



# Smith & Dietrich Law Offices

## South Sound Community Lawyers

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Law Offices PLLC

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*Via Electronic Delivery*

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Re: *Response of Sarah Morken and Elect Sarah Morken for Tacoma City Council to  
Public Disclosure Commission Ticket No. 34581*

Dear Micaiah,

I write to respond on behalf of my clients, Sarah Morken and Elect Sarah Morken for Tacoma City Council, to the complaint submitted to the Public Disclosure Commission by Glen Morgan on or around April 11, 2018, which is assigned ticket number 34581.

Ms. Morken was a first-time candidate for Tacoma City Council in the August 2017 primary election, which marked the end of her campaign. In his complaint, Mr. Morgan alleges Ms. Morken and her campaign violated state law by filing two Form C-4 expenditure reports, and 23 Form C-3 contribution reports, in an untimely manner. He also makes various other allegations addressed below.

### *Allegations concerning late reporting*

My clients admit that they have filed or amended certain reports of expenditures and contributions after the applicable deadline for filing a complete report. In some cases, Mr. Morgan is insisting that the mere act of amending a report, or filing an electronic version of a report previously submitted in paper form, is a violation of the law—which is a warped reading of the law at best, as the campaign's activity was originally reported on C-3s and C-4s that were timely filed. For example, my clients timely filed Form C-4 in paper form on July 10, 2017, and filed a corresponding electronic version of the report, with minor corrections, on September 8, 2017 (report no. 100785639) shortly after it came to their attention that they needed to file electronically. Similarly, the alleged "Violation #"'s 2-25 (other than number 6, a Form C-3 report reflecting zero activity, which as such was not required to be filed by law) alleged in Exhibit A to Mr. Morgan's complaint in fact represent disclosures that had previously been made using timely paper reports which my clients believed were sufficient in the first months of their campaign.

My clients filed timely reporting on paper forms provided by the Commission, not realizing that those forms had been replaced by the electronic filing system until after

the 2017 primary election. They then re-filed their reporting in the Commission's new electronic system using the ORCA software. To penalize campaigns diligently attempting to timely file their reports, and for correcting minor, unintentional errors in their filings, is contrary to the purpose of the campaign finance law. At any rate, the scope of my clients' late reporting is so narrow, and the information reported late is so minor in significance, I hope you will agree that dismissal or scheduling this matter for a brief adjudicative hearing would be the most appropriate resolution of this matter.

My clients admit that 24 of the reports cited by Mr. Morgan which they filed electronically on September 7 and 8, 2017 were required by law, and that those electronic reports were late. However, their filing of these materials followed diligent efforts to comply with Washington's campaign finance laws by a first-time candidate's campaign, and my clients had already filed substantially identical disclosures according to the appropriate reporting deadlines, but using paper reporting forms.

*Allegations concerning reporting of last-minute contributions*

Mr. Morgan's complaint incorrectly alleges "on information and belief" that my clients received reportable last-minute contributions of \$1,000 or more. In fact, publicly accessible data on the Commission's website shows that Ms. Morken's campaign raised under \$6,000 in contributions and the largest contribution amount was \$500. No reportable last-minute contributions aggregating to over \$1,000 in value were received during the special reporting period prior to the 2017 primary election.

*Allegations concerning description of expenditures in reporting*

The complaint wrongly suggests that the level of detail in various campaign expenditures reported by my clients violates WAC 390-16-037 or -205. On review, the campaign's reporting approach was not inconsistent with the requirements of the law stated at RCW 42.17A.240(6);<sup>1</sup> the parties to whom expenditures were paid, and the dollar value and purpose of the expenditures were identified. There is simply no significant issue with this manner of reporting.

*Remaining conclusory and circular allegations*

Finally, the complaint closes by wrongly suggesting, citing only undisclosed "information and belief," that my clients committed various violations of Washington law. The claims include "[f]ailure to list committee officers, timely file/update C-1/C-1PC;" "[i]llegal unauthorized expenditure of funds by an individual not listed as an officer on form C-1/C1-pc;" supposed failure to preserve campaign records; deposits completed by an unauthorized individual; failure to include sponsor identification in political advertising; and failure to report independent expenditures. Finally, it baselessly suggests that there is some reason for the

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<sup>1</sup> The statute requires disclosure of "[t]he name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, the amount, date, and purpose of each expenditure, and the total sum of all expenditures."

Commission to investigate malicious or willful violations of the campaign finance law related to this complaint. Because no factual basis is provided for any of these allegations, no response or investigation is warranted, or even possible as a practical matter. At all times, my clients have made a good faith effort to comply with Washington's campaign finance laws. These baseless contentions should be dismissed without further use of investigative resources.

**Setting this complaint for a brief enforcement hearing would be the most efficient resolution**

I encourage you to set the relatively routine and minor reporting allegations in this complaint for resolution at a brief enforcement hearing, unless you should dismiss it outright as provided under the new amendments to RCW 42.17.755. The regulations concerning brief enforcement hearings would allow the presiding officer to consider factors such as the following:

- "The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public," WAC 390-37-143(2)(d);
- "Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period," WAC 390-37-143(2)(f);
- "Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention," WAC 390-37-143(2)(g); and
- "Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation," WAC 390-37-143(2)(g).

Additionally, effective June 7, the Commission should be able to consider whether the complaint represents remedial violations, if any, of the law, which might be best resolved without any monetary penalty (or with a waived penalty). At a brief enforcement hearing, Ms. Morken and her committee would be able to show that they have cooperated with PDC staff by responding promptly to the allegations, and taken responsibility for appropriately filing and reporting their campaign activity, including by filing appropriate electronic versions of their reports as soon as they were aware of the need to do so. Additionally, they would be able to show that any violations are relatively minor; corrective actions have already been completed, including amending relevant reports on September 7 and 8, 2017; and the alleged violations had no significant or material impact on the public. Scheduling this matter for a brief adjudicative hearing would allow the presiding officer to set a penalty amount which would resolve this minor complaint.

There may be no need to *hold* a brief enforcement hearing after one is scheduled to resolve this complaint, however. My clients are willing to provide a signed statement of understanding, any missing required reports, and a penalty payment appropriate to the limited allegations, as

provided by WAC 390-37-142(3), to resolve the allegations in this complaint. Only if you believe that a brief enforcement hearing would not be possible to resolve these allegations, my clients would ask that you please set this matter for an adjudicative hearing before the full Commission.

**The Commission and/or its staff should address this complaint without awaiting a decision by the Attorney General's Office in light of amendments to state law effective June 7, 2018**

In closing, I urge the Commission and its staff to dismiss this complaint or address this complaint through a brief enforcement hearing, rather than awaiting notification from the Attorney General's Office prior to acting on the complaint. Amendments to the campaign finance law will become effective Thursday this week which will both extend the time period for the Commission to act on this complaint (with such period to extend for 90 days from the April 11, 2018 date of filing—or until July 10, 2018), and will prevent the Attorney General from initiating an enforcement action in the absence of a referral from the Commission. See *generally* ESHB 2938, Sec. 13 (amending RCW 42.17A.765(1) to provide that "Only after a matter is referred by the commission, under RCW 42.17A.755, the attorney general may bring civil actions in the name of the state for any appropriate civil remedy...").

I thank you for your time and attention to this letter, and look forward to discussing the resolution of this complaint with you.

Sincerely,



Walter M. Smith

cc: Tony Perkins, Investigator (Attorney General's Office)