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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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ELECTIONS COMMISSION

FLORIDA ELECTIONS COMMISSION,

Petitioner,¹

v.

FEC Case No.: 02-132

DOAH Case No.: 02-4913

JOAN RUFFIER,

Respondent,

FLORIDA ELECTIONS COMMISSION,

Petitioner,

v.

FEC Case No.: 02-131

DOAH Case Nos.: 02-4914

GEORGE SHELDON,

Respondent.

F.O. No.: DOSFEC 03-241

FINAL ORDER

¹The ALJ in his Recommended Order aligned the Commission as Respondent and Joan Ruffier and George Sheldon as Petitioners. Since the FEC is the charging party and bears the burden of proof it appears more appropriate to reverse this alignment.

On May 22, 2003, this cause came on to be heard before the Florida Elections Commission (FEC or Commission). At the meeting, the FEC reviewed the Recommended Order entered by Administrative Law Judge (ALJ), Harry L. Hooper, on March 21, 2003. The FEC has also addressed the Exceptions to the Recommended Order filed by the staff of the Commission acting as advocate for the FEC as well as the Responses thereto filed by the Respondents.²

APPEARANCES

For Petitioners: Eric M. Lipman, Esquire
Florida Elections Commission
107 West Gaines Street
Tallahassee, FL 323999-1050

For Respondent: Robin Gibson, Esquire
Gibson, Valenti & Ashley
212 East Stuart Avenue
Lake Wales, Florida 33853

THE FEC STAFF'S EXCEPTIONS

1. Staff Exception #1 is approved. As the FEC has consistently held, FEC v. Morroni, Case No. FEC 97-060; FEC v. Bosczar, Case No. FEC 95-053; Division of Elections v.

²The FEC has reviewed the entire record and heard arguments of counsel.

De La Portilla, Case No. FEC 93-045; FEC v. Harris, Case No. FEC 98-087; FEC v. De La Portilla, Case No. FEC 00-006; FEC v. Proctor, Case No. FEC 99-065; the burden of proof in cases involving alleged violations of Chapter 106 is by a "preponderance of the evidence." For this reason, the FEC rejects the ALJ's characterization (COL @ ¶ 17) of the burden as being "clear and convincing." That being said, the Commission finds that the facts as found by the ALJ support the conclusions in the Recommended Order as modified by the FEC's conclusions herein under either burden.

2. The Commission rejects Staff Exception #2. The FEC fully supports the Division of Elections' position that parties required to submit information to the Division should do so using the appropriate forms. However, the evidence as found by the ALJ showed that Respondents did not notify the Division that a new Deputy Treasurer for the political committee involved had been appointed prior to the submission of the Quarterly Report at issue even though the form used was that designated for candidates not for committees.

I certify that a copy hereof has been furnished to
counsel for Respondents, Robin Gibson, Esquire, Gibson,
Valenti & Ashley, 212 East Stuart Avenue, Lake Wales,
Florida, 33853, by U.S. mail, and by hand delivery to
Clerk, Florida Elections Commission, 107 West Gaines
Street, Suite 224, Tallahassee mail this 22nd day of
August 2003.

Patsy Jenkins

Given the facts of this case, the Commission cannot say that the Respondents' use of the incorrect form made their Quarterly Report so inaccurate as to make their certification of the Report "inaccurate or untrue" in violation of Section 106.07(5), Fla. Stat. While the FEC does not agree with the ALJ's conclusion (COL @ ¶¶ 23-25) that using an incorrect form cannot form the underlying basis of a finding that a report violates Section 106.07(5), it agrees with his conclusion that no violation occurred here.

WHEREFORE, based upon the foregoing and as amended by the Commission's rulings on the exceptions filed herein, the FEC hereby accepts the Findings of Fact, Conclusions of Law and Recommendation of the ALJ and **DISMISSES** the charges against the Respondents.

DONE and **ORDERED** this 22nd day of August
2003.

Chance Irvine

Chance Irvine, Chairman
Florida Elections Commission

CERTIFICATE OF SERVICE