BEFORE THE ETHICS COMMISSION
FOR THE STATE OF TENNESSEE
AT NASHVILLE

IN RE: SAMUEL RILEY,	)	
	)	
Respondent.	)	No. 2008-62A
	)	
	)	
	)	

CONDITIONAL CLASS 2 ASSESSMENT ORDER

This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on December 11, 2008 at its regularly scheduled meeting, upon presentation by staff of documentation in the file tending to show that Respondent had not filed a 2008 statement of disclosure of interests statement ("Statement") as required by Tenn. Code Ann. §§ 8-50-501 - 8-50-502, and that more than thirty-five (35) days had passed since Respondent had received notice by certified mail of an assessment for this failure to file, from all of which the Commission finds as follows:

FINDINGS OF FACT

1. Duty to File. Respondent, held a local public office as Commissioner for Greene County in 2008, and was required to file a Statement, as required by Tenn. Code Ann. §§ 8-50-501 and 8-50-502. This Statement was due to be filed no later than January 31, 2008. In June, 2008, the Commission sent Mr. Riley a warning letter by first class mail, regarding the failure to file.

2. Class 1 Assessment letter. On July 23, 2008, Mr. Riley received by certified mail, return receipt requested, a show cause notice setting forth the factual basis of the violation, the maximum penalty, and the date a response to the letter had to be filed. The letter also stated the Commission intended to consider, at its August 26, 2008 meeting, assessment of Class 1 civil penalties for failure to timely file a Statement. The letter set forth the date, place, and time of the meeting, and informed Mr. Riley of his opportunity to participate in an informal show cause proceeding at the meeting, either by appearing personally or by submitting a sworn statement and documents.

3. Class 1 offense. Mr. Riley did not respond to the notice. At its meeting of August 26, 2008, the Commission found that Mr. Riley had committed a class 1 offense by failing to file a statement on time, and that the maximum penalty of seven hundred fifty dollars

($750) should be imposed pursuant to Tenn. Code Ann. § 3-6-205(a)(1). A conditional order to this effect was issued on September 10, 2008. The Commission sent Mr. Riley the order by both certified mail, return receipt requested, the letter is unclaimed after two (2) attempted delivery, and by first class mail, which has not been returned to the Commission.

4. Class 2 assessment letter. On November 12, 2008, the Commission sent Mr. Riley by both certified mail, return receipt requested, and by first class mail, an assessment letter setting forth the Commission's intent to consider assessment of a Class 2 civil penalty up to ten thousand dollars ($10,000) during its December 11, 2008 meeting for failure to file a Statement within thirty-five (35) days of receipt of an assessment letter. The assessment letter informed Mr. Riley of the factual basis of the violation, the maximum penalty, and the date a response to the letter had to be filed. The letter set forth the date, place, and time of the meeting, and informed Mr. Riley of his opportunity to participate in an informal show cause proceeding at the meeting, either by appearing personally or by submitting a sworn statement and documents. The certified mail is unclaimed after three attempted delivery, and the first class mail has not been returned to the Commission.

5. Class 2 violation. Mr. Riley failed to file his statement within thirty-five (35) days after receipt by certified mail of an assessment letter, thus committing a Class 2 violation as provided by Tenn. Code Ann. § 3-6-205(a)(2).

CONCLUSIONS OF LAW

The Commission has previously found that Mr. Riley had an obligation under the Act to file a Statement for 2008 before January 31, 2008, and failed to do so. The Commission previously imposed a conditional penalty of seven hundred fifty ($750) dollars for failure to timely file.

Although Mr. Riley received notice of the previous order, he has still not filed his Statement with the Commission. The Commission considers Mr. Riley' failure to file his 2008 Statement to be significant. The Commission has taken steps through training, website postings, and notices to help persons required to file Statements to come into compliance with the Act. More than a year and a half has passed since the filing requirements of the Act became effective. Mr. Riley appears to be ignoring the Commission. More importantly, he is ignoring the General Assembly by not complying with the Act. The Commission finds that the maximum penalty is appropriate in this case.

The Act authorizes the Commission to administratively assess a civil penalty of not more than ten thousand dollars ($10,000) if a local public official fails to file a Statement within thirty five (35) days of receipt of an assessment letter. Tenn. Code Ann. § 3-6-205 (a)(2). Since the Commission has already assessed a fine of seven hundred fifty ($750) dollars for failure to file timely, the Commission will impose the maximum amount of fine remaining, nine thousand two

hundred fifty ($9,250) dollars.

This conditional assessment cannot become final until after Respondent has been afforded an opportunity for a contested case hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to his rights to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 - 4-5-325.

ORDER

It is therefore ORDERED that a civil penalty in the amount of nine thousand two hundred fifty dollars ($ 9,250) is assessed against Mr. Samuel Riley for failure to file a Statement.

It is further ORDERED that the Executive Director shall issue this order for the Commission and file it in the Commission's offices.

It is further ORDERED that the Executive Director shall cause to be provided to the Respondent, by either personal service, certified mail return receipt requested, or overnight delivery, a copy of this order, and notice of the following:

> Respondent has the right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days of this order, a written request for a contested case hearing in a form that shall be set forth in the notice; and
>
> That in the event of failure to timely file a petition to waive, reduce, or contest the penalty, or a petition for a contested case hearing, the order cannot be appealed to Chancery Court, and will become a final personal judgment against him, and may form a basis for legal action to collect the civil penalty.

It is further ORDERED that this order shall not become final until thirty (30) days after issuance.

SO ORDERED.

Issued this 17th day of December, 2008

TENNESSEE ETHICS COMMISSION

By: _____

Bruce A. Androphy,
Executive Director

TENNESSEE ETHICS COMMISSION

Instructions and information regarding Requests for Reconsideration

A person against whom a conditional civil penalty assessment order has been issued by the Commission may seek reconsideration of a conditional assessment order by filing with the Commission, within fourteen (14) days of the issuance of the order, a written request for reconsideration.

(1) The written request must be *received* in the Commission's office within fourteen (14) days after the date the order was issued.

(2) Requests received more than fourteen (14) days after the date the order was issued will be denied.

(3) The request must include the name and address of the party seeking reconsideration, the case number, and the date and nature of the order for which reconsideration is requested.

(4) The request must include additional information that was not available at the meeting during which the conditional civil penalty assessment order was approved by a vote of the members.

For the period of time during which a timely request for reconsideration of a civil penalty order is pending, the Commission's order will not become final. Upon a vote of four (4) of the Commission members in attendance to deny a request for reconsideration, the Commission shall issue an order denying the request. A person wishing to appeal from the denial of a request for reconsideration may do so by filing, within ten (10) days of the issuance of the order, a petition for a contested case hearing pursuant to the Uniform Administrative Procedures Act. Such petition must conform to the instructions on the next page.

For questions about this form, please contact the Commission staff at 615.253.8632.

PLEASE SEE NEXT PAGE FOR INFORMATION AND INSTRUCTIONS REGARDING PETITIONS FOR CONTESTED CASE HEARING.

TENNESSEE ETHICS COMMISSION

Instructions and information regarding petitions for contested case hearing

Within thirty (30) days of the issuance of a conditional civil penalty assessment order or within ten (10) days of the issuance of an order denying a timely motion to reconsider a conditional civil penalty assessment order, a person subject to the civil penalties set forth in the order may initiate a contested case proceeding by filing a petition with the Commission. Any petition received after the prescribed time shall be denied.

(1) The petition shall clearly and concisely set forth petitioner's grounds for contending that the penalty should be waived or reduced, or otherwise modified in any way.

(2) The petition shall include a statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.

(3) If the person filing the petition is unable to state the matters above in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon timely, written application a more definite and detailed statement shall be furnished ten (10) days prior to the time set for the hearing. Tenn. Code Ann. § 4-5-307(b)(3).

(4) Oath. The petition shall be signed under oath before a notary public or other official authorized to take oaths, and shall specify that the factual allegations are made upon personal knowledge of the petitioner; provided, that if any of the allegations in the petition are known to petitioner only by information and belief, rather than by personal knowledge, the oath shall specify each allegation made only on information and belief.

(5) For all factual allegations made on information and belief, rather than petitioner's personal knowledge, the petition shall set forth the grounds upon which such information and belief are based.

(6) Filing of petition.

a. Methods. The alleged violator may file the petition by hand delivery, by first class mail, by certified mail, or by facsimile transmission. It is the alleged violator's obligation to ensure timely receipt of the petition by the Commission. The risk of non-delivery shall be on the alleged violator.

b. File stamped copy. If the alleged violator wishes to receive a file-stamped copy of the petition as proof of timely filing, the violator may file a second copy of the petition and exhibits and, if the petition was filed other than by hand delivery, a self-addressed, stamped envelope with sufficient postage prepaid to ensure mailing to the petitioner.

Upon timely filing of a petition for a hearing, the Executive Director or his designee shall cause a notice of the time, date, place, and nature of the hearing to be served, or mailed by certified mail, return receipt requested, to the person who filed the petition. Tenn. Code Ann. § 4-5-307(b). The person who filed the petition has the right to appear at the hearing and to be represented by counsel.

For questions about this form, please contact the Commission staff at 615.253.8632.