

1 SUSAN G. SHELLEY

2 [REDACTED]
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4 Respondents, In Pro Per
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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA

10 In the Matter of) FPPC No.: 15/003
11) OAH No.: 2019030096
12 SUSAN G. SHELLEY, SUSAN SHELLEY) Assigned Judge: Hon. Deena Ghaly
FOR ASSEMBLY 2013 and SUSAN)
13 SHELLEY FOR ASSEMBLY 2014) RESPONDENTS' REPLY TO
14 Respondents.) COMPLAINANT'S CLOSING
15) ARGUMENT
16)
17)
18) *Hearing Date: June 19, 2019*
Place: 320 W. Fourth Street, # 630,
Los Angeles, Calif. 90013

19
20 TO THE HONORABLE DEENA GHALY, TO ALL PARTIES HEREIN AND TO THEIR
21 ATTORNEYS OF RECORD:

22 Respondents hereby reply to Complainant's Closing Argument in the above-entitled action.

23 There are three things of particular interest that Respondents note in Complainant's Closing
24 Argument as evidence of the failure of the FPPC Enforcement Division to meet its burden of
25 proof.

26 The first is that Complainant has abandoned its argument, stated in the Accusation as an
27 "aggravating factor" and previously cited in support of a claim of public harm, that "for the
28 preelection [sic] period immediately before the 2013 Special General election, Shelley and the

1 2013 and 2014 Committees did not file any campaign statements in any format, so no disclosure
2 was available to the public immediately before the Special General election.” (Exhibit 2, p. 10)

3 The evidence showed that this was false. Complainant no longer makes this assertion.

4 Complainant’s whole case fails on that basis alone.

5 The second thing that’s notable is the statement in the “Introduction” (Complainant’s Closing
6 Argument, hereafter “CCA,” p. 4, lines 5-6) that Ms. Shelley “did not take the filing deadlines
7 seriously during the election cycle and does not want to take responsibility for the failure to
8 timely file.”

9 At what point? During the campaign, when she sought help from the Commission staff to
10 “comply with everything?” After the campaign, when she asked the staff if anything was
11 “missing or incorrect?” In 2014 when she promptly paid or timely filed requests for waiver of
12 liability for late fees levied by the Secretary of State? When she paid a total of \$2,210 in
13 monetary penalties for the late filing of pre-election statements? When she cooperated fully with
14 the Franchise Tax Board’s audit? When she was responsive and cooperative with the
15 Enforcement Division after it notified her in January 2016 that it was bringing charges for
16 violations of the Political Reform Act? During the three-and-a-half years before there finally was
17 a hearing in this matter?

18 Is Complainant suggesting that Ms. Shelley’s decision to exercise her right to a hearing is a
19 failure to “take responsibility?” Does the FPPC Enforcement Division believe that declining to
20 sign a stipulated agreement is itself bad conduct?

21 So it would appear.

22 The third thing that points to the failure of Complainant to meet its burden of proof is this
23 statement: “However, any mitigating circumstances do not obviate the liability for violating the
24 Act.” (CCA, p. 4, lines 21-22)

25 This statement would appear to be contradicted by Regulation 18361.5 subdivision (d), which
26 commands that the Fair Political Practices Commission and the administrative law judge “shall”
27 consider “all” the surrounding circumstances and lists a number of them in particular.

28

1 Complainant’s statement also contradicts the FPPC Enforcement Division Manual, which
2 specifically instructs commission counsels to evaluate, when a finding of a violation is made,
3 whether there is public harm that warrants monetary penalties, or whether the matter should be
4 closed with a warning letter or other resolution. (Exhibit DD, p. 21, No. 3)

5 In its desperate zeal to justify its prayer for \$12,000 to \$17,000 in monetary penalties,
6 Complainant tries to fill the gaping hole in its case, created by the implosion of its false “no
7 disclosure” assertion, by attempting to invent new justifications for the charges.

8 But first, Complainant tries again to mislead the Court about the facts and circumstances
9 surrounding the formation of the 2014 committee. Under “Facts and Evidence,” this paragraph
10 begins the section titled, “Background”:

11 “Shelley was a candidate for the 45th District of the California State Assembly during the
12 2014 election cycle. She filed a candidate statement of intention on January 14, 2013, declaring
13 her candidacy and voluntarily placing herself on the 2014 ballot for this Assembly seat. In order
14 to solicit and receive contributions to support her campaign for the Assembly, Shelley was
15 required to form a candidate-controlled committee. She filed a Statement of Organization for a
16 recipient committee with the SOS on February 20, 2013, indicating that the committee qualified
17 on February 8, 2013.”

18 In the next paragraph, Complainant omits the key fact that was the basis of the
19 acknowledgment in the Accusation that there were “unique” circumstances in this election.
20 Truncated and intentionally misleading, the paragraph reads as follows:

21 “In 2013, Robert Blumenfield, the occupant of the 45th District Assembly seat, won election
22 to the Los Angeles City Council, 3rd District. Thereafter, on July 2, 2013, the Governor
23 proclaimed and ordered a special election to be held on November 19, 2013, to fill the vacancy
24 resulting from the resignation of Blumenfield.” (CCA, p. 9, lines 7-23; p. 10, lines 1-3)

25 One would have to follow the footnotes to the volumes of exhibits to find the actual date that
26 Blumenfield won election to the City Council—March 5, 2013—and to realize that he waited to
27 resign from the Assembly until June 30, 2013. During this nearly four-month period – and even
28 earlier, during the City Council campaign – candidates who wished to run in the anticipated

1 special election were instructed by state officials to open 2014 committees if they wished to raise
2 funds for the 2013 special election, and then transfer the funds to 2013 committees after the seat
3 was officially vacated.

4 This crucial fact and unique circumstance is stated in the Accusation (Exhibit 2, p. 4, lines 22-
5 23; p. 5, lines 1-2), and in the Amended Probable Cause Report (Exhibit 2.2, p. 6, lines 8-10).
6 Yet in briefs, arguments and testimony submitted as part of this hearing, Complainant persists in
7 trying to create a false impression to mislead the Court about the reason for the formation of the
8 2014 committee.

9 The omission of key facts and evidence continues in Complainant's summary of "Supporting
10 Witness Testimony" (CCA, p. 15, lines 8-12). Complainant writes:

11 "Staff Services Analyst Samantha Brown testified that the report from CARES titled Filing
12 History is the complete history of filings received by and filed by the filing officer for candidates
13 for state elective office."

14 Omitted from that statement is the fact that the Filing History for the 2013 committee showed
15 timely Form 497 reports during the period between 10/6/13 and 11/2/13, and that Complainant
16 withheld from the Court the certified records of those relevant and mitigating reports. It was left
17 for Respondents to introduce copies of the filed reports along with testimony from a certified
18 expert witness who examined and independently verified them. Complainant had the audacity to
19 object to both. Is there no obligation on the part of government lawyers to be truthful and
20 forthcoming?

21 Writing of the Supporting Witness Testimony of Program Specialist II Luzmaria Bonetti,
22 Complainant states:

23 "Bonetti testified that she, as the auditor assigned to review the FTB's audits on behalf of the
24 Fair Political Practices Commission, confirmed the findings of the audit." (CCA, p. 15, lines 11-
25 12)

26 Omitted from that statement is Ms. Bonetti's testimony on direct examination:

27 "So in this case I would definitely review the SOS filing history which you discussed earlier.
28 If there's additional records needed, I will talk to the case attorney. If there's additional records

1 needed, we'll request those as well....I'm looking for facts, whether they're mitigating or
2 aggravating, or any additional things that I might need to review...."I'm always looking for
3 additional facts that I will relay to the case attorney, whether it's mitigating or aggravating, just
4 any other facts. If I find that something was disclosed on something else or an amendment was
5 filed, that's something...." (Certified Transcript, p. 45, line 21-25; p. 46, lines 10-13; p. 48, lines
6 18-23)

7 And on cross-examination, when asked, "Do you acknowledge what's in the Accusation;
8 that candidates were instructed to do that [open 2014 committees to raise funds for the 2013
9 election], notwithstanding that they had to sign under penalty of perjury that they intended to run
10 in 2014?":

11 Bonetti: "I believe I've – I've seen some advice regarding that. I'm not sure if it was an
12 advice letter or some sort of information, yes." (Certified Transcript, p. 77, line 17-19)

13 And in response to the Court's question, "Is that – whether for Ms. Shelley or anybody else,
14 would that be considered a mitigating or aggravating circumstance?"

15 Bonetti: "I would say those are – that's – it's considered, Hey, there's a special election. It's
16 difficult for me to answer because yes, I mean, those are factors to consider...." (Certified
17 Transcript, p. 91, lines 22-25)

18 However, the factors were not considered by Ms. Bonetti, who also testified, "I don't know
19 all the details. I'm not trying to be difficult. I don't remember if I put them [the 2013 and 2014
20 committee reports] side by side...." (Certified Transcript, p. 81, lines 2-4)

21 The Enforcement Division's interest in mitigating circumstances seems to come and go. In
22 the Accusation, Complainant states that "the Enforcement Division has reduced the number of
23 violations charged in this case in light of any potential confusion that may have occurred due to
24 the multiple committees," circumstances acknowledged as "unique." (Exhibit 2, p. 10, lines 7-9)

25 And then in its Closing Argument, Complainant states that "any mitigating circumstances do
26 not obviate the liability for violating the Act." (CCA, p. 4, lines 21-22)

27
28

1 This is utterly arbitrary. The “unique” circumstances and “potential confusion” apply equally
2 to all the charges in the Accusation, and clearly the Enforcement Division recognizes these as
3 mitigating circumstances.

4 Respondents will address the specific factors cited by the Complainant:

5
6 **The Seriousness of the Violations**

7
8 Complainant states, “The statutory requirement for candidates and candidate-controlled
9 committees to file pre-election campaign disclosure statements are [sic] an integral part of the
10 overall statutory scheme of transparency and disclosure in the political process so that voters
11 may be fully informed and improper practices may be inhibited.”

12 One way to make sure voters are fully informed is to make sure candidates are fully informed.

13 In Complainant’s Closing Argument, the filing schedule for the 2013 Special Primary election
14 and the Special General election is concisely and clearly stated on p. 6, lines 17-23; p. 10, lines
15 10-20; p. 11, lines 5-14; p. 12, lines 18-19; p. 13, lines 5-6, 14-15 and 24-25; and p. 14, lines 7-8.

16 But not even once was this information sent to Ms. Shelley during the period when she sought
17 help to “comply with everything.” It was not on the Secretary of State’s website. It was not on
18 the Special Election Calendar.

19 Respondent Susan Shelley looked for information about filing requirements. As described
20 more fully in Respondents’ Closing Argument, there was no notification to the candidates of the
21 filing schedule. Ms. Shelley wrote to the advice@fppc.ca.gov email address and stated that she
22 was trying to “comply with everything,” which she described as a daunting task. Her questions
23 communicated both her inexperience and the difficulty she was having. Ms. Shelley wrote to the
24 Commission staff solely to ask for help to comply with the law.

25 However, Ms. Shelley was left hanging by the Commission staff, on her own to find
26 information about campaign statement filing requirements from public news reports about the
27 fundraising of other candidates.

1 In December 2013, when Ms. Shelley wrote to the advice@fppc.ca.gov email address to say
2 that she was trying to make sure the campaign was in full compliance, and to ask if anything was
3 “missing or incorrect,” the Commission staff ignored her question. (Exhibit D, p. 2)

4 It was just over a year later, in February 2015, that the FPPC announced the launch of an
5 online Candidate Toolkit, the purpose of which, the Commission’s then-Chair Jodi Remke
6 stated, was to provide a “one site, one stop toolkit” to “improve compliance” by inexperienced
7 candidates. The FPPC itself recognized that “candidates without extensive campaign experience
8 or a specialized attorney look to the FPPC for guidance on how to comply with the Political
9 Reform Act when conducting their campaigns for public office.” (Exhibit Y)

10 Ms. Shelley was one of those candidates, inexperienced and without an attorney, who looked
11 to the FPPC for guidance. The staff members did not provide crucial guidance to a brand-new
12 candidate/treasurer on how to comply with – or even find – pre-election reporting requirements.
13 Complainant states, “there was no evidence presented that Shelley sought advice regarding filing
14 deadlines.” Complainant is arguing that the question wasn’t asked correctly, so too bad for the
15 candidate who now faces up to \$17,000 in monetary penalties for not knowing the answer, or
16 even the right question. (CCA, p. 19, lines 5-6)

17 The seriousness of the violations is fully mitigated by the fact that Ms. Shelley sought help
18 and did not receive it; by the fact that she timely filed Form 497 reports for the 2013 committee
19 throughout the campaign as well as Form 460 reports for the 2014 committee during the period
20 before the special election was called, thereby disclosing all loans and nearly all monetary
21 contributions well before the 2013 elections; by the fact that Ms. Shelley asked if anything was
22 “missing or incorrect,” and received no response; and by the fact that Ms. Shelley fully
23 cooperated with the Secretary of State’s office, when notified of late-filed statements, by paying
24 a total of \$2,210 in \$10-per-day late-fee penalties for pre-election reports for the two committees
25 in the two 2013 elections, a substantial monetary penalty for a cluster of errors in a three-month
26 time period by a first-time state candidate with no paid staff.

1 **Intention to Conceal, Deceive or Mislead**

2
3 There is not even a suggestion of this – the FPPC acknowledges that Ms. Shelley filed
4 campaign statements to disclose her activity and made a good faith effort to comply with the
5 reporting requirements of the Act.
6

7 **Whether the Violation was Deliberate, Negligent or Inadvertent**

8
9 Complainant argues that Ms. Shelley was “negligent” and “careless,” but the evidence shows
10 a candidate who stayed up late into the night struggling to get the campaign’s statements filed on
11 Cal-Access, even sending an emailed question to the Commission staff that was time-stamped
12 11:27 p.m. (Exhibit C) Respondents’ witness Amber Maltbie testified that many of the
13 electronic reports were filed between the hours of 12:30 a.m. and 4:30 or 5:00 a.m. (Certified
14 Transcript, p. 148, lines 7-8)

15 These are not the actions of someone who is careless or negligent. These are the actions of a
16 candidate acting as her own treasurer in an all-volunteer campaign with two active committees
17 and two elections that were 60 days apart.

18 A candidate who sought the help of the Commission staff to comply and tried to get
19 everything filed correctly before the end of the calendar year is clearly not someone who is
20 careless or negligent. All the alleged violations were inadvertent, and Ms. Shelley endeavored to
21 correct all errors as soon as she was informed of them.
22

23 **Whether Shelley Demonstrated Good Faith by Consulting the Commission Staff**

24
25 The FPPC acknowledges that “the evidence shows that Shelley made a good faith effort to
26 comply with the reporting requirements of the Act.”
27
28

1 But then the Complainant engages in questionable conduct, bringing up the subject of
2 “additional violations” and “charges” that the Enforcement Division “declined to include” in the
3 Accusation. (Complainant’s Closing Argument, p. 19, lines 1-2)

4 This conduct deprives Respondents of the opportunity to defend against charges that have not
5 been included in this Accusation, yet are cited to smear Respondents with vague allegations of
6 wrongful actions.

7 Complainant goes on to state that Ms. Shelley’s email request for advice in December 2013,
8 “Please let me know if anything is missing or incorrect,” does not constitute “a complete
9 defense,” as it was not a “request for formal advice.” But the factor to be considered in
10 mitigation, according to Regulation 18361.5 subdivision (d), is “Whether the violator
11 demonstrated good faith by consulting the Commission staff or any other government agency in
12 a manner NOT constituting a complete defense under Section 83114, subdivision (b).”
13 [Emphasis added]. If the law considers an email such as Ms. Shelley sent to be “a complete
14 defense,” Complainant’s charges in this case are even more wrongful.

15 The evidence shows, and the FPPC does not dispute, that Ms. Shelley demonstrated good
16 faith by consulting the Commission staff.

17
18 **Whether Shelley’s Violations were Isolated or Part of a Pattern and Whether Shelley**
19 **has a Prior Record of Violations of the Political Reform Act or Similar Laws**

20
21 The FPPC acknowledges that “the evidence shows that Shelley does not have a prior record
22 of violations of the Political Reform Act.”

23 Complainant contends that the late filing of pre-election reports for the 2013 campaign
24 constitutes a “pattern,” but all the violations charged in this case took place during a three-month
25 period between 8/8/13 and 11/7/13, when Ms. Shelley was a first-time state candidate and had no
26 notification of the filing schedule.

27 Complainant virtually concedes that this three-month cluster of errors under difficult
28 circumstances does not constitute a pattern. To try to save its case, it brings in evidence of

1 irrelevant minor late fees during the later 2014 campaign – such as \$10 fines for mailing a paper
2 hardcopy one day late – to present a misleading characterization that Complainant describes with
3 the words, “Shelley continued to file late in 2014.”

4 There is no pattern of violations and there is no enforcement history. However, there is
5 profound unfairness in Complainant’s repeated references to supposed violations, which the
6 Enforcement Division did not charge, in order to smear Respondents with allegations of unseen,
7 unproven “bad conduct.”

8
9 **Whether Shelley Voluntarily Filed Amendments to Provide Full Disclosure**

10
11 The FPPC acknowledges, “Shelley filed campaign statements to report the two committee’s
12 activities, albeit late.”

13 The evidence shows that on her own initiative, Ms. Shelley offered to file amended reports
14 and, also on her own initiative, did file at least one amended report to show an additional in-kind
15 contribution of which she had just been notified (Exhibit BB). The evidence shows that in
16 December 2013, when Ms. Shelley offered to file any missing reports or amendments to make
17 corrections, there was no response to her email. (Exhibit D)

18 Complainant here raises an entirely new charge, again based on the supposed charges that
19 were dropped during settlement talks after Ms. Shelley showed evidence that she had asked for
20 help to get transferred funds reported correctly, something she was unable to do on the Cal-
21 Access system. “Shelley has not amended the statements to include the required information
22 regarding original contributors,” Complainant now alleges. (CCA, p. 20, lines 13-14)

23 Complainant is again alleging violations that were not charged, and suddenly inventing a
24 failure to amend reports when there is no evidence that the FPPC or the Secretary of State’s
25 office or the Franchise Tax Board asked Respondents to amend reports.

26 This is another attempt to fill the hole left when Complainant abandoned its false assertion
27 that Respondents provided the public with “no disclosure” in the reporting period immediately
28

1 before the Special General election and “did not file any campaign statements in any format”
2 during that period.

3 The Accusation acknowledged that candidates were “instructed” to open 2014 committees to
4 raise funds for the 2013 special election before it was called and then transfer the funds to 2013
5 committees after the seat was vacated. After first trying multiple times to mislead the Court
6 about this fact, a ruse that attempted to obfuscate the campaign finance disclosures made by the
7 2014 committee, Complainant now asserts in its Closing Argument that “it was not obvious that
8 it was [Shelley’s] intent to transfer these funds.” (CCA, p. 17, line 7). Not obvious to whom?

9 It was obvious in the district that candidates were raising money for the 2013 special election
10 and there is no evidence that Ms. Shelley ever stated otherwise, nor would it have been in her
11 interest to state otherwise. It was in her interest to demonstrate her viability as a candidate in the
12 special election.

13 In addition, Ms. Shelley communicated with the Commission staff about the transfers of
14 funds in an email sent August 19, 2013, at 11:27 p.m. (Exhibit C) Why was it “not obvious” to
15 the Enforcement Division that the funds raised in the 2014 committee were intended to be used
16 for the 2013 campaign?

17 If the FPPC staff had conducted a professional and good-faith investigation before bringing
18 these charges, it would have been obvious. Instead, they disregarded key facts and mitigating
19 information, then went ahead with charges so unwarranted that the FPPC counsel withheld
20 records and attempted to mislead the Court, all to exaggerate the public harm from the alleged
21 violations and conceal that the claim of “no disclosure” and “did not file any campaign
22 statements in any format” was a lie.

23
24 What is left of Complainant’s case? Late-mailed paper hardcopies of reports that had already
25 been filed electronically and one failure to provide voters with a list of routine campaign
26 expenditures and “a summary page condensing the information into an easily digestible format.”
27 (CCA, p. 18, line 7)

1 This is the public harm, Complainant alleges, that justifies “moderate to high” penalties of
2 \$12,000 to \$17,000.

3 The Secretary of State has already issued a full waiver of liability for the late filing of paper
4 hardcopies and reduced liability for the late electronic filings. All fines have been paid.

5 If these charges had been investigated competently and in good faith, they would never have
6 been brought and should never have been brought. Knowing the full facts as she did, Ms. Shelley
7 would not sign a stipulated agreement, not even when the Enforcement Division threatened her
8 with a potential \$55,000 in fines (Exhibit 2.1). And now the Complainant holds that against her,
9 calling it a refusal to “take responsibility.”


10 The FPPC Enforcement Division’s conduct in this case has exposed an out-of-control agency
11 that uses the fearsome power of government to coerce stipulated agreements from well-
12 intentioned citizens who engage in political activity, especially from people who cannot afford
13 the time and money needed to exercise their rights, or who fear to challenge a government
14 agency that professes to be an “ethics watchdog.”

15 With its misconduct in this case, the FPPC Enforcement Division has forfeited any right to
16 the title of “ethics watchdog” and revealed itself to be a self-serving, corrupted system that tosses
17 people’s lives and professional reputations into a woodchipper for the convenience of the staff.

18 Respondents respectfully ask for a proposed decision that this case shall be closed with no
19 further action.

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21
22 Dated: July 10, 2019

23 SUSAN G. SHELLEY

24
25 BY: 
26 SUSAN G. SHELLEY, SUSAN
27 SHELLEY FOR ASSEMBLY 2013,
28 AND SUSAN SHELLEY FOR
ASSEMBLY 2014