

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

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Date: November 19, 2013

Treasurer Laura Reyes

Docket No: 13P-041

AFSCME

1625 L Street, NW

Washington, D.C. 20036

ORDER

Statement of Case

This matter came before the Office of Campaign Finance (“OCF”) Office of the General Counsel following a determination by its Public Information and Records Management Division (“PIRM”) that pursuant to the District of Columbia Campaign Finance Act of 2011, D.C. Official Code § 1-1163.09(b) (2012) and District of Columbia Municipal Regulations, 3 DCMR § 3017.2 (August 2013), Ms. Laura Reyes, Treasurer for the AFSCME political action committee failed to timely file the October 10th, 2013 Report of Receipts and Expenditures (“R&E report”), which was due on October 10, 2013.

By Notice of Hearing, Statement of Violations and Order of Appearance dated October 22, 2013, OCF ordered Ms. Laura Reyes (“Respondent”), to appear at a scheduled hearing on November 6, 2013, and show cause why she should not be found in violation of D.C. Official Code § 1-1163.09(b) and 3 DCMR § 3017.2 and fined accordingly.

Summary of Evidence

On November 5, 2013, Respondent submitted a duly sworn affidavit with OCF explaining her failure to timely file the October 10th R&E report. Respondent’s affidavit raises several issues that will be addressed in this Order. The affidavit states that Respondent has served as Treasurer of the American Federation of State, County and Municipal Employees International Union, AFL-CIO (“AFSCME”) since June of 2012. AFSCME’s Associate General Counsel provided a cover letter for Respondent’s affidavit which stated in pertinent part that “Neither Ms. Reyes nor AFSCME counsel are available to attend the November 6, 2013 hearing for which notice was only received late in the day on October 22, 2013.” However, 3 DCMR § 3709.3 provides that “*notice of an informal hearing shall be issued in writing at least ten (10) days prior to the hearing; provided that the ten (10) day period may be waived for good cause shown as long as the party is given a sufficient opportunity to prepare for the hearing.*” Thus, pursuant to 3 DCMR § 3709.3 Respondent was given adequate notice of the November 6, 2013 hearing.

Further, Respondent's affidavit contends that she was not required to file a Notification of Non-Support for calendar year 2014 on or before October 10, 2013. Respondent's affidavit states that counsel for AFSCME along with AFSCME staff appeared at an informal hearing held by OCF on April 3, 2013. The April 3, 2013 informal hearing pertained to the committee's untimely filing of the March 10th R&E report. Respondent's affidavit states that during the April 3, 2013 hearing, OCF staff "indicated" to counsel for AFSCME that the Committee would be granted an extension to file a Notification of Non-Support and that this submission would relieve the committee of their duty to file subsequent Reports for the remainder of the 2013 calendar year. OCF subsequently received AFSCME's Notification of Non-Support on April 9, 2013.

Additionally, in support of her contention that the Committee's Notification of Non-Support was not due on October 10, 2013, Respondent's affidavit cited language contained in OCF's Notification of Non-Support Form (OCF Form 12). In pertinent part, Respondent's affidavit cited the following language, "*I understand that a Notification of Non-Support is to be filed each year along with the January 31st Report of Receipts and Expenditures. Filing this Notification of Non-Support waives the filing of all other reports except for the January 31st and July 31st reports.*" Respondent goes on to cite language from 3 DCMR § 3017.2(c) reiterating the position that Respondent had until January 31, 2014 to file a Notification of Non-Support for the calendar year 2014.

In the present case, Respondent has correctly cited all of the relevant regulations. However, Respondent's affidavit fails to address the fact that on September 12, 2013, OCF sent a letter entitled *Reminder to File Your October 10th Report, 2013* to AFSCME at 1625 L Street, N.W., Washington, D.C. 20036. The reminder letter was sent to each Treasurer of a Political Action Committee (PAC), advising them that they needed to file their R&E report by October 10th if they planned on participating in the upcoming elections for the 2014 calendar year. The reminder letter also advised Treasurers that if their PAC did not intend on participating in elections for the 2014 calendar year, they must file a Notification of Non-Support with OCF by October 10, 2013. The exact language included in the September 12, 2013 reminder letter read as follows;

Please be advised that if the PAC will not be participating in the 2014 election, it must file a Notification of Non-Support (OCF Form 12) in lieu of OCF Form 16 by October 10, 2013. The filing of this form absolves the PAC from filing the subsequent reports required this year and next year with the exception of the January 31st and July 31st Reports. For your convenience, we have included the form in this letter.

Counsel for Respondent later confirmed that she did receive the OCF reminder notice, dated September 12, 2013, regarding elections for the 2014 calendar year. Counsel confirmed that the committee received the reminder notice well before the October 10th deadline. Despite knowledge of the reminder notice, Counsel for the Respondent explained that the committee elected not to file an R&E report or a Notification of Non-Support with OCF by the October 10, 2013 deadline. Subsequently, on October 22, 2013, after having received a hearing notice from OCF, Respondent filed the October 10th R&E report. Respondent is currently in compliance with applicable regulation(s).

Findings of Fact

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

1. Respondent is the Treasurer for the AFSCME political action committee.
2. Respondent was required to file either a Notification of Non-Support or a Report of Receipts and Expenditures with OCF by October 10, 2013.
3. Respondent failed to file either a Notification of Non-Support or a Report of Receipts and Expenditures by October 10, 2013.
4. By Notice of Hearing, Statement of Violations and Order of Appearance dated October 22, 2013, OCF ordered Respondent to appear for a scheduled hearing on November 6, 2013.
5. On November 5, 2013, Respondent submitted a sworn affidavit with OCF.
6. Respondent provided a reasonable explanation for the failure to timely file a Notification of Non-Support in that the committee had filed a Notification of Non-Support on April 9, 2013 and believed that doing so absolved them of their obligation to file any other R&E report or Notification of Non-Support until January of 2014. Although Respondent received notification regarding the change in filing dates, it is understandable that there was a misunderstanding as to the proper filing date. Hence, Respondent's explanation is reasonable because the date in which to file a Notification of Non-Support did change from January 31, 2014 to October 10, 2013.
7. On October 22, 2013, after having received a hearing notice from OCF, Respondent filed the October 10th R&E report.
8. Respondent is currently in compliance with applicable regulation(s).

Conclusion of Law

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

1. Respondent violated D.C. Official Code § 1-1163.09(b) and 3 DCMR § 3017.2.
2. The penalty established by 3 DCMR § 3711.2(f) for failure to file a Report of Receipts and Expenditures with OCF, as required by D.C. Official Code § 1-1163.09(b), is a fine of \$50.00 per day for each business day subsequent to the due date.
3. Pursuant to 3 DCMR § 3711.2(f) the AFSCME political action committee may be fined a maximum of \$400.00.
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 provided a reasonable explanation for the failure to timely file a Notification of Non-Support in that the committee had filed a Notification of Non-Support on April 9, 2013 and believed that doing so absolved their obligation to file any other reports or Notifications of Non-Support until January of 2014. This explanation is reasonable because the date in which to file a Notification of Non-Support did change from January 31, 2014 to October 10, 2013.
6. Respondent's explanation for failure to timely file the required R&E report or Notice of Non-Support constitutes good cause for suspension of a fine.

Recommendation

In view of the foregoing and information included in the record, **I HEREBY RECOMMEND** that the Director suspend a fine in this matter.

November 19, 2013

Date

/s

Austin Franklin
Hearing Examiner

Concurrence

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

November 19, 2013

Date

/s

William O. SanFord
General Counsel

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ORDER OF THE DIRECTOR

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

November 19, 2013

Date

/s

Cecily E. Collier-Montgomery
Director

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a true copy of the **ORDER** has been served on Treasurer Laura Reyes, via regular mail at 1625 L Street, NW, Washington, DC 20036, and by electronic mail at chui@afscme.org, on this 19th day of November, 2013.

/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 (16th) 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 14th Street NW, Suite 433, Washington, DC 20009*.