

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 11/177
13)
14 MARCIE HODGE, HODGE FOR MAYOR)
2010, and YVONNE HODGE, TREASURER) STIPULATION, DECISION and
15) ORDER
16 Respondents.)
17)

18 Complainant, the Fair Political Practices Commission, and Respondents Marcie Hodge, Hodge
19 for Mayor 2010, Yvonne Hodge agree that this Stipulation will be submitted for consideration by the
20 Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents Marcie Hodge, Hodge for Mayor 2010,
4 Yvonne Hodge, Treasurer violated the Political Reform Act by (1) failing to timely file a first pre-
5 election campaign statement by October 5, 2010, for the reporting period January 1, 2010 through
6 September 30, 2010, in violation of Government Code Sections 84200.5, subdivision (b), and 84200.7 (1
7 count), and (2) failing to timely file a second pre-election campaign statement by October 21, 2010, for
8 the reporting period October 1, 2010 through October 16, 2010, in violation of Government Code
9 Sections 84200.5, subdivision (b), and 84200.7 (1 count). These counts are described in Exhibit 1,
10 which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a
11 true and accurate summary of the facts in this matter.

12 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
13 Respondent also agrees to the Commission imposing upon them an administrative penalty in the amount
14 of Five Thousand Dollars (\$5,000). A cashier's check from Respondents in said amount, made payable
15 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
16 administrative penalty, to be held by the State of California until the Commission issues its decision and
17 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
18 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
19 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
20 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the
21 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
22 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
23 disqualified because of prior consideration of this Stipulation.

24
25
26 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

Respondents Marcie Hodge, Individually
and on behalf of Hodge For Mayor 2010

Dated: _____

Respondent Yvonne Hodge, Individually
and on behalf of Hodge For Mayor 2010

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Respondents Marcie Hodge, Hodge for
3 Mayor 2010, and Yvonne Hodge, Treasurer” FPPC No. 11/177, including all attached exhibits, is hereby
4 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
5 execution below by the Chair.

6
7 IT IS SO ORDERED.

8
9 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Committee “Hodge for Mayor 2010” (“Committee”) qualified as a candidate controlled recipient committee under the Political Reform Act (the “Act”)¹ on or about August 12, 2010, upon the filing of a statement of organization. The Committee is controlled by Respondent Marcie Hodge, an unsuccessful candidate for Mayor of Oakland in the November 2, 2010 election. Respondent received 3,625 votes, or 3 percent of the total votes cast. Respondent Yvonne Hodge was the treasurer for the Committee at all times relevant. Respondents violated the Act by failing to comply with campaign reporting provisions.

For the purposes of this Stipulation, Respondents’ violations are stated as follows:

COUNT 1: Respondents Marcie Hodge, Hodge for Mayor 2010, and Yvonne Hodge failed to file a first pre-election campaign statement by October 5, 2010, for the reporting period January 1, 2010 through September 30, 2010, in violation of Government Code Sections 84200.5, subdivision (b), and 84200.7.

COUNT 2: Respondents Marcie Hodge, Hodge for Mayor 2010, and Yvonne Hodge failed to file a second pre-election campaign statement by October 21, 2010, for the reporting period October 1, 2010 through October 16, 2010, in violation of Government Code Sections 84200.5, subdivision (b), and 84200.7.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Section 82013, subdivision (a), defines a “committee” to include any person who receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly known as a “recipient committee.” A committee controlled directly or indirectly by a candidate, or that acts jointly with a candidate, is known as a candidate-controlled committee. (Section 82016.) Under the Act’s campaign reporting system, candidate-controlled committees are required to file specified campaign statements and reports disclosing contributions received and expenditures made.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Duty to File Pre-election Campaign Statements

Under the Act's campaign reporting system, candidates and committees are required to file periodic campaign statements and reports disclosing their financial activities. Section 84215, subdivision (d), requires all county candidates, elected officers, and their controlled committees to file the committee's campaign statements with the elections official of the county in which the candidate or officeholder is domiciled.

For an election held in June or November of an even-numbered year, candidates and their controlled committees are required to file two pre-election campaign statements according to a specified schedule. (Sections 84200.5, subdivision (b), and 84200.7, subdivision (b).)

For an election held on November 2, 2010, the first pre-election campaign statement for the reporting period January 1, 2010 through September 30, 2010, was due on or before October 5, 2010, and the second pre-election campaign statement for the reporting period October 1, 2010 through October 16, 2010, was due on or before October 21, 2010.

Liability of Committee Treasurers

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. Under Sections 83116.5 and 91006, a committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

SUMMARY OF THE FACTS

Respondent Committee "Hodge for Mayor 2010" ("Committee") qualified as a candidate controlled recipient committee under the Political Reform Act (the "Act")² on or about August 12, 2010, upon the filing of a statement of organization. The Committee is controlled by Marcie Hodge, an unsuccessful candidate for Mayor of Oakland in the November 2, 2010 election. Respondent received 3,625 votes, or 3 percent of the total votes cast. Respondent Yvonne Hodge is the treasurer for the Committee.

This case was opened proactively, as the result of newspaper articles which called into question the sources of funding to and Respondent's campaign; which had not been disclosed prior to the election.

The majority of the contributions to the committee were made from Respondent Marcie Hodge's personal funds. The committee ultimately reported total receipts of approximately \$58,000 in total contributions and loans, and approximately \$45,000 in expenditures.

² The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Respondent kept records concerning the expenditures made during the course of her campaign; but failed to make timely campaign disclosures.

COUNT 1

Failure to File a First Pre-Election Campaign Statement

In connection with an election held on November 2, 2010, Respondents has a duty to file the first preelection campaign statement covering January 1, 2010 through September 30, 2010, by the October 5, 2010, due date. No pre-election statements were filed prior to the election.

By failing to timely file a first pre-election statement; Respondents violated Sections 84200.5, subdivision (b), and 84200.7.

COUNT 2

Failure to File a Second Pre-Election Campaign Statement

In connection with an election held on November 2, 2010, Respondents has a duty to file the second pre-election campaign statement for the reporting period September 25, 2011 through October 22, 2011, by the October 27, 2011, due date. No pre-election statements were filed prior to the election.

By failing to timely file a second pre-election statement; Respondents violated Sections 84200.5, subdivision (c), and 84200.8.

CONCLUSION

This matter consists of two counts, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total of Ten Thousand Dollars (\$10,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

The typical administrative penalty for failing to timely file a preelection campaign statement has been in the middle of the penalty range, depending on the circumstances.

Other similar cases regarding a failure to file pre-election statements that have been recently approved by the Commission include:

In the Matter of Brian Goldberg, FPPC No. 09/639 had a similar fact pattern; the failure to file a second pre-election campaign statement by a candidate for a local school board. Respondent cooperated fully with filing obligations. The commission approved settlement of this case, with a \$2,500 penalty for this violation, on October 14, 2010.

In the Matter of Alvina Sheeley and Alvina Sheeley for Election F-SUSD Governing Board 2011, FPPC No. 11/1124, had a similar fact pattern; both of the required pre-election statements were not filed until after the election. The commission approved settlement of this case in August 16, 2012, and the agreed upon penalty for each of these violations was \$2,500 per count.

The public harm inherent in this type of violation, where pertinent information is not disclosed by the committee, is that the public is deprived of a means to discover the identity of contributors, the amounts contributed, and the nature of the committee's campaign expenses. In this case, Respondents failed to timely file required pre-election reports, which were due before the election. Respondents' violations of the Act were deliberate at worst and negligent at best. Respondents have no prior enforcement history. In addition, Respondents assert that they unintentionally violated the Act and had no intention to conceal the information but instead were unaware of the required pre-election campaign statements.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Five Hundred Dollars (\$2,500) per count, for a total of Five Thousand Dollars (\$5,000) is recommended.