

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

BOARD OF ETHICS

*** DOCKET NO. 2022-0906-ETHICS-B**

IN THE MATTER OF

REGINALD MERCHANT

*** AGENCY TRACKING NO. 5122-003**

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 Reginald Merchant knowingly failed to file his 10-P and 30-P campaign finance disclosure reports by the sixth day after they were due, and his 10-G campaign finance disclosure report by the eleventh day after it was due, in connection with his 2021 candidacy for the office of Mayor, City of New Orleans. The Louisiana Board of Ethics proved by clear and convincing evidence that Reginald Merchant knowingly failed to file the reports as alleged. The Louisiana Board of Ethics is authorized to impose an additional civil penalty not to exceed \$10,000 against Reginald Merchant for each report pursuant to Louisiana Revised Statutes (La. R.S.) 18:1505.4(A)(4)(a) and (b).

APPEARANCES

An adjudicatory hearing was conducted August 17, 2022, 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). Although duly noticed, Reginald Merchant (Respondent) did not appear for the hearing.²

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

² On June 8, 2022, a *Notice of Hearing* was mailed by the Administrative Hearings Clerk for the Division of Administrative Law to Respondent at: 2734 Milan Street, New Orleans, Louisiana, 70115-6220. This is the same address the BOE mailed Respondent the charges contained in its *Amended Request for Hearing*, its *Late Fee*

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 file three campaign finance disclosure reports by their deadlines in connection with his 2021 candidacy for the office of Mayor, City of New Orleans.

The BOE requested that the EAB conduct an adjudicatory hearing to determine whether Respondent knowingly failed to file his 10-P and 30-P campaign finance disclosure reports by the sixth day after they were due, and his 10-G campaign finance disclosure report by the eleventh day after it was due, which could subject him to an additional civil penalty not to exceed \$10,000 for each report, pursuant to La. R.S. 18:1505.4(A)(4)(a) and (b).³

At the hearing, the BOE offered its exhibits, numbered BOE-1 through BOE-14, which

Assessment Orders, and its discovery, including *Requests for Admissions*, all by certified mail, returned receipt requested, and the BOE received the certified mail receipts; see BOE exhibits 6, 7, 8, 9, 11, and 12. This is the same address Respondent listed as his mailing address on his *Notice of Candidacy (Qualifying Form)*; see BOE-2.

³ The BOE's original *Request for Hearing*, filed on February 3, 2022, alleged the failure of Respondent to file his 10-P and 30-P campaign finance disclosure reports. The BOE filed an *Amended Request for Hearing* on March 31, 2022, reiterating the allegations contained in its *Request for Hearing* and adding allegations that Respondent failed to file his 10-G campaign finance disclosure report.

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 failed to file his 10-P, 30-P, and 10-G campaign finance disclosure reports in violation of La. R.S. 18:1495.4(B)(4), La. R.S. 1495.4(B)(5), and La. R.S. 1495.4(B)(6) and would therefore be subject to additional civil penalties pursuant to La. R.S. 18:1505.4(A)(4)(a) and (b) for each late report.

FINDINGS OF FACT

Respondent qualified as a candidate for the office of Mayor, City of New Orleans, in a primary election held November 13, 2021.⁴ The office of Mayor, City of New Orleans is a “major” level public office.⁵ Respondent did not receive sufficient votes in the primary election to qualify for the general election held on December 11, 2021.⁶

Respondent was required to file a requisite campaign finance disclosure report that was due thirty days prior to the primary election of November 13, 2021, (also known as a 30-P report), due on October 14, 2021.⁷ Respondent was required to file a campaign finance disclosure report ten days prior to the primary election (also known as the 10-P report), due on November 3, 2021, in connection with the primary election of November 13, 2021.⁸ Respondent was required to file a campaign finance disclosure report ten days prior to the December 11, 2021, general election (also known as the 10-G report), due on December 1, 2021.⁹

The BOE is the Supervisory Committee on Campaign Finance Disclosure under the CFDA.¹⁰ Election candidates, when qualifying at their respective clerks of court office, are

⁴ See BOE-2; BOE-3. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he was a candidate for the office of Mayor, City of New Orleans; BOE-11.

⁵ See BOE-4, p. 2.

⁶ See BOE-3, pp. 1-2.

⁷ BOE-4.

⁸ *Id.*

⁹ *Id.*

¹⁰ La. R.S. 18:1483(19).

provided with a *Schedule of Reporting and Filing Dates for Candidates (Schedule)*.¹¹ The *Schedule* informed Respondent that the 30-P report was due on October 14, 2021, the 10-P report was due on November 3, 2021, and the 10-G report was due on December 1, 2021.¹² Candidates qualifying to run for office are notified that they are subject to the provisions of the CFDA.¹³

Respondent did not file the required 30-P report by the due date, October 14, 2021, or by the sixth day after the report was due.¹⁴ On January 4, 2022, the BOE issued a *Late Fee Assessment Order* and assessed a fine of \$2,500, pursuant to La. R.S. 18:1505.4(A)(2)(a)(i), because Respondent failed to file his 30-P report.¹⁵ The *Late Fee Assessment Order* was sent by certified mail, return receipt requested, to Respondent at his address at 2734 Milan Street, New Orleans, Louisiana, 70115-6220, and the BOE received the certified mail receipt.¹⁶ In the letter accompanying the *Late Fee Assessment Order*, Respondent was notified that he was required to file the 30-P campaign finance disclosure report and that he could be subject to an additional civil penalty of \$10,000, pursuant to La. R.S. 18:1505.4(A)(4), if he failed to file the report.¹⁷

Respondent did not file the required 10-P report by the due date, November 3, 2021, or by the sixth day after it was due.¹⁸ On January 4, 2022, BOE issued a *Late Fee Assessment Order* and assessed a fine of \$2,500, pursuant to La. R.S. 18:1505.4(A)(2)(a)(i), because Respondent failed to file his 10-P report.¹⁹ The *Late Fee Assessment Order* was sent by certified mail, return

¹¹ BOE-4.

¹² *Id.*

¹³ See BOE-2, p. 2. 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).

¹⁴ BOE-10. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he did not file a 30-P campaign finance disclosure report in connection with the November 13, 2021, primary election for the office of Mayor, City of New Orleans; BOE-11.

¹⁵ BOE-7. The assessment of the \$2,500 fine is not before the EAB.

¹⁶ *Id.* at pp. 3-4.

¹⁷ *Id.* at p. 1.

¹⁸ BOE-10. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he did not file a 10-P campaign finance disclosure report in connection with the November 13, 2021, primary election for the office of Mayor, City of New Orleans; BOE-11.

¹⁹ BOE-8. The assessment of the \$2,500 fine is not before the EAB.

receipt requested, to Respondent at his address at 2734 Milan Street, New Orleans, Louisiana, 70115-6220, and the BOE received the certified mail receipt.²⁰ Respondent was notified in the letter accompanying the order that he was required to file a 10-P campaign finance disclosure report and that he could be subject to an additional civil penalty of \$10,000, pursuant to La. R.S. 18:1505.4(A)(4), if he failed to file the report.²¹

Respondent did not file the required 10-G report by the due date, December 1, 2021, or by the eleventh day after it was due.²² On February 21, 2022, BOE issued a *Late Fee Assessment Order* and assessed a fine of \$2,500, pursuant to La. R.S. 18:1505.4(A)(2)(a)(i), because Respondent failed to file his 10-G report.²³ The *Late Fee Assessment Order* was sent by certified mail, return receipt requested, to Respondent at his address at 2734 Milan Street, New Orleans, Louisiana, 70115-6220, and the BOE received the certified mail receipt.²⁴ Respondent was notified in the letter accompanying the order that he was required to file a 10-G campaign finance disclosure report and that he could be subject to an additional civil penalty of \$10,000, pursuant to La. R.S. 18:1505.4(A)(4), if he failed to file the report.²⁵

On March 31, 2022, the BOE propounded to Respondent written discovery, including *Requests for Admissions*, to admit or deny that he failed to file his 10-P, 30-P, and 10-G campaign finance disclosure reports.²⁶ The written discovery was sent to Respondent by certified mail at the 2734 Milan Street, New Orleans, Louisiana, 70115-6220, address, and was delivered and signed

²⁰ *Id.* at p. 3.

²¹ *Id.* at p. 1.

²² BOE-10. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he did not file a 10-G campaign finance disclosure report in connection the November 13, 2021, primary election for the office of Mayor, City of New Orleans; BOE-11.

²³ BOE-9. The assessment of the \$2,500 fine is not before the EAB.

²⁴ *Id.* at p. 3.

²⁵ *Id.* at p. 1.

²⁶ BOE-11.

for.²⁷

On May 6, 2022, the BOE requested Respondent participate in a Rule 10.1 Discovery Conference because Respondent did not respond to the BOE's discovery requests.²⁸

As of August 2, 2022, Respondent had not filed his 10-P, 30-P, or 10-G campaign finance disclosure reports²⁹ and, as of August 17, 2022, had not filed responses to the BOE's *Requests for Admissions*.³⁰

CONCLUSIONS OF LAW

The BOE proved by clear and convincing evidence that Respondent knowingly failed to file his 10-P and 30-P campaign finance disclosure reports by the sixth day after they were due, and his 10-G campaign finance disclosure report by the eleventh day after it was due. The BOE is authorized to impose upon Respondent an additional civil penalty not to exceed \$10,000 for each report, as allowed by La. R.S. 18:1505.4(A)(4)(a) and (b).³¹

In hearings under the CFDA before the EAB, the BOE must prove by clear and convincing evidence that the candidate knowingly failed to timely file a required campaign finance disclosure report.³² Failure to timely submit required reports constitutes a violation of the CFDA.³³

The office of Mayor, City of New Orleans, is a "major" level public office.³⁴ Every

²⁷ See BOE-11, p. 8.

²⁸ BOE-12.

²⁹ Mr. Reeves represented to the EAB that none of the reports had been filed as of the date of the hearing.

³⁰ BOE-10; BOE-14. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he did not file his 30-P, 10-P, and 10-G campaign finance disclosure reports; BOE-11.

³¹ La. R.S. 18:1505.4(A)(4)(a) and (b) of the CFDA provides that, if after conducting an adjudicatory hearing, the EAB determines that a candidate knowingly failed to file the required 10-P and 30-P reports, or filed the 10-P and 30-P reports more than six days late, and knowingly failed to file the required 10-G campaign finance disclosure report, or filed the report more than eleven days late, then the BOE, functioning as the Supervisory Committee on Campaign Finance Disclosure, may impose upon the candidate additional civil penalties not to exceed \$10,000.00 for each report.

³² 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).

³³ La. R.S. 18:1505.1(B).

³⁴ La. R.S. 18:1483(11); La. R.S. 18:1484(1).

candidate for “major” level public office (or their campaign treasurer) is required to file certain campaign finance disclosure reports by the statutory deadlines.³⁵ Failure to timely submit required reports constitutes a violation of the CFDA.³⁶

As a candidate for Mayor, City of New Orleans, a “major” level public office,³⁷ Respondent was required to file a 30-P report by October 14, 2021, which was the 30th day prior to the primary election.³⁸ Respondent was also required to file a 10-P report by November 3, 2021, which was the tenth day prior to the primary election. Respondent was also required to file a 10-G report by December 1, 2021, which was the tenth day prior to the general election. As of August 2, 2022, Respondent had not filed his 30-P, 10-P, or 10-G campaign finance disclosure reports.³⁹

Any candidate for “major” office (or her campaign treasurer), who knowingly fails to timely file a required report may be assessed a civil penalty in the amount of \$100 per day, not to exceed \$2,500.⁴⁰ “Knowingly and willfully,” means conduct which could have been avoided through the exercise of due diligence.⁴¹

Respondent knew he was obligated to meet the CFDA filing requirements by the statutory deadlines and that additional civil penalties, not to exceed \$10,000 per report, could be imposed if he did not file the 30-P, 10-P, and 10-G campaign finance disclosure reports. The BOE proved by clear and convincing evidence that Respondent knowingly failed to file his 30-P, 10-P, and 10-G campaign finance disclosure reports by the statutory deadlines.

Additionally, Respondent’s failure to file his 30-P, 10-P, and 10-G campaign finance disclosure reports within three days after the final date for filing creates a rebuttable presumption

³⁵ La. R.S. 18:1495.4.

³⁶ La. R.S. 18:1505.1(B) and La. R.S. 18:1481(1).

³⁷ See BOE-2, p. 2.

³⁸ La. R.S. 18:1495.4(B)(2). BOE-4.

³⁹ BOE-10.

⁴⁰ La. R.S. 18:1505.4(A)(2)(a)(i). The assessment of the \$2,500 fine is not before the EAB.

⁴¹ La. R.S. 18:1505.5.

of intent to not file the reports.⁴² Nothing in evidence rebuts this statutory presumption.

If, after conducting an adjudicatory hearing, the EAB determines that Respondent knowingly failed to file the required campaign finance disclosure reports by the sixth and the eleventh day after the reports were due, respectively, 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.⁴³

The BOE proved by clear and convincing evidence that Respondent, a candidate for a “major” level office, knowingly violated the CFDA by failing to file his 30-P, 10-P, and 10-G campaign finance disclosure reports by the statutory deadlines and by the sixth day and eleventh day after the reports were due, respectively.

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)(a) and (b), not to exceed \$10,000 for each report.

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 Reginald Merchant for failing to file his 30-P campaign finance disclosure report, in connection with his 2021 candidacy for the office of Mayor, City of New Orleans, by the sixth day after it was due.

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 Reginald Merchant for failing to file his 10-P campaign finance disclosure report, in connection with his 2021 candidacy for the office of Mayor, City of New

⁴² La. R.S. 18:1505.1(A).

⁴³ La. R.S. 18:1505.4(A)(4)(a) and (b).

Orleans, by the sixth day after it was due.

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 Reginald Merchant for failing to file his 10-G campaign finance disclosure report, in connection with his 2021 candidacy for the office of Mayor, City of New Orleans, by the eleventh day after it was due.

Rendered and signed on September 6, 2022, in Baton Rouge, Louisiana.

Anthony J. Russo

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

Esther A. Redmann

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

Gregory J. McDonald

Gregory J. McDonald
Administrative Law Judge
Ethics Adjudicatory Board, Panel B

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Wednesday, September 07, 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 49:977.1. 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.