

**BEFORE THE OFFICE OF CAMPAIGN FINANCE  
DISTRICT OF COLUMBIA BOARD OF ELECTIONS  
FRANK D. REEVES MUNICIPAL BUILDING  
2000 14<sup>th</sup> STREET, N.W., SUITE 433  
WASHINGTON, D.C. 20009  
Telephone: (202) 671-0547  
Fax: (202) 671-0658**

**IN THE MATTER OF**

The Honorable C. Dianne Barnes  
Chair, ANC 5E  
41 Adams Street, NW  
Washington, DC 20001

)  
) Date: October 3, 2013  
)  
) Docket No.: OCF-2013-015  
) (Revised)  
)

**ORDER**

**Statement of Case**

This matter came before the Office of Campaign Finance (OCF), Office of the General Counsel, following a complaint filed by Randolph Drexler, which alleged that ANC 5E used its District of Columbia Government-sponsored website to post partisan political endorsements of candidates for Ward 5 Democrats in violation of D.C. Official Code § 1-1163.36(a) (Supp. 2013) and 3 DCMR § 3301.1(a) (August 2013).

By Notice of Hearing, Statement of Violations and Order of Appearance dated September 20, 2013, OCF ordered C. Dianne Barnes, Chair ANC 5E (“Respondent”), to appear at a scheduled hearing on September 30, 2013 and show cause why ANC 5E should not be found in violation of D.C. Official Code § 1-1163.36(a) and 3 DCMR § 3301.1(a) and fined accordingly.

**Summary of Evidence**

On September 30, 2013, the Respondent ANC Chair, Commissioner C. Dianne Barnes, appeared at the scheduled hearing, accompanied by Commissioner Debbie Smith-Steiner, ANC 5E01. Laura McQueen Whitaker appeared on behalf of OCF. Ms. Whitaker testified that it was alleged that ANC 5E posted partisan political endorsements on its D.C. Government-sponsored website in violation of D.C. Official Code § 1-1163.36(a) and 3 DCMR § 3301.1(a).

Commissioner Barnes testified that ANC 5E normally does not post the type of information it is alleged to have posted on its website. She stated categorically that ANC 5E’s Commission of the Whole (COW) did not request, endorse or authorize the posting, and that it was removed from the website within an hour of the COW’s notification of its existence. Commissioner Barnes presented related email threads to corroborate her testimony.

Commissioner Debbie Smith-Steiner testified that at ANC 5E's monthly Commission of the Whole meeting in June 2013, Michael Clark, President of the Edgewood Civic Association, informed the Commission of the endorsement of candidates for Ward 5 Democrats appearing on ANC 5E's website. According to Commissioner Smith-Steiner, she requested that Michael Henderson, ANC 5E's webmaster, post an announcement concerning a major ANC meeting that she was sponsoring on the website, not the announcement of partisan political endorsements, which she knew to be prohibited. She continued that the webmaster should not have placed the political endorsement on the ANC's website because of his longstanding knowledge of, and involvement with, ANC matters. Further, in her view, it was the webmaster's arbitrary decision to post the prohibited material on the website. Commissioner Smith-Steiner offered into evidence email threads that she believed would support her oral testimony to include her assertion that she did not authorize Mr. Henderson to post the prohibited material on the ANC website. She further stated that she proposed the removal of the webmaster to the Commission, but the Commission's support for such an action was not forthcoming. Commissioner Smith-Steiner averred that she only authorized the webmaster to place an announcement concerning an important, upcoming meeting on the Edgewood Civic Association's listserv.

A review of the email threads provided by Commissioners Barnes and Smith-Steiner is not dispositive of the individual responsible for authorizing the posting of the partisan political material on ANC 5E's website. Notwithstanding, it is clear that the Commission recognizes the prohibition against this activity by Advisory Neighborhood Commissions, and that it took immediate action to cure the infraction. Further, the record reflects that, subsequent to this incident, the Commission established and adopted procedures relative to the posting of information on its official website to prevent its misuse or abuse in the future.

### **Findings of Fact**

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

1. Respondent ANC posted partisan political endorsements of candidates for Ward 5 Democrat officers on its District Government-sponsored website.
2. By Notice of Hearing, Statement of Violations and Order of Appearance dated September 20, 2013, OCF ordered Respondent ANC to appear for a scheduled hearing on September 30, 2013.
3. Respondent ANC, through its representatives, appeared at the scheduled hearing.

**Findings of Fact (cont'd)**

4. Respondent ANC provided a credible explanation for the posting of partisan political material on its District Government-sponsored website as due to a miscommunication resulting in the prohibited use of the website.
5. Respondent ANC removed the inappropriate material from its website after notification of its existence.
6. Respondent ANC is currently in compliance with the statute and applicable regulation(s).

**Conclusions of Law**

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

1. Respondent violated D.C. Official Code § 1-1163.36(a) and 3 DCMR § 3301.1(a).
2. The penalty established at 3 DCMR § 3711.2(w) for using District Government resources for campaign-related activities is \$2,000.00.
3. In accordance with D.C. Official Code § 1-1163.35(a)(3), the Respondent may be fined a maximum of \$2,000.00 for the foregoing violation.
4. For good cause shown pursuant to 3 DCMR § 3711.7, the Director of Campaign Finance (Director) may modify, rescind, dismiss or suspend any fine.
5. Respondent's explanation for the posting of partisan political material on its government-sponsored website, in that a miscommunication occurred that was immediately cured, constitutes good cause for suspension of the fine.

**Recommendation**

In view of the foregoing and information included in the record, **I HEREBY RECOMMEND** that the Director suspend the fine in this matter. I further recommend that the Director admonish the Respondent for failing to exercise sufficient control over its website that would have prevented the misuse of a government resource.

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**Date**

/s/

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**Jean Scott Diggs**  
**Senior Hearing Officer**

**Concurrence**

In view of the foregoing, **I HEREBY CONCUR** with the Recommendation.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
*/s/*  
**William O. SanFord**  
**General Counsel**

**ORDER OF THE DIRECTOR**

**IT IS ORDERED** that the fine in this matter is hereby suspended; and that the Respondent **IS HEREBY ADMONISHED** to exercise sufficient control over its website to prevent its misuse, as well as any other government resource, in the future.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
*/s/*  
**Cecily E. Collier-Montgomery**  
**Director**

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that a true copy of the foregoing **ORDER** was served on The Honorable C. Dianne Barnes, Chair, ANC 5E via regular mail at 41 Adams Street, NW, Washington, DC 20001 and by electronic mail at [5E09@anc.dc.gov](mailto:5E09@anc.dc.gov) on this 3rd day of October, 2013.

cc: rdrexler78@gmail.com

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*/s/*

**Notice**

Any party adversely affected by an Order of the Director may: (1) file a Motion for Reconsideration (Motion) with the OCF within five (5) days after receipt of an Order, provided that, relevant evidence was omitted from consideration at the hearing (3 DCMR § 3709.13); or (2) obtain review of the Order by filing a request for a **hearing de novo** with the Board of Elections within fifteen (15) days from the date of issuance of an Order. Any fine imposed by the Director, pursuant to § 3711.2 shall become effective on the sixteenth (16<sup>th</sup>) day following the issuance of a decision or Order; provided that, the Respondent does not request a **hearing de novo** with the Board of Elections. Fines imposed shall be paid within ten (10) days of the effective date of the issued Order of the Director. Make payment by check or money order, payable to: District of Columbia Treasurer. Send payment to the *Office of Campaign Finance, Frank D. Reeves Municipal Building, 2000 14<sup>th</sup> Street NW, Suite 433, Washington, DC 20009*.