

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA  
ELECTIONS COMMISSION

**In Re:** Diana Wasserman-Rubin

Case No.: FEC 00-205  
F.O. No.: DOSFEC 01-171 W

**CONSENT ORDER**

The Respondent, Diana Wasserman-Rubin, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties. The parties jointly stipulate to the following facts, conclusions of law, and order:

**FINDINGS OF FACT**

1. On September 29, 2000, the staff of the Commission issued a Statement of Findings, recommending to the Commission that there was probable cause to believe that the Respondent violated Section 106.021(3), Florida Statutes.
2. The facts set forth in the Statement of Findings, which is attached hereto and incorporated by reference, are deemed admitted as true.
3. On November 6, 2000, the Commission entered an Order of Probable Cause finding there was probable cause to believe that the Respondent violated Section 106.021(3), Florida Statutes.
4. On November 7, 2000, the Respondent was served by certified mail with a copy of the Order of Probable Cause.
5. The Respondent requested a hearing before the Commission within 30 days of receiving the Order of Probable Cause.

**CONCLUSIONS OF LAW**

6. The Commission has jurisdiction over the parties to and subject matter of this

cause, pursuant to Section 106.26, Florida Statutes.

7. The Commission staff and the Respondent stipulate that, although the violations charged in the Order of Probable Cause were not knowingly committed, the elements of the violations could be proven by clear and convincing evidence.

### **ORDER**

8. The Respondent and the staff of the Commission have entered into this Consent Order voluntarily and upon advice of counsel.

9. The Respondent shall bear her own attorney fees and costs that are in anyway associated with this case.

10. The Respondent understands that before the Consent Order is final agency action, the Commission must approve it at a public meeting.

11. After it is approved by the Commission, this Consent Order constitutes final agency action on the violations charged in the Order of Probable Cause.

12. The Respondent voluntarily waives the right to any further proceedings under Chapters 106 and 120, Florida Statutes, and the right to appeal the Consent Order.

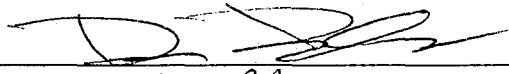
13. This Consent Order is enforceable under Sections 106.265 and 120.69, Florida Statutes. The Respondent expressly waives any venue privileges and agrees that if enforcement of this Consent Order is necessary, venue shall be in Leon County, Florida.

14. The Respondent shall remit to the Commission a civil penalty in the amount of \$1500 for violating Section 106.021(3), Florida Statutes. The civil penalty shall be paid to the Florida Elections Commission, Room 2002, The Capitol, Tallahassee, Florida, 32399-1050, as a condition precedent to the Commission's execution of this Consent Order.

The Respondent hereby agrees and consents to the terms of this Consent Order on

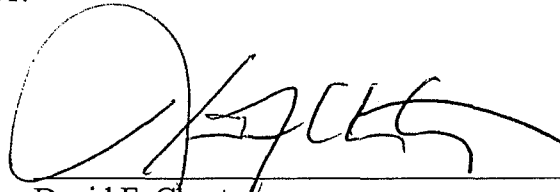
April 18, 2001.

  
Diana Wasserman-Rubin

  
Donna M. Ballman, P.A.  
13899 Biscayne Boulevard, Suite 4801 S. University Dr.  
North Miami Beach, Florida 33181 Suite 3010  
Ft. Lauderdale, FL  
33328

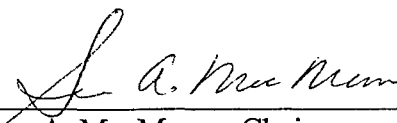
The Commission staff hereby agrees and consents to the terms of this Consent Order on

May 7, 2001.

  
David F. Chester  
Assistant General Counsel  
Florida Elections Commission  
Room 2002, The Capitol  
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held  
on May 9 & 10, 2001, at Orlando, Florida and filed with the Clerk of the Commission on

May 22, 2001, in Tallahassee, Florida.

  
Susan A. MacManus, Chairman  
Florida Elections Commission  
Room 2002, The Capitol  
Tallahassee, FL 32399-1050

Copies furnished to:


David F. Chester, Assistant General Counsel  
Diana Wasserman-Rubin, Respondent  
Donna M. Ballman, Attorney for Respondent  
Brenda Lee Chalifour, Complainant  
North Mimi Beach City Clerk, Filing Officer

Attachment: Statement of Findings



DIANA WASSERMAN-RUBIN OR 09/00  
RICHARD RUBIN  
5731 Sw 196 Lane  
Southwest Ranches, Fl 33332

0319  
63-607/670

4-18-01 Date

Pay to the Order of Florida Elections Commission \$ 1500<sup>00</sup>  
One Thousand Five Hundred no/xx Dollars  Security Features Details on Back

**SUNTRUST**  
SunTrust Bank, South Florida  
South Weston Office  
Davie, Florida 203-6000

For in full settlement Case FCC 00-905  MP  


STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

IN RE: Diana Wasserman-Rubin

Case No.: FEC 00-205

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**ORDER OF PROBABLE CAUSE**

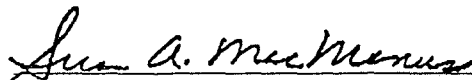
**THIS CAUSE** came on to be heard before the Florida Elections Commission at its meeting held on October 24, 2000, in Tallahassee, Florida.

Based on the facts set forth in the Complaint, Report of Investigation, and Statement of Findings, that are incorporated as a part of this order, the Commission finds that there is:

**Probable cause** to believe that the Respondent violated Section 106.021(3), Florida Statutes, prohibiting a candidate from making an expenditure except through the campaign treasurer, on three occasions; and,

**No Probable cause** to believe that the Respondent violated Section 106.19(1)(a), Florida Statutes, prohibiting a person or organization from accepting a contribution in excess of \$500 for each election.

**DONE AND ENTERED** by the Florida Elections Commission and filed with the Clerk of the Commission on November 6, 2000, in Tallahassee, Florida.



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Susan A. MacManus, Chairman  
Florida Elections Commission  
Room 2002, The Capitol  
Tallahassee, FL 32399-1050

## NOTICE OF RIGHT TO A HEARING

As the Respondent, you are entitled to a hearing before the Florida Elections Commission or the Division of Administrative Hearings on those violations of the Florida Statutes on which the Commission has found probable cause. The hearing is held according to Chapter 120, Florida Statutes, and Chapters 2B-1 and 28-106, Florida Administrative Code. To obtain a hearing, you must file with the Commission Clerk a written petition requesting a hearing.

To obtain an informal or formal hearing before the Commission or a formal hearing before the Division of Administrative Hearings, the Clerk must receive your petition within 30 days of the date that you received this order. If you request a formal hearing, the Commission reserves the right to refer the case to the Division of Administrative Hearings. The address of the Commission Clerk is Room 2002, The Capitol, Tallahassee, Florida 32399-1050. In the petition, you must request either a formal or an informal hearing. No mediation is available.

To request an **informal hearing**, you must include in the petition requesting the hearing all the information listed in Rule 28-106.301(2), Florida Administrative Code. At the informal hearing, you will have the right to make written or oral arguments to the Commission concerning the violation and the potential fine. Live witness testimony is unnecessary at an informal hearing.

To request a **formal hearing**, you must include in the petition requesting the hearing all the information listed in Rule 28-106.201(2), Florida Administrative Code, including a statement of all issues of material fact in the Statement of Findings that you dispute. At the formal hearing, you will have the right to present evidence relevant to the violation(s) listed in this order, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against you.

**If you do not timely file a written petition requesting a hearing, you will be deemed to have waived your right to both a formal and an informal hearing. This matter will be scheduled for a Commission meeting, and the Commission will consider this document, the Statement of Findings, and the Report of Investigation and issue a final order that may include a substantial fine.**

Copies furnished to:

Phyllis Hampton, Assistant General Counsel  
Ms. Donna M. Ballman, P.A., Attorney for Respondent (certified mail)  
Ms. Brenda Lee Chalifour, Complainant  
Supervisor of Elections, Broward County, Filing Officer

Attachment: Statement of Findings

## STATEMENT OF FINDINGS

Case Number: FEC 00-205

**Respondent:** Diana Wasserman-Rubin

**Complainant:** Brenda Lee Chalifour

On August 14, 2000, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 106, Florida Statutes. The Commission staff investigated the allegations and based on the facts and conclusions of law contained in the Complaint, the Report of Investigation, and this statement, the staff recommends that the Commission find that there is:

**Probable cause** to believe that the Respondent violated Section 106.021(3), Florida Statutes, prohibiting a candidate from making an expenditure except through the campaign treasurer, on three occasions; and,

**No Probable cause** to believe that the Respondent violated Section 106.19(1)(a), Florida Statutes, prohibiting a person or organization from accepting a contribution in excess of \$500 for each election.

### Summary of Facts and Conclusions of Law

1. Respondent is a candidate for the Broward County Commission; she was successful in the September Democratic primary. Respondent will face a write-in candidate in the general election in November. Respondent has been a member of the Broward County School Board for the past 12 years. During the 2000 election, she switched her candidacy from the Broward County School Board to the Broward County Commission

2. Complainant is an attorney in Hollywood, Florida; her boyfriend opposed Respondent in the primary election.

3. The Commission staff investigated whether Respondent violated Section 106.021(3), Florida Statutes, when she made two expenditures to American Express. Both expenditures were reported on the Respondent's campaign treasurer's reports. One was for purchases at Kinko's in the amount of \$617.90, and the other was for purchases at Mailboxes in the amount of \$668.81. The Respondent's campaign treasurer's report also shows expenditure to Visa for fundraiser thank-you cookies on July 25, 2000 in the amount of \$106.33.

4. Respondent's counsel, Donna M. Ballman, submitted a response to the complaint on September 11, 2000. Counsel explained that Respondent thought that this was a proper way to make expenditures, as long as the credit card companies were reimbursed directly by the campaign account. Counsel further explained that her client "misunderstood" the law on this issue. Counsel added that as of August 25, 2000, her client had been advised that the only expenditures that may be made are to be made through the campaign account.



5. Mary Cooney, candidate qualifying officer with the Broward County Supervisor of Elections' office, said that she did not recall having had any discussions with Respondent concerning whether it was permissible to use a credit card for a campaign-related expenditure. On May 11, 2000, Respondent signed a statement of candidate stating that she had received, read, and understood the requirements of Chapter 106, Florida Statutes.

6. Under these circumstances, it appears that the Respondent did not comply with the provisions of Section 106.121(3), Florida Statutes, and that the non-compliance was willful.<sup>1</sup> The Respondent is an experienced candidate; this is her fourth campaign for public office. Section 106.021(3), Florida Statutes, clearly states

Except for independent expenditures, no contribution or expenditure, including contributions or expenditures of a candidate or of the candidate's family, shall be directly or indirectly made or received . . . except through the duly appointed campaign treasurer of the candidate or political committee.

7. Section 106.125, Florida Statutes, regulates the use of credit cards and limits their use to statewide candidates for travel-related expenditures only. Even if the candidate had been a candidate for statewide office, she could not have used the credit card for the expenditures she made.

8. The Complainant also submitted a newspaper article that alleged that the Respondent had accepted contributions from five contributors that exceeded \$500 per election in violation of Section 106.19(1)(a), Florida Statutes. The following chart outlines those contributions:

Contributor	Date of contributions	Amount
Ruth Cosnotti	May 20, 1999	\$100
	June 23, 2000	\$500
CAM-Co Enterprises, Inc.	May 20, 1999	\$100
	July 27, 2000	\$500
Pass Painting Company, Inc.	June 16, 1999	\$250
	July 27, 2000	\$500
G.T. McDonald Enterprises	May 20, 1999	\$250
	April 26, 2000	\$500
Francis Engineering, Inc.	June 16, 2000	\$500
	July 27, 2000	\$500

9. In addition to these alleged excessive contributions, Complainant faxed records

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<sup>1</sup> Section 106.37, Florida Statutes, provides that a person willfully violates Chapter 106, Florida Statutes, if the person:

...commits an act while knowing that, or showing reckless disregard for whether, the act is prohibited...or does not commit an act while knowing that, or showing reckless disregard for whether the act is required....A person knows that an act is prohibited or required if the person is aware of the provision...which prohibits or required the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. A person shows reckless disregard for whether an act is prohibited or required under this chapter if the person wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation... (Emphasis added)

that indicate that the Respondent accepted excessive contributions from Mueller, Mintz, Kornreich, Caldwell, Case, Crosland & Bramnick, P.A., and C&F Electric, Inc.

10. Respondent's counsel admitted that the Respondent accepted several contributions that exceeded the statutory limit of \$500, but stated, "However, the acceptance of these contributions was entirely accidental. The mistakes appear largely to have occurred due to the fact that contributions were made in different reporting cycles, and there was no system in place to cross-check prior reports before depositing contribution checks."

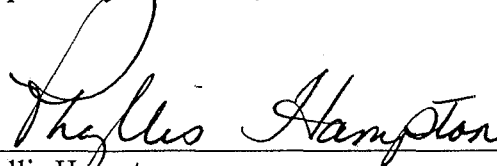
11. Counsel noted in the response that each of the excessive contributions was returned on August 9, 2000, including the two additional contributions that Complainant noted in her fax to Commission staff. This was five days before the complaint was filed with the Commission. Counsel submitted copies of the letters that were mailed to the contributors returning the excessive contributions.

12. Counsel stated that the Respondent has now installed a computer program alphabetizes contributions and enables her client to "cross-check" to make sure no illegal contributions are accepted.

13. Complainant also filed a complaint with the Broward County State Attorney's office requesting that they investigate Respondent for accepting illegal campaign contributions. The state Attorney's office found Respondent's conduct was neither knowing nor willful.

14. It appears that the acceptance of the excessive campaign contributions was not a violation of Section 106.19(1)(a), Florida Statutes. For the Commission to find a violation of this section, it must be both knowingly and willfully committed.

Respectfully submitted,



Phyllis Hampton  
Assistant General Counsel

September 29, 2000  
Date

Copy furnished to:

Barbara M. Linthicum, Executive Director  
Keith Smith, Investigator Specialist