

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

BOARD OF ETHICS

*** DOCKET NO. 2021-6751-ETHICS-A**

IN THE MATTER OF

*

KENNETH C. PAYNE

*** AGENCY TRACKING NO. 5121-070**

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 Kenneth C. Payne failed to file his 2020 supplemental campaign finance disclosure report more than eleven days after it was due, in connection with his successful 2020 candidacy for Chief of Police, City of Plaquemine. The Louisiana Board of Ethics proved by clear and convincing evidence that Kenneth C. Payne failed to file the report as alleged. The Louisiana Board of Ethics is authorized to impose an additional civil penalty not to exceed \$10,000 against Kenneth C. Payne pursuant to Louisiana Revised Statutes (La. R.S.) 18:1505.4(A)(4)(b).

APPEARANCES

The hearing in this matter was held on March 24, 2022, in Baton Rouge, Louisiana, before Panel A of the Ethics Adjudicatory Board.¹ Charles E. Reeves, Jr., appeared as counsel on behalf of the Louisiana Board of Ethics. Though properly noticed, Kenneth C. Payne did not appear for the hearing.²

¹ The panel consisted of administrative law judges Edwin L. Hightower (presiding), Sherlyn D. Shumpert, and Lance B. Vinson.

² On January 13, 2022, the *Conference Report and Order* setting this matter for hearing and Division of Administrative Law (DAL) correspondence notifying Kenneth C. Payne of the hearing date, time, and location were mailed by DAL's Administrative Hearings Clerk to his last known addresses, at 58320 Irion Street, Plaquemine, LA 70764-3504; and 23540 Railroad Avenue, Plaquemine, LA 70764. See BOE-11.

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

In connection with his successful 2020 candidacy for Chief of Police, City of Plaquemine, the Louisiana Board of Ethics (BOE), in its capacity as the Supervisory Committee on Campaign Finance Disclosure, assessed a civil penalty against Kenneth C. Payne (Respondent) for failing to file his 2020 supplemental campaign finance disclosure report by the eleventh day after it was due, which may subject him to an additional civil penalty not to exceed \$10,000 pursuant to La. R.S. 18:1505.4(A)(4)(b).

Counsel for the BOE offered eleven exhibits during the hearing, which were admitted into evidence.³ Counsel presented the case on behalf of the BOE, after which the record was closed, and the matter taken under advisement.

FINDINGS OF FACT

- 1) Respondent was a successful 2015 candidate for Chief of Police, City of Plaquemine, in

³ The exhibits were marked and admitted as BOE-1 through BOE-11.

the October 24, 2015, primary election,⁴ and the November 21, 2015, general election.⁵

- 2) Respondent was commissioned December 1, 2015; re-elected November 8, 2016, and commissioned January 1, 2017; and re-elected November 3, 2020, and commissioned January 1, 2021.⁶
- 3) On September 8, 2015, Respondent signed the *Notice of Candidacy* for the October 24, 2015, primary election, and acknowledged that he was subject to the provisions of the CFDA.⁷
- 4) On July 16, 2020, Respondent filed his supplemental campaign finance disclosure report covering the 2019 calendar year in connection with the October 24, 2015, primary election, and the November 21, 2015, general election, which reported a surplus in the amount of \$146.44.⁸
- 5) Respondent's supplemental campaign finance disclosure report covering the 2020 calendar year was due on February 15, 2021.⁹
- 6) 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, eleven days after the deadline; and the record indicates he has yet to file his supplemental campaign finance disclosure report for the relevant period.¹⁰
- 7) The BOE personally served Respondent with the *Request for Hearing* on December 16, 2021.¹¹

⁴ BOE-3, (Louisiana Secretary of State, Official Results), p. 4 of 6.

⁵ BOE-3, (Louisiana Secretary of State, Official Results) p. 5 of 6.

⁶ See BOE-4.

⁷ See BOE-2 (*State of Louisiana – Notice of Candidacy (Qualifying Form)*), p. 3 of 5.

⁸ BOE-7.

⁹ La. R.S. 18:1495.4(D).

¹⁰ BOE-9 (*Affidavit of Angela Newsom*, Director of Campaign Finance for the BOE).

¹¹ See BOE-5, p. 20 of 20.

CONCLUSIONS OF LAW

Respondent knowingly failed to file his supplemental campaign finance disclosure report for the 2020 calendar year by the eleventh day after it was due. For this failure, the BOE is authorized to impose an additional civil penalty against Respondent as allowed by La. R.S. 18:1505.4(A)(4)(b).

Adjudicatory hearings under La. R.S. 18:1505.4(A)(4)(a) and (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 qualified 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 elections that fall outside the time frame in the previous provision. In either case, the BOE must prove by clear and convincing evidence¹² that the candidate knowingly¹³ failed to file a required report within six days or eleven days, respectively, following the date it was due.

Respondent was a successful candidate for Chief of Police, City of Plaquemine, in the October 24, 2015, primary election, and the November 21, 2015, general election. Every candidate 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

If the final report of a candidate for an election . . . shows a deficit or a surplus, the candidate and his treasurer, if any, shall file supplemental reports with the supervisory committee of all information required in R.S. 18:1495.5. Such reports shall be filed annually no later than February fifteenth and shall be complete through the preceding December thirty-first. Such a supplemental report shall be filed each year until a report has been filed which shows no deficit and until any

¹² 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) (internal citations omitted).

¹³ La. R.S. 18:1505.4(A)(1).

¹⁴ La. R.S. 18:1495.4(A).

¹⁵ La. R.S. 18:1505.1(B).

surplus campaign funds have been disposed of in accordance with R.S. 18:1505.2(I).¹⁶

On July 16, 2020, Respondent filed his supplemental campaign finance disclosure report covering the 2019 calendar year in connection with the October 24, 2015, primary election, and the November 21, 2015, general election, which reported a surplus in the amount of \$146.44. As an elected official, Respondent is required to file annual supplemental campaign finance disclosure reports as long as there remains a reported surplus.¹⁷

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, eleven days after the deadline.

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, the BOE may impose an additional civil penalty not to exceed \$10,000 against Respondent for each report that he failed to timely file.¹⁸ Failure to file a required report within three days after the final date for filing shall be presumptive evidence of intent to not file the report.¹⁹ 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 file his supplemental campaign finance disclosure report covering the 2020 calendar year by February 26, 2021, the eleventh day after it was due. As a result, the BOE is authorized to impose an additional civil penalty of up to \$10,000 as allowed by La. R.S. 18:1505.4(A)(4)(b).

¹⁶ La. R.S. 18:1495.4(D)(1).

¹⁷ *Id.*

¹⁸ La. R.S. 18:1505.4(A)(4).

¹⁹ La. R.S. 18:1505.1(A).

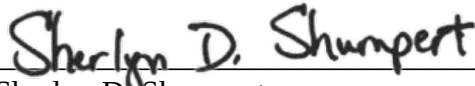
ORDER

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 Kenneth C. Payne for failing to file his supplemental campaign finance disclosure report covering the 2020 calendar year by the eleventh day after it was due.

Rendered and signed on April 29, 2022, in Baton Rouge, Louisiana.



Edwin L. Hightower
Presiding Administrative Law Judge
Ethics Adjudicatory Board, Panel A



Sherlyn D. Shumpert
Administrative Law Judge
Ethics Adjudicatory Board, Panel A



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

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Tuesday, May 03, 2022, I have sent a copy of
this decision/order to all parties of this matter.

Clerk of Court

Division of Administrative Law

REVIEW RIGHTS

This is the final decision of the Ethics Adjudicatory Board. You may seek rehearing or reconsideration of this decision, subject to the grounds for and time limitations provided in Louisiana Revised Statutes 49:959. A request for rehearing must be sent to one of the addresses listed 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

You have the right to appeal this decision to the Court of Appeal, First Circuit, in accordance with Louisiana Revised Statutes 42:1142. You must file a written motion for appeal with the Ethics Adjudicatory Board within thirty (30) days after the transmittal of notice of this decision.