

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

IN THE MATTER OF

The Honorable Muriel Bowser
Councilmember for Ward 4
515 Oglethorpe Street, NE
Washington, DC 20011

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DATE: July 10, 2012

DOCKET NO.: OCF PI 2012-103

ORDER

Statement of the Case

This matter comes before the Office of Campaign Finance (OCF) upon a complaint filed by Keith Jarrell with the Board of Elections on April 2, 2012. The complaint alleged that Councilmember Muriel Bowser, a candidate for re-election for Councilmember for Ward 4 (hereinafter respondent candidate), had violated the provisions of 3 DCMR § 3300, by using her government-issued cell phone for personal gain. Specifically, Mr. Jarrell alleged that the respondent candidate used her cell phone to make and receive telephone calls related to her re-election campaign.

Pursuant to the complaint, OCF commenced a Preliminary Investigation and advised Councilmember Bowser of the allegations.

Summary of Evidence

As evidence of the infraction, Mr. Jarrell provided copies of the respondent candidate's cell phone records which he had obtained from the District of Columbia Council's Freedom of Information Act (FOIA) officer. He additionally alleged that the records reflected numerous contacts between the respondent candidate and her campaign headquarters during regular business hours.

On May 22, 2012, OCF received a written response from respondent candidate through counsel, Elizabeth F. Getman and Joseph E. Sandler of Sandler Reiff, Young & Lamb, P.C.

Respondent candidate stated that the use of her government-issued cell phone for campaign related matters was de minimis and did not result in any incremental cost to the District. Respondent candidate additionally argued that the Council's Administrative Procedure Manual expressly permits the use of official resources to coordinate scheduling and other matters between Councilmembers and their campaign staff in accordance with Section 1.6.3. of the Manual. Respondent candidate further asserted that the Council's FOIA officer had only identified five brief telephone calls between Councilmember Bowser's government-issued cell phone and her campaign staff four of which were one or two minutes in length and one call for a three minute period.

Respondent candidate also stated that her best recollection of the telephone calls in question was that they were made while en route between official and campaign functions to advise of possible late arrivals or to coordinate between Council and Campaign schedules. Respondent candidate finally stated that the complainant failed to provide specific facts that the Councilmember's brief use of the cell phone constituted an advantage or an effort to realize personal gain and that the complaint should be dismissed for failing to establish a violation of District of Columbia law.

OCF requested and received detailed transcripts of the records for the respondent candidate's government- issued cell phone from the Secretary to the District of Columbia Council during the period in question.

OCF additionally verified through the General Counsel for the District of Columbia that the Council's Administrative Procedures Manual provides for the coordination of scheduling to avoid conflicts between Council and campaign activities.

D.C. Official Code § 1-1163.36 (a) (2001 Edition) states in pertinent part that “[n]o resources of the District of Columbia government, including the expenditure of funds, the personal services of employees during their hours of work, and nonpersonal services, including supplies, materials, equipment, office space, facilities, and telephones and other utilities, shall be used to support or oppose any candidate for elected office, whether partisan or nonpartisan...”

Findings of Fact

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

1. The respondent candidate's cell phone records reflected a total of five telephone calls out of 349 calls between her government-issued cell phone and a telephone number the complainant identified as belonging to her re-election campaign during the period in question.
2. The total amount of time expended on the telephone calls between the respondent candidate's government-issued cell phone and her re-election campaign was nine minutes out of 1,521 minutes of usage during the period in question.
3. Section 1.3.2 of the District of Columbia Council's Administrative Procedures Manual provides that “personal use of telephones should be limited to absolutely necessary calls”.
4. Section 1.6.3(e) of the District of Columbia Council's Administrative Procedures Manual provides in pertinent part that “scheduling assistance and information between Council and campaign staffs may be necessary to ensure that no conflict occurs between the Members campaign schedule and the Council schedule.”
5. The respondent candidate's brief use of her government-issued cell phone to coordinate between Council and Campaign schedule was clearly de minimis and does not constitute an improper use of government resources.

Conclusions of Law

Based upon the record provided by OCF, I therefore conclude:

1. The information provided by the complainant did not sufficiently establish that the respondent candidate violated D.C. Official Code § 1-1163.36 (a) or 3 DCMR § 3300.
2. The response provided by the respondent candidate effectively refuted the allegations in the complaint.
3. Insufficient evidence exists in this matter to support a violation of the statute or applicable regulation.

Recommendation

In view of the foregoing and information included in the record, I hereby recommend that the Director dismiss this matter pursuant to 3 DCMR § 3705.1(a) because insufficient evidence exists to support a violation.

Date

/s/
William O. Sanford
Hearing Officer

WHEREFORE, IT IS HEREBY ORDERED that this matter is hereby DISMISSED.

Date

/s/
Cecily Collier-Montgomery
Director

Pursuant to 3DCMR § 3504.1, this Order may be appealed to the Board of Elections by an adversely affected party within 15 days from the date of issuance.

SERVICE OF ORDER

This is to certify that a true and correct copy of the foregoing Order was served via e-mail, and postage pre-paid first class mail on this the 10th day of July 2012, to:

Councilmember Muriel Bowser
515 Oglethorpe, NE
Washington, DC 20011

Keith Jarrell
5416 13th Street, NW
Washington, DC 20011

NOTICE

Pursuant to 3DCMR §3711.5 (March 2010), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000-14th Street, N.W., Washington, D.C. 20009.