

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Our Committee to Elect)	
Kathy Henderson,)	
Kathy Henderson, Treasurer,)	
)	
Petitioner,)	Administrative Hearing
)	Order No. 22-027
v.)	
)	
The D.C. Office of)	
Campaign Finance,)	
)	
Respondent.)	
)	

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) at a regular meeting of the Board on October 4, 2022, and a further proceeding on October 6, 2022. It involves a request for hearing *de novo* pursuant to 3 DCMR § 3709.12 with respect to the Office of Campaign Finance’s (“OCF”) July 22, 2022 Second Amended Order (“Final OCF Order”) in OCF 2022 F-008. In the Final OCF Order, OCF’s Director rejected a request by Kathy Henderson, Treasurer of Our Committee to Elect Kathy Henderson, to waive a \$550.00 fine for the late-filing of a report. Ms. Henderson appeared *pro se*, and OCF was represented by its General Counsel, William O. SanFord and Attorney Advisor Belinda Kittles Perry. Board Chairman Gary Thompson and Board member Michael Gill presided over the hearing.

Background

Between 2006 and 2020, Ms. Henderson registered eight committees in OCF’s Traditional Program for compliance with campaign finance obligations. The committees were registered in

support of Ms. Henderson’s candidacy for various elected offices. As part of the Traditional Program requirements, committees must regularly file Reports of Receipts and Expenditures (“R&E Reports”) detailing their campaign finances. Over this period, Ms. Henderson was late fifteen times in filing the required reports. In six instances of late filings by Ms. Henderson, OCF issued orders imposing fines. The fines imposed by those orders were suspended in all but one instance. In that one case, Ms. Henderson was fined \$150.

Between February 4 and 7, 2022, Ms. Henderson sought to participate in the recently-implemented Fair Elections Program (“FEP”) with respect to her recent bid for the Democratic nomination for the office of Ward 5 Member of the Council of the District of Columbia. Toward that end, she registered with OCF a committee designated “Our Committee to Elect Kathy Henderson.”¹ Candidates, such as Ms. Henderson, who are seeking certification in the FEP are also required to file R&E reports. OCF posts at multiple locations on its website the deadlines for filing R&E Reports under the program.² In completing the registration form for FEP participation, Ms. Henderson agreed to comply with all FEP rules and regulations. The fine which OCF is authorized to impose for failing to file a FEP R&E report is \$50.00 per day up to a cap of \$4,000.00.³ Second and subsequent offenses can result in Board-imposed fines of not more than \$10,000.00.⁴

On March 3, 2022, Ms. Henderson attended an OCF Entrance Conference that is required for FEP participation. At that conference, Ms. Henderson was informed of the qualifications for

¹ See OCF website at <https://fairelections.ocf.dc.gov/public/registrantDisclosureDetails/87>.

² See, e.g., page 48 of the plain language Campaign Finance Guide at <https://ocf.dc.gov/sites/default/files/dc/sites/ocf/publication/attachments/2020%20CampaignFinanceGuide.pdf> and the chart of 2022 filing deadlines at https://ocf.dc.gov/sites/default/files/dc/sites/ocf/release_content/attachments/2022%20Filing%20Dates.pdf.

³ D.C. Official Code §1-1163.35(a)(2) and (4) and 3 DCMR § 3711.4(1).

⁴ D.C. Official Code §1-1163.35(a)(2).

being certified in the FEP program, and was presented with the mandatory filing deadlines for R&E reports, including specifically the March 10, 2022 deadline for filing the first report.

As Ms. Henderson's first R&E report was due March 10, 2022, the Public Information and Records Management ("PIRM") Division of OCF sent e-mail reminders of the March 10th reporting requirement to Ms. Henderson on February 17 and March 8.⁵ While Ms. Henderson later claimed that she did not receive either of these emails, they generated no notification to OCF that they were not delivered. The emails were sent to the same email address which Ms. Henderson, on her Declaration of Candidacy form, consented to use to receive any official Board communications regarding her candidacy.

Ms. Henderson's March 10th report was not filed by the filing deadline. Accordingly, the PIRM Division referred that violation to OCF's Office of General Counsel ("OCF's OGC") for enforcement.

On March 30, 2022, OCF's OGC issued a Notice of Hearing, Statement of Violations and Order of Appearance to Ms. Henderson via e-mail ordering her to show cause why she should not be found in violation of reporting requirements and fined accordingly. The notice directed Ms. Henderson to appear at a virtual show cause hearing on April 13, 2022. The record indicates that Ms. Henderson received that show cause hearing notification.

On April 11, 2022, Ms. Henderson sent an email to PIRM staff member S. Wesley Williams. The caption of the email on its subject line was "FEP Login Credentials" and the body of the email read as follows:

Good Afternoon Mr. Williams:

⁵ While orders issued later by OCF also reference a March 7, 2022 email reminder, OCF did not provide documentation of that reminder to the Board. Therefore, the instant order refers to the February 17 and March 8 reminder emails only.

I was unable to login to file the April 10th report. I originally attempted to change my password; however, I received a message that my email address was invalid. I need access to the FEP dashboard to file my report correctly. I sent you images of the messages I received and copies of contribution forms in an attempt to comply with the deadline.

Thank you for your follow up.

Kathy Henderson

On April 12, 2022, Ms. Henderson, after being assisted by Mr. Williams with logging into the OCF report filing portal and concurrent with the filing of her April 10th report, submitted the March 10th report.⁶ The following day, Ms. Henderson was present at the virtual show cause hearing conducted by OCF's OGC.

On May 18, 2022, OCF issued an order ("May 18 Order") setting forth the hearing examiner's recommendation (notwithstanding a maximum penalty of \$1,150.00 dollar fine for failure to file the March 10th Report) to impose a \$550 fine. In the May 18 Order, OCF's General Counsel concurred with the examiner's recommendation, and OCF's Director approved the imposition of the \$550 fine.⁷ The May 18 Order states that, at the show cause hearing, Ms. Henderson testified that she had a conversation with Mr. Williams, "concerning contributions made after March 10, 2022, and was advised that they should be reported on the subsequent report filing" and she "acknowledged that she did not discuss the March 10th late filing with Mr. Williams." Although Ms. Henderson had a history of noncompliance in the Traditional Program, the May 18 Order indicates that Ms. Henderson "has no history of delinquent report filings" with

⁶ See report posted at <https://fairelections.ocf.dc.gov/public/registantDisclosureDetails/87>.

⁷ See 3 DCMR § 3711.8 (providing that the OCF Director may, for good cause shown, modify, rescind, dismiss, or suspend any fine imposed).

respect to the FEP. The May 18 Order did not mention that Ms. Henderson did file her March 10th Report late April 12, and was based on 23 days of noncompliance.

On May 23, 2022, Ms. Henderson filed a Motion for Reconsideration of the May 18 Order.⁸ In her Motion for Reconsideration, Ms. Henderson stated that, during the April 13, 2022 hearing, the presiding officer did not ask her if the March 10th Report had been filed and was unaware of the submission of the report. The Motion for Reconsideration also stated that, at the hearing, Ms. Henderson apologized for failing to timely file, explaining that she had not received the PIRM Division's email reminder notices. Ms. Henderson also stated in her Motion for Reconsideration that, after having a conversation with Mr. Williams, she mistakenly understood that the information for the March 10th Report could be captured in the April 10th Report. Ms. Henderson's Motion for Reconsideration emphasized that she had no history of late filing or other wrongdoing, and that she understands the reporting requirement. In addition, the Motion noted that Ms. Henderson filed the March 10th report "after experiencing considerable difficulty accessing the online filing system and requesting login credentials and a new password from [Mr. Williams]." In her Motion for Reconsideration, Ms. Henderson, noting these facts,⁹ argued that the "a \$550.00 penalty is excessive, disproportionate and punitive; the penalty harms the Candidate's ability to mount a successful campaign for public office."

On May 24, 2022, OCF issued an order amending the May 18 Order by noting that the March 10th report was filed on April 12, 2022. The May 45 Order reduced the term of noncompliance to 22 days and the maximum possible fine to \$1,100.00.

⁸ See 3 DCMR § 3709.13 (permitting motions for reconsideration).

⁹ Ms. Henderson also noted in the Motion for Reconsideration that she is Treasurer of the respective committee and that, while she attempted to delegate that responsibility to another, the person she approached declined to serve in that role and stated that she was doing too much. At the October 4, 2022 hearing before the Board on this matter, however, Ms. Henderson stated that her late filing was not a consequence of her being too busy.

On May 25, 2022, OCF issued a Response to Motion for Reconsideration and Order that repeated the facts stated in the May 18 Order, including that Ms. Henderson has no history of delinquent filings in the FEP. The May 25 Order rejected the issues raised in Ms. Henderson's Motion for Reconsideration as of no merit and as failing to provide relevant evidence omitted from consideration at the time of the April 13 show cause hearing. According to the May 25 Order, Ms. Henderson acknowledged at the May 18 hearing that she did not discuss the late filing of the March 10th Report with Mr. Williams. The May 25 Order further states that the hearing examiner had "been advised that Mr. Williams never advised Ms. Henderson that she was exempt from filing the March 10th Report, nor was an extension to late file granted." Citing the regulation allowing a \$50.00 per day fine for late reports, the May 25 Order opines that the \$550 fine is not excessive, disproportionate, or punitive.

On June 10, 2022, Ms. Henderson timely sought a *de novo* review by the Board of the OCF May 25 order and a Board hearing on that matter. In her hearing request, Ms. Henderson reiterated the points she made in her Motion for Reconsideration.

On June 24, 2022, the Board's Office of General Counsel held a prehearing conference in the matter.¹⁰ Following the prehearing conference, the Board's Office of General Counsel brought to OCF's attention a discrepancy in the May 25 Order's citations to the statutory and regulatory provisions applicable to Ms. Henderson's reporting obligation and the fines for late filing.

On July 22, 2022, OCF issued the Final OCF Order, the stated purpose of which was to "correct the citation for statutory authority for the reporting obligation and fine amount, for the [FEP]; provide the history of prior violations incurred by Kathy Henderson for delinquent filings

¹⁰ 3 DCMR § 415.1 authorizes the Board's Office of General Counsel to convene prehearing conferences in matters pending before the Board. The purposes of such conferences include simplifying the issues that will go before the Board and possibly obtaining admissions on the facts.

of [R&E Reports], in the Traditional Program, along with orders imposing fines for those delinquent filings; add additional factual information contained in an Affirmation ... from [Mr. Williams[.]]” The Final OCF Order added to the previous order’s language the history of Ms. Henderson poor compliance with reporting obligations in the Traditional Program and detailed her prior fifteen late reports and the six orders imposing fines for untimely filings, including the \$150.00 fine that was not waived. The Final OCF Order included a new exhibit “A” which consisted of a statement by Mr. Williams in which he averred that, when Ms. Henderson registered for the FEP, she expressly agreed to comply with that program’s rules and regulations and that she attended the Entrance Conference which addressed the FEP reporting requirements. Mr. Williams’ statement also noted that Ms. Henderson did not request and was not granted an extension of the deadline for filing the March 10, 2022 report.¹¹

On August 6, 2022, Ms. Henderson emailed OCF a request for reconsideration. In that email, Ms. Henderson contested the Final OCF Order for the reason that she did not receive OCF’s emails reminding her of her filing obligation and she asserted that it was reasonable for her to rely on those notices. She also stated that “Wesley Williams told me ‘any contribution not captured in a report should be included in the next report...’ I had a reasonable belief that I did not have to file the March 10th report.” She claimed that her prior history of late filings was “irrelevant, prejudicial and does not make me an expert on any OCF requirement.” On August 10, 2022, OCF denied Ms. Henderson’s request for reconsideration as untimely filed.

¹¹ According to the Final OCF Order (at 2), Ms. Henderson, at the prehearing conference made “inaccurate and or incomplete representations” and OCF was further amending the Order “to clarify the record.” There is no evidence, however, that Ms. Henderson intended to make inaccurate or incomplete representations. Arguably, her claims as to her compliance with reporting requirements merely echoed the OCF hearing officer’s repeated statements that Ms. Henderson had no history of noncompliance based implicitly on her FEP obligations alone (as opposed to her delinquent history in the Traditional Program). Moreover, Ms. Henderson herself characterized her communications with Mr. Williams as a misunderstanding.

Meanwhile, on August 7, 2022, Ms. Henderson emailed the Board's Executive Director a timely request for *de novo* review by the Board of the Final OCF Order.¹² In her second request for *de novo* review, Ms. Henderson asserted that “[t]he Second Amended Order appears to be a determined effort to prejudice, undermine, and insult me as a candidate, which is highly improper and contrary to the intent of the law.”

On September 28, 2022, the Board's Office of General Counsel convened a further prehearing conference in this matter. Ms. Henderson and OCF Attorney Advisor Perry appeared. At that conference, Ms. Henderson continued to demand that the \$550 fine be waived in its entirety and indicated that she would not be open to agreeing to payment of even a reduced fine. Ms. Henderson recognized during the prehearing conference that the notifications from OCF of a reporting deadline were a “courtesy.” She indicated that she should not be held responsible for failure to timely file the March 10 report because she has never “intentionally” failed to comply with OCF's reporting obligations and characterized her situation as constituting “excusable neglect.” She argued that the fine was inappropriate given that her campaign has no money, she received no benefit from the FEP, and no public purpose would be served by punishing her as she is committed to complying with OCF reporting requirements and will not, in the future, rely on OCF emails notifying her of filing deadlines.

Ms. Henderson also reasserted her claim in her May 23 Motion for Reconsideration that she was unable to file the March 10th report because she could not access OCF's online filing system. After the prehearing conference was briefly continued so that Ms. Henderson could

¹² 3 DCMR § 3709.12 requires that hearing *de novo* requests be submitted no later than fifteen days from the issuance by the Director of an order; which in this case would have been Sunday, August 6, 2022. D.C. Official Code § 1-1021.01, however, states that “if the final date for any action falls on a Saturday, Sunday, or legal holiday, such action shall be considered timely if taken on the next regular business day immediately thereafter[.]” Accordingly, the deadline for seeking *de novo* review was Monday, August 7, 2022.

produce documentation as to her inability to file, Ms. Henderson provided the email (discussed above) from her to Mr. Williams dated April 11, 2022 in which she requested assistance with logging into the OCF report filing portal.¹³ Relatedly, Ms. Henderson reiterated her claims in her reconsideration request that her history of late filing in the Traditional Program was not relevant, and she argued that, if that history was considered by the Board, she should be allowed to provide email evidence that her prior late filings were not her fault but were caused by technical difficulties with OCF's online filing portal.¹⁴ She also stated that she planned to present Councilmember Kenyan McDuffie to attest to the OCF portal malfunctioning and perhaps other issues.¹⁵

As the parties were unable to resolve matter of the fine imposed by OCF at the prehearing conference, the case was set for a hearing before the Board on October 4, 2022. Ms. Henderson appeared at that hearing and restated her position that the \$550 fine should be waived.

¹³ While the email referred to an April 10th report, that is the only documentation provided by Ms. Henderson that she was not able to log in to file the March 10th report.

¹⁴ Immediately following the prehearing conference, Ms. Henderson forwarded to the General Counsel's Office emails from her to OCF that showed that she advised OCF that she was unable to log into the reporting portal and/or requested new log in credentials. The emails seem to relate to nine efforts by Ms. Henderson to access the portal with respect to prior committees during 2011 to 2012, 2016 to 2019 and in 2022. Ms. Henderson also provided an email dated January 1, 2013 related to a report for India Henderson. Finally, Ms. Henderson forwarded to the General Counsel's Office an email regarding an OCF September 13, 2022 notification of her recent successful registration with OCF for an Advisory Neighborhood Commissioner race and the login credentials for the related new account. In her forwarding email, Ms. Henderson stated that she had not received from OCF any "email outlining reporting dates or any additional information" but that when she logged into the account she could see that a report would be due for the period of July 20, to November 8, 2022. Ms. Henderson complained: "Am I supposed to know the details because I have run for elected office before?"

¹⁵ The General Counsel Office's attorney presiding over the prehearing conference sent Ms. Henderson an email following up on the conference matters which advised that "[t]he parties may offer witnesses [at the Board hearing] but it is the Chair's decision as to whether to call and hear from those witnesses and he may exclude irrelevant testimony (3 DCMR 419.1(f) and (m))." Ms. Henderson responded: "I have requested Councilmember Kenyan McDuffie as a witness." Ms. Henderson was then asked via email by the attorney representing the Office of General Counsel to "please provide a proffer of [Councilmember McDuffie's] testimony and its relevance to the fine imposed on [her] specifically." Ms. Henderson did not respond and did not, at the Board hearing, present Councilmember McDuffie as a witness. Instead, at the Board hearing, Ms. Henderson revealed for the first time that she did not intend to call Councilmember McDuffie as a witness on her behalf, but intended him to be present as an adverse witness, and she stated that she had requested that the Office of General Counsel send whatever notice was needed to have Councilmember McDuffie appear and that her request had been denied. Nothing in Ms. Henderson's communications at the prehearing conference or in the follow-up emails regarding that conference, however, indicated that Ms. Henderson offered Councilmember McDuffie as anything but a witness on her behalf.

At the hearing, Ms. Henderson characterized her failure to file timely the March 10th report as “excusable neglect.” While she acknowledged that she had attended OCF’s Entrance Conference and that that conference would have covered the FEP report filing deadlines, she objected to being treated as an experienced candidate based on the filing of her first FEP report in that new program. Although Ms. Henderson acknowledged that she did not have her March 10th report prepared at the time that it was due and did not attempt to log into OCF’s filing portal until a month later, she maintained that her late filing was due to technical difficulties. She also offered documentation of emails between her and representatives of OCF for the purported purpose of demonstrating that her history of late Traditional Program R&E Report filings was the result of technical issues with OCF’s online filing portal. Noting that she “did not memorize the filing calendar”, Ms. Henderson insisted that she should have been allowed to rely on email reminders of her filing obligation. Ms. Henderson repeatedly asserted that she had always been compliant with OCF’s directives and argued that no purpose would be served by imposing a fine on her, given that, *inter alia*, she received no FEP public funding. She chastised OCF for fining her, claiming that the process was “horribly unfair” and “an abuse of authority.”¹⁶

¹⁶ In addition, Ms. Henderson offered new theories as to the rationale behind OCF’s imposition of the fine. She described the imposition of the fine as “an effort to ... get me” and, stated with respect to her inability to login to OCF’s portal: “... I believe that there’s some underhanded backroom dealing here in this matter ... that will come out, if this matter goes forward.” Ms. Henderson claimed that the fine imposed was a response by OCF to an allegation made by a political opponent regarding Ms. Henderson’s history of campaign finance noncompliance. Referring to a pending court appeal in which Ms. Henderson is challenging a Board decision rejecting a petition she submitted in an effort to recall an Advisory Neighborhood Commissioner and one-time political opponent of Ms. Henderson (*see Kathy Henderson v. D.C. Board of Elections*, DCCA Case No. 21-AA-824), Ms. Henderson stated:

But the real issue here today, the real issue here today is that there is a recall case pending before the Court of Appeals, in which the person who currently holds the seat who has been accused of multiple violations of the law. Her response is I’ve had multiple campaign finance late filings over the years and the Office of Campaign Finance has let me [get] away with it.... That is why we are here today. The Office of Campaign Finance is digging in their heels ... But you’re determined. You’re determined to bring me down[.]

Tr. at 34-35. Ms. Henderson also suggested that OCF’s imposition of a fine was the product of improper relationships between OCF staff and Councilmember McDuffie. Specifically, Ms. Henderson stated:

Mr. Williams appeared at the hearing and testified to Ms. Henderson's late filing. Ms. Henderson was given an opportunity to examine Mr. Williams. She asked him if she had experienced login issues in the past and Mr. Williams responded that he did not recall, but noted that Ms. Henderson had numerous committees and may have been confused about the applicable credentials. Ms. Henderson also asked Mr. Williams if he had ever apologized to her for not addressing her login issues. Mr. Williams stated that he may have offered an apology if he did not get back to Ms. Henderson about a login issue within 24 hours.

OCF's General Counsel noted that compliance with the FEP's reporting obligations is not contingent upon whether the candidate receives any public funds. He also commented that OCF offers a computer and in-person assistance to filers at its offices. He denied that anyone at OCF

... I requested that Mr. Wesley Williams ... and Councilmember McDuffie be here today to talk about their relationship, and how this whole matter arises from their conversations. I don't have privy to those conversations yet but I can assure you if you continue with this matter and you continue to want to subject me to this public lynching of sorts, then everything will come out. Everything will come out, and I've already included the Office of Inspector General.

Tr. at 36-37. Ms. Henderson elaborated at other points in her remarks on her belief that the fine imposed on her was the product of some conspiracy against her:

[T]he larger issue is that Kenyan McDuffie is attempting to make an argument to undermine my candidacy, as you know, through his surrogates. And, we don't know or we won't know yet the extent of that surrogate network until the process plays out. So, if you want to continue this matter, I'm assuming that I have a right to appeal it. I'm going to do that and I'm going to ... make FOIA requests. I'm sure they will be denied and I'm going to exercise all of my rights to the fullest extent of the law.

Tr. at 57.

... I've actually changed the history of the District of Columbia and I'm not saying that, you know, because I have a grandiose sense of self. ... So, if this is an opportunity to say we got her, we got her.
... I'd like to ask [Councilmember McDuffie] a series of questions on all of the misdeeds he has done that are now coming to light.

Tr. at 59. Elsewhere in her statements, Ms. Henderson threatened that, if the fine against her was upheld, a former BOE employee's supposed efforts to keep her from picking up her petitions for office and a former BOE registrar's numerous malfeasance issues "will all come out."

was out to get Ms. Henderson and urged the Board to uphold OCF's order imposing a \$550 fine on Ms. Henderson.

At the end of the hearing, the Board proceeded with the remaining portion of its agenda, and then voted unanimously to enter into executive session to deliberate on the matter. It announced that it would leave the record open for a day to allow the parties to submit any further documentation. The Board advised that, after the submission of any such further documentation and Board review of that material, it would meet to announce its decision.

On October 5, 2022, Ms. Henderson emailed the Board's Office of General Counsel a sur rebuttal response to the testimony presented at the previous day's Board hearing and thirteen email communications spanning the past decade between Ms. Henderson and OCF. In her sur rebuttal, Ms. Henderson contended that the login process and online R&E Report filing system used by OCF is not user-friendly. She repeated that she did not receive any of the email reminders of the March 10th Report deadline, and argued that the fact that OCF stated that those reminders did not bounce back was not compelling and noted that OCF had not provided read receipts for those communications. Ms. Henderson maintained in her sur reply that "[t]he laws outlining the purpose and function of OC[F] are designed to facilitate transparent reporting of campaign contributions; they are not designed to bludgeon candidates with oppressive, unfair fines for unintended late filings." Ms. Henderson repeated that her prior history of late filings was prejudicial and unrelated to the late March 10th Report filing. Noting that the report disclosed a \$20.00 contribution and nothing more, Ms. Henderson argued in her sur reply that the fine is disproportionate and "appears to be politically motivated." The thirteen email communications attached to Ms. Henderson's sur

reply included the communications that she provided to the Board's Office of General Counsel on September 28, 2022 and two additional emails that did not specifically concern login issues.¹⁷

OCF provided the report filing reminder emails that were sent to Ms. Henderson's email address on February 17 and 8 and information on the compliance of other FEP candidates with the March 10th reporting obligation. That information documented that only one other FEP candidate was late in filing the March 10th report and that that candidate was fined \$575. Accounting for the two instances of late filing (*i.e.*, Ms. Henderson and the other candidate), the filers in the FEP were 96% compliant with the March 10th reporting obligation.

The Board met on October 6, 2022 to conclude the matter. Ms. Henderson and representatives of OCF were present. At that further proceeding, the Board announced that it was upholding OCF's order imposing a \$550 fine on Ms. Henderson.

Analysis

The importance of campaign finance reporting requirements cannot be overstated:

The foundation of all government ethics laws is disclosure ...[d]isclosure requirements deter actual corruption and avoid the appearance of corruption ...Recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations

Report on Bill 20-0076 (D.C. Act 20-249), the "Campaign Finance Reform and Transparency Amendment Act of 2013" at 25 (Oct. 22, 2013) (citing a committee report on related campaign finance legislation). "The key to ensuring the District maintains fair elections and campaigning is to 'give teeth' to campaign finance reform in the form of penalties." *Id.* at 32.

¹⁷ The first additional email, dated December 6, 2017, was a request by Ms. Henderson for assistance from Mr. Williams with closing the committee Kathy Henderson for Ward 5 and inquired about whether any reports were due. The second email, dated October 1, 2020, concerned Ms. Henderson's inability to participate in a candidate debate due to technical difficulties.

In this case, Ms. Henderson did not deny that she filed her March 10th report late on April 12, 2022. As it is undisputed that Ms. Henderson’s March 10, 2022 report was filed late, OCF has sufficiently demonstrated a violation.¹⁸ The issue then is whether Ms. Henderson has demonstrated that the fine should be waived.¹⁹ While the OCF Director may, for good cause shown, modify, rescind, dismiss, or suspend any fine imposed (*see* 3 DCMR § 3711.8), the Director was, as a matter of law, empowered to fine Ms. Henderson up to \$1,100.00. *Butz v. Glover Livestock Commission, Co.*, 411 U.S. 182, 187 (1973) (the authority of an administrative officer to impose fines is expansive and allows the imposition of a penalty that is within the limits of the law). Given that the Director elected to impose a substantially reduced fine of only \$550, Ms. Henderson is hard pressed to show that the fine here should even be further reduced, much less waived altogether. That said, our authority to review the OCF Director’s decision is *de novo* (3 DCMR § 3709.11) and we are not bound by her decision. *MorphoTrust USA, Inc. v. D.C. Contract Appeals Bd.*, 115 A.3d 571, 582 (D.C. 2015) (explaining that “*de novo*” means “anew” and “a non-deferential review”).

The facts here establish that Ms. Henderson was adequately informed of her FEP March 10th reporting obligation. She was apprised of that obligation at the Entrance Conference, and that deadline is repeatedly posted on OCF’s website. OCF’s efforts to support candidate compliance with email alerts regarding their reporting obligations in no way absolves candidates or their political committees of meeting the deadlines for financial disclosure reports. Ms. Henderson

¹⁸ *See* 3 DCMR § 423.5 (OCF has the burden of proving a violation with reliable, probative, and substantial evidence).

¹⁹ 3 DCMR § 424.1 (the party asserting a claim bears the burden of proof).

herself recognized during the prehearing conference that those alerts were a “courtesy.” Accordingly, she relied on those alerts at her own peril.²⁰

Further, to the extent that Ms. Henderson is claiming that login difficulties caused her March 10th report to be filed late, such a claim is essentially a red herring given that Ms. Henderson did not even attempt to log into OCF’s filing portal until a month after her March 10th report was due. Had Ms. Henderson attempted to timely file her March 10th report and encountered login difficulties, she would have been assisted within a day and would not have been fined. Notwithstanding her documentation of several instances over the past decade in which she had to request assistance with logging into the OCF filing portal, Ms. Henderson has not shown that login issues had anything to do with her failure to timely file the March 10th Report.²¹

Ms. Henderson’s position that her history of noncompliance with OCF reporting requirements is of no relevance is incorrect. That history reveals her knowledge of her obligations (regardless of whether her inability to file was due to technical issues²²) which goes to the heart of Ms. Henderson’s excuse that she did not intentionally fail to comply with her OCF obligations.

²⁰ Prior to her appearance before the Board, Ms. Henderson indicated that her communications with Mr. Williams led her to believe that she could address her March 10th report in her April filing. While Ms. Henderson does not seem to be pressing that issue, we note that the record does not establish a sufficiently misleading communication by Mr. Williams. In any event, given that Ms. Henderson had been admonished at least sixteen times that she faced fines for late filing, was in fact subjected to fines in six prior cases, and has been fined \$150.00 previously in the Traditional Program for a late-filed report, and in light of the information posted on OCF’s website about FEP reporting and provided in the Entrance Conference, it would not have been reasonable for Ms. Henderson assume that the March 10th report could have been filed late in April based on Mr. Williams’s comment about correcting earlier filed reports.

²¹ Moreover, Ms. Henderson never associated the emails she offered as evidence that purportedly documents several instances where she requested login assistance with any of the fifteen instances of OCF late filing findings in the Traditional Program. Accordingly, Ms. Henderson has not shown that login issues ever resulted in a finding by OCF that Ms. Henderson filed late.

²² While it seems doubtful that the extensive history of late filings by Ms. Henderson could be attributed solely to problems with OCF’s online portal for filing given, *inter alia*, that most other candidates (as OCF explained at the hearing and in material it submitted to supplement the record) have been able to timely file their reports, the cause for the lateness is, at best, of marginal relevance. The relevance of these prior incidents is that Ms. Henderson was being reminded repeatedly of the requirement that she file her R&E reports timely, and that she risked being fined if she did not.

Along these lines, Ms. Henderson's claim that the public interest will not be served by fining her because she received no public funding is not persuasive. Timely reporting is essential for OCF's ability to administer the FEP regardless of whether the candidate is ultimately funded. Receipt of FEP funds is not a condition on the imposition fines.

Likewise, Ms. Henderson's assertion that no purpose will be served by punishing her because she has always intended to be compliant is belied by the facts. Notwithstanding fifteen late filing notices, six orders imposing fines (of which five were waived) and a fine of \$150.00 in the Traditional Program, Ms. Henderson was undeniably late in filing her first report in the FEP. It is difficult to conclude that Ms. Henderson's tardy behavior will be remedied by overlooking yet another delinquent filing.

Further, the fact that Ms. Henderson's March 10th report ultimately revealed only a single \$20 contribution does not make the instant fine disproportionate or excessive. Rather, that fact tends to show that Ms. Henderson was not overly burdened by the filing requirement because her reporting obligation was rather limited and straightforward in this case. The regulations expressly tie the level of the fine to the number of days that the report is late (\$50.00 per day), not the level of financial activity reflected on the report. In this case, OCF halved that amount. Given the regulatory scheme for assessing fines and the reduction in the fine imposed, it cannot plausibly be maintained that the fine here was disproportionate. Indeed, OCF imposed a similar fine on the only other candidate who filed the March 10th FEP Report late. And, we have sanctioned a fine of a similar amount for a report that was filed somewhat later than the report at issue here even though the record did not reveal a history of late filings by the candidate. *See D.C. Office of Campaign Finance v. Manley Collins*, BOE Case No. 19-040 (Oct. 29, 2019) (enforcement of a \$500 fine

imposed where report due on March 12, 2018 was not filed until June 23, 2018). We decline in the interest of parity to waive entirely, as Ms. Henderson requests, the instant fine.

Contrary to Ms. Henderson’s position, we cannot say that the \$550 fine imposed by OCF (approximately half the allowable fine) was “excessive, disproportionate, or punitive.” Nor can it be said that Ms. Henderson demonstrated sufficient good cause under 3 DCMR § 3711.8 to suspend the fine imposed.²³

Conclusion

Accordingly, it is this 6th day of October, 2022, **ORDERED** that the Final OCF Order imposing a \$550 fine for the late filing of the March 10, 2022 report by Our Committee to Elect Kathy Henderson is **AFFIRMED**. Ms. Henderson is directed to pay or make arrangements to pay that fine forthwith or face enforcement proceedings.

The Board issues this written order today, which is consistent with our oral ruling which was announced at the hearing on October 6, 2022.



Dated: October 6, 2022

Gary Thompson
Chair, Board of Elections

²³ Although Ms. Henderson has suggested that the standard to be applied to waiving the fine is “excusable neglect,” the regulation applies a “good cause” standard. We do not opine as to whether those terms are interchangeable.