

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

In Re: Javier E. Giraud

Case No.: FEC 16-858

TO: Javier E. Giraud
3870 SW 137th Avenue
Miami, FL 33175

Town of Cutler Bay
Jacqueline N. Wilson
10720 Caribbean Blvd., Ste. 105
Cutler Bay, FL 33189

NOTICE OF HEARING (AUTOMATIC FINE)

A hearing will be held in this case before the Florida Elections Commission on, **May 17, 2017 at 8:30 am, or as soon thereafter as the parties can be heard**, at the following location: **Augustus B. Turnbull Conference Center, 555 West Pensacola Street, Room 214, Tallahassee, Florida 32301**

Failure to appear in accordance with this notice will constitute a waiver of your right to participate in the hearing. Continuances will be granted only upon a showing of good cause.

This hearing will be conducted pursuant to Section 106.25, Florida Statutes, which governs your participation as follows:

If you are the Respondent, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission. However, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless you request to be heard or the Commission requests that your case be considered separately on the day of the hearing, your case will *not* be individually heard.

If you are the Complainant, you may attend the hearing, but you will *not* be permitted to address the Commission. In addition, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless the Respondent requests to be heard or the Commission requests that the case be considered separately on the day of the hearing, the case will *not* be individually heard.

If you are an Appellant, and you have requested a hearing, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission.

Please be advised that both confidential and public cases are scheduled to be heard by the Florida Elections Commission on this date. As an Appellant, Respondent or Complainant in one case, you will *not* be permitted to attend the hearings on other confidential cases.

The Commission will electronically record the meeting. Although the Commission's recording is considered the official record of the hearing, the Respondent may provide, at his own expense, a certified court reporter to also record the hearing.

If you require an accommodation due to a disability, contact Donna Ann Malphurs at (850) 922-4539 or by mail at 107 West Gaines Street, The Collins Building, Suite 224, Tallahassee, Florida 32399, at least 5 days before the hearing.

See further instructions on the reverse side.

Amy McKeever Toman
Executive Director
Florida Elections Commission
May 1, 2017

Please refer to the information below for further instructions related to your particular hearing:

If this is a hearing to consider **an appeal from an automatic fine**, the Filing Officer has imposed a fine on you for your failure to file a campaign treasurer's report on the designated due date and, by filing an appeal, you have asked the Commission to consider either (1) that the report was in fact timely filed; or (2) that there were unusual circumstances that excused the failure to file the report timely. You are required to prove your case. If the Commission finds that the report was filed timely or that there were unusual circumstances that excused the failure, it may waive the fine, in whole or in part. The Commission may reduce a fine after considering the factors in Section 106.265, Florida Statutes. If the Commission finds that the report was not timely filed and there were no unusual circumstances, the fine will be upheld.

If this is a hearing to consider a **consent order before a determination of probable cause has been made**, the Commission will decide whether to accept or reject the consent order. If the Commission accepts the consent order, the case will be closed and become public. If the Commission rejects the consent order or does not make a decision to accept or deny the consent order, the case will remain confidential, unless confidentiality has been waived.

If this is a hearing to consider a **consent order after a determination of probable cause has been made**, the Commission will decide whether to accept or reject the consent order. If the Commission accepts the consent order, the case will be closed. If the Commission rejects the consent order or does not make a decision to accept or deny the consent order, the Respondent will be entitled to another hearing to determine if the Respondent committed the violation(s) alleged.

If this is a **probable cause hearing**, the Commission will decide if there is probable cause to believe that the Respondent committed a violation of Florida's election laws. Respondent should be prepared to explain how the staff in its recommendation incorrectly applied the law to the facts of the case. *Respondent may not testify, call others to testify, or introduce any documentary or other evidence at the probable cause hearing.* The Commission will only decide whether Respondent should be *charged* with a violation and, before the Commission determines whether a violation has occurred or a fine should be imposed, Respondent will have an opportunity for another hearing at which evidence may be introduced.

If this is an **informal hearing**, it will be conducted pursuant Sections 120.569 and 120.57(2), Florida Statutes; Chapter 28 and Commission Rule 2B-1.004, Florida Administrative Code. At the hearing, the Commission will decide whether the Respondent committed the violation(s) charged in the Order of Probable Cause. The Respondent will be permitted to testify. However, the Respondent may not call witnesses to testify.

Respondent may argue why the established facts in the Staff Recommendation do not support the violations charged in the Order of Probable Cause. At Respondent's request, the Commission may determine whether Respondent's actions in the case were willful. The Respondent may also address the appropriateness of the recommended fine. If Respondent claims that his limited resources make him unable to pay the statutory fine, *he must provide the Commission with written proof of his financial resources* at the hearing. A financial affidavit form is available from the Commission Clerk.

FLORIDA ELECTIONS COMMISSION
CASE REPORT
Case Number: FEC-16-858

NAME: **JAVIER E. GIRAUD**

DATE APPEAL RECEIVED: 11/21/16

DATE REPORT DUE: 11/4/16 (2016 G3)

DATE HAND DELIVERED: 11/7/16

DATE FILING OFFICER RECEIVED REPORT: 11/7/16

NUMBER OF DAYS LATE: 3

AMOUNT OF FINE: **\$1,500.00**

FINE BASED ON: (X) NUMBER OF DAYS (..) 25% OF RECEIPTS (..) 25% OF EXPENDITURES

TOTAL RECEIPTS FOR REPORTING PERIOD: \$17,500.00

TOTAL EXPENDITURES FOR REPORTING PERIOD: \$6,847.82

DATE OF FIRST NOTIFICATION: 11/9/16

SUMMARY: Javier Giraud was a candidate for Vice Mayor in the 2016 elections. Mr. Giraud appointed himself as his own treasurer.

Mr. Giraud is appealing the fine claiming that unusual circumstances existed that caused the 2016 G3 Report to be untimely filed. According to Mr. Giraud, "Please accept this correspondence as my appeal to the Commission to waive \$1,000.00 of the \$1,500 fine imposed upon me for filing late. I filed the filing on the next available business day; but for the deadline falling on a Friday, I would have only been subjected to a \$500.00 fine. The Clerk of Cutler Bay's offices are not open on weekends and any attempt to deliver the filing would not have been received before the following Monday. I ask that the Commission consider that I am a first time candidate, it was my first and only late filing, I unwisely appointed myself as the sold and only treasurer and that it was the 12th day of me standing outdoors at the early voting polls for 12 hours a day. Additionally, the violation was not in bad faith as I filed the report on the next business day".

- The 2016 G3 Report covers the time period from 10/22/16 through 11/3/16.
- In a 2/8/17 telephone interview with Debra Eastman, Interim Town Clerk, I was advised that candidates can file reports with their office via hand delivery or mail.

PRIOR CASES: None

CANDIDATE [X]	STATE []
PC []	DISTRICT []
CCE []	COUNTY [X]
POLITICAL PARTY []	CITY []

ER

Javier E. Giraud
20920 SW 85th Place
Cutler Bay, Florida 33189
(305) 781-8660
javiergiraud@yahoo.com

RECEIVED

2016 NOV 21 A 10:54

STATE OF FLORIDA
ELECTIONS COMMISSION

November 17, 2016

Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, Florida 32399-1050

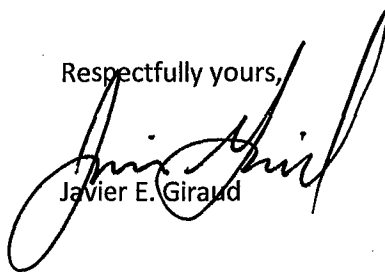
Re: Appeal of Late Filing Fine

To whom it may concern:

Please accept this correspondence as my appeal to the Commission to waive \$1,000.00 of the \$1,500 fine imposed upon me for filing late (see attachment). I filed the filing on the next available business day; but for the deadline falling on a Friday, I would have only been subjected to a \$500.00 fine. The Clerk of Cutler Bay's offices are not open on weekends and any attempt to deliver the filing would not have been received before the following Monday.

I ask that the commission consider that I am a first time candidate, it was my first and only late filing, I unwisely appointed myself as the sole and only treasurer and that it was the 12th day of me standing outdoors at the early voting polls for 12 hours a day. Additionally, the violation was not in bad faith as I filed the report on the next business day.

Respectfully yours,



Javier E. Giraud

Enclosure



Office of the Town Clerk

Jacqueline N. Wilson
Town Clerk

November 9, 2016

Javier Giraud
20920 SW 85th Place
Cutler Bay, FL 33189

Dear Javier Giraud:

This letter is to acknowledge receipt of the 2016-G3 Report for the office of Vice Mayor for the Town of Cutler Bay for the November 8, 2016 General Election. The 2016-G3 Report was received by me on November 7, 2016. As the Filing Officer for the Town of Cutler Bay, it is determined that the report was filed after the deadline of November 4, 2016.

In accordance with Florida State Statutes 106.07, you are hereby assessed a fine in the amount of \$1500.00, which is \$500 per day for each late day.

The fine shall be paid to the Filing Officer within 20 days of receipt of this notice. Please be aware that it is the policy of the Town of Cutler Bay not to accept cash. Payment may be made with a personal check or money order.

If you have any questions, please feel free to contact me.

Very truly yours,

Jacqueline N. Wilson
Town Clerk



COPY

Jacqueline Wilson

From: Jacqueline Wilson
Sent: Wednesday, November 09, 2016 6:45 PM
To: javielmo@aol.com
Cc: Jacqueline Wilson
Subject: Letter- Fine Assessed for Late Filing of 2016-G3 Report
Attachments: Letter- Fine Assessed for Late Filing 2016-G3 Report- Giraud110916.pdf
Importance: High

Good Afternoon Javier Giraud-
Please find attached letter regarding the 2016-G3 Report for your campaign for the office of Vice Mayor for the Town of Cutler Bay for the November 8, 2016 General Election, and kindly be informed this letter will also be received via Certified Mail with Return Receipt Requested.
Please let me know if I may be of further assistance.
Thank you

Jacqueline Wilson
Town Clerk
Office of the Town Clerk

Town of Cutler Bay
Cutler Bay Town Center
10720 Caribbean Blvd.
Suite 105
Cutler Bay, Florida 33189
Tel: (305) 234-4262
Fax: (305) 234-3525

www.cutlerbay-fl.gov



Please consider the environment before printing this e-mail



PLEASE NOTE: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



COPY

Office of the Town Clerk

Jacqueline N. Wilson
Town Clerk

November 9, 2016

Javier Giraud
20920 SW 85th Place
Cutler Bay, FL 33189

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Very truly yours,

Jacqueline N. Wilson
Town Clerk



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Xavier Giraud
20920 SW 85 Pl.
Cutler Bay, FL 33189

2. Article Number

(Transfer from service label)

7013 2630 0001 0075 9626

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Xavier Giraud* Agent Addressee

B. Received by (Printed Name)

Xavier Giraud

C. Date of Delivery

11-17-16

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail® Priority Mail Express™
- Registered Return Receipt for Merchandise
- Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

9296 5200 1000 0692 ET02

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.465
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$6.465

Postmark
Here

Sent To *Javier Giraud*
Street, Apt. No.,
or PO Box No. *20920 SW 85 Place*
City, State, ZIP+4 *Cutler Bay, FL 33189*

PS Form 3800, August 2006

See Reverse for Instructions

UNITED STATES POSTAL SERVICE

FL 331

17 NOV '16

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

Town of Cutler Bay
Town Clerk's Office
10720 Caribbean Blvd
Suite 105
Cutler Bay, FL 33189

RECEIVED
NOV 21 2016



Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

Important Reminders:

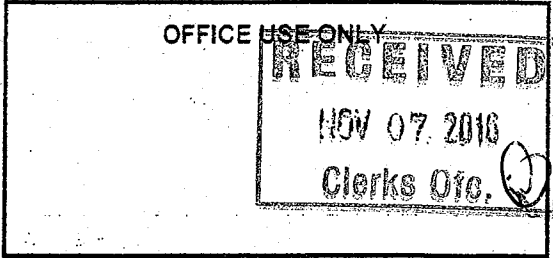
- Certified Mail may ONLY be combined with First-Class Mail® or Priority Mail.
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, August 2006 (Reverse) PSN 7530-02-000-9047

CAMPAIGN TREASURER'S REPORT SUMMARY

(1) Javier Giraud
 Name
 (2) 20920 SW 85 place
 Address (number and street)
Cutler Bay, FL 33175
 City, State, Zip Code



Check here if address has changed (3) ID Number: 121

(4) Check appropriate box(es):
 Candidate Office Sought: Vice Mayor
 Political Committee (PC)
 Electioneering Communications Org. (ECO)
 Party Executive Committee (PTY)
 Independent Expenditure (IE) (also covers an individual making electioneering communications)
 Check here if PC or ECO has disbanded
 Check here if PTY has disbanded
 Check here if no other IE or EC reports will be filed

(5) Report Identifiers

Cover Period: From 10 / 22 / 2016 To 11 / 3 / 2016 Report Type: 2016 G3
 Original Amendment Special Election Report

(6) Contributions This Report

Cash & Checks \$ _____
 Loans \$ 17,500.00
 Total Monetary \$ 17,500.00
 In-kind \$ _____

(7) Expenditures This Report

Monetary Expenditures \$ 6,847.82
 Transfers to Office Account \$ _____
 Total Monetary \$ _____

(8) Other Distributions
 \$ _____

(9) TOTAL Monetary Contributions To Date
 \$ 33,700.00

(10) TOTAL Monetary Expenditures To Date
 \$ 17,918.29

(11) Certification

It is a first degree misdemeanor for any person to falsify a public record (ss. 839.13; F.S.)

I certify that I have examined this report and it is true, correct, and complete:

(Type name) Javier Giraud
 Individual (only for IE or electioneering comm.) Treasurer Deputy Treasurer
 Signature: [Signature]

(Type name) Javier Giraud
 Candidate Chairperson (only for PC and PTY)
 Signature: [Signature]

CAMPAIGN TREASURER'S REPORT - ITEMIZED CONTRIBUTIONS

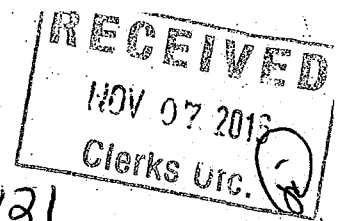
RECEIVED
 NOV 07 2016
 Clerks Inc. (8)

(1) Name Javier Giraud

(2) I.D. Number 121

(3) Cover Period 10 / 22 / 2016 through 11 / 3 / 2016 (4) Page 1 of 1

(5) Date	(7) Full Name (Last, Suffix, First, Middle) Street Address & City, State, Zip Code	(8) Contributor Type Occupation		(9) Contribution Type	(10) In-kind Description	(11) Amendment	(12) Amount
10, 28, 16	Javier Giraud 20920 SW 85 pl Cutler Bay, FL 33189	S	Attorney	Loan			7,500.00
63-1							
11, 3, 16	Javier Giraud 20920 SW 85 pl Cutler Bay, FL 33189	S	Attorney	Loan			10,000.00
63-2							
/ /							
/ /							
/ /							
/ /							
/ /							
/ /							



CAMPAIGN TREASURER'S REPORT - ITEMIZED EXPENDITURES

(1) Name Javier Girsud (2) I.D. Number 121
 (3) Cover Period 10/22/2016 through 11/3/2016 (4) Page 1 of 1

(5) Date	(7) Full Name (Last, Suffix, First, Middle) Street Address & City, State, Zip Code	(8) Purpose (add office sought if contribution to a candidate)	(9) Expenditure Type	(10) Amendment	(11) Amount
10/25/16	Community Newspapers P.O. Box 431970 South Miami, FL 33243	Ad			
G3-1			CAN		630.00
10/27/16	Minuteman Press 8850 SW 125 Terr Miami, FL 33176	Printing			
G3-2			CAN		213.00
10/30/16	Helen Mathis 14841 Polk St Miami, FL 33176	Early voting Poll worker			
G3-3			CAN		630.00
10/30/16	Harold Watkins	Early voting Poll worker			
G3-4			CAN		630.00
10/30/16	Zachary Strachan 12015 SW 187 Terr Miami, FL 33177	Early voting Poll worker			
G3-5			CAN		300.00
11/1/16	Minuteman Press 8850 SW 125 Terr 33176	Postage			
G3-6			CAN		1,706.04
11/2/16	Anthony Vernon 18640 SW 80 Ave Miami, FL 33157	Early voting Poll worker			
G3-7			CAN		151.00
11/3/16	Minuteman Press 8850 SW 125 Terr Miami, FL 33176	Printing			
G3-8			CAN		2,587.78



Office of the Town Clerk

Jacqueline N. Wilson
Town Clerk

NOVEMBER 8, 2016 GENERAL ELECTION

CAMPAIGN TREASURER'S REPORTS (F. S. Section 106.07):

Campaign Treasurer Reports shall be filed with the Town Clerk on the 10th day following the end of each month, except that if the tenth day occurs on a Saturday, Sunday or legal holiday, the report shall be filed on the next business day that is not a Saturday, Sunday or legal holiday. The following is the 2016 schedule of due dates to Campaign Treasurer's reports with the Town Clerk:

<u>Due Date:</u>	<u>Name of Report</u>	<u>Cover Period:</u>
February 10, 2016	2016-M01	1/1/2016-1/31/2016
March 10, 2016	2016-M02	2/1/2016-2/29/2016
April 11, 2016	2016-M03	3/1/2016-3/31/2016
May 10, 2016	2016-M04	4/1/2016 – 4/30/2016
June 10, 2016	2016-M05	5/1/2016 – 5/31/2016
July 11, 2016	2016-M06	6/1/2016 – 6/30/2016
August 10, 2016	2016-M07	7/1/2016 – 7/31/2016
September 12, 2016	2016-M08	8/1/2016 – 8/31/2016
October 11, 2016	2016-M09	9/1/2016 – 9/30/2016
October 14, 2016 (25 days prior)	2016-G1	10/1/2016-10/7/2016
October 28, 2016 (11 days prior)	2016-G2	10/8/2016-10/21/2016
November 4, 2016 (4 days prior)	2016-G3	10/22/2016-11/3/2016

Filing History

CTR Rec'd

9/12/16

10/11/16

10/14/16

10/28/16

11/7/16

