

**BEFORE THE ELECTIONS DIVISION
OFFICE OF THE SECRETARY OF STATE
STATE OF OREGON**

IN THE MATTER OF)	DEFAULT FINAL ORDER
)	
DONNA NELSON FOR)	
STATE REPRESENTATIVE)	Case Nos. L9232, L9233, L9234, L9235 &
(003652))	06-C&E-26
)	

HISTORY OF THE CASE

On July 23, 2007, the Elections Division of the Office of the Secretary of State (Elections Division) issued 5 Notices of Proposed Civil Penalty to Donna Nelson for State Representative (the Committee) and its treasurer, Freda Wilson-Padilla for failure to file a detailed first pre-election contribution and expenditure report for the 2006 primary election (Ex. Q), for failure to file a detailed second pre-election contribution and expenditure report for the 2006 primary election (Ex. P), for failure to file a detailed post-election contribution and expenditure report for the 2006 primary election (Ex. O), for failure to file a detailed first pre-election contribution and expenditure report for the 2006 general election (Ex. N), and for failure to keep accounts of contributions received current within seven days after receipt of the contribution (Ex. M).

On August 6, 2007, Representative Nelson requested a hearing on behalf of the Committee. (Ex. S.) The Elections Division referred these matters to Ray Myers, Hearings Officer, to hold a hearing and to issue a Proposed Order.

These matters were consolidated for hearing. Because the facts and legal issues concerning the various proposed penalties are so intertwined, the Secretary is issuing a consolidated proposed order. Hearing convened September 6, 2007 in Salem, Oregon. The Elections Division was represented by Assistant Attorney General Lynn Rosik. Jennifer Hertel, compliance specialist with the Elections Division, testified on behalf of the Elections Division. Attorneys Caitlin Mitchell and Brent Goodfellow appeared on behalf of the Committee. Representative Nelson, testified on behalf of the Committee. The record closed on the date of hearing.

ISSUES

In Case L9232, the Elections Division alleges that the Committee did not file a detailed first pre-election report for the 2006 primary election. It alleges that the Committee was

obligated to file such a report, but never did. It considers the information required to be reported therein to have been filed on October 26, 2006, in the committee's second pre-election report for the 2006 general election. Thus, it alleges that this information was filed 140 business days late. The Elections Division proposes a civil penalty of \$1,000. (Ex. Q.)

In Case L9233, the Elections Division alleges that the Committee did not file a detailed second pre-election report for the 2006 primary election. It alleges that the Committee was obligated to file such a report, but never did. It considers the information required to be reported therein to have been filed on October 26, 2006, in the committee's second pre-election report for the 2006 general election. Thus, it alleges that this information was filed 122 business days late. The Elections Division proposes a civil penalty of \$50. (Ex. P.)

In Case L9234, the Elections Division alleges that the Committee did not file a detailed post-election report for the 2006 primary election. It alleges that the Committee was obligated to file such a report, but never did. It considers the information required to be reported therein to have been filed on October 26, 2006, in the committee's second pre-election report for the 2006 general election. Thus, it alleges that this information was filed 93 business days late. The Elections Division proposes a civil penalty of \$100. (Ex. O.)

In Case L9235, the Elections Division alleges that the Committee did not file a detailed first pre-election report for the 2006 general election. It alleges that the Committee was obligated to file such a report, but never did. It considers the information required to be reported therein to have been filed on October 26, 2006, in the committee's second pre-election report for the 2006 general election. Thus, it alleges that this information was filed 18 business days late. The Elections Division proposes a civil penalty of \$1,000. (Ex. N.)

In Case 06-C&E-26, the issue is whether the committee failed to keep detailed records of contributions received current within seven days after receipt of the contributions. The Elections Division proposes a civil penalty of \$1,325.00. (Ex. M.)

Representative Nelson contends that there are mitigating circumstances that should reduce the assessed penalties in each case.

EVIDENTIARY RULINGS

Exhibits A through S and 1 through 2 were admitted into evidence without objection.

FINDINGS OF FACT

1. On November 7, 2006, the Elections Division received a complaint from Deborah Runciman concerning what she referred to as the committee's "accounting discrepancies," "failure to record contributions within 7 days of receipt" and "improper filing of form PC-7 when she had already received more than \$2,000." (Ex. A).

2. The Elections Division investigated the complaint and following the investigation issued a final determination on July 3, 2007. (Testimony of Ms. Hertel, Ex. H.) The Elections Division then issued the five Notices at issue here. (Testimony of Ms. Hertel, Ex. H.) .
3. On April 10, 2006, the committee filed a PC-7 form stating that the committee did not expect to receive aggregate contributions received or aggregate expenditures made for the 2006 Primary Election aggregate amounts totaling less than to exceed \$2,000. (Ex. A-22).
4. The Committee made an expenditure of \$5,000 to Representative Nelson as a “reimbursement” on November 17, 2005. (Ex. E- 30). This expenditure is during the accounting period for the first pre-election reporting period. This expenditure was first reported on the second pre-election report filed October 26, 2007. (Testimony of Ms. Hertel).
5. The Committee did not file detailed first or detailed second pre-election contribution and expenditure reports for the 2006 primary election. The Committee did not file a detailed post-election report for the 2006 primary election. (Testimony of Ms. Hertel, Ex. H-4). The first pre-election report was due on April 10, 2006; the second pre-election report was due on May 4, 2006; and the post-election report was due on June 15, 2006. *2006 Campaign Finance Manual* at 10.
6. On October 2, 2006, the committee filed a PC-7 form stating that the committee did not expect to receive aggregate contributions received or aggregate expenditures made for the 2006 General Election to exceed \$2,000. (Ex. A-24).
7. The Committee received contribution checks from a) Oregon Loggers PAC for \$2,000, dated February 21, 2006; b) Oregon Truck PAC for \$500 dated September 11, 2006; c) from Oregon Soft Drink PAC for \$1,000 dated August 15, 2006; d) from Oregon Realtors PAC for \$1,000 dated July 27, 2006; e) from Oregon Nurseries PAC for \$250 dated August 17, 2006; f) from Natural Gas PAC for \$500 dated September 20, 2006; g) from LODGEPAC for \$1,000 dated September 8, 2006; h) from AG-PAC for \$500 dated September 12, 2006; i) from Owner Operators (McDonalds) for \$800 dated September 1, 2006; j) from Georgia-Pacific Corp. for \$500 dated June 8, 2006; k) from Pharmaceutical Research and Manufacturers of America for \$250 dated May 4, 2006; and l) from Phillip Morris USA, Inc. for \$500 dated August 21, 2006.(Ex. E-2 to 4).
8. AG-PAC’s contribution was mailed on September 12, 2006. (Ex. D-2). This check was received by the Committee by September 15, 2006. (ORCP 311(q).) The Committee did not open the envelope containing the check, or in any way account for the contribution until October 5, 2006. (Ex. E-2).
9. Oregon Realtors PAC hand delivered its contribution to Ms. Nelson in early October 2006¹. (Ex. D-18.) The Committee did not open the envelope containing the check, or in

¹ This finding was corrected from the proposed order because the letter filed by Andrea Bushnell, the treasurer of

any way account for the contribution until October 6, 2006. (Ex. E-3).

10. Oregon Loggers's PAC's check was mailed by February 22, 2006. (Ex. D-13.) This check was received by the Committee by February 25, 2006. (ORCP 311(q)). The Committee did not open the envelope containing the check, or in any way account for the contribution until October 6, 2006. (Ex. E-3).
11. Oregon Truck PAC's contribution was mailed on September 11, 2006. (Ex. D-24). This check was received by the Committee by September 14, 2006. (ORCP 311(q)). The Committee did not open the envelope containing the check, or in any way account for the contribution until October 6, 2006. (Ex. E-3).
12. LODGEPAC's contribution was mailed on September 8, 2006. (Ex. D-6). This check was received by the Committee by September 11, 2006. (ORSCP 311 (q)). The Committee did not open the envelope containing the check, or in any way account for the contribution until October 5, 2006. (Ex. E-2).
13. Philip Morris USA, Inc.'s contribution was mailed on August 28, 2006. (Ex. D-35-36). This check was received by the committee on August 31, 2006. (ORCP 311 (q)). The committee did not open the envelope containing the check, or in any way account for the contribution until October 8, 2006.²
14. The Committee did not file a detailed first pre-election report for the 2006 general election. (Testimony of Ms. Hertel.) This report was due October 2, 2006. *2006 Campaign Finance Manual* at 10.
15. The committee first reported the contributions and expenditures that should have been reported in its first pre-election report for the 2006 primary, its second pre-election report for the 2006 primary, its post-election report for the 2006 primary and its first pre-election report for the 2006 general election in its second pre-election report for the 2006 general election, which it filed on October 26, 2006. (Testimony of Ms. Hertel.)

CONCLUSIONS OF LAW

In Case L9232, Committee did not file a detailed first pre-election report for the 2006 primary election. The Committee was obligated to file such a report, but never did. The information required to be reported therein was filed on October 26, 2006, in the committee's second pre-election report for the 2006 general election. Thus this information was filed 140 business days late. A civil penalty of \$1,000 is the correct penalty for this violation.

In Case L9233, the Committee did not file a detailed second pre-election report for the

Oregon Realtors PAC, stated that the contribution check (dated July 27, 2006) was hand delivered to Representative Nelson in early October 2006.

² This finding was added because the Secretary has determined that ORCP 311(q) also applies to the Philip Morris USA, Inc. contribution.

2006 primary election. The Committee was obligated to file such a report, but never did. The information required to be reported therein was filed on October 26, 2006, in the committee's second pre-election report for the 2006 general election. Thus, this information was filed 122 business days late. A civil penalty of \$50 is the correct penalty for this violation.

In Case L9234, the Committee did not file a detailed post election report for the 2006 primary election. The Committee was obligated to file such a report, but never did. The information required to be reported therein was filed on October 26, 2006, in the committee's second pre-election report for the 2006 general election. Thus, this information was filed 93 business days late. A civil penalty of \$100 is the correct penalty for this violation.

In Case L9235, the Committee did not file a detailed first pre-election report for the 2006 general election. The Committee was obligated to file such a report, but never did. The information required to be reported therein was filed on October 26, 2006, in the committee's second pre-election report for the 2006 general election. Thus, this information was filed 18 business days late. A civil penalty of \$1,000 is the correct penalty for this violation.

In Case 06-C&E-26 the committee failed to keep detailed records of contributions received that are current within seven days after the receipt of the contribution transaction. A civil penalty of \$825 is the correct penalty for this violation.

Representative Nelson failed to prove that there are mitigating circumstances that should reduce the assessed penalties in each case.

OPINION

Overview

Because Ms. Wilson-Padilla did not request a hearing and did not appear at the hearing requested by the committee, the Secretary is issuing this Order by Default to Ms. Wilson-Padilla. The Treasurer and the candidate are personally responsible for performing all duties prescribed under ORS 260.005 and ORS 260.035 through 260.159. ORS 260.037. All violations alleged are violations of statutes that both the candidate and the treasurer are personally responsible for performing. Consequently, both the candidate and the treasurer are jointly and severally liable for payment of civil penalties assessed for these violations. *Gold v. Secretary of State*, 106 Or App 573 (1991).

The Elections Division, in its case against the committee established a prima facie case. Therefore, it has also established a prima facie case against Ms. Wilson-Padilla. However, because Representative Nelson also succeeded in reducing the amount of one of the penalties, Ms. Wilson-Padilla may take advantage of her defense. The Secretary notes that on the record, Representative Nelson stated that she would assume all liabilities for penalties assessed in these proceedings.

Representative Nelson did not expect to spend or receive more than an aggregate of \$2,000 in either the primary or the general election. She did not expect to be challenged in the election. Consequently, she filed PC-7 forms for both the primary and general election. Filing these forms exempts a committee from filing detailed contribution and expenditure reports, unless the committee, in fact, receives aggregate contributions or makes aggregate expenditures exceeding \$2,000 in an election cycle. See ORS 260.112.

In late 2005, the committee repaid a \$5,000 loan to Representative Nelson. Representative Nelson did not believe that this expenditure counted towards the \$2,000 aggregate. Consequently, she thought that the PC 7 was appropriate for the 2006 primary election.

The Committee operated with a small staff, often only one volunteer. As a result, the committee made it a practice to sort incoming mail and immediately open only constituent letters and bills. All other mail was placed into bins to be opened at a later date. Because Representative Nelson did not expect contributions, letters containing contributions were simply tossed into one of the bins without being opened. As a result, beginning in February 2006, the committee received contributions in the mail that it did not account for. Consequently, the committee did not know that contributions had exceeded \$2,000 for either the primary or the general election. In addition, the committee did not keep detailed accounts of contributions current within 7 days of receipt as required by ORS 260.055(1).

The Secretary accepts that Representative Nelson was acting in good faith. She did not expect to receive contributions, so she did not look for them and thus did not account for them. However, a committee has an obligation to keep proper accounts so that the public can be kept properly informed of contributions and expenditures. The committee's practice of not completely reviewing its mail caused the committee to fail to report both expenditures and contributions that should have been reported. As a result, the Elections Division has imposed significant penalties against the committee. With the exception of certain contributions for which the Secretary is unable to determine receipt, the Secretary is upholding the penalties proposed by the Elections Division.

The Elections Division has authority to impose civil penalties pursuant to ORS 260.232. The Committee filed a PC 7 for both the primary and the general elections in 2006. By administrative rule OAR 165-012-0005 the Secretary of State designated the *2006 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations. The *2006 Campaign Finance Manual* at 53 explains that a PC 7 is a statement by the Committee that it does not expect to receive or spend more than a total of \$2,000 during a particular election period. A Committee that files a PC 7 is exempt from filing detailed Contribution and Expenditure reports for that election; however, if at any time the total contributions or total expenditures in an election cycle exceed \$2,000, the committee must file detailed reports. The detailed reports are due by the deadline for that accounting period in which the \$2,000 limit is exceeded. *2006 Campaign Finance Manual* at 53.

Late Reports for 2006 Primary

The accounting period for the first pre-election contribution and expenditure report for the 2006 primary election runs from the date of the first contribution or expenditure to March 30, 2006. The period for filing a report is between March 31 and April 10, 2006. *2006 Campaign Finance Manual* at 10. The Committee made a \$5,000 loan repayment to Representative Nelson on October 17, 2005. Representative Nelson testified that she did not believe she needed to report this loan repayment because both the loan and its repayment involved her. Representative Nelson further testified that the reason the committee filed a PC 7 for both elections is that she did not expect to be challenged in either election and consequently did not intend to expend or to receive enough to exceed the \$2,000 threshold.

The Secretary accepts Representative Nelson's good faith. However, the loan repayment is, in fact, an expenditure that needs to be reported. The *2006 Campaign Finance Manual* at 38 states that "an expenditure includes...incurring or repayment of indebtedness or obligation by or on behalf of a candidate, committee, or person in consideration for any services, supplies or equipment." Thus, because this was a repayment of a loan on behalf of the committee, it is a reportable expenditure.

Because the expenditure was made during the accounting period for the first pre-election contribution and expenditure report, the committee should not have filed the PC 7 for the primary election and should, instead, have filed a detailed first pre-election report for the 2006 primary. Additionally, once the requirement of detailed reports kicked in, the committee should have continued to file detailed contribution and expenditure reports throughout the 2006 primary election period. Therefore, the Secretary concludes that the committee was late in filing detailed contribution and expenditure reports for the 2006 primary election. In this case, the contributions and expenditures were first reported on October 26, 2006, the date the committee filed its second pre-election report for the 2006 general election. Thus, the first pre-election report for the 2006 primary was filed 140 business days late; the second pre-election report for the 2006 primary was filed 122 business days late; the post-election report for the 2006 primary election was filed 93 business days late; and the first pre-election report for the 2006 general election was filed 18 days late.

The penalty for the failure to file a detailed first pre-election report was correctly calculated by the Elections Division. The total expenditures during the first pre-election period are \$5,025 (\$5,000 for the loan repayment and \$25 for filing fees (Ex. A-14) and are greater than the amount of total contributions during that period of time. This was the committee's first violation during a two year period. According to the penalty matrix contained in the *2006 Campaign Finance Manual*, the amount of the greater total expenditures or total contributions, whichever is greater, is multiplied by 1 percent for first violations, and is then multiplied by the number of business days the report is late. $\$5,025 \times .01 \times 140$ equals \$7,035. However, the penalty matrix has an established maximum penalty of \$1,000 when the greater of the total contributions or total expenditures during the accounting period is between \$2,000.01 and \$10,000. Consequently, the appropriate penalty for failing to file a detailed first pre-election report for the 2006 primary election is \$1,000.

The penalty for the failure to file a detailed second pre-election report was also correctly calculated. The committee was obligated to file a detailed second pre-election report. Because the committee had neither expenditures nor contributions during this period, the penalty assessed is the minimum. This is a second violation based on the fact that the first violation was the failure to file a first pre-election report for the 2006 primary election. The minimum penalty of a late report that is a second violation is \$50.

The penalty for the failure to file a detailed post-election report for the 2006 primary election was also correctly calculated. The committee was obligated to file a detailed post-election report. Because the committee had neither expenditures nor contributions during this period, the penalty assessed is the minimum. This is a third violation based on the fact that the first violation was the failure to file a first pre-election report for the 2006 primary election and the second violation was the failure to file a second pre-election report for the 2006 primary election.. The minimum penalty of a late report that is a third violation is \$100.

Late Report for 2006 General Election

The accounting period for the first pre-election contribution and expenditure report for the 2006 general election ran from June 6, 2006 through September 22, 2006. The report was due on October 2, 2006. LODGE PAC mailed a check for \$1,000 on September 8, 2006; AG-PAC mailed a check for \$500 to the committee on September 12, 2006; Oregon Truck PAC mailed a check on September 11, 2006; and Philip Morris USA, Inc. mailed a check on August 28, 2006. The committee argues that this, and other contributions, were not received until the envelopes were actually opened. The word “received” is used in ORS 260.112(1) which states that a committee may file a certificate to the effect that it expects “neither the aggregate contributions to be received nor the aggregate expenditures...to exceed \$2,000....”

In determining the meaning of “received,” the Secretary is guided by the familiar methodology for statutory construction that the Oregon Supreme Court first described in *PGE v. Bureau of Labor and Industries*, 317 Or. 606, (1993). Under that methodology, the Secretary first examines the words of the statute in context. *Id.* at 610-11, 859 P.2d 1143. To ascertain the legislative intent, the Secretary analyzes the text of the statute in context and, only if necessary, resorts to legislative history and maxims of statutory construction.

Websters Third New International Dictionary defines receive as “ to take possession or delivery of *receive a gift* *receive a letter* Thus, the plain and ordinary meaning of the word “receive” is to take possession or delivery of. There is nothing in the text or context of the statute that leads to the conclusion that the legislature intended it to mean anything other than its plain and ordinary meaning. Consequently, the Secretary concludes that here it retains its plain and ordinary meaning.

Representative Nelson testified that she took possession of every check referenced in the findings of fact above. She testified that she or her office staff extracted bills and constituent mail from mail received and then placed all other correspondence in bins, without opening it. By her own testimony, Representative Nelson admitted to have come into possession of these contributions.

The record does not contain any evidence concerning when the committee actually came into possession of any particular contribution, except the contribution from Oregon Realtors PAC, which was hand-delivered to Representative Nelson. However, several committees responded to inquiries by the Elections Division by indicating what date the contribution was mailed. Philip Morris USA, Inc. provided cover letters dated August 25, 2006 and August 28, 2006 that indicate mailing of the check to Representative Nelson by James Gardner on August 28, 2006. The Secretary concludes that the dated cover letter indicates the date of mailing of the Philip Morris USA, Inc. check. Under ORCP 311(q) there is a presumption that “a letter duly directed and mailed was received in the regular course of the mail.” The committee has offered no evidence to rebut this presumption. Accordingly, relying on this presumption, the Secretary has found that each check for which there is evidence of mailing was received within 3 days of mailing, a time the Secretary considers to be in the regular course of mail. The other contributors who responded to inquiries did not indicate when their contributions were mailed. Therefore, the presumption does not apply. I note that Phillip Morris submitted cover letters dated August 28, 2006 and August 25, 2006 that indicate transmittal of a check to Representative Nelson. Consequently, the Secretary is able to apply the Rule 311(q) presumption to conclude when they were actually received.

The Secretary concludes that when the committee filed its PC 7 for the 2006 general election, it had received a total of \$2,500 in contributions. These are \$500 from AG-PAC received September 15, 2006, \$1,000 from LODGEPAC received on September 11, 2006, \$500 from Philip Morris USA, Inc. received August 31, 2006, and \$500 from Oregon Truck PAC received September 14, 2006. In addition to the aggregate of \$2,500 in contributions during this reporting period, the committee made expenditures of \$50 to the City of McMinnville for sign permits and \$300 to the Secretary of State. (Ex. E pages 54 through 58). Therefore, the Secretary concludes that the committee did exceed \$2,000 in total contributions or total expenditures during this reporting period. The committee was not eligible to file a PC 7 under ORS 260.112 for this period and should have filed a first pre-election detailed contribution and expenditure report.

The penalty for the failure to file a detailed first pre-election report for the 2006 general election was correctly calculated by the Elections Division. The total contributions during the first pre-election period are \$2,500 and are greater than the amount of total expenditures during that period of time. This was the committee’s fourth violation during a two year period. According to the penalty matrix contained in the *2006 Campaign Finance Manual*, the amount of the greater total expenditures or total contributions, whichever is greater, is multiplied by 5 percent for third and subsequent violations, and is then multiplied by the number of business days the report is late. \$2,500 times .05 times 18 equals \$1,800.00. However, the penalty matrix has an established maximum penalty of \$1,000 when the greater of the total contributions or total expenditure during the accounting period is between \$2,000.01 and \$10,000. Consequently, the appropriate penalty for failing to file a detailed first pre-election report for the 2006 general election is \$1,000.

Failure to Account for Contributions

The final penalty is a more general violation. The Elections Division contends that the Committee violated ORS 260.055(1), which states:

“Each candidate, other than a candidate for political party office, and the treasurer of each political committee shall keep detailed accounts. The accounts shall be current as of not later than the seventh calendar day after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be reported under ORS 260.057, 260.076 or 260.078. Subject to ORS 260.085, the accounts shall list all information required to be reported under ORS 260.083.”

As noted above, Representative Nelson testified that the committee’s practice is to sort through the mail and extract bills and constituent mail. All other mail was placed in bins for opening and processing later. Representative Nelson admitted in her response to the Elections Division’s investigation that she did not “find” any of the contributions detailed in Finding 5 above until October 5, 2006 or later. It is reasonable to assume, based on Representative Nelson’s testimony, that most, if not all, these checks were held without being accounted for in a detailed accounting, for longer than 7 days after they were received. However, there is only sufficient evidence to make such a finding in connection with the \$500 check from AG-PAC received September 15, 2006, the \$2,000 check from Oregon Loggers PAC received February 25, 2006, the \$1,000 check from LODGEPAC received September 11, 2006, the \$500 check from Philip Morris USA, Inc. received on August 31, 2006, and the \$500 check from Oregon Truck PAC received September 14, 2006. As noted above, there is evidence when each of these checks was mailed. The date of receipt is based on the Rule 311(q) presumption. The Secretary concludes, therefore, that the Elections Division has proven that the committee failed to keep detailed accounts of contributions current within seven days of receipt of these five checks.

The Elections Division alleged that the committee had failed to keep detailed accounts of contributions within seven days of receipt of seven checks. The file contains insufficient evidence of when two of those checks were received, to find that no accounting was made within 7 days. They are: from Pharmaceutical Research Manufacturers of America and from Georgia Pacific Corp.. The Elections Division calculated the penalty based on the matrix contained in Appendix A to OAR 165-013-0010, which provides that for violations of ORS 260.055(1), the penalty for a first violation is zero, the penalty for a second violation is \$75 and the penalty for each subsequent violation is \$250. Because the Elections Division found seven violations, it assessed a civil penalty of \$1,325. The correct penalty, based on the five violations that are proven, is \$825.

Mitigating Circumstances.

The Committee argues that there are mitigating circumstances that should reduce the penalties that are assessed against it. As noted above the Secretary of State has designated the *2006 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations. The *2006 Campaign Finance Manual* at 102 states that the only mitigating circumstances that may be considered are those specifically outlined in the *2006 Campaign Finance Manual*. The Elections Division interprets this to mean that absent one of the specified mitigating circumstances, the civil penalty will be assessed based on the matrices found in the Manual. The Secretary defers to the division's interpretation of its own rules. Thus, to the extent that the Committee argues for mitigating circumstances that are not outlined in the Manual, those "mitigating circumstance" will not be considered. Accordingly, the Secretary finds that unless the Committee establishes one of the mitigating circumstances outlined in the Manual, a civil penalty must be assessed based on the matrix found in the Manual.

The five mitigating circumstances are: (1) the lateness is directly due to criminal activity against the Committee or its treasurer; (2) the lateness is directly due to a calamitous event resulting in destruction or inaccessibility of the Committee's records; (3) the lateness is directly due to a failure of a professional delivery service to deliver in the time guaranteed in writing; (4) the lateness is directly due to an error by the elections filing officer; and (5) the lateness is directly due to a valid personal emergency of the Treasurer or candidate.

The committee contends that the failure to file the primary election reports is due to a valid personal emergency of Representative Nelson. It also contends that the failure to file the first pre-election report and the failure to keep detailed accounts is due to a separate valid personal emergency of Representative Nelson.

The *2006 Campaign Finance Manual* at 102 states:

"The lateness of a report is the direct result of a valid personal emergency of the candidate or treasurer. In this case independent written verification must be provided.

"A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer, which caused a report to be late. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made."

Representative Nelson testified that in February 2006 she developed a broncho-virus. She testified that it lasted about six to eight weeks and that, as a result, she was almost bedridden. She further testified that in February and March the committee had only one volunteer. She testified that during that period she had difficulty concentrating and that inhibited her ability to work at her office.

The Committee submitted exhibit 1, which consists of billing statements and insurance statements reflecting that Representative Nelson sought treatment from Willamette Valley

Medical Center, Dr. Paquette, Dr. Molloy, and Emergency Medical Association of McMinnville between February 27 and March 4, 2006.

The Secretary concludes that the evidence the Committee has submitted is insufficient to establish a valid personal emergency as a mitigating circumstance. Based on her demeanor, the Secretary finds that Representative Nelson was a credible witness. However, even viewing her testimony in a light most favorable to her, the Secretary finds that her testimony does not establish a valid personal emergency as a mitigating circumstance. Her testimony is that this was a chronic problem for six to eight weeks. This is more like a long-term illness where other arrangements could have been made than an emergency situation. More important, even Representative Nelson's testimony does not establish that the lateness of the primary election reports was the direct result of this illness. The PC 7, upon which the committee relied in not filing the detailed reports for the primary election was filled out on April 8, 2006. This is at the end of the period during which she was affected by this problem. In fact, at one point in her testimony she indicated that it was during February and March that she was affected. Representative Nelson never testified that the illness prevented her from attending to the committee's business; it only inhibited her ability to work at the committee's office. She said that it slowed her ability to go through mail. The Secretary does not find this testimony sufficient to persuade me that the filing of the PC 7, the failure to file the primary and general election reports or the failure to account for contributions was directly caused by this illness.

The Secretary notes, in addition, that the written documentation merely establishes that something was wrong with Representative Nelson in late February and early March 2006. It does not in any way establish that the late reports were a direct result of the illness. The *2006 Campaign Finance Manual* requires that there be written documentation that the failure to file was the direct result of the illness.

The committee also argues that Representative Nelson's heart attack on October 26, 2006 somehow directly caused the failure to account for contributions. Representative Nelson testified that she suffered a heart attack on October 26, 2006, but had been feeling a headache, arm and shoulder pain before that. The committee submitted exhibit 2, which confirms that Representative Nelson was in intensive care at Salem Hospital from October 26, 2006 through November 2, 2006.

The problem with considering the October 26, 2006 heart attack at a mitigating factor is that the actions and inactions for which the committee is being penalized all took place well before October 26, 2006. Thus, it cannot have been the direct cause of these actions and inactions. In addition, neither Representative Nelson, nor the documentation, states that the heart attack or even the problems preceding it, directly caused the failure to file the first pre-election report or the failure to keep accounts of contributions.

The Secretary concludes that the committee has failed to prove any mitigating circumstances.

ORDER

The committee is assessed a civil penalty of \$1,000 for failure to file a detailed first pre-

election report for the 2006 primary election.

The committee is assessed a civil penalty of \$50 for failure to file a detailed second pre-election report for the 2006 primary election.

The committee is assessed a civil penalty of \$100 for failure to file a detailed post-election report for the 2006 primary election.

The committee is assessed a civil penalty of \$1,000 for failure to file a first pre-election report for the 2006 primary election.

The committee is assessed a civil penalty of \$825 for failing to account for four contributions within seven days of receiving each contribution.

RIGHT TO JUDICIAL REVIEW

You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served to you. Because this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

John Lindback, Director of Elections

Date

CERTIFICATE OF SERVICE

I certify that on December 5, 2007, I served the attached Final Order by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

Donna Nelson for State Representative
Freda Wilson-Padilla, Treasurer
2150 St Andrews Dr
McMinnville OR 97128