

ARKANSAS ETHICS COMMISSION

910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773

Elaine Black
Chairman

Catherine Johnson
Vice Chairman

Paul F. Dumas
J. Barrington Minix
Anna Bray
Commissioners

Graham F. Sloan
Director

Rita S. Leoney
Chief Counsel

Todd Eider
Staff Attorney

Teresa Keathley
Kit Acklin
Directors of Compliance



October 5, 2010

Hon. Michael A. Maggio
1745 Penny Street
Conway, Arkansas 72034

Re: Case No. 2010-CM-007

Dear Judge Maggio:

On May 26, 2010, the Ethics Commission mailed you a certified letter containing a copy of the complaint filed against in the above-referenced case. In that letter, the Commission notified you that an investigation was being commenced regarding the issue of whether or not you violated Ark. Code Ann. § 7-6-203(g)(1), Ark. Code Ann. § 7-6-206, and/or Ark. Code Ann. § 7-6-207(b)(1)(E)-(H), in your capacity as the incumbent candidate for Circuit Judge, District 20, Division 2, during the 2008 election cycle.

The investigation focused on three (3) checks which were drawn on the checking account of the Keep Mike Maggio Campaign Committee and deposited into the personal checking account of you and your wife Emily. The checks in question were Check No. 1024 in the amount of \$500.00, Check No. 1026 in the amount of \$1,254.97, and Check No. 1028 in the amount of \$600.00.

On September 30, 2010, you signed a written Offer of Settlement agreeing that the Commission make a finding that you violated Ark. Code Ann. §§ 7-6-203(g)(1), 7-6-206, and 7-6-207(b)(1)(E)-(H) by taking campaign funds as personal income, by failing to maintain proper records of all campaign expenditures, and by failing to properly report those expenditures on your Campaign Contribution and Expenditure reports filed with the Secretary of State during that particular election cycle.

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www.arkansasethics.com

2010-04-07-10

As part of its disposition of this matter, the Commission is hereby issuing this **Public Letter of Warning** which is condemnatory in nature and serves to express strong disapproval of your misconduct. It is the Commission's view that such misconduct serves to undermine public confidence in the integrity of the governmental process. You are advised not to engage in the same activity again.

This disciplinary action is taken pursuant to Ark. Code Ann. § 7-6-218(b)(4).

Sincerely,

A handwritten signature in cursive script that reads "Elaine Black".

Elaine Black
Chairman

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COPY

October 5, 2010

Hon. Michael A. Maggio
1745 Penny Street
Conway, Arkansas 72034

Re: Case No. 2010-CM-007

Dear Judge Maggio:

Please be advised that the Ethics Commission is in receipt of the written Offer of Settlement which you signed on September 30, 2010, and returned to us along with a cashier's check in the amount of five hundred dollars (\$500). Pursuant to the terms of that settlement, you have been issued a Public Letter of Warning and fined \$500. A copy of the public letter is enclosed for your records.

In accordance with Ark. Code Ann. § 7-6-218(b)(1)(C), the Commission is sending this letter, which is a public document, to give notice of its final action together with the reasons for such action. In that regard, it is noted that the final action in this matter was the issuance of a Public Letter of Warning and the imposition of a \$500 fine.

The foregoing action was taken as a result of your agreeing that the Commission make a finding that you violated Ark. Code Ann. §§ 7-6-203(g)(1), 7-6-206, and 7-6-207(b)(1)(E)-(H) in your capacity as the incumbent candidate for Circuit Judge, District 20, Division 2, during the 2008 election cycle. This finding centered around three (3) checks which were drawn on the checking account of the Keep Mike Maggio Campaign Committee (the "Campaign Committee"), made payable to your wife Emily, and deposited into a personal checking account she held jointly with you. The checks in question were Check No. 1024 in the amount of \$500.00, Check No. 1026 in the amount of \$1,254.97, and Check No. 1028 in the amount of \$600.00.

The first of these statutes, Ark. Code Ann. § 7-6-203(g)(1), provides, in pertinent part, that "[a] candidate shall not take any campaign funds as personal income." It is noted that paragraph (g)(4)(A) of that statute provides that "a candidate who uses campaign

funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income."

The second statute, Ark. Code Ann. § 7-6-206, provides as follows:

- (a) A candidate, a political party, or a person acting in the candidate's behalf shall keep records of all contributions and expenditures in a manner sufficient to evidence compliance with §§ 7-6-207 - 7-6-210.
- (b) The records shall be made available to the Arkansas Ethics Commission and the prosecuting attorney in the district in which the candidate resides, who are delegated the responsibility of enforcing this subchapter, and shall be maintained for a period of four (4) years.

The third one, Ark. Code Ann. § 7-6-207(b)(1)(E)-(H), provides that the Campaign Contribution and Expenditure ("C&E") reports required to be filed pursuant to Ark. Code Ann. § 7-6-207(a) shall indicate the following:

- (E) An itemization of all single expenditures made which exceed one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;
- (F) A list of all paid campaign workers and the amount the workers were paid;
- (G) A list of all expenditures by categories, including, but not limited to: (i)(a) Television; (b) Radio; (c) Print; and (d) Other advertising; (ii) Direct mail; (iii) Office supplies; (iv) Rent; (v) Travel; (vi) Expenses; (vii) Entertainment; and (viii) Telephone;
- (H) The total amount of all nonitemized expenditures made during the filing period[.]

With respect to the \$500.00 check, your C&E reports did not reflect a corresponding entry. Although receipts were produced for expenditures totaling \$497.83 which were made for a newspaper advertisement, materials for yard signs, campaign materials, and invitations to fundraisers held during your campaign, no receipt was produced for the remaining \$2.17. Moreover, the receipt for the fundraising invitations reflected that they

funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income."

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- (b) The records shall be made available to the Arkansas Ethics Commission and the prosecuting attorney in the district in which the candidate resides, who are delegated the responsibility of enforcing this subchapter, and shall be maintained for a period of four (4) years.

The third one, Ark. Code Ann. § 7-6-207(b)(1)(E)-(H), provides that the Campaign Contribution and Expenditure ("C&E") reports required to be filed pursuant to Ark. Code Ann. § 7-6-207(a) shall indicate the following:

- (E) An itemization of all single expenditures made which exceed one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;
- (F) A list of all paid campaign workers and the amount the workers were paid;
- (G) A list of all expenditures by categories, including, but not limited to: (i)(a) Television; (b) Radio; (c) Print; and (d) Other advertising; (ii) Direct mail; (iii) Office supplies; (iv) Rent; (v) Travel; (vi) Expenses; (vii) Entertainment; and (viii) Telephone;
- (H) The total amount of all nonitemized expenditures made during the filing period[.]

With respect to the \$500.00 check, your C&E reports did not reflect a corresponding entry. Although receipts were produced for expenditures totaling \$497.83 which were made for a newspaper advertisement, materials for yard signs, campaign materials, and invitations to fundraisers held during your campaign, no receipt was produced for the remaining \$2.17. Moreover, the receipt for the fundraising invitations reflected that they

Hon. Michael A. Maggio
October 5, 2010
Page 3

cost \$282.54, but this expenditure was not disclosed as an itemized expenditure over \$100.00 on any of your C&E reports.

With respect to the \$600.00 check, both you and your wife stated that it was written to pay her for services rendered during the course of the campaign. However, no record beyond the check itself was produced to support such an expenditure and there was no corresponding disclosure on any of your C&E reports. A \$600.00 payment to your wife for services rendered during the campaign would need to have been reported as (i) an itemized expenditure over \$100.00, (ii) a campaign expenditure by category next to "Paid Campaign Workers", and (iii) in the section for paid campaign workers.

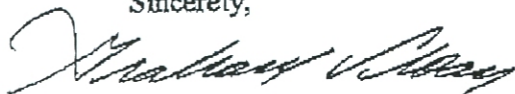
And finally, with respect to the \$1,254.97 check, it was listed on your final C&E report as an expenditure to the Conway Country Club ("CCC") for a "campaign committee meeting" but the check was actually made payable to your wife. Both you and your wife subsequently stated that this check represented (i) the cost of food served at a Mexican Buffet event catered to your house in Conway on election night and (ii) room rental fees in the amount of \$600.00 for campaign office space at the CCC which was used to hold meetings and distribute campaign materials.

Although there was conflicting evidence concerning the cost of the Mexican Buffet event, records produced by the CCC reflected that the cost of the event was \$582.91. No records made or kept during the ordinary course of business were produced to substantiate the payment of \$600.00 to the CCC for room rental fees.

The expenditure for the cost of the Mexican Buffet event should have been listed by category next to "Entertainment" on your final C&E report. Assuming that room rental fees in the amount of \$600.00 had been paid to the CCC for office space, that expenditure would have been required to be reported by category next to "Rent" on your final C&E report.

If you should have any questions or comments concerning this matter, please do not hesitate to contact us.

Sincerely,



Graham F. Sloan
Director

Enclosure

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September 22, 2010

Hon. Michael A. Maggio
1745 Penny Street
Conway, Arkansas 72034

Re: Case No. 2010-CM-007

Dear Judge Maggio:

On May 26, 2010, the Ethics Commission mailed you a certified letter containing a copy of the complaint filed against you in the above-referenced case. In that letter, the Commission notified you that an investigation was being commenced regarding the issue of whether or not you violated (i) Ark. Code Ann. § 7-6-203(g)(1), (ii) Ark. Code Ann. § 7-6-206, and/or (iii) Ark. Code Ann. § 7-6-207(b)(1)(E)-(H), in your capacity as the incumbent candidate for Circuit Judge, District 20, Division 2, during the 2008 election cycle.

As you are aware, the investigation focused on three (3) checks which were drawn on the checking account of the Keep Mike Maggio Campaign Committee (the "Campaign Committee") and deposited into the personal checking account of you and your wife Emily. The checks in question were Check No. 1024 in the amount of \$500.00, Check No. 1026 in the amount of \$1,254.97, and Check No. 1028 in the amount of \$600.00.

Please be advised that the results of staff's investigation were presented to the Commission for a determination concerning probable cause at the Commission meeting held on September 17, 2010. After considering both the results of the investigation and the applicable law, the Commission decided, by a vote of 4-0, with Commission Dumas recusing, that probable cause existed for finding that you violated Ark. Code Ann. § 7-6-203(g)(1) which serves to prohibit the taking of campaign funds as personal income, Ark. Code Ann. § 7-6-206 which requires that proper records of campaign expenditures be maintained, and Ark. Code Ann. § 7-6-207(b)(1)(E)-(H) which set forth reporting requirements concerning campaign expenditures.

In making these findings, the Commission was mindful that Canon 4 of the Code of Judicial Conduct prohibits a judicial candidate from personally being involved in soliciting or accepting campaign contributions other than through a campaign committee. However, a judicial candidate is not relieved from ensuring that his or her campaign committee complies with the applicable campaign finance laws.

Hon. Michael A. Maggio
September 22, 2010
Page 2

With respect to the \$500.00 check, your C&E reports did not reflect a corresponding entry. Although receipts were produced for expenditures totaling \$497.83 which were made for a newspaper advertisement, materials for yard signs, campaign materials, and invitations to fundraisers held during your campaign, no receipt was produced for the remaining \$2.17. Moreover, the receipt for the fundraising invitations reflected that they cost \$282.54, but this expenditure was not disclosed as an itemized expenditure over \$100.00 on any of your C&E reports.

With respect to the \$600.00 check, both you and your wife stated that it was written to pay her for services rendered during the course of the campaign. However, no record beyond the check itself was produced to support such an expenditure and there was no corresponding disclosure on any of your C&E reports. A \$600.00 payment to your wife for services rendered during the campaign would need to have been reported as (i) an itemized expenditure over \$100.00, (ii) a campaign expenditure by category next to "Paid Campaign Workers", and (iii) in the section for paid campaign workers.

And finally, with respect to the \$1,254.97 check, it was listed on your final C&E report as an expenditure to the Conway Country Club ("CCC") for a "campaign committee meeting" but the check was actually made payable to your wife. Both you and your wife subsequently stated that this check represented (i) the cost of food served at a Mexican Buffet event catered to your house in Conway on election night and (ii) room rental fees in the amount of \$600.00 for campaign office space at the CCC which was used to hold meetings and distribute campaign materials.

Although there was conflicting evidence concerning the cost of the Mexican Buffet event, records produced by the CCC reflected that the cost of the event was \$582.91. No records made or kept during the ordinary course of business were produced to substantiate the payment of \$600.00 to the CCC for room rental fees.

The expenditure for the cost of the Mexican Buffet event should have been listed by category next to "Entertainment" on your final C&E report. Assuming that room rental fees in the amount of \$600.00 had been paid to the CCC for office space, that expenditure would have been required to be reported by category next to "Rent" on your final C&E report.

In accordance with Section VI (15) of the Commission's Rules of Practice and Procedure, the Commission is hereby issuing you this written Offer of Settlement. The proposed sanctions are the issuance of a Public Letter of Warning and the imposition of a fine in the amount of \$500.00. Said fine shall be due within thirty (30) days from the acceptance of this offer.

Pursuant to Section VI (16) of the Commission's Rules of Practice and Procedure, you have ten (10) days from the date of this letter to accept this Offer of Settlement in writing. To do so, you will need to sign this letter in the space provided below and return it to the

Hon. Michael A. Maggio
September 22, 2010
Page 3

Commission either in person or by United States mail. A faxed copy of this Offer of Settlement will not suffice.

As expressly recognized in the Commission's Rules of Practice and Procedure, the issuance of this Offer of Settlement does not mean that the Commission has found that you committed a violation but rather that probable cause has been found to exist. Please be advised that acceptance of this Offer of Settlement shall be the equivalent of a final adjudication in which the Commission made a finding of a violation and shall constitute final action for purposes of appeal under the Administrative Procedures Act. Moreover, pursuant to Ark. Code Ann. § 25-19-105(f), an accepted Offer of Settlement is a public document.

By signing this Offer of Settlement, you are agreeing that the Commission make a finding that there were violations of Ark. Code Ann. § 7-6-203(g)(1), Ark. Code Ann. § 7-6-206, and Ark. Code Ann. § 7-6-207(b)(1)(E)-(H) and that as the candidate you bear ultimate responsibility for those violations.

You are not required to accept this Offer of Settlement. In lieu of accepting this Offer of Settlement, you have the right to request a public hearing before the Ethics Commission. The request must be in writing and received by the Commission no later than ten (10) days from the date of this letter. If sent by United States mail, the postmark of the request shall be used as the filing date.

If you neither accept this Offer of Settlement nor request a public hearing before the Commission, then this matter will proceed to a final adjudication hearing. You will be given written notice of the place, date, and time of said hearing. In the event a public hearing or final adjudication hearing is conducted and a violation is found, the Commission will not be bound by the terms of this offer.

Please do not hesitate to contact us should you have any questions or comments.

Sincerely,



Graham F. Sloan
Director

ACCEPTED BY:


Michael A. Maggio

Date: 9/30/10

cc: Commissioners