent failed to file a 2020 supplemental report in connection with a November 2012 election for traffic court judge. However, prior to the hearing, Respondent filed that report to the satisfaction of the BOE, the BOE withdrew those allegations, and the related exhibits (BOE-7, BOE-17, and BOE-22) were not admitted into evidence.

R.S. 18:1505.4(A)(4)(b) for each report.

At the hearing, counsel for the BOE offered and introduced twenty-six exhibits,⁴ which were admitted into evidence. Counsel presented the case on behalf of the BOE and moved for the *Requests for Admissions* that the BOE served on Respondent on December 19, 2021, to be deemed admitted pursuant to Louisiana Code of Civil Procedure articles 1467 and 1468, which was granted.⁵ At the conclusion of the hearing, the record was closed, and the matter was submitted for decision.

FINDINGS OF FACT

February 6, 1999, Election for State Senate

- 1) Respondent was a candidate for State Senate, District 3, in the February 6, 1999, election.⁶
- 2) Respondent received thirty-five percent of the vote in the February 6, 1999, primary election, but he was unsuccessful in the general election on March 6, 1999.⁷
- 3) When Respondent qualified as a candidate for the February 6, 1999, primary election, he acknowledged that he was subject to the provisions of the CFDA.⁸
- 4) On April 19, 1999, Respondent filed a *Candidate's Report* that was due the fortieth day after the general election for the period of February 15, 1999, through April 5, 1999, which stated his funds on hand at the close of the reporting period totaled \$2,072.51, loans received totaled \$172,500.00, and debts and obligations (other than loans) of

⁴ The exhibits had been marked for identification as BOE-1 through BOE-29 and certified by affidavit to be true and correct copies of the BOE records. See BOE-1 (May 18, 2022, *Affidavit* of Carolyn Abadie Landry, Executive Secretary for the BOE). For reasons stated above, BOE-7, BOE-17, and BOE-22 were not admitted into evidence.

⁵ The *Requests for Admissions* appear in BOE-24, pp. 3-5, and Respondent's failure to answer those requests was established by BOE-29 (October 12, 2022, *Affidavit* of Carolyn Abadie Landry).

⁶ BOE-2.

⁷ BOE-9.

⁸ See BOE-2, p. 2.

\$547.65.⁹

- 5) On February 14, 2002, Respondent filed a supplemental *Candidate's Report*, which showed no funds on hand and loan repayments of \$520.47;¹⁰ that report did not address the other outstanding loan/debt amount of \$172,527.18 from the April 19, 1999, report.
- 6) Respondent did not file a 2020 supplemental campaign finance disclosure report for the February 6, 1999, election by February 26, 2021.¹¹

October 5, 2002, Election for Judge, Civil District Court

- 1) Respondent was a candidate for Judge, Civil District Court, Division K, in the October 5, 2002, election.¹²
- 2) Respondent received fifty-one percent of the vote in the October 5, 2002, primary election and was elected to that office.¹³
- 3) On February 13, 2008, Respondent filed a supplemental *Candidate's Report* for the period of January 1, 2007, through December 31, 2007, which stated his funds on hand at close of the reporting period were \$86,550.88, loans received totaled \$135,000.00, and debts and obligations (other than loans) of \$1,165.00.¹⁴
- 4) On February 17, 2010, Respondent filed a supplemental *Candidate's Report* for the period of January 1, 2008, through December 31, 2008, which stated his funds on hand at the close of the reporting period were \$122,284.21.¹⁵

⁹ See BOE-13, pp. 2, 17-31. Respondent incorrectly reported \$20,000.00 in Loans Received on the second page of the report; the loans detailed on pages 17-30 of the report total \$172,500.00.

¹⁰ *Id.* at pp. 122-125.

¹¹ BOE-23, *Affidavit* of Angela Newsom, establishes Respondent did not file the report by the February 15, 2021, deadline or at any point between the deadline and May 18, 2022.

¹² BOE-3.

¹³ BOE-10, p. 1.

¹⁴ See BOE-14, pp. 2, 40-43. Respondent incorrectly reported Loans Received on the second page of the report; the loans detailed on pages 40-42 of the report total \$135,000.00.

¹⁵ *Id.* at p. 46.

- a. This report indicated no loan repayments; however, \$20,457.86 of expenditures were explained as personal loan payments or partial payments, and \$1,165.00 was explained as repayment in full to Pampy's, although the same report indicated \$1,165.00 was still due to Pampy's.¹⁶
- 5) On February 17, 2010, Respondent also filed a supplemental *Candidate's Report* for the period of January 1, 2009, through December 31, 2009, which stated his funds on hand at close of the reporting period were \$39,184.58.¹⁷
 - a. This report also indicated no loan repayments; however, \$80,383.17 of "other disbursements" on the reports Expenditures pages were explained as personal loan payments. This report also stated that \$1,165.00 was still owed to Pampy's.¹⁸
- 6) On February 15, 2011, Respondent filed a supplemental *Candidate's Report* for the period of January 1, 2010, through December 31, 2010, which stated his funds on hand at close of the reporting period were \$11,739.35.¹⁹
 - a. This report also indicated no loan repayments; however, \$30,945.23 of expenditures were explained as "partial payment on personal loan." This report also stated that \$1,165.00 was still owed to Pampy's.²⁰
- 7) On February 10, 2020, Respondent filed a supplemental *Candidate's Report* for the period of January 1, 2019, through December 31, 2019, which showed funds on hand at the close of the reporting period were \$11,739.35.²¹
- 8) The amounts reported as personal loan payments on the reports covering the years 2008

¹⁶ *Id.* at pp. 46, 70-71.

¹⁷ *Id.* at p. 74.

¹⁸ *Id.* at pp. 74, 76, 78-80.

¹⁹ *Id.* at p. 82.

²⁰ *Id.* at pp. 82, 84-86.

²¹ BOE-14, p. 89.

through 2010 do not equal \$135,000.00.

- 9) Respondent did not file a 2020 supplemental campaign finance disclosure report for the October 5, 2002, election, February 26, 2021.²²

October 4, 2008, Election for Judge, Civil District Court

- 1) Respondent was a candidate for Judge, Civil District Court, Division K, in the October 4, 2008, election.²³
- 2) When Respondent qualified as a candidate for the October 4, 2008, primary election, he acknowledged that he was subject to the provisions of the CFDA.²⁴
- 3) Respondent was elected to that office.²⁵
- 4) On July 31, 2012, Respondent filed a supplemental *Candidate's Report* for the period of January 1, 2011, through December 31, 2011, which stated he had no funds on hand at close of the reporting period and loans received totaling \$413.01, with at least \$200.00 due on those loans.²⁶
- 5) Respondent did not file a 2020 supplemental campaign finance disclosure report for the October 4, 2008, election, February 26, 2021.²⁷

October 22, 2011, Election for Judge, Traffic Court

- 1) Respondent was a candidate for Judge, Traffic Court, Division A, Parish of Orleans, in the October 22, 2011, election.²⁸

²² BOE-23, *Affidavit* of Angela Newsom, establishes Respondent did not file the report by the February 15, 2021, deadline or at any point between the deadline and May 18, 2022.

²³ BOE-5.

²⁴ *Id.* at p. 3.

²⁵ BOE-8.

²⁶ See BOE-15, pp. 2, 4. Although Respondent reported loans received totaling \$413.01 and no loan repayments made, the report detailed that only \$200.00 remained due.

²⁷ BOE-23, *Affidavit* of Angela Newsom, establishes Respondent did not file the report by the February 15, 2021, deadline or at any point between the deadline and May 18, 2022.

²⁸ BOE-6, p. 1.

- 2) When Respondent qualified as a candidate for the October 22, 2011, primary election, he acknowledged that he was subject to the provisions of the CFDA.²⁹
- 3) Respondent received fifty-four percent of the vote in the October 22, 2011, primary election and was elected to that office.³⁰
- 4) On February 10, 2020, Respondent filed a supplemental Candidate's Report for the period of January 1, 2019, through December 31, 2019, which stated he had no funds on hand at close of the reporting period and outstanding loans totaling \$124,627.86.³¹
- 5) Respondent did not file a 2020 supplemental campaign finance disclosure report for the October 22, 2011, election, February 26, 2021.³²

Respondent held elected office from January 1, 2003, following his successful 2002 election as Judge, Civil District Court, through December 31, 2020, when his term as Judge, Traffic Court, expired.³³

CONCLUSIONS OF LAW

Respondent knowingly failed to file four supplemental campaign financial disclosure reports for calendar year 2020 by February 26, 2021, the eleventh day after they were due. Because of these failures, the BOE is authorized to impose an additional civil penalty against Respondent pursuant to La. R.S. 18:1505.4(A)(4)(b) for each report.

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

²⁹ *Id.* at p. 3.

³⁰ BOE-11, p. 3.

³¹ *See* BOE-16, pp. 3, 5-7.

³² BOE-23, *Affidavit* of Angela Newsom, establishes Respondent did not file the report by the February 15, 2021, deadline or at any point between the deadline and May 18, 2022.

³³ BOE-8.

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 evidence³⁴ that the candidate knowingly³⁵ 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 State Senate, which is a district office,³⁶ and Civil District Court Judge and Traffic Court Judge, which are major offices.³⁷ Every candidate for a district or major office is required to file certain campaign finance disclosure reports by the statutory deadlines.³⁸ Failure to timely submit required reports constitutes a violation of the CFDA.³⁹

La. R.S. 18:1495.4(D)(1) requires an elected public official to file annual supplemental reports with the BOE containing all the information required by La. R.S. 18:1495.5, no later than February fifteenth of each year, which shall be complete through the end of the preceding year. These reports shall be filed each year until a report has been filed which shows no deficit or surplus.

When a final report for an election shows a deficit or a surplus, La. R.S. 18:1495.4(D) requires supplemental reports be filed with the BOE containing all the information required by La. R.S. 1495.5, no later than February fifteenth, each year, which shall be complete through the end of the preceding year, until a report has been filed which shows no deficit or surplus.

For a candidate who is not an elected official, and whose final report for his election showed a deficit or surplus equal to or greater than \$2,500, La. R.S. 1495.4(D)(3)(a) limits the

³⁴ 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’ . . . 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).

³⁵ La. R.S. 18:1505.4(A)(1).

³⁶ See La. R.S. 18:1483(7) (defining “district office”).

³⁷ See La. R.S. 18:1483(11) (defining “major office”).

³⁸ La. R.S. 18:1495.4.

³⁹ La. R.S. 18:1505.1(B).

annual filing obligation to five years or until a report shows no deficit or surplus.⁴⁰

A candidate who is elected to or serving in any elected public office during the reporting period for any required supplemental report is considered an elected public official even if he is not elected to the office for which his candidacy resulted in the supplemental report being required.⁴¹

Respondent became an elected public official because he was elected Judge, Civil District Court, Division K, in the 2002 election. Because he became an elected official during the five years that he was required to file supplemental reports for his unsuccessful 1999 campaign for State Senate, District 3, his obligation to file annual supplemental reports for that 1999 campaign continued while he was an elected public official (or until a report showed no deficit or surplus). Likewise, his obligations to file supplemental reports for each of his later campaigns continued because he was elected to different offices.

Each report Respondent filed with the BOE showed a deficit or surplus in connection with his 1999 campaign for State Senate, District 3; his 2002 and 2008 campaigns for Judge, Civil District Court, Division K; or his 2011 campaign for Judge, Traffic Court, Division A. Respondent did not file a supplemental campaign financial disclosure report for calendar year 2020 for any of these campaigns by February 26, 2020, the eleventh day after they were 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.⁴² Respondent's failure to file his

⁴⁰ A supplemental report is required if the candidate receives a contribution or if repayment is made on an outstanding debt or loan after five years. *See* La. R.S. 18:1495.5(D)(3)(b).

⁴¹ *See* La. R.S. 18:1495.4(D)(3)(c).

⁴² La. R.S. 18:1505.4(A)(4).

supplemental campaign financial disclosure reports for calendar year 2020 within three days after the final date for filing created a rebuttable presumption of intent to not file the report.⁴³ Nothing in evidence rebuts this statutory presumption.

With the benefit of the un rebutted 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 four supplemental campaign financial disclosure reports for calendar year 2020. As a result, the BOE is authorized to impose an additional civil penalty of up to \$10,000 for each report as authorized by La. R.S. 18:1505.4(A)(4)(b).

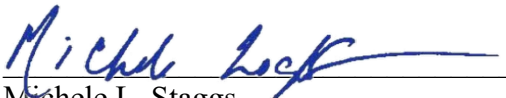
ORDER

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose additional civil penalties not to exceed \$10,000 each against Herbert A. Cade for his failure to file four supplemental campaign financial disclosure reports for his 1999 campaign for State Senate, District 3; his 2002 and 2008 campaigns for Judge, Civil District Court, Division K; and his 2011 campaign for Judge, Traffic Court, Division A, for calendar year 2020 by the eleventh day after they were due.

Rendered and signed December 12, 2022, in Baton Rouge, Louisiana.


Lance B. Vinson
Presiding Administrative Law Judge
Ethics Adjudicatory Board, Panel A


Anthony J. Russo
Administrative Law Judge
Ethics Adjudicatory Board


Michele L. Staggs
Administrative Law Judge
Ethics Adjudicatory Board

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Thursday, December 15, 2022, I have sent a copy of this decision/order to all parties of this matter.


Division of Administrative Law

⁴³ La. R.S. 18:1505.1(A).

REVIEW RIGHTS

Requests for rehearing, reopening, or reconsideration are subject to the procedures, timing requirements, and legal grounds provided in La. R.S. 49:977.1.

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

EMAIL: EABprocessing@adminlaw.la.gov

FAX: (225) 342-1812

HAND DELIVERY TO:

1020 Florida Street, Baton Rouge, LA 70802

MAIL:

Division of Administrative Law
ATTN: Ethics Adjudicatory Board
P.O. Box 44033
Baton Rouge, LA 70804-4033

Judicial review of this decision is subject to the provisions of La. R.S. 42:1142(A)(1).