

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**



12/18/2023

Devin Hamilton, Legal Assistant

STATE ETHICS COMMISSION,)	
)	
Petitioner,)	DOCKET NO. 2408433
)	2408433-OSAH-GGTACFC-RV-121-Schroer
v.)	
)	
HARDIE DAVIS, JR.,)	
)	
Respondent.)	

DECISION

I. INTRODUCTION

On March 21, 2022, Petitioner, the State Ethics Commission (the “Commission”), held a preliminary hearing and found reasonable grounds to believe that Respondent Hardie Davis, Jr. violated the Georgia Government Transparency and Campaign Finance Act (the “Act”). On or about September 13, 2023, the Commission referred this matter to the Office of State Administrative Hearings (“OSAH”), a court of administrative law, to conduct a hearing pursuant to Code Sections 21-5-6(b)(10) & (14) and 50-13-13. An administrative hearing was held on November 1, 2023. The Commission was represented by Assistant Attorney General Elizabeth T. Young. Mr. Davis was represented by Edward Tarver, Esq. The record remained open until November 17, 2023 to allow the parties to submit post-hearing briefs.

After careful consideration of all the evidence of record in this case, the Court makes the following findings of facts, conclusions of law, and decision.

II. STATUTORY BACKGROUND

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 achieve this purpose, the Act establishes “a requirement of public disclosure of campaign contributions and expenditures,” as well as “disclosures of significant private interests of public officers and officials which may influence the discharge of their public duties and responsibilities.” Id. These disclosure requirements are intended to provide the public with reasonable access to information in order to determine whether public officials have been influenced by their personal interests to the detriment of their public duties and to “hold the public officers accountable.” Id.

First, with respect to campaign contributions received by candidates for public office, the Act establishes a schedule for filing campaign contribution disclosure reports, which the Commission refers to as “CCDRs.” O.C.G.A. § 21-5-34. Candidates for public office, including municipal office such as mayor, must report any contributions of more than \$100.00 and any expenditure of more than \$100.00. O.C.G.A. §§ 21-5-34(b)(1)(A) & (B).¹ In an election year, all candidates must file CCDRs six times a year, on January 31, April 30, June 30, September 30, October 25, and December 31. O.C.G.A. § 21-5-34(c)(2). In a nonelection year, candidates for municipal offices must file two CCDRs per year, on June 30 and December 31. O.C.G.A. § 21-5-34(c)(1)(B).² Although the Act does not provide a filing exemption for public officials who are subject to term limits and are not eligible to run for office in the next election cycle,³ the Act

¹ Candidates for municipal office must file CCDRs with the municipal clerk in their municipality or with the county election superintendent. O.C.G.A. § 21-5-34(a)(4).

² The Act provides a five-day grace period for the filing of these reports. O.C.G.A. § 21-5-34(c).

³ An election cycle is defined as “the period from the day following the date of an election or appointment of a person to elective public office through and including the date of the next such election of a person to the same public office and shall be construed and applied separately for each elective office.” O.C.G.A. § 21-5-3(10).

establishes a general exemption to the CCDR filing requirement for any public official who signs and files an affidavit averring that they do not intend to accept contributions exceeding \$2,500.00 or make expenditures exceeding \$2,500.00 during an election cycle. O.C.G.A. § 21-5-34(d.1)(1). However, if, after filing such affidavit, the candidate does, in fact, exceed \$2,500.00 in contributions or expenditures during the election cycle, the candidate must then file the required disclosures by the statutory deadlines. O.C.G.A. § 21-5-34(d.1)(2) & (3).⁴

Second, with respect to private financial disclosure statements, which the Commission refers to as “PFDSs,” the Act requires public officials, including municipal officials, to file PFDSs no earlier than January 1 and no later than July 1 for the preceding year. O.C.G.A. § 21-5-50(a)(1) & (3.1). A PFDS must identify fees or honoraria accepted by the official for speaking engagements and the like; fiduciary positions held by the official; direct ownership interests in business entities; real estate holdings; and other significant private financial interests of the official and their immediate family. O.C.G.A. § 21-5-50(b). If a current public officer does not qualify for nomination for election to the same office (or for any other public office in the next election cycle), the officer is not required to file a PFDS during the last calendar year of their final term in office. O.C.G.A. § 21-5-50(a)(6); Commission Advisory Opinion No. 2017-02, attached to Commission’s Post-Hearing Brief. See O.C.G.A. § 21-5-6(a)(13)(Commission may issue written advisory opinions).

The Commission is authorized to investigate alleged violations of the Act, including failures to file required statements or reports, and may issue warning letters to persons who have

⁴ Specifically, if, after filing the affidavit, the candidate accepts contributions or makes expenditures over \$2,500.00 but under \$5,000.00, the candidate must file CCDRs on June 30 and December 31. If the contributions or expenditures exceed \$5,000.00 after filing the affidavit, the candidate is subject to the reporting requirements as if the affidavit had not been filed, and those requirements continue even after a successful candidate leaves public office if they have excess contributions or until the candidate files a termination statement and final CCDR. O.C.G.A. § 21-5-34(i) and (m).

not filed a required statement or report. O.C.G.A. § 21-5-6(b)(9) (10), (24). After finding a violation and providing an opportunity for a hearing, the Commission may issue orders directing compliance with the Act, prohibiting conduct that violates the Act, or imposing civil penalties. See O.C.G.A. § 21-5-6(b)(14)(A), (B), (C)(i).

III. FINDINGS OF FACT⁵

1.

Mr. Davis is the former Mayor of the City of Augusta. Mr. Davis was first elected Mayor in 2014 and was re-elected in 2018. Prior to serving as Mayor, Mr. Davis served in the Georgia General Assembly, as a State Representative from 2007 through 2009 and as a State Senator from 2010 through 2014. Mr. Davis testified that as a general rule, volunteers with his campaigns handled his campaign’s finances and the preparation of any required reports or statements, which he would review and approve. He further testified that in March 2020, he, like public officials around Georgia and the country, faced tremendous challenges related to the COVID pandemic, including “shutting the city down.” In addition, his campaign volunteers were not as readily available to assist with his disclosure reports and statements during this time, and his energy was focused on providing city services during a global health crisis. (Testimony of Mr. Davis.)

Personal Financial Disclosure Statements

2.

During his second term as Mayor, Mr. Davis was required to file a PFDS for calendar year 2018, which was due between January 1, 2019 and July 1, 2019. For calendar year 2019,

⁵ To the extent that certain findings of fact are more appropriately classified as conclusions of law, they should be so construed. To the extent that certain conclusions of law are more appropriately classified as findings of fact, they should be so construed.

his PFDS was due between January 1, 2020 and July 1, 2020. The preponderance of the evidence in the record proved that Mr. Davis did not timely file either the 2018 or 2019 PFDS. Specifically, the evidence proved that Mr. Davis filed a PFDS on March 21, 2018, which purported to cover the 2018 calendar year. However, as stated above, the Act provides that a PFDS must be filed after the end of the calendar year, between January 1 and July 1 of the next year. See O.C.G.A. § 21-5-50(a)(1). The March 21, 2018 PFDS was, therefore, premature. Similarly, the evidence proved that Mr. Davis filed a PFDS on July 24, 2019, which purportedly covered calendar year 2019. This statement also was premature and failed to meet the statutory requirement of disclosure of personal financial interests for the entire preceding calendar year. (Testimony of Mr. Davis, Mr. Kusak; Exhibit P-4.)

3.

It was not until the Commission notified Mr. Davis that he had violated the Act by failing to timely file the 2018 and 2019 PFDSs that he filed new PFDSs for 2018 and 2019 on or about August 23, 2021. The Court has compared the information disclosed by Mr. Davis in the two premature PFDSs filed on March 21, 2018 and July 24, 2019, with the belatedly-filed August 23, 2021 PFDSs, and the disclosures on all four statements appear to be identical. That is, on all four PFDSs, Mr. Davis disclosed the same three fiduciary positions with Georgia Tech Research Institute-EAC, Abundant Life Worship Center, and HEB Property Management; the same business ownership interest in HEB Property Management; the same real estate ownership interest in three properties in Richmond County; and the same employment for himself (Pastor) and his spouse (Dual Enrollment Coordinator). (Testimony of Joe Kusak, Mr. Davis; Exhibit P-4.)

Campaign Contribution Disclosure Reports

4.

The office of Mayor of the City of Augusta has a two-term limit, and Mr. Davis's second term ran from January 2018 to January 2022.⁶ In late 2019, Mr. Davis' campaign account had become "dormant," and for three or four months had a balance of less than \$100.00. Around that time, Mr. Davis spoke to the director of the Richmond County Board of Elections, who suggested he file an affidavit so that he would be exempt from filing CCDRs for the remainder of the election cycle. On January 8, 2020, Mr. Davis signed and filed an Affidavit of a Candidate's Intent not to Exceed \$2,500 in Contributions and/or Expenditures. However, shortly thereafter, Mr. Davis, who was the president of the African American Mayors Association ("AAMA"), attended an AAMA meeting in Washington, D.C. Mr. Davis testified that a few people he met at the meeting told him they wanted to make contributions to his campaign fund, and they later did so through his campaign's online contribution system, which was still active. Specifically, in January and February 2020, Mr. Davis received contributions totaling over \$4,000.00, which was over the statutory limit of \$2,500.00 to qualify for the CCDR exemption. Accordingly, the Court finds by a preponderance of the evidence that Mr. Davis was required to

⁶ In its Statement of Matters Asserted, the Commission asserted that Mr. Davis failed to file the CCDRs due on June 30, 2018 and December 31, 2018, the first year of his second term. However, the preponderance of the evidence proved that Mr. Davis did file the 2018 CCDRs, but he did so a few days past the five-day grace period allowed under Code Section 21-5-34(c). Specifically, the evidence proved that Mr. Davis did not file the CCDR due on Saturday, June 30, 2018 within the five-day grace period, and he was reported to the Commission by the Executive Director of the Richmond County Board of Elections on Friday, July 13, 2018. The next day, Saturday, July 14, 2018, Mr. Davis filed his CCDR, nine days after the five-day grace period. Similarly, Mr. Davis filed his December 31, 2018 CCDR on January 14, 2019, also nine days after the five-day grace period. While these CCDRs were technically untimely, the delays occurred after the election and were fairly de minimis. The Court finds that the Commission did not prove a "failure" to file, but rather minimally-late filings with respect to the two required 2018 CCDRs. Moreover, despite the fairly large amounts of contributions (\$48,815.00) and expenditures (\$66,902.18) made during the June 30, 2018 CCDR reporting period, the Commission has not alleged any unusual or unnecessary expenditures or other irregularities, despite the Commission's thorough review of all Mr. Davis' past filings. With respect to the December 31, 2018 CCDR, filed on January 14, 2019, Mr. Davis reported no contributions or expenditures during the reporting period, and a balance of around \$350.00. (Exhibit P-4.)

file a CCDR on June 30, 2020 under Code Section O.C.G.A. 21-5-34(d.1)(2). (Testimony of Mr. Davis, Mr. Kusak; Exhibit P-12.)

5.

Mr. Davis did not file a CCDR by June 30, 2020. Moreover, his campaign received additional contributions in August 2020 and the months thereafter totaling over \$1,000.00, and thus his campaign exceeded the exemption's upper limit of \$5,000.00. Mr. Davis was therefore required to file CCDRs as if he had never filed the affidavit in January 2020. Specifically, in addition to the June 30, 2020 CCDR, Mr. Davis was required to file CCDRs on or before December 31, 2020, June 30, 2021, and December 31, 2021. Mr. Davis testified that he was unaware that he had exceeded the exemption's threshold for contributions, and he admitted that he did not file the required CCDRs by the deadlines. Instead, the evidence in the record proved that Mr. Davis filed the June 30, 2020 CCDR and the December 31, 2020 CCDR on March 3, 2022, only after the Commission filed an Amended Complaint on February 2, 2022, relating, in part, to these missing reports. Mr. Davis has never filed the CCDRs due on June 30, 2021 or December 31, 2021.⁷ (Testimony of Mr. Kusak, Mr. Davis; Exhibits P-10, P-12.)

Commission's Investigation

6.

In late 2021 and early 2022, as part of its investigation of Mr. Davis' compliance with the disclosure obligations under the Act, the Commission served a subpoena on Mr. Davis,

⁷ Mr. Davis argued in his post-hearing brief that his campaign account closed on April 21, 2021, and he was therefore not obligated to file CCDRs in 2021. The bank statements tendered by the Commission as Exhibit P-10 show that the balance in Mr. Davis' campaign account as of April 2021 was \$0.00, and the Final Statement indicates that the account was closed on April 21, 2021. Although Mr. Davis testified that he believed a volunteer filed a termination statement, there is insufficient probative evidence to prove that Mr. Davis' campaign complied with the Act's requirement to file a termination statement together with a final CCDR within ten days of the dissolution of a campaign or committee. See O.C.G.A. § 21-5-34(m). Mr. Davis filed an Affidavit of a Candidate's Intent Not to Exceed \$2,500 in Contributions and/or Expenditures on February 11, 2022, a month after a new election cycle began. (Testimony of Mr. Davis; Exhibit P-12.)

requesting copies of his campaign bank records from 2017 through 2021. In response, Mr. Davis only provided records from 2017 and 2018, but he testified that as he transitioned into his second term, he had turnover in his volunteer staff and his records were not well maintained. According to Mr. Davis, he produced all the bank records he could easily locate and understood that the Commission could get the remaining records by subpoenaing the bank directly. The Commission issued subpoenas to the campaign's bank, and was provided campaign bank statements for 2019 through 2021. Upon review of these records, the Commission discovered contributions and expenditures that had not been timely disclosed by Mr. Davis. At the administrative hearing, the Commission proved by a preponderance of the evidence that Mr. Davis' campaign received nine contributions of over \$100.00 between January 2020 and April 2021 that were not disclosed in a timely-filed CCDR.⁸ These undisclosed contributions totaled over \$10,000.00. The Commission also proved by a preponderance of the evidence that the campaign made seven expenditures of over \$100.00 between May 2019 and March 2021 that were not disclosed in a timely-filed CCDR. These undisclosed expenditures totaled over \$3,000.00. (Testimony of Mr. Kusak, Mr. Davis; Exhibits P-3, P-6, P-8, P-9.)

7.

Among the expenditures that the Commission discovered from Mr. Davis' 2020 and 2021 campaign bank records are some that the Commission contends are not "necessary and ordinary campaign expenses . . . incurred in connection with such candidate's campaign for elective office or such public officer's fulfillment or retention of such office." See O.C.G.A. § 21-5-33(a). Specifically, the Commission has identified the following as improper expenditures under the Act, only two of which were disclosed on a CCDR filed by Mr. Davis on March 2, 2022:

⁸ Some of the 2020 contributions and expenditures appeared on the CCDRs filed belatedly on March 2, 2022, but the 2021 contributions and expenditures still have not been disclosed on a CCDR filed by Mr. Davis, although he has acknowledged them in his pleadings before the Commission and OSAH.

- \$858.36 to Card Assets Credit Card Payment on 3/2/20⁹
- \$1,500.00 to Card Assets Credit Card Payment on 9/15/20¹⁰
- \$29.99 for BetterMe Application Subscription on 11/24/20
- \$38.49 to Shell Gas Station on 12/21/20
- \$350.00 to Card Assets Credit Card Payment on 1/4/2021
- \$179.99 (total) for LinkedIn Premium on 2/3/21, 3/3/21, and 4/5/21
- \$19.96 (total) for ESPN+ on multiple dates
- \$170.00 (total) for Washington Post subscription on multiple dates
- \$25.00 for Starbucks on 3/8/21

(Mr. Davis, Mr. Kusak; Exhibits P-10; P-12.)

8.

Mr. Davis has conceded that two of the expenses listed above (\$29.99 BetterMe subscription and the \$19.96 for ESPN+) were personal expenses, and he testified that they were paid from his campaign's account in error. He testified that he repaid the campaign \$229.00 in April 2021 to "bring the account current" and to cover these inadvertent personal charges. With respect to the other expenditures listed above, Mr. Davis testified generally that they were for ordinary and necessary expenses, and gave the following explanations:

a) Credit Card Payments: The \$858.36 and \$1,500.00 credit card payments in 2020 were for a campaign credit card, which was used by himself, his campaign treasurer, and some volunteers for expenses related to his duties as Mayor. Although he could not be sure, Mr. Davis

⁹ On the June 30, 2020 CCDR filed on March 2, 2022, two years after this expenditure was made, Mr. Davis' campaign identified the recipient of the \$858.36 as "Card Services" and the purpose of the expenditure as "public office." (Exhibit P-12.)

¹⁰ On the December 31, 2020 CCDR filed on March 2, 2022, Mr. Davis' campaign identified the recipient of the \$1,500.00 payment as "Card Services" and did not list a purpose. (Exhibit P-12.)

testified that he believed some of the charges were for postage, as well as ride share, meals, and other travel expenses while attending a national leadership conference for the U.S. Conference of Mayors in Florida or meetings of the Board of Trustees for the National League of Cities. He admitted at the hearing that he did not know what all the expenses were that were charged on the campaign card, and he did not have a full itemization, despite being on notice for over a year that the Commission was questioning these expenditures. With respect to the \$350.00 credit card payment on January 4, 2021, Mr. Davis testified this was a contribution to the campaign of Senator Raphael Warnock.

b) Shell Gas Charge: Mr. Davis testified this charge was related to travel related to his public office, not a personal expense.

c) LinkedIn Charge: Mr. Davis testified that he uses LinkedIn along with other social media sites, including Twitter, Instagram, and Facebook, to provide news about the City of Augusta and to push other messages relating to his public office.

d) Washington Post: Mr. Davis testified that the City of Augusta's significant connections with federal programs, such as cybersecurity, and his involvement in the U.S. Conference of Mayors and other national groups made access to national news an important part of the fulfillment of his public office.

e) Starbucks: Mr. Davis testified that this was a gift card for a volunteer.

(Testimony of Mr. Davis.)

9.

Joe Kusak is the Deputy Director and General Counsel of the Commission. At the hearing, he testified that as part of the investigation of Mr. Davis' campaign disclosures, he examined all of Mr. Davis' CCDRs filed during his two terms as Mayor. Prior to the 2020-2021

calendar years, Mr. Kusak testified that he did not find expenditures similar to the ones listed in paragraph 7 above. Specifically, Mr. Kusak had not seen expenditures for un-itemized “credit card payments,” national newspaper subscriptions, LinkedIn premium fees, and Starbucks and gasoline charges. Mr. Kusak admitted that he did not ask Mr. Davis for an explanation relating to these expenses before the hearing because “early on” in the investigation, particularly after the campaign’s incomplete response to the Commission’s subpoena, he determined that Mr. Davis was not being forthright. Mr. Kusak further testified that based on his experience analyzing campaign disclosure statements, he found the above expenses to be suspicious; however, he admitted that expenses like a Starbuck gift card could have a reasonable purpose of rewarding a hard-working volunteer and that reimbursement for gasoline used to travel for official public duties could also be appropriate. (Testimony of Mr. Kusak.)

Commission’s Preliminary Hearing

10.

On February 1, 2022, the Commission filed an amended complaint and served a notice of a preliminary hearing on Mr. Davis on February 9, 2022. The Commission held the preliminary hearing on March 21, 2022. Mr. Davis participated remotely and consented to a finding of probable cause, although he did not specifically address each allegation. The Commission entered a written order finding probable cause that Mr. Davis had violated the Act and referred the matter to the Georgia Department of Law for further prosecution.

Penalties

11.

In its post-hearing brief, the Commission stated that although the maximum permissible penalty might not be appropriate for the multiple violations of the Act by Mr. Davis, a

“substantial” penalty was appropriate given Mr. Davis’ lack of transparency, his attempt to conceal improper expenditures by failing to produce the bank records, and his failure to prove that the suspicious expenditures were, in fact, ordinary and necessary. Mr. Davis argued in his post-hearing brief that any penalty should be waived or suspended because he was cooperative with the investigation, he filed or amended all required reports once he was put on notice that they were late, and he would experience undue financial hardship if a significant penalty was imposed.

IV. 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 Court concludes that the Commission proved by a preponderance of evidence that Mr. Davis violated the Act, as follows:

a) Mr. Davis filed his private financial disclosure statements for 2018 and 2019 both too early and too late. The failure to file these PFDSs within the statutorily-prescribed timeframe constitutes two separate violations of Code Section 21-5-50(a)(1).

b) Mr. Davis filed the required 2018 CCDRs, due on June 30, 2018 and December 31, 2018, nine days after the grace period for filing. These untimely filings constitute two minor violations of Code Section 21-5-34(c).

c) Mr. Davis was not exempt from filing CCDRs during his second term as Mayor of Augusta, notwithstanding the filing of an affidavit of intent, because he almost immediately exceeded the statutory maximum threshold for the exemption under Code Section 21-5-34(d.1).

Accordingly, he was required to file CCDRs on June 30, 2020, December 31, 2020, June 30, 2021, and December 31, 2021. O.C.G.A. §§ 21-5-34(c)(1)(B), (d.1)(2) & (3). Mr. Davis violated the Act by filing the June 30, 2020 and December 31, 2020 CCDRs over a year late on March 3, 2022, and failing to file the June 30, 2021 and December 31, 2021 CCDRs at all. The failure to timely file these CCDRs constitutes four separate violations of Code Section 21-5-34(c).¹¹

d) Mr. Davis violated the Act by making two expenditures from his campaign contributions that were not necessary and ordinary as required under Code Section 21-5-33(a). Specifically, the Court concludes that the Act requires candidates and public officials to report sufficient information to the Commission to show that campaign contributions are being expended only to defray necessary and ordinary expenses. O.C.G.A. §§ 21-5-33(a), 21-5-34(b)(1)(B) (CCDR must list the name of the recipient, and if the recipient is an individual, the individual's occupation and general purpose of the expenditure). With respect to the un-itemized 2020 credit card payments in the amount of \$858.36 and \$1,500.00, Mr. Davis did not sufficiently identify who was paid with the campaign credit card or for what purpose. That is, the true recipient of the expenditure is not the credit card company, but the person or entity whom the campaign paid with the credit card. The Court concludes that the Commission met its burden to prove that making two un-itemized payments to a credit card company from campaign contributions without specifying who the campaign paid with the credit card and for what purpose is not an ordinary expenditure and constitutes two separate violations of Code Section 21-5-33(a).

¹¹ Although the Commission proved that nine individual contributions and seven individual expenditures were not disclosed on timely-filed CCDRs, which arguably each constitute a separate and independent violation of the Act, the Court concludes that it is appropriate to consider the penalty for Mr. Davis' failure to make these individual disclosures as part of the penalty for his broader failure to timely file the four CCDRs due in 2020 and 2021, on which these individual disclosures should have been listed.

3.

On the other hand, the Court concludes that the Commission failed to prove that Mr. Davis violated Code Section 21-5-33(a) by making unnecessary or extraordinary expenditures for (i) a contribution to the campaign of Senator Warnock on January 4, 2021,¹² (ii) LinkedIn Premium, a social media platform, (iii) the Washington Post, a source of national news, (iv) gasoline for official travel, and (v) a Starbuck gift card for a volunteer. The Court has considered the testimony of Mr. Davis regarding the purpose of these expenditures and finds his testimony to be credible and his explanation of why such expenditures are ordinary and necessary expenses to be persuasive.

4.

Given the multiple violations of the Act, Mr. Davis is subject to civil penalties. The Act authorizes the Commission to 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. O.C.G.A. § 21-5-6(b)(14)(C)(i). The Commission also 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. Id. The Commission has not adopted a formal schedule of penalties for violation of the Act. Compare 11 CF.R. §§ 111.30, 111.34.¹³

¹² Although this expenditure was not disclosed on a CCDR and was identified only as a credit card payment on the campaign's bank account, the Court credits Mr. Davis' testimony that Senator Warnock's campaign was the sole recipient of the \$350.00 credit card payment on January 4, 2021 and concludes that his credible testimony on the identity of the recipient and the purpose of the expenditure was sufficient to rebut the prima facie case of an extraordinary expenditure.

¹³ 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

However, 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).

5.

In this case, the Court has weighed a number of factors to determine the appropriate penalty for Mr. Davis’ violations of the Act. First, with respect to the 2018 and 2019 PFDSs, the Court has considered that Mr. Davis did attempt to file the required statements, he just filed them too early. In addition, the Court has considered that the evidence in the record proved that his personal financial interests were accurately disclosed in the prematurely-filed PFDSs, and that there is no evidence that those interests changed at all during the reporting period. Thus, Mr. Davis’ failure to file the PFDSs at the right time did not deprive the public of “reasonable access to information in order to determine whether public officials have been influenced by their personal interests to the detriment of their public duties” because the information required to be disclosed remained the same. Consequently, the Court concludes that the appropriate civil penalty for the failure to timely file the 2018 PFDS is \$100.00, and \$200.00 for failure to timely file the 2019 PFDS, for a total of \$300.00 in civil penalties for the violations of Code Section 21-5-50(a)(1).

6.

With respect to the CCDRs, the Court concludes that the appropriate penalties for Mr. Davis’ nine-day delay in filing the June 30, 2018 CCDD and the December 31, 2018 CCDD

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.

should be in line with a late filing fee. The two significantly late 2020 CCDRs and the two missing 2021 CCRDs are more serious violations and warrant a more substantial penalty. The Court has taken into account that Mr. Davis was unaware that the online contributions to his still-active account exceeded the exemption threshold in early 2020, right around the time the COVID pandemic began, and the Court credits his testimony that his time and attention was focused elsewhere. The Court has also considered that Mr. Davis did eventually file the June 30, 2020 CCDR and the December 31, 2020 CCDR, albeit only after he was put on notice by the Commission over a year after the reports were due. On the other hand, the Court has considered that both the Commission and the public were effectively, if unintentionally, misled about the state of Mr. Davis' campaign finances after January 2020, and Mr. Davis did nothing to notify the public that his campaign had taken in \$10,000.00 after he filed an affidavit averring that he did not intend to receive contributions over \$2,500.00 for the rest of the election cycle.

7.

In addition, the Court has considered that by the time the 2021 CCDRs were due in June and December 2021, the demands on public officials due to the pandemic, while still present, were less acute, and provide less of an excuse for Mr. Davis' inattention to his disclosure obligations under the Act. Moreover, with respect to the reporting period covered by the missing June 30, 2021 CCDR, which could have served as his final CCDR if it had accompanied a written termination statement under Code Section 21-5-34(m), Mr. Davis's campaign was making small expenditures, including for the erroneous personal expenses (ESPN+ and BetterMe), the Washington Post, and Starbucks, all of which should have been disclosed in the timely-filed CCDR. Conversely, for the reporting period covered by the December 31, 2021 CCDR, the evidence proved that the campaign account was closed and there were no

expenditures or contributions to report for this period. Accordingly, as stated *supra*, Code Section 21-5-6(b)(14)(i) authorizes the Commission to waive or suspend a penalty for failure to file a report if there were no items to be included in the report.

8.

Having weighed all the evidence in the record, the Court concludes that the following civil penalties, totaling \$8,200.00, are appropriate sanctions for the late or missing CCDRs in violation of Code Section 21-5-34:

<u>LATE OR MISSING CCDR</u>	<u>CIVIL PENALTY AMOUNT</u>
June 30, 2018 (nine days late)	\$100.00
December 31, 2018 (nine days late)	\$100.00
June 30, 2020 (20 months late)	\$1,000.00
December 31, 2020 (14 months late)	\$2,000.00
June 30, 2021 (never filed, improper personal expenditures)	\$5,000.00
December 31, 2021 (no items to report)	Waived

9.

With respect to the nine individual contributions over \$100.00 and the seven individual expenditures over \$100.00 that should have been included in the late or missing CCDRs in 2020 and 2021, the Court has considered that these contributions and expenditures were not voluntarily disclosed by Mr. Davis, but came to light after the Commission subpoenaed the campaign's bank records. Accordingly, the Court concludes that an additional civil penalty in the amount of \$150 for each individual missing contribution and expenditure is proper as a sanction for Mr. Davis' failure to cooperate with the investigation. The total appropriate civil

penalty for the failure to disclose the individual contributions and expenditures in violation of Code Section 21-5-34 is \$2,400.00.

10.

Finally, as to the two violations of Code Section 21-5-50, for making credit card expenditures to undisclosed recipients for unspecified purposes, the Court has considered that such practice violates the very purpose of the Act. The Court has also weighed that Mr. Davis' testimony on the details of the \$858.36 payment in March 2020 and the \$1,500.00 payment in September 2020 was speculative at best and unsupported by corroborative evidence despite being on notice for over a year of the Commission's probable cause finding. See O.C.G.A. § 24-14-22 ("If a party has evidence in such party's power and within such party's reach by which he or she may repel a claim or charge against him or her but omits to produce it or if such party has more certain and satisfactory evidence in his or her power but relies on that which is of a weaker and inferior nature, a presumption arises that the charge or claim against such person is well founded; but this presumption may be rebutted.") See also Jones v. Krystal Co., 231 Ga. App. 102, 107 (1998) ("It is irrelevant which party has the burden to produce evidence, because the public policy favors producing evidence from which the factfinder can determine where the truth lies."). Having weighed the evidence in the record, the Court concludes that the appropriate sanction for the two violations of Code Section 21-5-50 is \$1,000.00 for the first violation and \$5,000.00 for the second violation, for a total of \$6,000.00 in civil penalties.

11.

Mr. Davis stated that he has incurred legal fees due to the Commission's investigation, which has also had a detrimental effect on his ability to obtain employment. He also argued that a significant penalty would be an undue hardship, but he did not produce any specific evidence

relating to his current financial status, and thus the Court cannot make a finding that the amount of civil penalties imposed herein would constitute an undue hardship justifying a reduction or waiver of the penalties. Consequently, the Court concludes that the above penalties, totaling \$16,900.00, are the appropriate sanction in light of all the evidence in the record.

IV. DECISION

Mr. Davis is **ORDERED** to make payment of \$16,900.00 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. Davis is also **ORDERED** to **CEASE** and **DESIST** from any further violations of the Act and to comply with all provisions thereof.

SO ORDERED, this 18th day of December, 2023.



Kimberly W. Schroer
Administrative Law Judge

