

**BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000-14th STREET, N.W., SUITE 433
WASHINGTON, D.C. 20009
(202) 671-0550**

IN THE MATTER OF

Kimberly Berry
Trial Attorney
Office of the Attorney General

) Date: September 23, 2011
)
) Docket No.: 11F-024
)
)

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF), Office of the General Counsel following a determination by its Public Information and Records Management Division that pursuant to D.C. Official Code §1-1106.02 (2001 Edition), KIMBERLY BERRY, Trial Attorney, Office of the Attorney General, failed to timely file a Financial Disclosure Statement (hereinafter FDS) for calendar year 2010 on or before May 15, 2011 as required by D.C. Official Code §1-1106.02, and by the extended filing date sanctioned by OCF on June 10, 2011.

By Notice of Hearing, Statement of Violations and Order of Appearance dated August 1, 2011, OCF ordered KIMBERLY BERRY to appear at a scheduled hearing on August 12, 2011 and show cause why she 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 August 12, 2011, KIMBERLY BERRY (hereinafter Respondent), appeared pro se to answer to the above-cited allegation(s). Latia Gaskins, Clerical Assistant appeared on behalf of OCF. Ms. Gaskins testified that the Respondent failed to timely file the required FDS for calendar year 2010 on or before May 15, 2011 and failed to file by the extended filing date June 10, 2011; and therefore, Respondent is in violation of the D.C. Official Code §1-1106.02 (2001 Edition).

Respondent testified that she separated from DC government May 14, 2011 and did not receive an exit interview from her agency administrator nor was she informed that she had a continued duty to file an FDS with OCF following her separation. Respondent acknowledges receipt of the OCF Notices mailed to her home address; however, Respondent explains that there was a delay in her retrieving the Notices in a timely manner because she was out of town managing personal family matters. However, upon being advised of her delinquent filing status, Respondent took action to correct her noncompliance and electronically filed the required FDS for calendar year 2010 before the scheduled hearing on August 11, 2011

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Respondent has been a timely FDS filer since 2009 and is currently in compliance with the statute.

Findings of Fact

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

1. Respondent served as Trial Attorney within Office of the Attorney General.
2. Respondent failed to file a FDS with OCF for calendar year 2010 on or before the extended date June 10, 2011.
3. On August 11, 2011, Respondent filed the required FDS electronically
4. Respondent filed the required FDS forty-three (43) days past the extended due date, June 10, 2011.
5. Respondent provided credible testimony for the untimely filing in that Respondent separated from DC government May 14, 2011 and did not receive and exit interview from her agency administrator nor was she informed that she had a continued duty to file an FDS with OCF following her separation. Respondent acknowledges receipt of the OCF Notices mailed to her home address; however, Respondent explains that there was a delay in her retrieving the Notices in a timely manner because she was out of town managing personal family matters. However, upon being advised of her delinquent filing status, Respondent took action and electronically filed the required FDS for calendar year 2010 before the scheduled hearing on August 1, 2011
6. Respondent does not have a history of FDS filing delinquencies and is currently in compliance with the statute.

Conclusions of Law

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

1. Respondent violated D.C. Official Code §1-1106.02.
2. The penalty established at D.C. Official Code §1-1103.05(b)(3), and 3 DCMR §§3711.2(aa), 3711.2 and 3711.4 (March 2007, as amended) for failure to timely file a Financial Disclosure Statement required by D.C. Official Code §1-1106.02 is a fine of \$50.00 per day for each business day subsequent to the due date.
3. In accordance with D.C. Official Code §1-1103.05(b)(3), the Respondent may be fined a maximum of \$2,000.00 for failing to timely file a Financial Disclosure Statement.

4. For good cause shown pursuant to 3 DCMR §3711.6, the Director of Campaign Finance (Director) may modify, rescind, dismiss or suspend any fine.
5. Respondent provided a credible explanation of the untimely filing in that Respondent separated from DC government May 14, 2011; Respondent was not advised by the agency administrator to file an FDS with OCF; Respondent was unaware of her delinquent filing status because she was out of town when OCF mailed Notice to her home address; however upon being advised, Respondent electronically filed the required FDS on August 11, 2011.

Recommendation

In view of the foregoing and information included in the record, a maximum fine of \$2,000.00 is appropriate for Respondent's failure to timely file a Financial Disclosure Statement; however, **I HEREBY RECOMMEND** that the Director **SUSPEND** the imposition of this fine in this matter.

Date

Kalvanetta K. Peete
Hearing Officer

Concurrence

In view of the foregoing, I hereby concur with the Recommendation.

Date

William O. SanFord
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that the fine is hereby suspended in this matter.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

I HEREBY CERTIFY that a copy of the foregoing has been furnished to KIMBERLY BERRY this _____ day of September, 2011 by US Mail and/or Certified Mail.

NOTICE

Pursuant to 3DCMR §3711.5, 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 433, 2000 Fourteenth Street, N.W., Washington, D.C. 20009.