

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

In the Matter of Enforcement Action
Against:

David Schmidt and 2006 David Schmidt
Campaign

Respondent.

Case No. 11-018

STIPULATION AS TO FACTS,
VIOLATIONS AND PENALTY

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondent David Schmidt and the 2006 David Schmidt campaign, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission seeks to modify any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission. This Stipulation only addresses allegations that occurred during the five years preceding November 28, 2011, the date PDC staff issued its Notice of Administrative Charges.

JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to Chapter 42.17 RCW and Chapter 42.17A RCW, Public Disclosure Acts; Chapter 34.05 RCW, the Administrative Procedure Act; and Title 390 WAC.

FACTS

1. Respondent David Schmidt was elected to the Washington State Legislature, in the 44th Legislative District, in 1994. He served four, two-year terms as a State Representative followed by one, four-year term as a State Senator. Mr. Schmidt was defeated in the November 7, 2006 general election in his bid for re-election to the

State Senate. On April 7, 2010, Mr. Schmidt filed a C-1 Candidate Registration stating that he was running for State Senate in the 44th Legislative District in 2010.

2. Mr. Schmidt raised \$193,999 during his 2006 campaign, and had a surplus of \$32,260.98 at the end of the campaign. On December 30, 2006, after losing the election, Mr. Schmidt reimbursed himself \$32,260.98 for wages he claims he lost in 2003, 2004, 2005 and 2006, reducing his campaign surplus to zero.
3. On or about November 1, 2006, Mr. Schmidt's computer "crashed." He did not file his post-general election C-4 report (due December 10, 2006) or his December 2006 C-4 report (due January 10, 2007). He did not file these reports until July 23, 2010, after he became a candidate for State Senate in the 2010 election. These reports were filed 1,320 and 1,289 days late, respectively, and were the first time the public was provided information identifying his reimbursements for lost earnings.

Reimbursement of Lost Earnings (RCW 42.17.125)

4. On July 23, 2010, Mr. Schmidt filed PDC form C-4 covering the period December 1, 2006 through December 31, 2006. He reported \$37,021.69 in previously unreported expenditures, including \$32,260.98 in reimbursements to himself on December 30, 2006 for claimed lost wages he identified as occurring during 2003, 2004, 2005 and 2006.
5. Mr. Schmidt's claims to lost wages were for time associated with the Washington Army National Guard (National Guard). Mr. Schmidt served in the National Guard as a non-commissioned officer (NCO) from 1982 through 2007. The National Guard required Mr. Schmidt to serve one weekend each month, normally with his assigned unit. This training is known as Inactive Duty Training (IDT). The National Guard also required Mr. Schmidt to serve two weeks each year, normally with his assigned unit. This training is known as Annual Training (AT). The National Guard has other training opportunities for which individuals can apply. Those training opportunities are known as Active Duty Operational Support (ADOS) and have been known as Active Duty Special Work (ADSW).

6. Missed weekend drills (IDT) and missed annual training (AT) can be made up at an alternative time, if the absence is excused. Mr. Schmidt was an NCO with special skills, and he could have made up missed weekend drills and missed annual training.
7. State law does not provide for reimbursement for lost wages from campaign contributions associated with legislative duties.
8. Mr. Schmidt said that after he was defeated in the 2006 general election, he faced unemployment and had no job prospects. As a result, he identified dates from 2003 through 2006 for which he claimed he had lost wages from the National Guard. He claimed that the dates were for training with his National Guard unit that he did not do because of his legislative duties and 2006 re-election campaign activities. Mr. Schmidt identified a total of \$12,159.41 as lost earnings for dates preceding June 9, 2005, the date Mr. Schmidt identified himself as a candidate for re-election in 2006.
9. Mr. Schmidt claimed the following amounts for lost wages:

Year	Lost Wages
2003	\$2,798.02
2004	\$7,432.03
2005	\$9,394.20
2006	\$12,636.73
TOTAL	\$32,260.98

10. Mr. Schmidt accounted for the claimed reimbursed lost wages in the following manner:

<u>Lost Wages</u> <i>per Dec. 2006 C-4 Schedule A</i>	<u>Relevant Dates</u> <i>per David Schmidt</i>	<u>Purpose of duty</u> <i>unable to attend due to campaign & legislative duties (per Mr. Schmidt)</i>
\$1,878.08	2003: Jan. 4-5, Feb. 1-2, Mar. 1-2, Apr. 5-6	Inactive duty training
\$919.94	2003: June (7 days)	Annual training
\$1,907.28	2004: Jan. 3-4, Feb. 7-8, Mar. 6-7, Sep. 4-5	Inactive duty training
\$667.10	2004: June (5 days)	Annual training
\$4,857.65	2004: Jul.-Aug. (35 days)	Special operations training mission to Phillipines

\$2,894.04	2005: Jan. 8-9, Feb. 5-6, Mar. 5-6, Apr. 2-3, Aug. 13-14, Sep. 10-11	Inactive duty training
\$947.94	2005: June (7 days)	Annual training
\$5,552.22	2005: Jul.-Aug. (41 days)	Special operations training mission to Phillipines
\$2,438.90	2006: Jan. 7-8, Feb. 4-5, Mar. 4-5, Oct. 7-8, Nov. 4-5	Inactive duty training
\$1,093.92	2006: June (8 days)	Annual training
\$7,110.48	2006: Apr.-Dec. (52 days)	WA Youth Challenge program – establishment & support
\$1,993.43	2006: 15 days-variable	Service support for emergency management training

11. Mr. Schmidt provided no evidence, in the form of a calendar or other records, to show that the wages he lost were as a result of campaigning for re-election in 2006. Mr. Schmidt acknowledged that he could have worked alternative weekends to make up the monthly IDT training that he missed, totaling \$9,118.30 in lost wages, but stated that it would have been extremely difficult and burdensome on the National Guard to do so.

12. Mr. Schmidt provided no explanation for why he missed his annual training (AT) requirements in 2003, 2004, 2005, or 2006, why he did not make up the missed training opportunities, or evidence of 2006 campaign activity on these AT dates that caused him to be unable to train, and lose \$3,628.90 in wages.

13. Mr. Schmidt reimbursed himself for wages he claims to have lost in July and August of 2004 totaling \$4,857.65 (\$138.79 per day) and in July and August 2005 totaling \$5,552.22 (\$135.42 per day) when he turned down opportunities to serve as an administrative NCO with a Special Forces Unit of the National Guard on training missions to the Philippines. He stated that he declined the opportunities to work because of his legislative duties and 2006 campaign activities. Mr. Schmidt provided no evidence of 2006 campaign activities that caused him to lose wages in July and August of 2004 and 2005.

14. The Washington Youth Academy is based in Bremerton, Washington, and is patterned after the National Guard's Youth Challenge program. As a legislator, Mr.

Schmidt sponsored legislation that created the Washington Youth Academy, and played a key role in initiating the program in Washington State. The National Guard supports the Washington Youth Academy, and in 2006, authorized Mr. Schmidt to work with the Washington Youth Academy, referring to this duty as Active Duty Special Work (ADSW).

15. Mr. Schmidt reimbursed himself \$7,110.48 for 52 days between April and December 2006 (\$136.74 per day) when he claims he lost earnings by not being able to work on behalf of the National Guard in establishing the Washington Youth Challenge Program because of his legislative duties and campaign activities. Mr. Schmidt provided no evidence of 2006 campaign activities that caused him to lose these earnings.
16. Mr. Schmidt reimbursed himself \$1,993.43 for 15 days during 2006 at \$136.74 per day when he states he lost earnings by not being able to provide service support for Emergency Management training throughout the state of Washington. Mr. Schmidt provided no actual dates for the lost wages, and provided no evidence of 2006 campaign activities that caused him to lose these earnings.
17. Respondent David Schmidt contends that he understood RCW 42.17.125 to allow him to reimburse himself for lost earnings at the close of his 2006 campaign, and that any violation was unintentional, although he did not attempt to confirm his understanding with PDC staff prior to making the reimbursement. He contends that the reimbursement, totaling \$32,260.98, was made in good faith, and had he believed reimbursement to be prohibited, he would not have reimbursed himself for the lost earnings.

Payments for Airfare to Arizona Following 2006 General Election (RCW 42.17.125)

18. The 2006 Schmidt campaign reported two expenses for travel to Arizona that took place following the 2006 general election, as listed below:

Date	Vendor	Purpose	Amount
12/30/06	Alaska Airlines	Travel to Arizona after election	\$377.60
12/30/06	Alaska Airlines	Travel to Arizona after election	\$377.60
Total			\$755.20

19. Mr. Schmidt purchased the two airline tickets between the primary and general elections, and took the trip two weeks after the general election. The stated purpose of the trip was for Mr. Schmidt and a campaign worker, Mary-Jim Montgomery, to travel to Arizona following the 2006 general election to ask Mr. Schmidt's brother and his family for campaign contributions.

Reporting Contributions and Expenditures (RCW 42.17.080 and .090)

20. On July 23, 2010, Mr. Schmidt filed PDC form C-4 covering the period October 31, 2006 through November 30, 2006 related to his 2006 campaign. The C-4 was required to be filed by December 11, 2006 and was filed three years and seven months (1,320 days) late. The late-filed C-4 report included \$40,830.59 in previously unreported expenditures.
21. On July 23, 2010, Mr. Schmidt filed PDC form C-4 covering the period December 1, 2006 through December 31, 2006 related to his 2006 campaign. The C-4 report was required to be filed by January 10, 2007 and was filed three years and six months (1,289 days) late. The late-filed C-4 report included \$37,012.69 in previously unreported expenditures.
22. On October 8, 2007, PDC staff contacted Mr. Schmidt to inquire about the status of his 2006 post-general election C-4 report which had not yet been electronically filed. Mr. Schmidt informed PDC staff that his computer had crashed a few days before the election, and asked if he could file his reports on paper rather than electronically. PDC staff informed Mr. Schmidt that he should file his reports on paper, but because he was required to file his reports electronically, he should include an explanation and request a waiver from filing electronically. Mr. Schmidt did not file any reports at that time, nor did he request a waiver.

23. In July 2010, after an inquiry from the Everett Herald about Mr. Schmidt's missing 2006 post-election C-4 reports, PDC staff contacted Mr. Schmidt and assisted him in filing his missing reports.

LEGAL AUTHORITY

24. **RCW 42.17.125** states: Contributions received and reported in accordance with RCW 42.17.060 through 42.17.090 may only be transferred to the personal account of a candidate, or of a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or loans to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Such lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the individual or the individual's political committee. The political committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount, date, and description of each expense, and the political committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(3) Repayment of loans made by the individual to political committees, which repayment shall be reported pursuant to RCW 42.17.090. However, contributions may not be used to reimburse a candidate for loans totaling more than *three thousand dollars made by the candidate to the candidate's own political committee or campaign.

WAC 390-16-238 states:

Except as specifically allowed by chapter 42.17 RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW 42.17.125.

An expenditure of a candidate's campaign funds shall be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign.

(3) If an activity or expenditure is both personal and campaign related, the campaign may pay no more than the fair market value of its share of the activity or expenditure.

For example, if a candidate uses a personal vehicle for campaign purposes, the campaign may reimburse the candidate for:

(a) The prorated share of documented gasoline, maintenance and insurance costs directly related to the campaign's usage of the vehicle; or

(b) The standard mileage rate established by the Internal Revenue Service for those documented miles directly related to the campaign's usage.

(4) Examples of expenditures presumed to be for personal use include, but are not limited to:

(a) Mortgage, rent, utility or maintenance expenses for personal living accommodations;

(b) Clothing purchases and maintenance expenses not related to the campaign;

(c) Automobile expenses not related to the campaign;

(d) Travel expenses not related to the campaign;

(e) Household food items;

(f) Restaurant expenses except for in-person fund-raising or campaign organizational activities;

(g) Tuition payments not related to the campaign;

(h) Admission to sporting events, concerts, theaters, or other forms of entertainment unless the event is primarily related to the candidate's campaign;

(i) Country club membership fees, dues and payments;

(j) Health club or recreational facility membership fees, dues and payments;

(k) Social, civic, fraternal, or professional membership dues, fees and payments unless the expenditure occurs during an election year and membership is required to gain access to the organization's mailing list for campaign purposes or other facilities for the candidate's campaign;

(l) Home or business internet service provider costs;

(m) Home or business newspaper and periodical subscriptions;

(n) Greeting cards to persons who would customarily receive such cards (e.g., family, friends and business associates).

RCW 42.17.080 and 090 require candidates to file timely, accurate reports of contributions and expenditures, including in-kind contributions. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days before each election, and in the month following the election, regardless of the level of activity. Contribution deposits made during this same time period must be disclosed on the Monday following the date of deposit.

VIOLATIONS

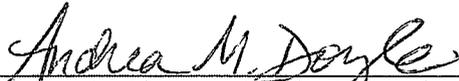
David Schmidt and the 2006 David Schmidt Campaign for State Senator in the 44th Legislative District violated provisions of the state campaign finance disclosure laws during the 2010 election as follows:

1. David Schmidt violated RCW 42.17.125, in the total amount of \$33,016.18, by:
 - a. improperly reimbursing himself from campaign funds in the amount of \$32,260.98 for wages he claims to have lost for the years 2003, 2004, 2005 and 2006 following his 2006 campaign for State Senate in the 44th Legislative District; and
 - b. improperly using campaign funds for personal use in the amount of \$755.20 by reimbursing himself for airfare for Mr. Schmidt and a campaign worker, Mary-Jim Montgomery, to travel to Arizona following the 2006 general election.
2. David Schmidt and the 2006 David Schmidt campaign violated RCW 42.17.080 and .090 by:
 - a. filing the campaign's 2006 post-general election C-4 report three years and seven months (1,320 days) late on July 23, 2010. The late-filed C-4 report included \$40,831 in expenditures not previously reported; and
 - b. filing the campaign's December 2006 C-4 report three years and six months (1,289 days) late on July 23, 2010. The late-filed C-4 report included \$37,012.69 in previously unreported expenditures.

PENALTY

Based upon the stipulated facts and violations set forth above, Respondent Schmidt and the 2006 David Schmidt campaign agree that a civil penalty in the amount of \$10,000 may be assessed. Respondent agrees to pay the penalty within 12 months from the date of the Final Order.

Respondent David Schmidt affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.


Andrea McNamara Doyle, Executive Director
Public Disclosure Commission

2-22-2012
Date Signed


David Schmidt, Respondent

2-22-12
Date Signed