

**BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
SUITE 420, 2000 14TH STREET, NW
WASHINGTON, D.C. 20009
(202) 671-0550**

IN THE MATTER OF)	DATE: December 29, 2011
)	
Friends of Calvin Gurley)	
Calvin Gurley, Candidate)	DOCKET NO.OCF 11C-006
612 Underwood Street, NW)	
Washington, D.C. 20012)	

ORDER

Statement of the Case

This matter comes before the Office of Campaign Finance (OCF) pursuant to a referral from the Public Information and Records Management (PIRM) Division to the Office of the General Counsel, on September 30, 2011, which alleged that the Friends of Calvin Gurley Principal Campaign Committee (hereinafter Respondent Committee), failed to place notices required by the Campaign Finance Reform and Conflict of Interest Act (Act) on campaign literature, in violation of D.C. Official Code § 1-1102.10 (2001 Edition). It was further alleged that the Respondent Committee may have failed to report an in-kind contribution and may have violated the reporting requirements in violation of D.C. Official Code §§ 1-1131.01(f) and 1-1131.03 respectively.

By Notice of Hearing, Statement of Violations and Order of Appearance (hereinafter Notice of Hearing) dated October 28, 2011, OCF ordered Calvin Gurley (hereinafter Respondent candidate) to appear at a scheduled hearing on November 7, 2011, and show cause why the Respondent Committee should not be found in violation of the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974, as amended by D.C. Official Code §§ 1-1101.01 et seq., and fined accordingly.

Summary of Evidence

On November 7, 2011, Respondent candidate appeared pro se. OCF was represented by Sonya Lake, Public Affairs Specialist with the PIRM Division. Ms. Lake alleged that the Respondent Committee failed to place notices required by the Campaign Finance Reform and Conflict of Interest Act (Act) on campaign literature, in violation of D.C. Official Code § 1-1102.10 (2001 Edition). She also alleged that the committee may have failed to report an in-kind contribution in the form of recycled

posters from a prior campaign and may have violated OCF reporting requirements in violation of D.C. Official Code §§ 1-1131.01(f) and 1-1131.03 respectively.

As evidence, the respondent candidate was shown a campaign poster which stated "Calvin Gurley Ward 4 Council." However, the disclaimer indicated that it was paid for by "Friends of Calvin Gurley 2010." The Respondent candidate stated that he did not know that posters are considered campaign literature, and, consequently, he did not believe he was provided proper notice to prepare a defense against the above referenced allegations. He additionally stated that he had communicated with Wesley Williams, Public Affairs Manager, via e-mail on several occasions during the month of September 2011; and, prior to receiving the hearing notice from OCF, he had complied with all requests he received from Mr. Williams.

A review of the correspondence between Mr. Williams and the Respondent Candidate revealed that on September 16, 2011, Mr. Williams advised the Respondent Candidate via e-mail that his campaign signs needed to be removed from circulation because: (a) they did not contain the proper disclaimer information and (b) the Respondent Candidate had not filed the requisite candidate registration forms with OCF. The correspondence also indicated that on September 27, 2011, Mr. Williams sent the Respondent Candidate a subsequent e-mail advising him that failure to remove the signs immediately could result in the matter being referred to the Office of the General Counsel (OGC). On September 30, 2011, as a result of the Respondent Committee's continued non-compliance, Mr. Williams referred the matter to OGC.

D.C. Official Code § 1-1102.10 provides that "[a]ll newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, initiative, referendum, or recall petitions, and other printed matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office or for the support or defeat of any initiative, referendum, or recall measure, shall be identified by the words "paid for by" followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears."

In the instant matter, the Respondent Candidate was advised that his campaign posters were not in compliance with the applicable provisions of the statute on two occasions but, the committee failed to comply. In addition, on December 2, 2011, nearly one month after the hearing, a member of the OCF staff was given a handbill promoting the candidacy of the Respondent Candidate by a resident of Ward 4 who stated that he received the document at his home address. The document did not include the required disclaimer information. Therefore, the Respondent Committee remained non-compliant through December 2, 2011.

The Respondent Candidate denied failing to report an in-kind contribution in the form of recycled posters from his 2010 campaign for Chairman of the Council. He

stated that the mistake in the disclaimer occurred because he engaged the same printer to produce the signs for his 2012 campaign that he used in 2010 and the printer inadvertently used the 2010 disclaimer information. The Respondent candidate further stated that because he did not recycle posters from a prior campaign, he did not violate the reporting requirements as alleged.

Findings of Fact

Having reviewed the allegations and the record herein, I find that:

1. The Respondent committee is the Principal Campaign Committee for a candidate for District of Columbia Councilmember from Ward 4 in the 2012 election cycle.
2. The Respondent Committee is required to include the requisite disclaimers on all campaign literature.
3. The Respondent Committee failed to include the required disclaimers on at least two pieces of campaign literature that were provided to the OCF.
4. The Respondent Committee's failure to comply with the required disclaimer provisions violates D.C. Official Code §§ 1-1102.10.
5. Respondent Candidate provided a credible explanation when he denied that the Respondent committee failed to report an in-kind contribution or failed to comply with reporting requirements.

Conclusions of Law

Based upon the record provided by the Office of Campaign Finance, I therefore conclude that:

1. The Respondent Committee violated the provisions of D.C. Official Code § 1-1102.10.
2. The Respondent Committee did not violate the provisions of D.C. Official Code § 1-1131.01(f)
3. The Respondent did not violate D.C. Official Code §§ 1-1131.03
4. The penalty established at D.C. Official Code §1-1103.05(b)(3), 3DCMR §3711.2(n) for failing to place required notices on campaign literature is a fine of \$500.00 for each violation.

5. In accordance with D.C. Official Code §1-1103.05(b)(3), the respondent committee may be fined a maximum of \$1,000.00 for the 2 violations cited above.
6. For good cause shown pursuant to 3DCMR §3711.6, the Director of the Office of Campaign Finance (Director) may modify, rescind, dismiss or suspend any fine.

The Respondent Committee's failure to comply with the disclaimer requirements after being advised to do so on two occasions, and continued non-compliance after the scheduled hearing on November 7, 2011, eliminates any basis for leniency or favorable consideration.

Recommendation

In view of the foregoing and information included in the record, I hereby recommend that the Director impose a fine of \$1,000.00 against the Respondent Committee in this matter.

Date

William O. Sanford
General Counsel

ORDER OF THE DIRECTOR

WHEREFORE, IT IS HEREBY ORDERED that the Respondent Committee be fined \$1,000.00 in this matter.

Date

Cecily Collier-Montgomery
Director

This Order may be appealed to the Board of Elections and Ethics within 15 days from the date of issuance.

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order on Calvin Gurley via first class postage pre-paid mail and certified mail on December 29, 2011.
