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**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action Against:
Robert Cerqui and 2008 Robert Cerqui
Campaign
Respondents.

PDC CASE NO. 10-038
FINAL ORDER

This matter came before the Washington State Public Disclosure Commission on January 28, 2010 at the PDC Office, 711 Capitol Way, Room 206, Olympia, Washington. Those present included Jim Clements, Commission Chair; David Seabrook, Vice Chair; Jane Noland, Member; Barry Sehlin, Member; and Jennifer Joly, Member. Also present were PDC Assistant Director Doug Ellis; PDC Director of Compliance Phil Stutzman; Robert Cerqui, on behalf of himself and his campaign (“Respondent”); and Nancy Krier, General Counsel for the Commission. The proceeding was open to the public and was recorded.

This matter resulted from an agency audit finding and subsequent administrative charges that Respondent Robert Cerqui, a candidate for State Representative in the 25th Legislative District in 2008, and his campaign failed to comply with relevant provisions of RCW 42.17 with respect to contribution and expenditure activities in the 2008 election cycle.

PDC Staff submitted to the Commission a cover memo from Mr. Stutzman dated January 27, 2010; a Notice of Administrative Charges dated January 14, 2010; a Report of Examination - Limited Scope Audit dated January 6, 2010 (with exhibits); and a

1 spreadsheet summarizing penalties assessed in comparable cases. The parties submitted to
2 the Commission a proposed Stipulation as to Jurisdiction, Facts, Violations and Penalty
3 (Stipulation) dated January 28, 2010.

4 Mr. Stutzman summarized the proposed Stipulation and the staff recommendation to
5 accept the Stipulation. Mr. Cerqui addressed the Commission.
6

7 The Commission voted 3-2 to accept the Stipulation if the Penalty section is
8 modified. The parties agreed to that modification.

9
10 **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 Based upon the Stipulation as modified in this Final Order, and which Stipulation is
12 hereby attached and incorporated by reference except for the Penalty section, the
13 Commission finds:

- 14 1. The Jurisdiction, Facts, and Violations are established as provided in the
15 Stipulation.
16 2. The Respondent committed multiple violations of RCW 42.17 as provided in
17 the Stipulation, in particular RCW 42.17.060, RCW 42.17.080, and RCW 42.17.090.

18 **II. ORDER**

19 Based upon the findings and conclusions, the Commission orders that:

- 20 1. The Stipulation is accepted with the exception of the Penalty provision.
21 2. The Respondent is assessed a civil penalty of \$2,500. Of the total penalty
22 amount, \$500 will be suspended on the following conditions:
23 a. That the Respondent commits no further violations of RCW 42.17 within
24 four years from the date of the entry of this Final Order in this matter;
25 b. That \$500 of the non-suspended amount of the penalty is paid within 60
26 days of the date of this Final Order in this matter and the remaining \$1,500 non-suspended
amount is paid within 12 months of the date of this Final Order in this matter; and,

1 c. That the Respondent files corrected reports with the Commission, accurately
2 reflecting the campaign's activities, within 60 days from the date of the entry of this Final
3 Order in this matter.

4 3. The Commission recognizes that the Respondent affirms his intention to
5 comply in good faith with the provisions of RCW 42.17 in all future election campaigns.

6 7 III. APPEALS

8 RECONSIDERATION OF FINAL ORDER - COMMISSION

9 Any party may ask the Commission to reconsider this final order. Parties must
10 place their requests for reconsideration in writing, include the specific grounds or reasons
11 for the request, and deliver the request to the Public Disclosure Commission Office within
12 **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order
13 upon the party. WAC 390-37-150. Service by the Commission on a party is accomplished
14 on the date of mailing by U.S. mail if the order is mailed, or the date of personal service if
15 personal service is made. RCW 34.05.010(19). The Commission orders are generally
16 mailed via U.S. mail.
17

18 Pursuant to WAC 390-37-150, the Public Disclosure Commission is deemed to have
19 denied the petition for reconsideration if, within twenty (20) business days from the date the
20 petition is filed, the Commission does not either dispose of the petition or serve the parties
21 with written notice specifying the date by which it will act on the petition. Pursuant to
22 RCW 34.05.470(5), the Respondent is not required to ask the Public Disclosure
23 Commission to reconsider the final order before seeking judicial review by a superior court.
24

25 FURTHER APPEAL RIGHTS – SUPERIOR COURT

26 Pursuant to RCW 42.17.395(5), a **final order** issued by the Public Disclosure
Commission is subject to judicial review under the Administrative Procedures Act, chapter

1 34.05 RCW. The procedures are provided in RCW 34.05.510 - .598. Pursuant to RCW
2 34.05.542(2), a petition for judicial review must be filed with the superior court in Thurston
3 County or the petitioner's county of residence or principal place of business. The petition
4 for judicial review must be served on the Public Disclosure Commission and any other
5 parties within **30 days** of the date that the Public Disclosure Commission serves this final
6 order on the parties. RCW 34.05.542 (4) provides: "Service of the petition on the agency
7 shall be by delivery of a copy of the petition to the office of the director, or other chief
8 administrative officer or chairperson of the agency, at the principal office of the agency.
9 Service of a copy by mail upon the other parties of record and the office of the attorney
10 general shall be deemed complete upon deposit in the United States mail, as evidenced by
11 the postmark."
12

13
14 If reconsideration is properly sought, the petition for judicial review must be served
15 on the Public Disclosure Commission and any other parties within thirty (30) days after the
16 Commission acts on the petition for reconsideration.

17 **IV. ENFORCEMENT OF FINAL ORDERS**

18 The Commission will seek to enforce this final order in superior court under RCW
19 42.17.395-.397, and recover legal costs and attorney's fees, if the penalty remains unpaid
20 and no petition for judicial review has been filed under chapter 34.05 RCW. This action
21 will be taken without further order by the Commission.
22

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1 The Executive Director is authorized to enter this order on behalf of the
2 Commission.

3 DATED THIS 4th day of February, 2010.
4

5 FOR THE COMMISSION:

6 Vicki Rippie
7 VICKI RIPPIE, Executive Director *Age E*

8
9 *Attachment:* Stipulation as to Jurisdiction, Facts, Violations and Penalty dated January
10 28, 2010

11 *Date of mailing:*

12 02/04/10
13

14 *Copies mailed to:*

15 Robert Cerqui
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**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action
Against

Robert Cerqui and 2008 Robert Cerqui
Campaign

Respondents.

Case No. 10-038

STIPULATION AS TO FACTS,
VIOLATIONS AND PENALTY

The parties hereto, the Public Disclosure Commission Staff, by and through its Assistant Director, DOUG ELLIS, and the Respondent, ROBERT CERQUI and 2008 ROBERT CERQUI CAMPAIGN, submit this Stipulation as to Facts, Violations and Penalty in this matter.

JURISDICTION

1. The Public Disclosure Commission has jurisdiction over this proceeding pursuant to Washington's campaign finance disclosure law (the Act), Chapter 42.17 RCW; the Administrative Procedure Act, Chapter 34.05 RCW; and Title 390 WAC.

FACTS

2. Robert Cerqui was a candidate who sought election to the office of State Representative for the 25th Legislative District in 2008.
3. Mr. Cerqui filed a Candidate Registration (PDC Form C-1) on May 9, 2008. When he filed the C-1, he was an incumbent Fife City Councilmember, having been elected to that office in 2003 and 2007.
4. On March 17, 2009, PDC staff informed Mr. Cerqui and the Cerqui Campaign that a limited-scope audit was being conducted with regard to contribution and expenditure

activities undertaken by the campaign during the 2008 election cycle. The findings of the limited scope audit were the basis for issuing the Notice of Administrative Charges.

5. **RCW 42.17.060(5)** requires that all monetary contributions received by a candidate must be deposited by the campaign within five business days of receipt of the contribution.
6. **RCW 42.17.080(6)** requires the campaign to preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.
7. **RCW 42.17.080 and .090** requires candidates to file timely, accurate reports of contribution and expenditure activities undertaken by their campaigns, including both monetary and in-kind contributions.

Failure to timely deposit campaign contributions within five business days of receipt (RCW 42.17.060)

8. Candidates are required to timely deposit monetary contributions received by the campaign within five business days of receipt. The campaign reported receiving \$140,461.72 in contributions, which included \$96,005.25 in monetary contributions from 205 contributors.
9. Based on the date of receipt listed on the campaign's C-3 reports, the campaign failed to timely deposit 98 of the 205 contributions received by the campaign, totaling \$67,975.25 in monetary contributions that were not deposited within five business days of receipt.
10. The \$67,975.25 in late-deposited contributions represented 70.8% of the total dollar value of all monetary contributions received by the campaign. The late-deposited contributions were deposited between one and 43 days beyond the five business days allowed for depositing contributions. Of the 98 late-deposited contributions, contributions totaling \$14,700 were deposited between 12 and 43 days late.

Failure to maintain campaign records of contributions and expenditures (RCW 42.17.080)(6)

11. Candidates are required to: a) maintain books of account that accurately reflect all contributions and expenditures on a current basis within five business days of receipt or

expenditure; and b) preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for no less than five calendar years.

12. On March 17, 2009, the Cerqui campaign was asked to provide documentation of its contribution and expenditure activities during the 2008 election cycle. Despite repeated requests, no documentation was provided by Mr. Cerqui. Therefore, staff was unable to verify, from campaign records, whether monetary expenditures were timely reported, or whether expenditures should have been reported as orders-placed on prior C-4 reports.

Failure to timely file Monetary Contributions Reports (PDC Form C-3) (RCW 42.17.080 and .090)

13. Beginning in June of 2008, all candidates were required to file C-3 reports each Monday for bank deposits made during the preceding seven calendar days.
14. PDC staff reviewed the campaign's C-3 reports along with information contained in the PDC campaign database. Staff reviewed the fourteen C-3 reports filed by the campaign during the period May 10 through November 7, 2008. Staff evaluated the campaign's timeliness with regard to filing C-3 reports.
15. The fourteen C-3 reports filed by the campaign totaled \$96,005.25 in contributions received. Of the fourteen C-3 reports, five were timely filed electronically, a 38.6% compliance rate. The nine late-filed C-3 reports were filed between one and 43 days late. Of the nine late-filed C-3 reports, contributions totaling \$13,830 were filed between 13 and 43 days late.

Failure to disclose in-kind contributions on Schedule B to C-4 reports (RCW 42.17.080 and .090)

16. The campaign reported receiving one in-kind contribution from the Washington State Democratic Central Committee (WSDCC) during the 2008 election cycle, totaling \$16,120. The in-kind contribution was reported as received by the campaign on October 20, 2008, and was included on the timely filed 7-day pre-general election C-4 report filed October 27, 2008.

17. At the request of PDC staff, Tony Yuchasz, Director for the House Democratic Campaign Committee, provided three Chinook Consulting invoices which listed three mail pieces paid for by the WSDCC totaling \$32,627.47 for the Cerqui campaign. Therefore, the Cerqui campaign failed to disclose receiving an additional in-kind contribution from the WSDCC, totaling \$16,507.47.

VIOLATIONS

1. Robert Cerqui and the 2008 Robert Cerqui campaign for State Representative committed multiple violations of RCW 42.17 as follows:
 - a. RCW 42.17.060, by failing to timely deposit contributions received by the campaign within five business days of receipt in an account established and designated for the campaign;
 - b. RCW 42.17.080(6), by failing to maintain all campaign records, receipts and other documentation for contribution and expenditure activities undertaken by the campaign; and
 - c. RCW 42.17.080 and .090, by failing to timely report monetary contributions received on Cash Receipts Monetary Contributions reports (PDC Form C-3), and by failing to report the receipt of in-kind contributions on Schedule B to Campaign Summary Receipts and Expenditures reports (PDC Form C-4).
2. Mr. Cerqui acknowledges that his campaign records were incomplete, but states that he does have some campaign records in his possession, including bank statements, copies of checks written, and some invoices. He said he believed that the House Democratic Campaign Committee had provided the necessary records to the PDC for the audit.
3. Mr. Cerqui asserts that the legislative race was his first large campaign, that there may not have been adequate communication with his treasurer, who was a volunteer, and that the violations were not intentional. Mr. Cerqui acknowledges that the final C-4 report does not show a debt to Chinook Consulting for approximately \$9,000.

PENALTY

1. Based upon the stipulated facts and the agreement regarding the violations set forth above, the Respondent agrees that a total civil penalty of \$2,500 be assessed. Of the total penalty amount, \$2,000 will be suspended on the following conditions:
 - a. That the Respondent commits no further violations of RCW 42.17 for four years from the date of the entry of the Commission's Final Order in this matter;
 - b. That payment of the non-suspended portion of the penalty (\$500) is paid within 60 days from the date of entry of the Commission's Final Order in this matter; and
 - c. That the Respondent files corrected reports with the Commission, accurately reflecting the campaign's activities, within 60 days from the date of entry of the Commission's Final Order in this matter.

2. The Respondent affirms his intention to comply in good faith with the provisions of RCW 42.17 in all future election campaigns.



DOUG ELLIS, Assistant Director
Public Disclosure Commission

1-28-10
Date Signed



ROBERT CERQUI
2008 CERQUI CAMPAIGN

1-28-10
Date Signed