

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

**The D.C. Office of  
Campaign Finance**

**Petitioner,**

**v.**

**Dwayne Toliver,  
Candidate**

**Respondent.**

**Administrative Hearing  
Docket No. 19-036**

**MEMORANDUM OPINION AND ORDER**

This matter came before the Board on Wednesday, October 2, 2019 pursuant to the submission of a Petition by the Office of Campaign Finance (hereinafter “OCF”) for Enforcement of its May 23, 2018 Order (“Order”) imposing a fine of \$2150.00 dollars against Dwayne Toliver. The fine was imposed for failure to timely file the January 31<sup>st</sup> Report of Receipts and Expenditures (“R & E Report”) in accordance with D.C. Official Code § 1-1163.09(b), which was due on February 16, 2018.

Pursuant to D.C. Official Code § 1-1163.09(a)(1) and (b), each treasurer of a political committee that supports a candidate “shall file with the Director of Campaign Finance...reports of receipts and expenditures on forms to be prescribed or approved by the Director of Campaign Finance.” Such reports “shall be filed on the 10<sup>th</sup> day of March, June, August, October, and December in the 7 months preceding the date on which, and in each year during which, an election is held for the office sought, and on the 8<sup>th</sup> day next preceding the date on which the election is held, and also by the 31<sup>st</sup> day of January of each year.” During non-election years, such reports “shall be filed on the 31<sup>st</sup> day of July[.]” At all times

pertinent hereto, Respondent was required to file by the required due date. Respondent failed to timely file the January 31<sup>st</sup> R & E Report by Friday, February 16, 2018.

Pursuant to 3 DCMR §§3709.3 and 3709.4, OCF issued to the Respondent a Notice of Hearing, Statement of Violations, and Order of Appearance (“Notice of Hearing”) dated March 26, 2018 and April 6, 2018, ordering him to appear at an informal hearing on April 4, 2018 and April 18, 2018, and show cause why he should not be found in violation of the D.C. Campaign Finance Act of 2011, as amended by D.C. Official Code § 1-1163.01 *et seq.*, and fined accordingly. Pursuant to 3 DCMR § 3709.4(f), the Notice of Hearing was served by regular mail on March 26, 2018 and April 6<sup>th</sup> 2018. The Respondent did not appear at either of those hearings.

The penalty established by 3 DCMR §§ 3711.1(b) and 3711.2(f) for failure to file the January 31<sup>st</sup> R & E Report required by D.C. Official Code § 1-1163.09(b) is a fine of \$50 per day for each business day subsequent to the due date. In accordance with D.C. Official Code § 1-1163.35(a)(3) and 3 DCMR § 3711.5, Respondent may be fined a maximum of \$4,000 for failing to timely file an R & E Report. Under 3 DCMR § 3711.8, for good cause shown, the Director of Campaign Finance may modify, rescind, dismiss, or suspend any fine. On the basis of the record and the recommendation of the Hearing Officer, the Director issued the Order imposing a fine of \$2150.00 dollars for failure to timely file the January 31<sup>st</sup> R & E Report, in accordance with D.C. Official Code § 1-1163.09(b). Because the Respondent did not seek review of the penalty with the Board of Elections pursuant to 3 DCMR § 3709.11, the fine of \$2150.00 became effective on June 14, 2018, the 16<sup>th</sup> business day following the issuance of the Order of the Director, pursuant to 3 DCMR §§ 3711.6 and 3711.7. Pursuant to 3 DCMR §§ 3711.6 and 3711.9, the deadline for payment of the fine imposed was June 27, 2018, which was the 10<sup>th</sup> business day after the effective date of the issuance of the Order. To date, the Respondent has failed to pay the fine imposed by the Order.

On Friday, June 1, 2019, OCF transmitted a Petition for Enforcement of its Order to the Office of the General Counsel for the Board. The General Counsel held pre-hearing conferences in the matter on July 17, 2019 and August 9, 2019. Despite being served with notice of the prehearing conferences by regular mail on July 11, 2019 and July 24, 2019, respectively, the Respondent failed to appear. Despite being served with notice of the October 2, 2019 hearing before the Board by regular mail on September 23, 2019, the Respondent again failed to appear.

D.C. Code § 1-1163.35(5) provides that “[i]f the person against whom a civil penalty is assessed fails to pay the penalty, the Elections Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia.” OCF has shown that the fine of \$2150.00 imposed against the Respondent was wholly justified. Despite attempts on the part of the Office of the General Counsel to meet with the Respondent and make arrangements to settle the matter, the Respondent has not demonstrated a willingness to do so.

Accordingly, it is this 29<sup>th</sup> day of October 2019,

**ORDERED** that the Order of the Director of the Office of Campaign Finance be enforced and that a Petition for the Enforcement of the Order be filed with the Superior Court.

October 29, 2019

A handwritten signature in blue ink, appearing to read "D. Michael Bennett", with a long horizontal flourish extending to the right.

D. Michael Bennett, Esq.  
Chairman, Board of Elections