**BEFORE THE ALASKA PUBLIC OFFICES COMMISSION**

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| Mike Widney,<br><br>Complainant,<br><br>v.<br><br>Kevin McCabe,<br><br>Respondent. | Case No. 25-01-CD |

## FINAL ORDER

On June 25, 2025, the Alaska Public Offices Commission considered Mike Widney's complaint against Representative Kevin McCabe.[1] Mr. Widney alleges that Rep. McCabe violated campaign laws during his 2020 and 2024 campaigns by not including all the necessary details for expenditures made to advertising and public relations firms.[2] Staff investigated and recommended that the Commission find violations on three reports, waive the civil penalties for two of the violations, and impose a civil penalty of $3,200 for the third violation. The Commission agrees with staff's recommendations and orders Rep. McCabe to pay a civil penalty of $3,200.

The Commission incorporates staff's findings and recommendations by reference in this order. As recommended by staff, the Commission finds that Rep. McCabe's 2020 30-day primary report, 2024 7-day primary report, and 2024 7-day general report violated

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1 The Commission heard testimony from staff, Rep. McCabe, and his campaign treasurer, and argument from Mr. Widney. *See* 2 AAC 50.891(d).

2 AS 15.13.040(a); 2 AAC 50.321(d).

AS 15.13.040 and 2 AAC 50.321(d) by failing to disclose sufficient details on expenditures made to Optima Public Relations and Republican Ads LLC. At the hearing, Rep. McCabe testified that the campaign did not always have all details on where the ads would be placed until later. As staff pointed out, however, the campaign had an ongoing obligation to file complete reports and to amend them if details changed or information became available later.[3] The three reports at issue did not originally disclose, nor have they been subsequently amended, to add "all services rendered, including the name of each business from which campaign goods or services were purchased or subcontracted or media advertising placed."[4]

For the violations on the first two reports, the Commission agrees with staff's recommendation to waive the penalties because after reduction for Rep. McCabe's inexperience in 2020 and his good filing history in 2024, they are "significantly out of proportion to the degree of harm to the public for not having the information."[5] For the

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3 *See* AS 15.13.040(a) (requiring candidates to file a "full report, upon a form prescribed by the commission"; reports are only "full" to the extent that they are complete by including all the required details); 2 AAC 50.321(g) (requiring amendments within 10 days after a correct value is known when "the value of any transaction in [a] report is incorrect or subsequently becomes incorrect, even if the value was accurate at the time of initial filing" if the change in value is $100 or more); *Republican Governors Ass'n v. APOC*, 485 P.3d 545, 551 (Alaska 2021) (noting that requiring prompt initial reporting, followed by prompt disclosure of any changes made later, helps ensures "precisely the sort of transparency the disclosure laws are intended to achieve").

4 2 AAC 50.321(d).

5 2 AAC 50.865(b)(5). *See* 2 AAC 50.855(b)(3)(B) (applying 50 percent reduction when the report is the person's first incomplete report and the information was not readily available in another forum); 2 AAC 50.865(a)(1) (allowing for a reduction of up to 50 percent for inexperienced filers and those with a good filing history). Staff applied the wrong criteria to initially reduce the penalty for the 2020 reporting violation; because the

third violation, the Commission agrees with staff's recommendation to impose a civil penalty of $3,200, after applying a reduction to the maximum penalty for Rep. McCabe's good filing history.[6] As staff explained, a penalty of $3,200 is far less than the more than the $18,000 in expenditures for which Rep. McCabe failed to provide adequate details on the report that was due days before the election, when the electorate's need for the information was high.

At the hearing, Rep. McCabe argued that the Commission was unfairly targeting him by (1) not imposing penalties against other candidates with similar reporting violations and (2) retaliating against him for his legislative actions concerning the agency. Neither is true. First, the Commission's staff did not single out Rep. McCabe for an enforcement action for any reason, much less retaliation. Staff's investigation arose due to a complaint filed by an independent person (apparently a political opponent), which is permitted by statute.[7] The Commission must investigate all such complaints that satisfy the filing rules.[8] Second, the Commission is not required to audit all reports for all potential violations, nor could it reasonably accomplish such a task with the staff,

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report was incomplete, rather than late, a reduction of only 50 percent, not 75 percent, applies. *Compare* 2 AAC 50.855(b)(2)(B)(i) *with* 2 AAC 50.855(b)(3)(B). But this mistake is immaterial because staff's ultimate recommendation was waiver, and a penalty that is higher than staff's calculation still supports the disproportionality analysis.

6 2 AAC 50.865(a)(1)(A).

7 AS 15.13.380(b) ("A person who believes a violation of this chapter or a regulation adopted under this chapter has occurred or is occurring may file an administrative complaint with the commission within five years after the date of the alleged violation."); 2 AAC 50.870(a)–(b) (providing rules for filing a complaint).

8 AS 15.13.380(e); 2 AAC 50.875(a); 2 AAC 50.870(c)–(d).

resources, and other responsibilities that it has.[9] The Commission's staff investigates violations of AS 15.13 when a complaint is filed and provides a report with recommendations to the commissioners for a decision.[10]

Moreover, to any extent that Rep. McCabe's claim alleges bias by the commissioners, it is well established that adjudicators of administrative cases are "presumed to be honest and impartial."[11] To show bias, a party must show that a decision-maker "had a predisposition to find against a party or . . . . interfered with the orderly presentation of the evidence. This is a demanding standard."[12] Here, accepting Rep. McCabe's claim and recusing the commissioners would leave no one to hear this case—an absurd result when the Commission's very duties are to enforce compliance with campaign finance and disclosure rules, and personal financial disclosure rules against sitting legislators.[13] Instead of recusal, structural safeguards address concerns about institutional bias. So that decisions are not made based on an alleged violator's political affiliation, the governor appoints two commissioners each from the two most successful political parties and the fifth commissioner is appointed after nomination by a

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9 *See* AS 15.13.030 (listing the Commission's duties); AS 24.60.220 (requiring the Commission to administer provisions on legislative financial disclosures); AS 15.13.374 (duties and procedure for addressing advisory opinion requests); AS 15.13.380 (duties and procedures for receiving and addressing complaints).

10 AS 15.13.380(e); 2 AAC 50.875; 2 AAC 50.891.

11 *E.g., APOC v. Not Tammie*, 482 P.3d 386, 389 (Alaska 2021) (citations omitted).

12 *Calvert v. State, Dep't of Labor & Workforce Dev.*, 251 P.3d 990, 1006 (Alaska 2011) (citation omitted).

13 AS 15.13.030; AS 24.60.220.

majority of the others.[14] To avoid even the appearance of bias, the commissioners may not engage in political activities or hold elective office while serving on the Commission.[15] And impartiality is ensured in particular cases by requiring withdrawal or disqualification if a commissioner has a conflict of interest or cannot be fair.[16] Here, Rep. McCabe did not indicate that he was seeking recusal nor did not provide "with particularity the grounds" for any alleged bias by a commissioner.[17] And the Commission's chair made clear at the hearing that Rep. McCabe's official legislative actions would not be a consideration in reaching this decision.

For the above reasons, the Commission finds that Rep. McCabe's 2020 30-day primary report, 2024 7-day primary report, and 2024 7-day general report violated AS 15.13.040 and 2 AAC 50.321(d). The Commission orders Rep. McCabe to pay a civil penalty of $3,200 and to amend the reports within 30 days of this order to provide the details required by 2 AAC 50.321(d) on the expenditures specified in staff's report.

This is a final Commission order. It may be appealed to the superior court within 30 days from the date of this order.[18] A request for the Commission to reconsider this order must be filed within 15 days from the date this order is delivered or mailed.[19]

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14 AS 15.13.020(b)–(c).

15 AS 15.13.020(e).

16 AS 44.62.450(c); 2 AAC 50.835.

17 AS 44.62.450(c).

18 AS 15.13.380(g); AS 44.62.560; Alaska R. App. P. 602.

19 2 AAC 50.891(g); AS 44.62.540.

Dated: July 7, 2025

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION[20]

<table>
<tr><td colspan="2">Certificate of Service:<br>I hereby certify that on this date, I served, by certified mail, US mail, and email a true and correct copy of the foregoing in this proceeding on the following:</td></tr>
<tr><td>Mike Widney<br>PO Box 520857<br>Big Lake, AK 99652<br>KCWidney@protonmail.com<br>MCWidney@outlook.com</td><td rowspan="2">and by email to:<br><br>Heather Hebdon<br>Executive Director<br>Alaska Public Offices Commission<br>heather.hebdon@alaska.gov</td></tr>
<tr><td>Kevin McCabe<br>PO Box 520248<br>Big Lake, AK 99652<br>kevin@kevinjmccabe.com</td></tr>
</table>

Emma Mullet 7-7-25

Paralegal Date

[20] Commissioners Richard Stillie, Dan LaSota, Lanette Blodgett, Eric Feige, and Walt Monegan participated in this matter. The decision was made on a 5–0 vote.