



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN THE MATTER OF ENFORCEMENT)	PDC CASE NO: 11-033
ACTION AGAINST)	
Recall Dale Washam)	Amended Notice of Administrative
)	Charges
Respondent.)	
_____)	

IT IS ALLEGED as follows:

I. JURISDICTION

1. The Public Disclosure Commission (PDC) has jurisdiction over this proceeding pursuant to the provisions of RCW 42.17, the state campaign finance disclosure law; RCW 34.05, the Administrative Procedure Act; and WAC 390.

II. ALLEGATIONS

2. PDC Staff alleges that Recall Dale Washam, a political committee, (Respondent) violated WAC 390-16-125 by exceeding the limitations for Mini campaign reporting by a political committee, specified in WAC 390-16-105, before applying in writing to the Commission for authorization to change reporting options, in accordance with the provisions of WAC 390-16-125.
3. PDC Staff alleges that Respondent violated RCW 42.17.040, 42.17.080 and 42.17.090 by exceeding the limitations for Mini campaign reporting by a political committee, specified in WAC 390-16-105, before: (1) filing an amended Committee Registration (PDC Form C-1pc); and (2) filing PDC forms C-3 and C-4 with relevant schedules and attachments.

III. REGULATORY BACKGROUND

4. Through its adoption of WAC 390-16-105, the PDC created the Mini-reporting option, which relieves political committees from the basic filing requirements imposed by RCW 42.17.080 and .090 to file frequent, detailed reports of contributions and expenditures. To qualify for these Mini-reporting requirements, a committee must agree that its aggregate

contributions and expenditures will not exceed \$5,000, and that no contribution or contributions from any person will exceed \$500. WAC 390-16-105. For purposes of Washington's campaign finance disclosure law, the definition of "contribution" includes "Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee."

5. The PDC has recognized that early contributions to and expenditures by a recall committee, including legal expenses, are subject to reporting per Declaratory Ruling No. 6, *Recall Petition is Ballot Proposition When Initially Filed*. Declaratory Ruling No. 6 states that a recall petition becomes a ballot proposition subject to the disclosure requirements of RCW 42.17 from and after the time that it is first filed with the relevant elections authority, i.e., prior to the drafting of the ballot synopsis, and prior to a judicial hearing to determine the legal sufficiency of the recall charges. **(Exhibit 1)**

IV. FACTS

6. Dale Washam was elected Pierce County Assessor-Treasurer on November 4, 2008.
7. On October 21, 2010, a political committee, Recall Dale Washam, opted to register with the PDC under the Mini Reporting option. **(Exhibit 2)** By doing so, Respondent voluntarily agreed to raise and spend no more than \$5,000 in contributions, and to accept no more than \$500 in monetary or in-kind contributions from any one source in exchange for opting out of certain reporting requirements otherwise applicable to political committees under RCW 42.17.080 and RCW 42.17.090.
8. On October 29, 2010, Respondent filed a recall petition with the Pierce County Auditor seeking the recall of Dale Washam from office.
9. On November 10, 2010, a Ballot Synopsis was filed with Pierce County Superior Court.
10. On November 16, 2010, Respondent's representatives met with the Law Firm of Oldfield & Helsdon, PLLC, and the firm began providing *pro bono* services to the Respondent.
11. On December 16, 2010, at a hearing held in Pierce County Superior Court, the Court found the recall charges legally sufficient. Having completed the work of representing the Respondent at the sufficiency hearing in superior court, the firm Oldfield & Helsdon, PLLC, began working to prepare for a possible appeal by Dale Washam to the Washington State Supreme Court.

12. In PDC Interpretation 91-02, *Legal Fees Related to Placing, or Not Placing, a Proposition on the Ballot*, the Commission stated that expenses for legal services incurred “*by a person or political committee to place a measure on a ballot, to influence the wording of a ballot title or to require that a government agency place a measure on the ballot are campaign expenditures reportable under RCW 42.17.*” **(Exhibit 3)** In-kind contributions received by Respondent from Oldfield & Helsdon, PLLC, up to and including the December 16, 2010 sufficiency hearing, totaled \$21,616.25.
13. On December 17, 2010, based on media coverage of the recall effort, PDC staff contacted Respondent to caution them that donated legal services could exceed the limit of Mini Reporting on contributions from one source.
14. In a letter received on January 10, 2011, Respondent requested to change from the Mini Reporting option to the Full Reporting option. **(Exhibit 4)** The request letter from Robin Farris, Respondent’s Chair, stated in part, “*The Recall Dale Washam campaign is requesting to change from mini-reporting to full reporting. I chose mini-reporting because it is very difficult to recall elected officials in Washington State. On December 22, 2010, we were successful in the Superior Court hearing, which means we will be able to gather signatures once the appeal process is over.*”
15. On January 12, 2011, Respondent submitted contribution and expenditure reports as part of its formal application for a change from the Mini Reporting option to the Full Reporting option. **(Exhibit 5)** Respondent also submitted billing statements from Oldfield & Helsdon, PLLC, detailing the firm’s *pro bono* work in advising and representing Respondent.
16. As of January 12, 2011, Respondent’s reportable monetary and in-kind contributions totaled \$24,566.25, and its monetary and in-kind expenditures totaled \$22,623.60.
17. As of December 31, 2010, Respondent exceeded the \$500 limit of the Mini Reporting option on contributions from one source by \$21,116.25, and exceeded the \$5,000 limit of Mini Reporting on total contributions and expenditures by \$19,556.25.
18. On January 18, 2011, PDC staff contacted Tom Oldfield of Oldfield & Helsdon, PLLC, to inform him that Respondent exceeded the Mini Reporting limits prior to processing a change in reporting options, that it appeared his client could not return to compliance with

the Mini limits, and that as a result, PDC staff was unable to process or approve his client's application.

19. PDC staff informed Mr. Oldfield that because Respondent had not complied with the limits of the Mini Reporting option, per WAC 390-16-105 it was once again subject to the normal contribution and expenditure reporting requirements of RCW 42.17.080 and 42.17.090.

IV. LAW

RCW 42.17.020(15)(c) states: "Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider."

RCW 42.17.040 states, in part: "(1) Every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission." ... and "(3) Any material change in information previously submitted in a statement of organization shall be reported to the commission within the ten days following the change."

RCW 42.17.080 and .090 require political committees under the full reporting option to file timely, accurate reports of contributions and expenditures.

WAC 390-16-105 (2) states, in part: "A political committee, as that term is defined in RCW 42.17.020, shall not be required to comply with the provisions of RCW 42.17.065 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when neither aggregate contributions nor aggregate expenditures exceed five thousand dollars and no contribution or contributions from any person exceed five hundred dollars."

WAC 390-16-125 states, in part, "(1) A candidate or political committee shall apply in writing to the commission for authorization to change reporting options before the limitations specified in WAC 390-16-105 are exceeded. A complete application shall include all of the following documents:

- (a) An amended registration statement (Form C-1 for candidates, Form C-1pc for political committees) selecting the full reporting option as provided in RCW 42.17.065 - 42.17.090;
- (b) PDC forms C-3 and C-4 with relevant schedules and attachments disclosing all contributions and expenditures to date reportable under RCW 42.17.090 for the election campaign, or in the case of continuing political committees, for the calendar year; and

- (c) (ii) If the applicant is the treasurer of a political committee supporting or opposing a ballot proposition, a statement affirming that all treasurers of all political committees registered with the commission as supporting or opposing the proposition have been notified personally in writing of the application, and the manner and date of such notification.”

Declaratory Ruling No. 6 *Recall Petition is Ballot Proposition When Initially Filed*, provides that a recall petition becomes a ballot proposition subject to the disclosure requirements of RCW 42.17 from and after the time that it is first filed with the relevant elections authority, i.e., prior to the drafting of the ballot synopsis, and prior to a judicial hearing to determine the legal sufficiency of the recall charges.

PDC Interpretation 91-02 *Legal Fees Related to Placing, or Not Placing, a Proposition on the Ballot*, provides, in part, concerning the specific service of legal representation, “Expenditures made by a person or political committee to place a measure on a ballot, to influence the wording of a ballot title or to require that a government agency place a measure on the ballot are campaign expenditures reportable under RCW 42.17.”

RESPECTFULLY SUBMITTED this 29th day of March, 2011.


Philip E. Stutzman
Director of Compliance

Exhibits

- Exhibit 1** PDC Declaratory Order 6, *Recall Petition is Ballot Proposition When Initially Filed*
- Exhibit 2** Committee Registration (PDC Form C1-pc) filed October 21, 2010
- Exhibit 3** PDC Interpretation 91-02, *Legal Fees Related to Placing, or Not Placing, a Proposition on the Ballot*
- Exhibit 4** Request to change to Full Reporting option received January 10, 2011 with new C-1pc
- Exhibit 5** C-4 with Schedules A & B for period December 1 – December 31, 2010