STATE OF COLORADO SECRETARY OF STATE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2023-61 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. Ralene for D49, Respondent.	▲COURT USE ONLY▲ CASE NUMBER 2024 AHO 0023

MOTION FOR ENTRY OF DEFAULT JUDGMENT

The Elections Division of the Colorado Department of State moves for an entry of default judgment under Rule 24 of the Secretary's Rules on Campaign and Political Finance. 8 CCR 1505-6. As good cause, the Division states:

1. On June 12, 2024, the Division served Respondent Ralene for D49 with an Administrative Complaint. The Complaint was sent by email and United States mail, first-class postage prepaid to the email address and mailing address on Ralene for D49's committee registration statement. The email address was teamrevord@gmail.com and the mailing address was 11850 Kalmath Way, Payton, CO 80831.

2. Service was made on the Committee's registered agent by mailing the Complaint to the address furnished by the Committee to the Secretary. *See* Ex. 1 (Van Pelt Decl.).

3. The Committee's answer was due on July 17, 2024, 30 days after the Complaint was originally sent to the address on the Committee's registration statement. As of the date of this motion, no answer has been received.

4. A hearing was set in this matter for July 29, 2024. No representative for Ralene for D49 appeared at that hearing.

5. Rule 24.7.1 provides that if a person is served an administrative complaint and fails to respond to the complaint within 30 days, "a hearing officer may enter a default against that person."

6. In addition, section 1-45-111.7(6)(a) provides that campaign finance hearings "must be in accordance with section 24-4-105." That section, in turn, permits hearing officers, upon motion, to enter a default. § 24-4-105(2)(b).

7. Rule 24.7.3 requires the party filing a motion for default to serve the motion upon all parties to the proceeding, including the person against whom default is sought, and to provide an affidavit establishing service of the notice and motion for default.

8. The Motion must also be accompanied by an affidavit establishing that both the Administrative Complaint and the motion for entry of default were served upon the person against whom a default is sought "or have been mailed by first-class mail to the last address furnished to the agency by the person against whom the default is sought." Rule 24.7.3(b).[1]

8. A copy of this motion is being served on Ralene for D49 by U.S. mail as indicated in the Certificate of Service attached to this motion and in the Van Pelt Declaration.

9. Rule 24.7.3 also requires a party moving for default to set forth the legal authority for the claim and any applicable calculation thereof.

10. The attached Gentry Declaration establishes that Ralene for D49 initially reported two $500 contributions from a corporation, both of which were prohibited by Article XXVIII, section 3(4)(a). Ralene for D49 later amended her reports to state that those contributions were from employees of the corporation in question, but provided no evidence—including a sworn statement—to support that assertion.

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[1] C.R.C.P. 108 permits the use of unsworn declarations under C.R.S. § 13-27-101 whenever a procedural rule requires an affidavit. *See also* Rule 24.3 (Rules of Civil Procedure generally apply).

11. The attached Gentry Declaration also establishes that Ralene for D49 accepted two contributions—$100 and $400 respectively—from an LLC. Although Ralene for D49 later amended her reports to indicate that those contributions should have been attributed to her husband, an employee of the LLC in question, Ralene for D49 never provided the required LLC affirmation. To date, Ralene for D49 has provided no evidence that an LLC affirmation was filled-out and retained prior to these contributions having been received. *See* § 1-45-103.7(5)(d)(I) ("No candidate committee . . . shall accept a contribution from a limited liability company unless the written affirmation satisfying the requirements of this paragraph (d) is provided before the contribution is deposited by the candidate committee.").

12. The Elections Division is seeking a penalty of $300. As for the prohibited corporate contributions, Rule 23.3.3(c)(1) provides for "at least $100 and 10 percent of the prohibited activity." Here, that would be $300. However, the Division finds mitigating circumstances under Rule 23.3.5. Namely, Ralene for D49 amended its reports of contributions and expenditures to indicate that the corporate contributions should have been attributed to the Founder and CEO of the corporation in question respectively. Accordingly, the Division seeks a penalty of $200 for the corporate contributions.

13. As for the LLC contributions, "any person who has violated any of the provisions of subsection [1-45-103.7](5)(d)(I) . . . is subject to a civil penalty of fifty dollars per day for each day that the written affirmation regarding the membership of a limited liability company has not been filed with or retained by the candidate committee[.]" § 1-45-103.7(7)(c). Here, the initial LLC contribution was made on August 24, 2023, or approximately 344 days ago. Assuming that the affirmation was not retained—which, to this point, there is no evidence it was retained—that would suggest a statutory penalty of $17,200.

14. However, the Division believes such a penalty would be excessive and perhaps unconstitutionally burdensome under the First Amendment. *See generally Sampson v. Buescher*, 625 F.3d 1247, 1260 (10th Cir. 2010) (noting $50 per day penalty for failure to meet recording deadlines in assessing burden on committees in First Amendment context). The Secretary's rules provide that, "in assessing a fine amount," a hearing officer must consider "mitigating and aggravating factors." And the Court of Appeals has held that an Administrative Law Judge has discretion to not impose the full $50 per day penalties prescribed under Colorado's campaign finance laws. *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210, 1219 (Colo. App. 2009) (holding that ALJs enjoy broad discretion in levying sanctions under Colorado campaign finance law).

15. Here, the Division notes that the LLC in question, G3 Flooring and Design, appears to have only one member: Joseph Revord, who is the candidate's husband. Gentry Declaration ¶ 7. It seems likely, then, that the Committee's amendments to its filings to attribute G3's contribution to Joseph Revord accurately reflects the nature of the contribution. And, under such circumstances, the affirmation is less important because of the nature of the LLC, and its close relationship with the candidate.

14. Accordingly, the Division believes a penalty of $100 for this violation is sufficient to further the purposes of campaign finance law. It also reflects the Committee's efforts to promptly amend its filings to reflect the individual member of the LLC to whom the LLC's contribution should be attributed.

THEREFORE, the Secretary respectfully requests that the Hearing Officer enter an Initial Decision imposing a penalty of $300 against Ralene for D49.

Respectfully submitted 5th day of August, 2024.

PHILIP J. WEISER
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CERTIFICATE OF SERVICE

I hereby certify that I have duly served a true and correct copy of this **MOTION FOR ENTRY OF DEFAULT JUDGMENT** to the parties at the addresses shown below by electronic means and first class USPS mail, 5th day of August, 2024, addressed as follows.

Via First Class Mail:

Ralene for D49
C/O Registered Agent Ginger Ralene Revord
11850 Kalmath Way
Peyton, CO 80831

Respondent

/s/ Carmen Van Pelt
Carmen Van Pelt