

**STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW**

**LOUISIANA BOARD OF ETHICS**

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**\* DOCKET NO. 2009-0665-ETHICS-B**

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IN THE MATTER OF

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**ERNEST STEPHENS**

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**\* AGENCY TRACKING NO. 2007-1046**

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**DECISION AND ORDER**

The Louisiana Board of Ethics (Board) issued charges against Mr. Ernest Stephens in accordance with La. R.S. 24:55(B)(1). Based on the evidence presented, we conclude that Mr. Ernest Stephens violated La. R.S. 24:55(B)(1). We assess a penalty of \$3,500.00 for the violation.

**APPEARANCES**

A hearing was conducted in Baton Rouge, Louisiana, on July 10, 2009, before the Ethics Adjudicatory Board, Panel B, consisting of Administrative Law Judges Charles Perrault, Jr., Lynn Lightfoot and William Cooper, III. Present at the hearing:

Mr. Michael Dupree, counsel for the Board.

Mr. Ernest Stephens (Respondent) failed to appear.

**STATEMENT OF THE CASE**

This adjudication is conducted in accordance with the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the Division of Administrative Law Act, La. R.S. 49:991, *et seq.*

Following an investigation, the Board issued charges against Respondent on February 14,

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2008. The Board charged Respondent with failure to submit his semi-annual lobbyist expenditure reports. La. R.S. 24:55(B)(1) requires all registered lobbyists to file their January 31 - June 30, 2007, semi-annual expenditure reports with the Board by August 15, 2007. The Board requested that we assess a penalty of \$3,500.00 for the violation.

### **FINDINGS OF FACT**

On January 31, 2007, Respondent registered with the Board as a lobbyist and paid his registration fee. On April 13, 2007, the Board mailed a receipt and notice to Respondent advising that his Legislative Lobbying registration form had been accepted. Respondent did not file his semi-annual expenditure report on August 15, 2007, as required under La. R.S. 24:55(B)(1).

On August 20, 2007, the Board notified Respondent that he failed to file his Lobbyist Expenditure Report as required under La. R.S. 24:55(B)(1). The Board mailed its notice to the Respondent's last known address. Ms. Latisha Thomas, the Administrative Coordinator 4 for the Ethics Administration Program, investigated this case for the Board. She testified by affidavit. Ms. Thomas swore that she searched the Board's records and found that Respondent had not filed his January 1 - June 30, 2007, Legislative Lobbyist Expenditure Report as of April 24, 2009.

On February 14, 2008, the Board instituted formal charges against Respondent for violating La. R.S. 24:55(B)(1). The Board mailed notice of the formal charges to the Respondent on February 25, 2008. Respondent did not file a response.

Respondent was notified of the July 10, 2009, hearing on May 12, 2009<sup>1</sup>. Respondent

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<sup>1</sup> The April 27, 2009, hearing notice was accepted by "S. Fitzgerald" on May 12, 2009, according to the United States Postal Service certified mail receipt sent to Respondent's last known address.

failed to appear for the hearing after reasonable notice.

## CONCLUSIONS OF LAW

### 1. Standard of Proof

The Ethics Adjudicatory Panel assigned to conduct the public hearing of this matter is charged with determining the validity of the charges against the respondent, whether a violation occurred, and what penalties or sanctions, if any, will be imposed.<sup>2</sup> The standard of proof in a hearing under the Louisiana Code of Governmental Ethics is that the evidence must be “clear and convincing.”<sup>3</sup> Clear and convincing evidence is an intermediate standard of persuasion, which requires more than a preponderance of the evidence, but less than proof beyond a reasonable doubt; the existence of the disputed fact must be much more probable than its nonexistence. *Louisiana State Bar Association v. Edwins*, 329 So.2d 437 (La.1976).

### 2. Violation of La. R.S. 24:55(B)(1)

La. R.S. 24:51 defines a “lobbyist” as any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying. The Board demonstrated Respondent was a registered Legislative Lobbyist under La. R.S. 24:51.

All legislative lobbyists are required to submit semi-annual lobbyist expenditure reports. La. R.S. 24:55(B)(1) requires all registered lobbyists to file their January 31 - June 30, 2007, semi-annual expenditure reports with the Board by August 15, 2007. The Board notified Respondent on August 20, 2007, that he failed to file his Lobbyist Expenditure Report as required under La. R.S. 24:55(B)(1). The Board made another search of its lobbyist records on

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<sup>2</sup> La. R.S. 42:1141(C)(4)(d)(ii).

<sup>3</sup> La. R.S. 42:1141(C)(4)(e).

April 24, 2009, and found that Respondent had still not filed his expenditure reports as required. The Board used the affidavit of Ms. Thomas to prove this fact. The affidavit does not comply with the requirements of La. R.S. 35:12 because the notary failed to list his notary ID number. However, we do not find the deficiency destroys the validity of the affidavit under the rationale of *Millen v. State Department of Public Safety*, 2007-0845 (La. App. 1 Cir. 12/21/07) 978 So. 2d 957; and *Succession of Adler*, 334 So. 2d 799 (La. App. 4 Cir. 1976). Therefore, we conclude the Board established through clear and convincing evidence that Respondent violated La. R.S. 24:55(B)(1).

### 3. Penalty

In accordance with La. R.S. 24:58(D)(1), Respondent is subject to a late fee of \$50.00 per day for failure to timely file his expenditure report. The maximum penalty under the late fee provision is \$1,500.00 per violation. Respondent is also subject to a civil penalty of up to \$10,000.00 under La. R.S. 24:58(D)(2) for failure to file the report within eleven days of the due date. As of the hearing, Respondent's report had not been filed.

The failure to file the expenditure report is a serious violation. We have taken into consideration the fact that Respondent ignored all of the Board's notices. He has made no effort to cooperate with the Board or to follow the law. We conclude that Respondent should be penalized the maximum late fee allowed under La. R.S. 24:58(D)(1), which is \$1,500.00. Since Respondent has yet to file his report, we conclude he should pay a civil penalty of \$2,000.00 as allowed under La. R.S. 24:58(D)(2). Respondent's total penalty is \$3,500.00.

**ORDER**

For the above reasons:

**IT IS HEREBY ORDERED** that Mr. Ernest Stephens violated La. R.S. 24:55(B)(1).

**IT IS FURTHER ORDERED** that Mr. Ernest Stephens is to pay a penalty of three thousand five hundred dollars (\$3,500.00) to the Board of Ethics for the violation.

Rendered and signed this July 20, 2009 in Baton Rouge, Louisiana.



Charles Perrault, Jr.  
Presiding Administrative Law Judge



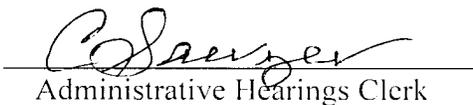
Lynn Lightfoot  
Administrative Law Judge

William H. Cooper, III  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the attached document(s) on all parties to this proceeding or their counsel of record by regular mail, this 21<sup>st</sup> day of

July, 2009.



Administrative Hearings Clerk