

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

In the Matter of Enforcement Action
Against:

Lucy DeYoung

Respondents.

Case No. 14-008

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 Lucy DeYoung, through her counsel Mark Lamb, 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 suggests modification to 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.

JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

FACTS

1. During 2013, Bernie Talmas served as Mayor of the City of Woodinville. On March 28, 2013, Mr. Talmas filed a Candidate Registration (C-1 report) registering his candidacy for re-election to the Woodinville City Council in the November 5, 2013 general election.
2. The Woodinville City Council was considering legislation to change its Council Ethics and Rules of Procedures at its June 18, 2013, July 2, 2013, July 16, 2013, September 24, 2013, and October 22, 2013 meetings. Ms. DeYoung states that she desired to influence that legislation by sending out mailings and phone calls to have the Council adopt strengthened Council Ethics and Rules of Procedures. She states that she sent out information to influence

Mayor Talmas to put the issue on the Council Agenda and to vote for improved Council Ethics and Rules of Procedures

Direct Mail Postcards and Automated Calls

3. Between August 29, 2013 and October 21, 2013, Lucy DeYoung sponsored \$14,973 in Independent Expenditure political advertising automated phone calls and direct mail postcard Electioneering Communications opposing Bernie Talmas, a Woodinville City Council candidate, running for re-election in the November 5, 2013 general election. Five direct mail postcards were presented to the public on August 29, 2013, September 9, 2013, September 23, 2013, October 7, 2013, and October 18, 2013, each costing approximately \$2,935.05. Automated phone calls were presented to the public on October 21, 2013 at a cost of \$298.
4. Ms. DeYoung's direct mail postcards and automated telephone calls attacked the character and campaign tactics of Mr. Talmas, making the communications subject to only one reasonable interpretation: an exhortation to vote against Mr. Talmas.
5. Lucy DeYoung presented an Independent Expenditure direct mail postcard to the public on August 29, 2013 opposing Mr. Talmas. The postcard had a value of \$2,905. Ms. DeYoung was required to file a C-6 report disclosing the Independent Expenditure postcard by September 3, 2013. She failed to file the C-6 report.
6. Lucy DeYoung presented four Electioneering Communication direct mail postcards to the public on September 9, 2013, September 23, 2013, October 7, 2013, and October 18, 2013. Each of the postcards cost \$2,935.05, for a total cost of \$11,740. Ms. DeYoung was required to report the Electioneering Communications by electronically filing C-6 reports on September 10, September 24, October 8, and October 21, 2013. The communications were reported from 109 to 150 days late on February 7, 2014, by facsimile. A C-6 report for these four expenditures was re-filed electronically on March 4, 2014, as required.
7. Lucy DeYoung was required to file a C-6 report of Independent Expenditures by October 28, 2013 for the automated telephone calls presented to the public on October 21, 2013. She filed the C-6 report on February 7, 2014, 105 days late, by facsimile. She re-filed the C-6 report electronically on March 4, 2014.

Sponsor Identification for Direct Mail Postcards/Automated Calls

8. None of Ms. DeYoung's Electioneering Communication postcards, her Independent Expenditure political advertising postcard, or her Independent Expenditure political advertising telephone calls included a statement of sponsor identification taking the form, "*No candidate authorized this ad. It is paid for by (name, address, city, state).*" Rather, the postcards identified Ethical Woodinville with a web address and a rented UPS mailing address. The telephone calls identified Ethical Woodinville with a web address and telephone number. None of the communications identified Ms. DeYoung as their sponsor.

Concealment of Expenditures for Direct Mail and Advocacy Phone Calls

9. Ethical Woodinville is not a registered political committee nor a separate legal entity of any kind. It is an assumed name created by agents of Lucy DeYoung for the purpose of sponsoring various forms of election-related communications. All communications attributed to Ethical Woodinville were funded and ultimately approved by Ms. DeYoung.
10. Despite media attention seeking the identity of the person or persons responsible for the communications attributed to Ethical Woodinville, during the weeks leading up to the 2013 general election, Ms. DeYoung failed to identify herself as the sponsor of the communications. Inquiries from the media went unanswered, or were met with responses that did not identify Ms. DeYoung.
11. On October 2, 2013, PDC staff mailed notification of a complaint filed by Susan Boundy-Sanders to the address listed in the Ethical Woodinville communications. Ms. DeYoung did not submit any disclosure filings in response to staff's letter, and did not contact PDC staff or provide any other response.
12. On December 4, 2013, PDC staff mailed a letter to the address listed in the Ethical Woodinville communications, containing notification that staff would conduct a formal investigation of Ms. Boundy-Sanders' complaint. In an email received on December 20, 2013, an unidentified person acknowledged receipt of staff's December 4, 2014 letter. Lucy DeYoung was not identified in the email as the sponsor of the Ethical Woodinville communications.

13. The first notification the public received of Ms. DeYoung's sponsorship of the Ethical Woodinville communications was in an L-6 report of Grass Roots Lobbying activity she submitted to the Public Disclosure Commission on January 10, 2014, more than two months after the 2013 general election.
14. Ms. DeYoung states that at all times, she believed that her actions were lawful. She states that she expended considerable resources to secure the advice of legal and political professionals whom she believed were well versed in campaign finance laws and would ensure that all communications complied with disclosure requirements. She states that her only desire was to send out communications to influence the Woodinville City Council to adopt an ethics ordinance to prevent bullying and abusive behavior by members of the council. When it was brought to her attention that their advice may have been erroneous, Ms. DeYoung acted to report all activity to the PDC through her new counsel, though her disclosures were untimely, and were made following the 2013 election.

STATUTORY AND RULE AUTHORITY

RCW 42.17A.005(19)(a) defines "Electioneering communication" to mean any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that: (i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name; (ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and (iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

RCW 42.17A.005(36) defines "Political advertising" to include any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

RCW 42.17.005(26) states, (26) "Independent expenditure" means an expenditure that has each of the following elements:

- (a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting

that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *eight hundred dollars or more.¹ A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

Washington State Supreme Court's ruling in *Washington State Republican Party v. Public Disclosure Commission*, 141 Wn.2d245 (2000) (WSRP). (Excerpt) The Court ... stated, in defining "express" advocacy, that when an ad "is unmistakable and unambiguous in its meaning, and presents a clear plea for the listener to take action to defeat[a] candidate," it is "express" advocacy. *Id.* At 273. The Supreme Court held as "important" that if, in an ad, "a candidate's character and campaign tactics are attacked, the ad may be subject to only one reasonable interpretation: an exhortation to vote against the candidate." *Id.* At 270. In contrast, the Court described "issue" advocacy as advocacy that "intend[s] to inform the public about political issues germane to [an] election." *Id.* At 272. (This paragraph is from the meeting materials for the January 26, 2012 Commission Meeting, on page 122 of 312.)

RCW 42.17A.255 states: (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240. ... (2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

RCW 42.17A.305 requires that the sponsor of an electioneering communication shall report to the commission within twenty-four hours of, or on the first working day after, the date the electioneering communication is broadcast, transmitted, mailed, erected, distributed, or otherwise published, and include: (a) Name and address of the sponsor; (b) Source of funds for the communication, (c) Name and address of the person to whom an electioneering communication related expenditure was made; (d) A detailed description of each expenditure

¹ Per WAC 390-05-400, in 2013 this dollar amount was set at \$900.

of more than one hundred dollars; (e) The date the expenditure was made and the date the electioneering communication was first broadcast, transmitted, mailed, erected, distributed, or otherwise published; (f) The amount of the expenditure; and (g) The name of each candidate clearly identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate.

RCW 42.17A.320 requires (1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

(2) In addition to the information required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure or an electioneering communication by a person or entity other than a bona fide political party must include as part of the communication:

(a) The statement: "No candidate authorized this ad. It is paid for by (name, address, city, state)"; ...

RCW 42.17A.435 states that no contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

VIOLATIONS

15. Based on the Stipulation of Facts set forth above, Lucy DeYoung violated RCW 42.17A as follows:

- A. RCW 42.17A.255 by failing to file a C-6 report of Independent Expenditures disclosing approximately \$2,905 for a postcard presented to the public on August 29, 2013 opposing Bernie Talmas, a Woodinville City Council candidate, running for re-election in the November 5, 2013 general election. The Independent Expenditure Political Advertising has not been disclosed on the C-6 report.

- B. RCW 42.17A.255 by failing to timely file a C-6 report of Independent Expenditures disclosing \$298 for advocacy phone calls opposing Mr. Talmas that were presented to the public on October 21, 2013.
- C. RCW 42.17A.305 by failing to timely file a C-6 report of Electioneering Communications disclosing \$11,740 for direct mail postcards opposing Mr. Talmas.
- D. RCW 42.17A.320 by using the assumed name "Ethical Woodinville" as the sponsor of Independent Expenditure Political Advertising, by failing to include the name of the actual sponsor in the communications, and the required language, "*No candidate authorized this ad. It is paid for by (name, address, city, state).*"
- E. RCW 42.17A.435 by making approximately \$14,973 in expenditures for Electioneering Communications and Independent Expenditure Political Advertising opposing Mr. Talmas in a manner that concealed her identity as the sponsor of the communications.

PENALTY

16. Based upon the Stipulation of Facts and Violations set forth above, Respondent Lucy DeYoung agrees to pay a total civil penalty of \$40,000 with \$30,000 suspended on the following conditions:
- a. Lucy DeYoung is not found to have committed any violations of RCW 42.17A within four years of the date of the final order in this matter.
 - b. Ms. DeYoung pays the non-suspended portion of the penalty (\$10,000) within 30 days of the date of the final order.
17. Ms. DeYoung affirms her intention to comply in good faith with the provisions of RCW 42.17A in the future.

Andrea M. Doyle
 Andrea McNamara Doyle, Executive Director
 Public Disclosure Commission

12/3/14
 Date Signed

Mark Lamb
 Mark Lamb, Counsel for Lucy DeYoung

12-3-14
 Date Signed