STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

CAROL MCCLAIN
32100 HOFFMAN RD NE
KINGSTON WA 98346

In Re the Matter of Carol McClain Respondent.	)))))	PDC Case No. 10-107 Findings of Fact, Conclusions of Law and **Order Imposing Fine**

A brief enforcement hearing (brief adjudicative proceeding) was held September 23, 2010, in Room 206, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington to consider whether the Respondent violated RCW 42.17.240 by failing to timely file the Personal Financial Affairs Statement (PDC Form F-1) for calendar year 2009, which is required to be filed no later than April 15, 2010.

The hearing was held in accordance with Chapters 34.05 and 42.17 RCW and Chapter 390-37 WAC. Commission Chair David Seabrook was the Presiding Officer. The Commission staff was represented by Kurt Young, Compliance Officer. The Respondent participated by telephone and provided testimony to the Presiding Officer.

An updated brief enforcement hearing notice was sent to Carol McClain on September 9, 2010. Having considered the evidence, the Presiding Officer finds as follows:

FINDINGS OF FACT

1. The Respondent is a Port Commissioner for the Port of Eglon. She was elected Port Commissioner in 2009 and her term of office ends in 2015.

2. The Respondent was required to file a Statement of Financial Affairs (PDC Form F-1) by April 15, 2010. The F-1 report covers financial activities that occurred in calendar year 2009.

3. The Respondent filed the F-1a report via facsimile on September 22, 2010, prior to the brief enforcement hearing being held.

4. The Respondent said the Port of Eglon is a small port district located between Kingston and Point No Point that consists of a boat launch with a parking lot. She said she was asked to serve her community as a Port Commissioner, and that the port district was having a difficult time finding commissioners. She said there was no conflict of interest with any of her finances and her duties as a Port Commissioner, and there was no change from the previously filed F-1 report.

5. The Respondent apologized for this matter and stated she had some medical and family issues that precluded her from timely filing her F-1 report.

CONCLUSIONS OF LAW

Based on the above facts, as a matter of law, the Presiding Officer concluded as follows:

1. This matter was duly and properly convened and all jurisdictional, substantive and procedural requirements have been satisfied.

2. The Respondent violated RCW 42.17.240 by failing to timely file the Personal Financial Affairs Statement by April 15, 2010.

ORDER

ON the basis of the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Respondent is assessed a civil penalty of $100 [1], of which the entire $100 is suspended on the condition that the Respondent commits no violations of RCW 42.17 through 2015, the end of her current term of office.

This is an **Initial Order** of the Public Disclosure Commission. There are two ways the Respondent may appeal this order to the Commission. Once the order becomes a final order, it may also be appealed to Superior Court.

REVIEW OF INITIAL ORDER - COMMISSION

a. The Respondent may request a review of this Initial Order by the entire Commission.
b. The request may be made orally or in writing, and must be received at the Public Disclosure Commission office within **21 business days** after the postmark date of this Initial Order. The Respondent must state the reason for the review, and identify what alleged errors are contained in the initial order.
c. If the Respondent requests a review, no penalty need be paid until after the Commission rules on the request.

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[1] The assessed penalty is based on a penalty schedule previously adopted by the Commission that takes into consideration prior violations and whether the missing report was filed before the date of the hearing. In assessing the penalty, the Presiding Officer considered that the Respondent had no prior violations and that the missing report was filed before the date of the hearing.

d. By law, a request for review of the initial order is deemed to have been denied if the Commission does not make a disposition of the matter within 20 business days after the request is submitted.
e. If the Commission is unable to schedule a meeting to consider the Respondent's request for review within 20 business days, the Initial Order becomes a Final Order and the matter will automatically be treated as a request for reconsideration of a final order unless the Respondent advises the Commission otherwise. The matter will be scheduled before the full Commission as soon as practicable.
f. A request for reconsideration must be in writing. Therefore, if the request for review of the Initial Order was made orally and deemed to have been denied because it could not be scheduled for consideration within 20 business days, the request must now be put in writing. (See Reconsideration of Final Order below.)
g. If no request for review is received within 21 business days, this order will automatically become a **Final Order** of the Commission, and the Respondent will be legally obligated to pay the penalty unless reconsideration has been sought or the matter has been timely appealed to Superior Court. (RCW 42.17.395, RCW 34.05.470 and RCW 34.05.570).

RECONSIDERATION OF FINAL ORDER - COMMISSION

a. Any party may ask the Commission to reconsider a final order. The request must be in writing and must include the specific grounds or reasons for the request. Grounds for reconsideration shall be limited to:
   i) A request for review was deemed denied in accordance with WAC 390-37-144(4);
   ii) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence. If errors of fact are alleged, the requester must identify the specific evidence in the prior proceeding on which the requester is relying. If errors of law are alleged, the requester must identify the specific citation; or
   iii) Significant typographical or ministerial errors in the order.

b. The request must be delivered to the Public Disclosure Commission office within **21 business days** after the postmark date of this order.
c. The Public Disclosure Commission is deemed to have denied the request for reconsideration if, within 20 business days from the date the request is filed, the Commission does not either dispose of the petition <u>or</u> serve the parties with written notice specifying the date by which it will act on the petition. (RCW 34.05.470).
d. The Respondent is not required to ask the Public Disclosure Commission to reconsider the final order before seeking judicial review by a superior court. (RCW 34.05.470).

FURTHER APPEAL RIGHTS – SUPERIOR COURT

a. A **final order** issued by the Public Disclosure Commission is subject to judicial review under the Administrative Procedure Act, chapter 34.05 RCW. (RCW 42.17.395(5)). The procedures are provided in RCW 34.05.510 - .598.

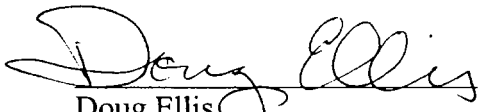
b. The petition for judicial review must be filed with the superior court and served on the Public Disclosure Commission and any other parties within **30 days** of the date that the Public Disclosure Commission serves this Final Order on the parties. (RCW 34.05.542(2)).
c. Service is defined in RCW 34.05.010(19) as the date of mailing or personal service.

ENFORCEMENT OF FINAL ORDERS

a. If there is no timely request for review or reconsideration, this Initial Order becomes a Final Order. The Respondent is legally obligated to pay any penalty assessed.
b. The Commission may seek to enforce a final order in superior court under RCW 42.17.395 - .397, and recover legal costs and attorney's fees, if the penalty remains unpaid and no petition for judicial review has been timely filed under chapter 34.05 RCW. This action will be taken without further order by the Commission.

Entered this 30th day of September, 2010.

Public Disclosure Commission



Doug Ellis
Interim Executive Director