

II. FINDINGS OF FACTS

1.

In 2018, Mr. Cheek was a resident of Cobb County, Georgia, and ran for District 3 Commissioner. Under the schedule for filing campaign contribution disclosure reports (“Reports” or “CCDRs”) set forth in O.C.G.A. § 21-5-34(c)(2), Mr. Cheek was required to file Reports on each of the following dates: January 31, 2018; March 31, 2018;¹ June 30, 2018, September 30, 2018; October 25, 2018; and December 31, 2018.

2.

Mr. Cheek filed a declaration of intention to accept contributions with the Cobb County Clerk during the 2018 election cycle and filed campaign contribution distribution disclosure reports on or about January 31, 2018 and March 31, 2018.² Thereafter, Mr. Cheek lost his party’s primary in May 2018, and then failed to file required CCDRs on June 30, 2018; September 30, 2018; October 25, 2018; and December 31, 2018.

3.

On July 25, 2018, the Commission notified Mr. Cheek by certified mail that it had received a third-party complaint, which alleged that he had failed to file the June 30, 2018 CCDR. The following year, on or about October 24, 2019, the Commission issued a Notice of Preliminary Hearing, notifying Mr. Cheek that the Commission would consider the third-party complaint at a meeting on December 4, 2019. Despite notice of the preliminary hearing, Mr. Cheek did not appear, and the Commission found reasonable grounds to believe that Mr. Cheek had violated the Georgia Government Transparency and Campaign Finance Act (the “Act”). On

¹ In 2018, the Act required a report to be filed on March 31 during an election year. That Report deadline has since changed to April 30, 2018. Id.

² On the March 31, 2018 report he reported a balance of funds of approximately \$4,000 to \$5,000.

February 3, 2020, the Chair of the Commission signed an Order after Preliminary Hearing, which was served on Mr. Cheek on or about February 6, 2020. In the order, the Commission found that Mr. Cheek had failed to file four Reports and referred the matter to the Georgia Department of Law for further prosecution.

4.

OSAH received a Statement of Matters Asserted from the Commission relating to Mr. Cheek on September 14, 2023. On September 22, 2023, the Court issued a Notice of Hearing and Pre-Hearing Order, setting the matter for an administrative hearing on October 25, 2023. Despite proper notice of the administrative hearing, Mr. Cheek did not appear. The Commission presented testimony from Steve Knittel, a Senior Staff Attorney with the Commission, and tendered exhibits, which were admitted into the record. Mr. Cheek has never responded to any of the Commission's notices, did not file any pleadings with this Court, and did not appear for the administrative hearing. At the administrative hearing, the Commission argued that the Court should consider the following factors in determining a proper penalty for Mr. Cheek's failure to file required Reports: (1) Mr. Cheek's failure to cooperate with the Commission's investigation, (2) his knowledge of the reporting requirements, as evidenced by his timely-filed reports in January and March 2018, (3) the fact that he accepted contributions from the public, as opposed to funding his campaign with personal funds, and (4) that the complaint arose from a member of the public, not through a routine audit by the Commission. The Commission did not refer the Court to any Board orders to consider as precedent in determining the appropriate penalty but cited to an OSAH decision in the case of *Georgia Government Transparency and Campaign Finance Commission v. Mayfield*, Docket No. 2214469-OSHA-GGTACF-CAN-48-Boggs, in which OSAH imposed the maximum civil penalties for failure to file multiple CCDRs.

III. CONCLUSIONS OF LAW

1.

The Commission bears the burden of proof. OSAH Rule 616-1-2-.07(1). The standard of proof is preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2.

The Act was adopted by the General Assembly to “protect the integrity of the democratic process and to ensure fair elections...” O.C.G.A. § 21-5-2. To accomplish this goal, the Act establishes a requirement for public disclosure of campaign contributions and expenditures for candidates seeking publicly-elected office, including county offices. Id. See also O.C.G.A. § 21-5-3(22)(F). Specifically, the Act requires candidates for county office, or such candidate’s campaign committee, to file CCDRs with the municipal clerk in their respective municipality or with the county election superintendent. O.C.G.A. § 21-5-34(a)(4). During the 2018 election year, these Reports were due on March 31, June 30, September 30, October 25, and December 31. See O.C.G.A. § 21-5-34(c)(2) (2018).

3.

The Commission proved by a preponderance of the evidence that Mr. Cheek violated the requirements of the Act by failing to file required CCDRs on June 30, 2018; September 30, 2018; October 25, 2018; and December 31, 2018.

4.

Under the Act, the Commission has the authority to issue orders directing compliance with the Act or prohibiting conduct that violates the Act. See O.C.G.A. § 21-5-6(b)(14)(C)(i). The Commission may also assess a civil penalty not to exceed \$1,000 per violation for a first occurrence, up to \$10,000 for a second occurrence of a violation of the same provision, and up to

\$25,000 for any third or subsequent violation of the same provision. The Commission has the discretion under the Act to waive or suspend a penalty if the penalty would impose an undue hardship on the person required to pay the penalty or when there were no items required to be reported in a missing or late CCDR. Id.

5.

The Commission has not adopted a formal schedule of penalties for violation of the Act. Compare 11 CF.R. §§ 111.30, 111.34.³ The only guidance in the Act on this question is the requirement that the Commission post all of its orders on the Commission’s website and the provision that “such orders shall serve as precedent for all future orders and opinions of the commission.” O.C.G.A. § 21-5-6(14)(C)(v). Although the Commission did not tender any Board orders as precedent, it did identify certain factors the Court should consider in determining the appropriate amount of a civil penalty and cited to the 2021 *Mayfield* decision as persuasive authority in support of imposing the maximum civil penalty.

6.

Under *Reheis v. Drexel Chemical Co.*, the Georgia Court of Appeals held that “[w]hen deciding whether to impose a civil penalty and, if so, in what dollar amount, the ALJ was required to take into account any factors it found relevant, including, but not limited to those specified in the statute.” 237 Ga. App. 87, 90 (1999) (reversing the superior court, which struck the ALJ’s imposition of a civil penalty for the violation of the Georgia Air Quality Act). In this

³ Under the Federal Election Campaign Act of 1971, as amended, the Federal Election Commission has established a schedule of administrative fines and penalties for violation of the federal election reporting requirements. See 11 C.F.R. § 111.43. The amount of the civil penalty for reporting violations is calculated pursuant to certain formulas that take into account four factors: (1) the election sensitivity of the report (for example the October reports are considered sensitive during an election year, but the year end reports are not), (2) whether the report was late (and, if so, how late) or not filed, (3) the level of activity on the account, and (4) the number of prior violations. Id.

matter, the Court has considered the following factors in determining an appropriate civil penalty for Mr. Cheek's violations of the Act. First, the Court has considered that although the four missing CCDRs were during an election year, the deadlines for filing were after Mr. Cheek lost the primary and was no longer a candidate for county office. Thus, the missing reports were not truly "election-sensitive" as relates to Mr. Cheek's candidacy and did not deny the public access to information prior to casting their votes. Second, the Court has considered that Mr. Cheek reported a balance of over \$4,000 from public contributions in the CCDR filed in March 2018, and he has never accounted for those funds, or any other funds accepted after March 2018. Third, the Court has considered that Mr. Cheek has ignored his obligations under the Act to file CCDRs and has failed to respond or participate in proceedings before both the Commission and this Court. Consequently, the Court has no evidence that civil penalties would cause an undue hardship on Mr. Cheek or that he would not have had items to report in the missing CCDRs.

7.

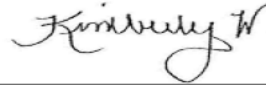
Accordingly, after weighing these considerations, the Court concludes that the appropriate civil penalty for Mr. Cheek's four violations of the Act are as follows: the maximum penalty of \$1,000 for the first occurrence in June 2018; \$5,000, the approximate balance of his campaign account in the March 2018, for the second occurrence in September 2018; and \$10,000 for the third and fourth violations in October and December 2018, which occurred well after Mr. Cheek was on notice from the Commission that a citizen had complained about his missing CCDRs. The total civil penalty imposed for violations of the Act in this matter is \$26,000.

IV. DECISION

Mr. Cheek is **ORDERED** to make payment of \$26,000 in civil penalties from his personal funds and not from campaign funds or government funds. Such payment shall be made

through periodic payments at the times and under the conditions agreed to by the Commission. Mr. Cheek is also **ORDERED** to **CEASE** and **DESIST** from any further violations of the Act and to comply with all provisions thereof.

SO ORDERED, this 22nd day of November, 2023.



Kimberly W. Schroer
Administrative Law Judge

