

CITY OF ALBUQUERQUE

BOARD OF ETHICS AND CAMPAIGN PRACTICES

NERI HOLGUIN,

Complainant,

v.

CASE NO. BOE 01-2021

MANUEL GONZALES, III,

Respondent.

**COMPLAINANT’S BRIEF ADDRESSING ISSUES TO BE CONSIDERED  
BY THE BOARD OF ETHICS AND CAMPAIGN PRACTICES**

The Respondent in this case, Manuel Gonzales III, signed a receipt reflecting that he had collected a \$5 Qualifying Contribution, when he had not, and submitted that receipt to the City Clerk’s Office as evidence that he had collected a contribution, when he had not. These acts constitute a willful, knowing violation of the Open and Ethical Election Code, as well as the Election Code (“the Codes”). The evidence will further establish that Respondent made a deliberate choice to commit this violation by refusing the \$5 contribution, even when offered, explaining “we’ll cover that” and depositing money from another source into the City account. This conduct not only violates specific provisions of the Codes, it fundamentally violates the spirit of laws that were adopted to eliminate corruption from elections. To address this wrongful conduct, the Board should exercise its power to reprimand Mr. Gonzales and issue a fine for this violation.

## **SUMMARY OF THE FACTS**

Respondent, a candidate for the Mayor of Albuquerque, attended a meeting of the Salvation Army Advisory Board on May 27, 2021. After addressing that Board, Respondent circulated a nominating petition and asked those in attendance to sign so that he could be on the ballot in November 2021. He also circulated a book with receipts for Qualifying Contributions — contributions that are collected so that a candidate can receive public financing. Dean Zantow, a member of the Board, signed the nominating petition. He also signed a Qualifying Contribution receipt. At that point, he asked Respondent, “Is this where I give \$5?” Respondent replied, “No, that’s okay, we’ll cover that.” Respondent then did not collect \$5 from Mr. Zantow. Respondent nonetheless signed the receipt representing that he had collected \$5 and permitted his campaign to submit the receipt to the City Clerk’s Office. He also permitted his campaign to deposit \$5 — from an unknown source — into the City of Albuquerque Open and Ethical Election (CAOEE) Fund. In an untimely filed Answer, Respondent has admitted that Mr. Zantow did not make a \$5 contribution to the Gonzales Campaign, even though Respondent signed the receipt representing that he did.

## **LEGAL ISSUES**

As a threshold matter, the Board should deem all allegations in the Complaint admitted because Respondent failed to file a timely Answer to the Complaint. Respondent has also now admitted that he signed the Qualifying Contribution acknowledgment card representing that Mr. Zantow had provided a \$5 contribution when Mr. Zantow had not, in fact, made a contribution. Moreover, the evidence presented at the hearing will show that Respondent directed Mr. Zantow not to give \$5, signed the receipt representing that he had collected a \$5 contribution from Mr.

Zantow when he had not, submitted the receipt to the City Clerk, and deposited money that did not come from Mr. Zantow into the City account. Through these actions, Respondent knowingly violated both the OEEC and the EC.

These violations are particularly egregious, for three reasons. First, it was a violation by the Respondent himself, not a campaign staffer or volunteer. Second, Respondent intentionally and willfully violated the codes by refusing an offer of money from Mr. Zantow and directing Mr. Zantow not to provide the \$5 contribution. Third, Respondent's actions appear to be part of an orchestrated scheme, as the campaign must have obtained the \$5 from another source before making a deposit to the CAOEE account. To address these egregious violations, the Board should censure Mr. Gonzales and issue a fine it deems appropriate.

**I. THE ALLEGATIONS SHOULD BE DEEMED ADMITTED.**

The Board should deem the allegations in the Complaint admitted because Respondent failed to file an Answer in a timely manner, even after he was given additional time to do so.

A Respondent who is the subject of a Complaint must provide an Answer that include a response to each allegation of the Complaint. *See* Rules and Regulations of the Board of Ethics and Campaign Practices Section 4(D). The Answer must be filed within 10 days after Respondent receives notice from the City Clerk that the complaint has been set for a hearing. *See id.* "A Respondent's failure to timely file a verified answer may be construed by the Board, depending on the totality of the circumstance, as an admission of the allegations." Section 4(A).

Here, the City Clerk issued a notice that the complaint had been set for a hearing on June 10, 2021, setting the evidentiary hearing in this matter for June 23, 2021. On June 21, 2021, Respondent moved to continue the hearing. On June 24, 2021, the City Clerk issued a second meet-

ing notice, setting the evidentiary hearing in this matter for July 16, 2021. Thus, under the revised schedule, Respondent's deadline to file an answer was extended by two weeks, to July 8, 2021.<sup>1</sup> Respondent, however, did not file an answer by July 8. Respondent filed his Answer on July 11, 2021 at 11:58 p.m. Notably, the Certificate of Service included with the Answer attests that the Answer was served on July 9, 2021, when it was not. Respondent failed to file a timely Answer even though his motion for continuance was granted, and thus he was given additional time to prepare one, even though he has now had the Complaint for more than one month, and even though the rescheduled hearing is now only days away. Given that Respondent had more than sufficient time to file an Answer, his failure to meet the deadline should be construed as an admission of the allegations in the Complaint, and the Board should proceed only to determine what remedy is appropriate for Respondent's actions.

**II. RESPONDENT VIOLATED THE OPEN AND ETHICAL ELECTION CODE AND THE ELECTION CODE BY FALSELY REPRESENTING THAT HE HAD COLLECTED A \$5 QUALIFYING CONTRIBUTION WHEN HE HAD NOT.**

The evidence presented at the hearing of this matter will show that Respondent knowingly and intentionally violated the Codes by representing that he had collected a \$5 Qualifying Contribution from Mr. Zantow when he had not.

**A. Respondent Violated the Open and Ethical Election Code by Submitting a Fraudulent Qualifying Contribution.**

First, Respondent violated the OEEC by submitting a \$5 contribution that was not paid by the person identified on the receipt.

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<sup>1</sup> This calculation assumes that Respondent had 10 business days to file his Answer. If instead Respondent was required to file his Answer in 10 calendar days, the Answer was due on July 6, 2021.

Albuquerque’s voters adopted the Open and Ethical Election Code in 2005. That code provides a mechanism for candidates for mayor or city council to obtain public financing for their campaigns. The Code was enacted to “diminish the public perception of corruption and strengthen public confidence in the governmental and election process” and “insure that the ... Mayoral election process is fair, responsible and ethical.” OEEC § 2. Under the Code, a candidate for Mayor is required to collect \$5 Qualifying Contributions from a minimum of 1% of the City’s registered voters in order to qualify for public financing. OEEC § 5. For Qualifying Contributions that are made in person, the candidate must obtain receipt from the contributor. *See* 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code Part (C)(4). “Applicant Candidates are responsible for assuring that receipts are fully and correctly filled out ... .” *Id.* “All Qualifying Contributions must be paid by the contributor; if the funds are provided by any person other than the contributor who is listed on the receipt, the Qualifying Contribution will be deemed fraudulent.” OEEC Regulations Part (C)(6).

Here, Respondent did not ensure that the receipt was fully and correctly filled out. He did the opposite. He directed Mr. Zantow to make a false statement, and then himself made a false statement, falsely represented that he had collected \$5 from Mr. Zantow when he had not. Moreover, the Qualifying Contribution at issue was not paid by the contributor. The campaign deposited \$5 at the time that it submitted Mr. Zantow’s receipt to the City Clerk. It is now undisputed that Mr. Zantow was not the source of those funds. Because the funds were provided by another person — either Respondent himself or someone working on his behalf — the Qualifying Contribution was fraudulent. And the evidence shows that Mr. Gonzales knowingly violated this provision. He rejected Mr. Zantow’s offer of payment, and did not collect payment from

Mr. Zantow, but nonetheless represented that he had. This conduct constitutes a direct, knowing violation of OEEC Regulations Part(C)(6).

**B. Respondent Violated the Election Code by Submitting a Contribution in the Name of a Person Who Was Not the Actual Source of Funds.**

Second, Respondent violated the Election Code when he expressly declined Mr. Zantow's offer to provide \$5, but nonetheless represented on the receipt that he had collected a \$5 contribution from Mr. Zantow and deposited money from another source into the City account.

The 2021 Regulations of the Albuquerque City Clerk for the Election Code, Part I(1), provide that:

No person may make a Contribution in the name of another person or knowingly permit his or her name to be used to accomplish such a Contribution. No person may knowingly accept a Contribution made by one person in the name of another. No person may knowingly accept a Contribution made by one person in the name of another. The contributor identified in the reports submitted to the City Clerk must be the actual source of funds for the Contribution.

Here, the evidence shows that Respondent, or someone working on his behalf, made a Contribution in the name of Mr. Zantow. As explained above, Mr. Zantow was not the source of funds that were deposited into the CAOEE account. Because those funds did not come from Mr Zantow, they must have been provided Respondent himself, or by someone working on behalf. Thus, Respondent either made a Contribution in the name of Mr. Zantow, or knowingly accepted a Contribution made in Mr. Zantow's name. In either scenario, Respondent violated this provision. In addition, Respondent separately violated this provision by submitting an acknowledgment form on which the contributor identified — Dean Zantow — was not the actual source of funds for the Contribution. The evidence, accordingly, will establish that Respondent violated this provision.

### **III. THE BOARD SHOULD BOTH REPRIMAND AND FINE RESPONDENT.**

The appropriate remedy for the Respondent's actions, at a minimum, is to issue both a reprimand and a \$500 fine for each violation.

“Pursuant to the Codes, the Board may, after due hearing, impose on a Candidate ... a fine not to exceed the maximum set by state law, \$500, for each violation of the Codes or these Rules and Regulations or issue a public reprimand or do both.” Rules and Regulations § 4(G)(1). Here, both a public reprimand and a fine are in order. The alleged violations at issue are particularly egregious because it is the candidate himself who not only failed to collect the \$5 Qualifying Contribution, but who signed the Qualifying Contribution receipt attesting that he had collected \$5 when he had not, who told the voter that he did not need to give \$5, and who submitted the Qualifying Contribution receipt to the City Clerk's Office when he had not, in fact, collected a \$5 Qualifying Contribution. Respondent signed an acknowledgement, at the beginning of the campaign process, attesting that he is “familiar with the City Charter's Election Code, Rules and Regulations of the Board of Ethics and Campaign Practices relating to the Election Code and the City Charter as amended to date, and the 2021 Regulations of the Albuquerque City Clerk ... .” As such, he is deemed to know — and certainly should have know — the requirements for the collection of \$5 Qualifying Contributions, including the fundamental requirement that \$5 be collected from the contributor. Moreover, these violations are particularly egregious because the Campaign deposited \$5 into the CAOEE account when it had not, in fact, collected \$5 from Mr. Zantow, raising the question as to where the deposited funds came from. Respondents directly, and unmistakably, violated the EC and the OEEC by failing to collect \$5 from Mr. Zantow, and both a fine and a reprimand are in order.

Respectfully submitted,

KEEFE LAW FIRM

By: */s/ Lauren Keefe* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12nd day of July, 2021, the foregoing was sent via email to [mdiemer@cabq.gov](mailto:mdiemer@cabq.gov), [ewatson@cabq.gov](mailto:ewatson@cabq.gov), [Aschultz@rodey.com](mailto:Aschultz@rodey.com), and [carter@harrison-hartlaw.com](mailto:carter@harrison-hartlaw.com).

KEEFE LAW FIRM

By: /s/ Lauren Keefe  
Lauren Keefe