

Eric Gioia, Public Advocate (2009)

1. Accepting over-the-limit contributions

\$12,875

Campaigns may not accept contributions from a single source in excess of the applicable contribution limit for the entire election cycle. *See* Admin. Code §§ 3-702(8), 3-703(1)(f), (11), (12); Board Rules 1-04(h), 1-07(c). The contribution limit for candidates running for Public Advocate in the 2009 election was \$4,950. *See* Admin. Code § 3-703(1)(f). If a candidate accepts more than one contribution from a single source, the contributions shall be totaled to determine the candidate's compliance with the applicable contribution limit. A "single source" includes any person, persons in combination, or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled, including every political committee established, maintained, or controlled by the same person, persons in combination, or entity. Board Rule 1-04(h). Liabilities for goods or services which are forgiven, in whole or part, are in-kind contributions. *See* Admin. Code § 3-702(8); Board Rules 1-02, 1-04(g). A debt owed by the campaign which is forgiven or settled for less than the amount owed is a contribution, unless the debt was forgiven or settled by a creditor who has treated the outstanding debt in a commercially reasonable matter. *See* Board Rule 1-04(g)(5). Loans made to a campaign that are not repaid by the date of the election are deemed contributions. *See* Admin. Code § 3-702(8). When a candidate has received a contribution in excess of the contribution limit, the candidate must return the excess portion to the contributor by bank check or certified check made out to the contributor. *See* Board Rule 1-04(c)(1).

The Campaign accepted 47 over-the-limit contributions. Seven were timely refunded, 37 were refunded after the deadline, and three were not refunded.

The Board assessed total penalties of \$12,875 for these violations.

2. Accepting corporate contributions

\$2,125

Campaigns may not accept, either directly or indirectly, a campaign contribution, loan, guarantee or other security for such loan, from any corporation, or (after December 31, 2007) from any partnership, limited liability partnership (LLP), or limited liability company (LLC). *See* N.Y.C Charter §1052(a)(13); Administrative Code §3-703(1)(l); Board Rules 1-04(c), (e). Liabilities for goods or services which are forgiven, in whole or part, are in-kind contributions. *See* Admin. Code § 3-702(8); Board Rules 1-02, 1-04(g). A debt owed by the campaign which is forgiven or settled for less than the amount owed is a contribution, unless the debt was forgiven or settled by a creditor who has treated the outstanding debt in a commercially reasonable manner. *See* Board Rule 1-04(g)(5). The amount of the in-kind contribution is the difference between the fair market value of the goods or services and the amount the campaign paid. *See* Admin. Code. § 3-702(8); Board Rules 1-02, 1-04(g). A campaign must return a prohibited contribution by bank check or certified check made out to the contributor. *See* Board Rule 1-04(c)(1).

The Campaign accepted nine corporate contributions. One of the contributions was timely refunded, and eight were refunded after the deadline.

The Board assessed total penalties of \$2,125 for these violations.

3. Accepting contributions from unregistered political committees \$750

Campaigns may not accept a contribution from a political committee unless the committee is registered with the CFB within ten days of receipt of the contribution. *See* Admin. Code §§ 3-703(1)(k), 3-707; Board Rule 1-04(d). A campaign must return a prohibited contribution by bank check or certified check made out to the contributor. *See* Board Rule 1-04(c)(1).

The Campaign accepted three contributions from unregistered political committees: \$500 from the IBEW Educational Committee, \$25 from Queens County Young Democrats, and \$250 from Soft Drink & Brewery Workers. The Queens County Young Democrats contribution was refunded on July 24, 2009, more than two years after the deadline. The other two committees registered in May 2008, after the deadline provided by the Board.

The Board assessed a penalty of \$750 for this violation.

4. Accepting over-the-limit Doing Business contributions \$10,850

Campaigns may not accept contributions from individuals or entities that have business dealings with New York City government (“the City”) in excess of the applicable Doing Business contribution limit for the entire election cycle. *See* Admin. Code §§ 3-702(8), (18), (20), 3-703(1-a), (1-b), 3-719(2); Board Rules 1-02, 1-04(c)(1), 1-04(h). When a candidate receives a contribution in excess of the limit from contributors who have business dealings with the City, the candidate must return the excess portion to the contributor by bank check or certified check made out to the contributor within twenty days of being notified by the Board. *See* Board Rule 1-04(c)(1).

The Campaign accepted 22 over-the-limit Doing Business contributions, eighteen of which were refunded after the deadline, while four were not refunded.

The Board assessed total penalties of \$10,850 for these violations.

5. Filing a disclosure statement eight days late No Penalty

Campaigns are required to file complete and timely disclosure statements on scheduled dates. *See* N.Y.C. Charter § 1052(a)(8); Admin. Code §§ 3-703(6), 3-708(8); Board Rules 1-09(a), 3-02.

Statement #1 was due on July 17, 2006. The statement and backup documentation were not filed until July 25, eight days late. Submissions were made on July 20 and 24, but they were rejected as incomplete by CFB staff. Disclosure statements are not considered submitted until the backup documentation is filed.

The Board did not assess a penalty for this violation.

6. Failing to file required daily pre-election disclosure statements \$200

During the two weeks preceding an election, a campaign is required to report all expenditures that exceed \$20,000 within 24 hours after they are made. These expenditures must also be reported in the Campaign's next disclosure statement. *See* Admin. Code §§ 3-703(1), (g), (6), (12); Board Rule 3-02(e).

The campaign did not file the required daily disclosures to report the following expenditures, which were reported on subsequent disclosure statements:

- \$29,000 to Benenson Strategy Group (09/01/09)
- \$29,000 to Benenson Strategy Group (09/11/09)
- \$34,445.07 to See Change Media (09/12/09)
- \$52,940.81 to See Change Media (09/12/09)

The Board assessed a penalty of \$200 for these violations.

7. Failing to provide bank statements \$1,500

Campaigns are required to provide bank records, including periodic bank statements. *See* Admin. Code §§ 3-703(1)(d), (g); Board Rules 4-01(a), (b)(6), (f).

The Campaign failed to provide bank, credit card, and merchant account statements for six accounts.

The Board assessed total penalties of \$1,500 for these violations.

8. Failing to report transactions \$1,974

Campaigns are required to report every contribution, loan, receipt, and disbursement. *See* Admin. Code § 3-703(6); Board Rule 3-03.

The Campaign failed to report 43 transactions totaling \$74,217.

The Board assessed total penalties of \$1,974 for these violations.

9. Failing to accurately report credit card contributions, resulting in an 11.78% variance \$1,500

Campaigns must maintain records, such as copies of bank records, merchant account statements, checks, bills and other documentation, that enable the CFB to verify the contributions and expenditures reported in the candidate's disclosure statements. *See* Admin. Code §§ 3-703(1)(d), (g); Board Rule 4-01. Campaigns are required to furnish such records to the CFB upon request. *See* Admin. Code § 3-703(1)(d), (g).

The Campaign's submitted merchant accounts statements reflect a total of \$83,167 more in credit card contributions than the amount reported on the Campaign's disclosure statements, creating a credit card contribution variance of (11.78%).

The Board assessed a penalty of \$1,500 for this violation.

10. Failing to provide signed intermediary affirmation statements and failing to respond to questions regarding intermediaries \$2,600

An intermediary is an individual or entity who solicits or delivers contributions to a campaign. Campaigns are required to report and respond to questions about intermediaries and to provide a signed statement from the intermediary affirming that the contributors were not reimbursed for their contributions and that none of the contributions was a loan. *See* Admin. Code §§ 3-702(12), 3-703(1)(d), (g), (6); Board Rules 3-03(c)(7), 4-01(b)(5).

The Campaign did not provide updated statements or explanations or amend its reporting for two of its intermediaries, in regard to whom the original statements submitted contained discrepancies. Additionally, the Campaign did not submit signed affirmation statements for 48 intermediaries.

The Board assessed total penalties of \$2,600 for these violations.

11. Exceeding the expenditure limit \$29,732

Candidates who participate in the Campaign Finance Program must abide by limits on the amount of money they can spend on their campaigns. *See* Admin. Code §§ 3-703(1)(i), 3-706, 3-711(2)(a); Board Rules 1-08(d), (l). The expenditure limit for candidates running for Public Advocate in the 2009 primary election was \$3,850,000. Expenditures made for the purpose of (i) challenging or defending the validity of petitions or for canvassing or re-canvassing of election results; (ii) bringing or responding to any action, proceeding, claim, or suit before a court or administrative agency regarding the candidate's compliance with the Act or election law; (iii) or responding to the CFB's post-election audit are exempt from the expenditure limit. *See* Admin. Code § 3-706(4)(a). Candidates must submit detailed documentation to support all exempt expenditure claims. *See* Admin. Code § 3-706(4)(b).

The Campaign exceeded the primary election expenditure limit by \$29,732.

The Board assessed a penalty of \$29,732 for this violation.

The penalty for this violation reflects the fact that exceeding the expenditure limit is one of the most serious violations of the Act and Board Rules and undermines the purpose of the Campaign Finance Program, and the penalty serves to deter participating candidates from violating the limit. *See* Final Determination No. 2008-2 (August 14, 2008) (“an expenditure limit violation can never be cured. A campaign that exceeds the expenditure limit has gained a permanent advantage over its opponents. It cannot regain adherence to the expenditure limit, and the added benefit received cannot adequately be disgorged.”).

12. Making improper post-election expenditures \$3,208

After an election and before repaying leftover campaign funds to the Board, Program participants may spend campaign funds only to pay campaign-related expenses incurred in the preceding election and for “routine activities involving nominal cost associated with winding up a campaign and responding to the post-election audit.” *See* Admin. Code §§ 3-702(21), 3-710; Board Rules 1-03(a), 5-03(e)(2). Further, “an expenditure for goods or services is made when the goods or services are received, used, or rendered, regardless when payment is made.” Board Rule 1-08(b).

The Campaign made improper post-election expenditures totaling \$32,083.40.

The Board assessed a penalty of \$3,208 for this violation.

13. Failing to demonstrate that spending was in furtherance of the campaign \$1,188

Campaign funds may only be used to further a candidate’s nomination or election. *See* Admin. Code §§ 3-702(21), 3-703(1)(d), (g), (6); Board Rules 1-03(a), 4-01. The Act lists expenditures that are presumed to be in furtherance of a campaign and gives examples of expenditures that are not. *See* Admin. Code § 3-702(21). In weighing whether an expenditure is in furtherance of a campaign, CFB staff considers, among other things, the timing of the expenditure, its purpose, and its cost. *Id.*; *see also* Advisory Opinion No. 2007-3 (March 7, 2007).

The Campaign made 27 expenditures totaling \$11,886.18 that appear not to have been in furtherance of the campaign.

The Board assessed a penalty of \$1,188 for this violation.

14. Failing to document transactions

\$1,400

Campaigns must maintain records, such as copies of checks, bills and other documentation, that enable the CFB to verify the contributions and expenditures reported in the candidate's disclosure statements. *See* Admin. Code §§ 3-703(1)(d), (g), (11), (12); Board Rule 4-01. Campaigns are required to furnish such records to the CFB upon request. *See* Admin. Code §§ 3-703(1)(d), (g).

The Campaign failed to provide documentation for 51 transactions. Fifteen of those transactions are covered under other violations, and eight transactions were less than \$50.

The Board assessed a penalty of \$1,400 for this violation.

15. Failing to adequately document transactions

\$2,500

Campaigns must maintain records, such as copies of checks, bills and other documentation, that enable the CFB to verify the contributions and expenditures reported in the candidate's disclosure statements. *See* Admin. Code §§ 3-703(1)(d), (g), (11), (12); Board Rule 4-01. Campaigns are required to furnish such records to the CFB upon request. *See* Admin. Code §§ 3-703(1)(d), (g).

On June 21, 2007, the Campaign requested clarification as to how the Board would treat the work of Lisa Hernandez Gioia ("Ms. Gioia"), the wife of the candidate and a professional fundraiser, as well as Ms. Gioia's company, The Esler Group, Inc. The Board issued an Advisory Opinion ("AO"), which made clear that in order for Ms. Gioia to retain her status as a campaign volunteer, it was imperative that she not receive any personal compensation for her volunteer services and that, in addition, neither she nor the company could profit from the efforts of company employees doing work for the Campaign. The AO further stated that "[a]ll disbursements from the Campaign for Company employees' actions must be documented and completed according to the Administrative Code and Board Rules" and that the Campaign must provide additional information to the Board regarding these employees, specifically: "(i) a detailed report on Company employees' expected tasks on behalf of the Campaign, including the number of hours the Campaign expects those employees will work on its behalf; and (ii) the Campaign's proposed method of recording the amount of time Company employees work on Campaign tasks." *See* Advisory Opinion No. 2007-5 (September 6, 2007).

CFB staff raised questions about the Campaign's compliance with the AO. Despite receiving the detailed guidance it requested from the Board, the Campaign failed to provide all the required supporting documentation for certain reported transactions involving The Esler Group employees.

The Board assessed a penalty of \$2,500 for this violation.