

NEW MEXICO STATE ETHICS COMMISSION

TIM EICHENBERG,

Complainant,

v.

LAURA MONTOYA,

Respondent.

No. 2022-006

**HEARING OFFICER'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

The Hearing Officer Hon. Alan C. Torgerson (ret.) conducted a hearing in this matter on August 21, 2023 at which the evidence, testimony and arguments on behalf of the Complainant Tim Eichenberg was presented by Intervenor General Counsel Walker Boyd, with the assistance of attorney Jessica Randall, and the Respondent Laura Montoya was represented by attorney Kenneth H. Statler. The hearing, which was open to the public, was transcribed by a court reporter as well as recorded. Three witnesses testified in person – Mandy Vigil, the State Elections Director at the office of the Secretary of State, Laura Montoya, and Chris Daul. The depositions of two witnesses, Gary Plante and Donald Leonard, were admitted as evidence along with the deposition exhibits. Both parties presented opening and closing arguments.

The parties submitted their proposed Findings of Fact and Conclusions of Law after having had an opportunity to review the written transcript. The Hearing Officer has reviewed and

considered the testimony of the witnesses, the two admitted depositions, the exhibits, the arguments, and the requested Findings of Fact and Conclusions of Law presented and submitted by the parties and has determined that the Respondent violated two sections of the New Mexico Campaign Reporting Act (hereinafter the “Act”). Ms. Montoya knowingly accepted a contribution that had been made by one person in the name of another person, thus violating Section 1-19-34.3 (A) of the Act. Ms. Montoya further failed to report that two campaign contributions she received were “otherwise directed through another person to a candidate”. Section 1-19-34.7 (D).

FINDINGS OF FACT

1. Respondent Laura Montoya declared her candidacy for the office of the State Treasurer in July or August of 2021. Tr. 52:9 -11.
2. Ms. Montoya testified that as a candidate seeking the office of the State Treasurer she was subject to the requirements of the Campaign Reporting Act. Tr. 35:23-36:1.
3. Ms. Montoya testified that she was familiar with the provisions of the Campaign Reporting Act. Tr. 36:2-5.
4. Donald “Donnie” Leonard is a former Sandoval County Commissioner, a resident of Corrales, New Mexico, and a business who owns a local company. Tr. 38:18-25.
5. Mr. Leonard did not have an official role in Ms. Montoya’s campaign for State Treasurer on September 21, 2021, but he was a volunteer for the campaign. Tr. 39:10-13.
6. Ms. Montoya testified that Mr. Leonard did a lot for her campaign for State Treasurer and has always been a great mentor. Tr. 39:25-40:14. She testified that “he’s the best volunteer in America.” Tr. 39:19.

7. Mr. Leonard asked other people to support Ms. Montoya's campaign for State Treasurer "in any conversation he possibly could." Tr. 40:12-17.

8. Ms. Montoya knew that Mr. Leonard was asking people to support her campaign. Tr. 40:18-20.

9. Mr. Leonard became the Manager of Ms. Montoya's campaign for State Treasurer in March of 2022. Tr. 77:2-78:4.

10. Mr. Leonard donated money to Mr. Montoya's campaign for State Treasurer on September 21, 2021 as reported on the Second Bi-Annual Report filed with the Office of Secretary of State on April 10, 2022. Exhibit 4, p. 7.

11. Gary Plante is a real estate developer and the manager of SIT Sheriff's Posse Road 1, LLC and SIT Sheriff's Posse Road 2, LLC. Plante Dep. 8:6-9.

12. SIT Sheriff's Posse Road 1, LLC and SIT Sheriff's Posse Road 2, LLC own buildings in Sandoval County that are leased to an assisted living services provider. Plante Dep. 6:5-12, 7:4-10, Ex. 19.

13. Mr. Plante contributed money to Ms. Montoya's campaign for County Treasurer for Sandoval County on June 14, 2016 as reported on the 2016 Reports of Expenditures and Contributions and again on October 4, 2016. Mr. Plante's occupation was listed as "businessman" and his address as 1692 Pace Rd. NW, Albuquerque, NM 87114. Exhibit 21 at 3, and Exhibit 22 at 3.

14. Mr. Plante's son, Michael Plante, and his grandson Cole Plante, served as volunteers in Ms. Montoya's campaign for State Treasurer. Tr. 45:3-46:5.¹

¹ "Mr. Plante" as referred to in these Findings of Fact and Conclusions of Law means Gary Plante.

15. Mr. Plante assisted in Ms. Montoya's campaign for State Treasurer by organizing a meeting for "some associates I knew to introduce them to Laura and for them to be able to ask her questions about her candidacy." Plante Dep. 9:12-19.

16. Mr. Leonard also helped set up the meeting for Ms. Montoya. Plante Dep. 12:15-25.

17. Mr. Leonard invited Ms. Montoya to the lunch meeting. Tr: 55:4-9.

18. The meeting took place at lunchtime on September 21, 2021 at the Corrales Bistro. Tr. 54:3-19. About ten people attended the lunch. Tr. 55:1-3.

19. Ms. Montoya met Mr. Plante for the first time in person at the lunch meeting on September 21, 2021. Tr. 53:22-25.

20. Ms. Montoya gave a short speech to the attendees at the lunch and solicited contributions for her campaign. Plante Dep. 21:2-14, Tr. 55:19-56:3.

21. Mr. Plante paid for the lunch and told Ms. Montoya he would be supportive of her. Tr.56:13-17.

22. Ms. Montoya reported Mr. Plante's payment as an in-kind contribution to her campaign. Exhibit 4, p. 14. Tr. 56:17-19.

23. Ms. Montoya received several contributions from the attendees at the lunch meeting and reported them on her Second Bi-Annual Report filed with the Office of Secretary of State on April 10, 2022. Exhibit 4, pp. 7-8.

24. Chris Daul is a resident of Placitas, a political consultant, and the manager of Adelante Sandoval, a PAC (political action committee), whose purpose is to raise money to contribute to Democratic candidates in Sandoval County. Tr. 97:11-98:6, 99:23-100:16.

25. Mr. Daul had a friendly and professional relationship with Ms. Montoya during her campaigns and gave a little advice to her but not in the course of a formal relationship. Tr. 101:14-102:11.

26. Mr. Daul was acquainted with Mr. Plante through some business that had come before the Sandoval County Commission, but the two men communicate infrequently. Tr. 102:12-103:4.

27. Mr. Daul is acquainted with Mr. Leonard through Mr. Leonard's political activity and through their work with Sandoval County Regional Medical Center Dep. Leonard 19:1-13.

28. Mr. Daul did not attend the luncheon at the Corrales Bistro. Tr. 121:14-16.

29. After the lunch ended, at 1:11 PM on September 21, 2021, Ms. Montoya texted the Secretary of State Maggie Toulouse Oliver asking a question about the limits that a candidate could accept in 2021 under the Campaign Reporting Act. Exs. 2 & 18, Ex. 16 to Leonard's Dep. Ms. Montoya testified that the first picture on the text was of the Secretary of State's website describing contribution limits that a statewide candidate could receive. Tr. 58:10-25.

30. Ms. Montoya testified that she texted the Secretary of State, "So if a PAC gives me \$10,000 is that ok to report in this report as the full \$10k or do I have to only report \$5,200." Tr. 59:18-22.

31. Ms. Montoya then testified that she texted the Secretary of State, "Thank you for helping me clear it up. I just wanted to make sure we report it correctly." Tr. 60:1-2.

32. Ms. Montoya testified that she wasn't sure why she made her inquiries to the Secretary of State about contribution limits on September 21, 2021. Tr: 60:6-16.

33. Mr. Daul also texted Ms. Montoya during the afternoon of September 21, 2021 texting, “I’m trying to call you but it won’t go thru. Try calling me”. Ms. Montoya responded less than two hours later with a thumbs up emoji. She also sent him a screen shot of her conversation with Maggie Toulouse Oliver. Ex. 2, Tr. 61:2-11.

34. Ms. Montoya testified that she does not remember what she discussed with Mr. Daul on September 21, 2021. Tr. 61:20-25

35. Ms. Montoya testified that she believes that the discussion with Mr. Daul was about contribution maximums but she thinks it was “more of a hypothetical.” Tr. 61:23- 62:5. She testified that Mr. Daul asks questions all the time. Tr. 62:2-3.

36. Mr. Daul testified that he has not relied on Ms. Montoya to determine his own or other people’s obligations under the Campaign Reporting Act. Tr. 116:14-21.

37. After the lunch at the Corrales Bistro, Mr. Plante and Mr. Leonard, driving separately, went to a nearby bank. Plante Dep. 22:3-12.

38. Mr. Plante testified that he made his contribution to a PAC and that “Donny [sic] said he would assist me at the bank in getting the contribution done correctly.” Plante Dep. 22:16-20.

39. Mr. Leonard provided the information about the political action committee to the woman at the bank who was issuing the two cashier’s checks. Plante Dep. 23:5-9

40. Mr. Plante testified that sometimes he wants to “do” contributions to a PAC that supports a candidate that he is supporting and that in this particular case he wanted to contribute to the PAC. Plante Dep. 23:17-21. He further testified that he knew that there was a PAC supporting Ms. Montoya. Plante Dep. 24:4-5.

41. Two cashier's checks, both in the amount of \$5,000 and both made payable to Adelante Sandoval, were created and dated September 21, 2021. Both checks were drawn on accounts at Wells Fargo Bank. One check was from Sheriff's Posse Road 1 and the other check was from Sheriff's Posse Road 2. Ex 1.

42. Mr. Plante was leaving town after the visit to the Wells Fargo Bank and asked Mr. Leonard if he would deliver the checks to the appropriate party. Mr. Plante testified that the checks were put on the counter and given to Mr. Leonard. Plante Dep. 28:13-25.

43. A U.S. Bank counter deposit of two \$5,000 checks was made to the account of Adelante Sandoval on September 21, 2021. Ex. 11

44. None of the witnesses has an independent recollection of making a counter deposit at a U.S. Bank to the Adelante Sandoval account on September 21, 2021. Leonard Dep. 28:20 – 29:6, Tr. 91:6-10, Tr. 106:22-107:24.

45. Mr. Daul claimed that the handwriting on the counter deposit slip was not his and that it was possible that the teller may have completed the counter deposit. Tr. 117: 14-15, 118:15-22. He also testified that no one else makes deposits to Adelante Sandoval except him. Tr. 117:16-18. Mr. Daul does not recall specifically who gave him the checks to deposit, or what time or where the deposit took place. Tr. 125:15-20. Finally, he acknowledged that the endorsement on the back of the cashier's checks appears to be "AS", which is what he has used to endorse checks on behalf of Adelante Sandoval. Tr. 130:10-16.

46. Adelante Sandoval wrote a check for \$10,000 to "Laura Montoya 4 NM" on September 25, 2021. Ex. 3. The check was cashed on September 27, 2021. Ex. 3. The handwriting on the check was Mr. Daul's. Tr. 109:18-22.

47. Mr. Daul testified that Adelante Sandoval gave the \$10,000 it had received to Laura Montoya 4 New Mexico because, “based on a conversation that had taken place at some point, I was asked to make that contribution to her.” Tr. 110:9-13.

48. Mr. Daul testified that at the time Adelante Sandoval received the two \$5000 contributions it was his understanding that they had been earmarked for Ms. Montoya. Tr. 111:4-10.

49. Mr. Daul does not recall with whom he had this conversation and does not recall whether it was a telephone conversation or an in-person conversation. Tr. 114:8-14, 122:1-3.

50. Mr. Daul did not make the decision himself to send the \$10,000 Adelante Sandoval had received to Laura Montoya 4 NM. Tr. 131:11-13.

51. Mr. Daul does not recall that Mr. Plante gave the earmarking instruction to him. Tr. 115:20-25, 123:17-23.

52. Mr. Daul testified that he had narrowed the earmarking instruction as most likely coming from Mr. Leonard or Ms. Montoya. Tr. 131:14-17.

53. Mr. Daul testified that Ms. Montoya would have known that Adelante Sandoval had received a contribution from the two Sheriff’s Posse LLCs but that he did not tell her that directly. Tr. 125:5-14.

54. Mr. Daul testified that, “based on conversations I had either with Laura or Donnie Leonard, it was my understanding that, you know, the campaign understood what the situation was, yes.” Tr. 128:15-25.

55. Ms. Montoya's Campaign for State Treasurer reported two contributions from Adelante Sandoval received on September 27, 2021, one in the amount of \$5,200 and the other in the amount of \$4,800 as shown on the Second Bi-Annual report for 2021. Ex. 4.

56. At the time the Second Bi-Annual report for 2021 was created, Ms. Montoya had not won the primary race for State Treasurer, so her campaign was limited to spending \$5,200 for the primary race and made the decision to report the remainder of the contribution from Adelante Sandoval in the amount of \$4,800. Tr. 66:10-67:11. She understood that if she did not win the primary race she would have to return that amount to Adelante Sandoval. Tr. 89:3-11.

57. Upon a further review of the Second Bi-Annual Report (Exhibit 4) Ms. Montoya noticed that an error had occurred because Adelante Sandoval was listed as donating three times to her campaign, \$500 on 8/4/2021, \$5,200 on 9/27/2021 and \$4,800 on 9/27/2021. Since those three amounts amounted to \$10,500, which exceeded the campaign limitation of \$10,400, the Laura Montoya 4 New Mexico campaign returned \$100 to Adelante Sandoval as an excess contribution. Tr. 64:6-23, Ex. 4, pp. 3,4, & 8 and Ex. 20, letter from Kenneth H. Stalter explaining the \$100 excess contribution.

58. Mr. Leonard testified that he was not aware of Adelante Sandoval before reading correspondence concerning the Ethics Complaint that were dated March 30, 2022 and September 28-29, 2022, months after the creation of the two cashier's checks dated September 21, 2021. Leonard Dep. 19:20-20:6, Exhibits 14 and 15 attached to Leonard Dep.

59. Mr. Leonard testified that he didn't know any of the gentlemen at the Corrales Bistro restaurant meeting on September 21, 2021 but later admitted that he did know Michael Plante who was at the meeting. Leonard Dep. 22:19-23:7.

60. Mr. Leonard testified that he did not remember seeing the two cashier's checks on September 21, 2021. Leonard Dep. 29:2 and 30:23-31:2. Mr. Leonard testified that he had never seen the two cashier's checks before his deposition. Leonard Dep. 30:23-31:2.

61. Mr. Leonard testified that he does not know how the checks got from the bank to Adelante Sandoval. Leonard Dep. 28:20-23.

62. Mr. Leonard testified that he does not remember hand-delivering the checks to Ms. Montoya. Leonard Dep. 29:3-6.

63. Mr. Leonard testified that he did not know on September 21, 2021 that two Sheriff's Posse LLCs had made a contribution to Adelante Sandoval and that the contribution was earmarked for Ms. Montoya. Leonard Dep. 31:3-9.

64. Mr. Leonard testified that he did not have any conversations with Ms. Montoya on September 21, 2021 about contributions from Mr. Plante or any companies associated with him. Leonard Dep. 33:13-17.

65. Mr. Leonard's testimony is not credible because he denied knowing about Adelante Sandoval although he gave the name of the PAC to the teller at the Wells Fargo bank after the luncheon, denied knowing anyone at the luncheon although he admits he knew Michael Plante and Gary Plante, denied seeing the cashier's checks although Mr. Plante testified that he put them on the bank counter in the presence of Mr. Leonard, and because he testified that he did not know how the checks got from the counter of the Wells Fargo bank to someone who deposited the checks into the Adelante Sandoval account, in a different bank, on the same day. Leonard Dep. 19:20-21: 4, 22:19-23:7, 30:23-31:2, 28:20-29:6.

66. Mr. Plante “indicated” to Mr. Leonard “a long time ago” that he didn’t want to have his name appear on contribution reports next to a significant political contribution because “a lot of us don’t like making [a] direct donation because then we get on a donation list, and then you have candidates from every different election calling you and saying, “Well, you gave to Joe Smith, why didn’t you give me a check.” Leonard Dep. 27:14-28:5.

67. A candidate is able to indicate that a contribution is earmarked or otherwise directed to her campaign by inputting the information in the memo field for the relevant contribution on the candidate’s electronic reporting. Tr. 27:13-23.

68. On her Second Bi-Annual report on contributions, Ms. Montoya did not indicate that the contribution she received from Adelante Sandoval consisted of two \$5,000 contributions from the Sherriff’s Posse LLCs. Ex. 4, p. 8.

69. Ms. Montoya denies providing Mr. Daul with the instruction that the Sheriff’s Posse LLC’s donations were to be directed to her campaign, but her testimony is inconsistent and not credible. Her text messages to the Secretary of State about “if a PAC gives me \$10k is that ok to report” implies that she knew that Adelante Sandoval would be getting a directed contribution from Mr. Plante. Although she may not have seen the actual checks prior to seeing a copy of them in her attorney’s office, the circumstantial evidence regarding the timing of the text to the Secretary of State (minutes after the lunch ended), the text from Mr. Daul that he was trying to call her at 2:15 pm that afternoon, and her emoji of a thumbs up at 4:01 pm is circumstantial evidence that Ms. Montoya was aware of the directed contribution and of the fact that it was \$10,000. Ex. 2, Tr. 91:6-10.

70. Mr. Plante's testified that, "Obviously I intended for the PAC to support Laura" and yet also testified that he had no recollection of having a conversation about how Adelante Sandoval should support Ms. Montoya. Plante Dep. 35:12-13, 38:21-25.

CONCLUSIONS OF LAW

1. At the conclusion of a hearing under the State Ethics Commission Act, the hearing officer must issue a written decision that shall include the reasons for the decision. NMSA 1978 § 10-16G-12(D) (2019). The findings must be based on a preponderance of the evidence. *Id.*

2. On September 21, 2021 Ms. Montoya was a candidate subject to the requirements of the Campaign Reporting Act.

3. On September 21, 2021, Mr. Plante, the manager of Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC, caused each company to make a separate \$5,000 contribution to Ms. Montoya through a PAC.

Violations of Section 1-19-34.3(A) of the Campaign Reporting Act

4. Under the Campaign Reporting Act, "[i]t is unlawful for a person to make a contribution in the name of another person." NMSA 1978 § 1-19-34.3(A) (2019). This provision is designed to prohibit what is known as "straw donor" contributions by which a person makes a contribution through an intermediary to a candidate and to ensure complete and accurate disclosures by candidates of contributors funding their campaigns. *United States v. O'Donnell*, 608 F. 3d 546, 548-549 (9th Cir. 2010) (interpreting an analogous provision of Federal Election Campaign Act of 1971).

5. Section 1-19-34.3(A) ensures complete and accurate disclosures by candidates of the contributors funding their campaigns. Otherwise, an individual could “thwart disclosure requirements and contribution limits” by attributing contributions to false names or straw donors. *Id.*, at 549.

6. “For purposes of a civil action, it shall be presumed that a public official of a candidate for public office subject to the Campaign Reporting Act has authorized and approved each solicitation for campaign contributions made by his campaign committee or a person authorized by the candidate to solicit contributions on his behalf.” NMSA 1978 §1-19-34.5 (1995). This proceeding is a civil matter.

7. Ms. Montoya had authorized Mr. Leonard to solicit campaign contributions on her behalf. She is presumed by law to have authorized and approved each solicitation made by Mr. Leonard on her behalf.

8. Mr. Leonard was an agent of Ms. Montoya because he was authorized by her to solicit and to accept donations on her behalf.

9. Either Ms. Montoya or Mr. Leonard solicited a contribution from Mr. Plante in support of her campaign for State Treasurer at the Corrales Bistro luncheon on September 21, 2021.

10. Mr. Plante decided to make his contribution in support of Ms. Montoya to a PAC.

11. It is irrelevant to the determination of this matter why Mr. Plante decided to make his contribution to the PAC Adelante Sandoval rather than directly to Ms. Montoya.

12. When Ms. Montoya accepted the \$10,000 donation from the PAC, she knew that the donation had been made by another person or persons through the PAC.

13. When Ms. Montoya accepted the \$10,00 donation from the PAC, she was under a duty to correctly report the names of the source of the donation on the Campaign Reporting Act form, which she failed to do. NMSA 1978 §1-19-34.3 (A).

14. Ms. Montoya violated Section 1-19-34.3(A) by incorrectly reporting the two donations from Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC, as coming from the PAC Adelante Sandoval.

Violations of Section 1-19-34.7 (D) of the Campaign Reporting Act

15. Under the Campaign Reporting Act, “[a]ll contributions made by a person to a candidate either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to that candidate.” NMSA 1978 § 1-19-34.7(D) (2019).

16. Mr. Plante communicated his intention that the PAC would use the two donations he caused to be made on September 21, 2021 to support Ms. Montoya to Ms. Montoya or to someone closely connected to Ms. Montoya's campaign. That person, or persons, then communicated this intention to Mr. Daul.

17. The contributions made by Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC were made indirectly to Ms. Montoya through the PAC Adelante Sandoval.

18. The contributions made by Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC were otherwise directed through another person (the PAC) to the candidate Ms. Montoya.

19. It is not necessary to the determination of this matter that no person testified that he or she heard or remembered hearing Mr. Plante specifically say that he wanted the donation he was going to make to the PAC to be used directly for Ms. Montoya's campaign for State Treasurer.

20. That knowledge - that Mr. Plante wanted the donation he was going to make to the PAC to be used directly for Ms. Montoya's campaign for State Treasurer – was clearly understood by the PAC as demonstrated by Mr. Daul's testimony.

21. The PAC accepted the \$10,000 donation knowing that the contributions had been directed to given to Ms. Montoya's campaign.

22. Because the two contributions made by made by Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC had been directed to be given to Ms. Montoya's campaign and because this knowledge was communicated to the PAC by either Ms. Montoya or Mr. Leonard, Ms. Montoya was deemed to have this knowledge.

23. Either Ms. Montoya knew that Mr. Plante had decided to support her campaign through the PAC because she learned of this fact at the lunch, or Mr. Leonard, her volunteer and agent who helped Mr. Plante create the checks to the PAC, knew that Mr. Plante had decided to support the campaign through the PAC and communicated this knowledge to Ms. Montoya.

24. The fact that Ms. Montoya texted the Secretary of State asking a question about "if a PAC gives me \$10k is that ok" minutes after the lunch ended and communicated with Mr. Daul that afternoon, including giving him a "thumbs up" emoji at 4 p.m., is circumstantial evidence that it more likely than not that Ms. Montoya knew that Mr. Plante was supporting her campaign with a \$10,000 donation that was going to be first directed to a PAC.

25. The evidence does not support Ms. Montoya's testimony that she may have texted the Secretary of State on the afternoon of September 21, 2021 because she was asking a hypothetical question, or asking on behalf of another candidate, or to answer a question that Mr. Daul had raised.

26. The New Mexico Administrative Code states that "[t]he candidate is deemed to have authorized and approved each report entry submitted to CFIS [the campaign finance information system]. NMAC 1.10.13.8.

27. Ms. Montoya violated Section 1-19-34.7 (D) of the Campaign Reporting Act by failing to treat the two \$5,000 donations from Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC as coming from these two entities on the Second Bi-Annual Report submitted 4/10/2022 through CFIS. Exhibit 4. Instead she reported the two donations, in the amounts of \$5,200 and \$4,800 as coming from Adelante Sandoval in September, 2021 even though she knew, or was deemed to have known, that they came from Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC.

DECISION

The Hearing Officer has concluded that the Respondent Laura Montoya (Respondent) violated two different sections of the Campaign Reporting Act, by knowingly accepting donations made by one person in the name of another person, NMSA 1978 § 1-19-34.3(A) (2019), and by failing to treat contributions that had been directed through another person to the candidate as contributions from the person to the candidate. NMSA 1978 § 1-19-34.7(D) (2019). Respondent has taken the position throughout this case that she had no knowledge that the \$10,000 donation

to the PAC that was later donated to her, had originated with Mr. Plante or that the donation had come from two LLCs that he managed. The Hearing Officer has determined that this line of testimony is not credible because it is inconsistent with the documentary evidence, including texts, bank documents and with the testimony of Mr. Daul. The Hearing Officer also finds it highly unusual that the memories of the witnesses have faded so completely that they are virtually unable to recall anything substantive about the September 21, 2021 afternoon in question, or the fact that a large, apparently unexpected, contribution appeared immediately after a campaign event in Corrales and yet they have no memory of the circumstances or details of that contribution. Because of the nuanced testimony by Ms. Montoya, Mr. Daul, Mr. Leonard and Mr. Plante, a great deal of which danced around the questions by claiming they could not remember or recall the events that led to this complaint, the Hearing Officer has had to weigh the credibility of the witnesses as well as take into consideration the circumstantial evidence and the evidentiary documents to determine the Findings of Fact and Conclusions of Law.

The Respondent has also argued that the “earmarking” section of the Campaign Reporting Act must be interpreted in light of the New Mexico Administrative Code’s definition of earmarking. The NMAC states that “‘Earmarking’ means making a contribution in which the original donor expresses an intention for the contribution to pass through some other person to a specific candidate or committee or to be used for a specific purpose, such as funding independent expenditures.” NMAC 1.10.13.7. Respondent argues that in light of the NMAC definition of earmarking, Section 1-19-34.7(D) must include a requirement that the original donor “expresses an intention” and that moreover, there must be direct evidence that someone heard the donor express that intention by using the word “earmarking.” No witness admitted that they expressly

heard Mr. Plante state that he intended for the two \$5,000 donations be earmarked for Ms. Montoya's campaign.

The Hearing Office does not agree with this interpretation of Section 1-19-34.7(D) of the Campaign Reporting Act. First, the section states clearly that its provisions include "contributions that are in any way earmarked *or otherwise directed* through another person to a candidate." (emphasis added) Thus, the statute covers situations that may not meet the NMAC definition of earmarking but may in some other manner be directed through another person to a candidate. Second, although no one admits to hearing Mr. Plante state that he intended the two \$5,000 contributions to the PAC to be contributed to Ms. Montoya, Mr. Plante himself testified in his deposition that, "Obviously I intended for the PAC to support Laura." Plante dep. 35:12-13. Mr. Daul, who is the Treasurer of the PAC, admits someone communicated to him that Mr. Plante communicated his desire to have the PAC support Ms. Montoya. The only logical explanation is that Mr. Plante directed, in some manner, through Mr. Leonard or Ms. Montoya, that the donations he was making on September 21, 2021 would be going to a PAC which, in turn, would send the donation to Ms. Montoya.

CIVIL PENALTY

1. Under the Campaign Reporting Act, a civil penalty of up to a thousand dollars may be assessed for each violation. The penalty may not exceed a total of twenty thousand dollars for each violation and can include forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution." NMSA 1978 §1-19-34.6(B).


2. The Hearing Officer declines to order forfeiture of the \$10,000 because there is little evidence of bad faith on the part of the Respondent or of public harm.

3. However, because the Hearing Officer has found that Respondent has violated two different sections of the Campaign Reporting Act he will impose a civil penalty of \$1,000.00.

ORDER

The Hearing Officer has concluded that the Respondent violated Section 1-19-34.3(A) of the Campaign Reporting Act by incorrectly reporting the two donations from of Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC, as coming from the PAC Adelante Sandoval, and violated 1-19-34.7(D) (2019) of the Campaign Reporting Act by failing to treat the two \$5,000 donations from Sheriff's Posse Road 1, LLC and Sheriff's Posse Road 2, LLC as coming from these two entities on the Second Bi-Annual Report submitted 4/10/2022 through CFIS. Exhibit 4. Instead Respondent reported the two donations, in the amounts of \$5,200 and \$4,800 as coming from Adelante Sandoval. Respondent was required to report the donations to her campaign truthfully and accurately, which she failed to do. The Hearing Officer hereby assess a civil penalty of \$1,000.00 for the two statutory violations.

IT IS SO ORDERED.


HEARING OFFICER HON. ALAN C. TORGERSON (RET.)

NOTICE OF THE RIGHT OF APPEAL

Within thirty days of the issuance of this decision, the Complainant, the Respondent, or the Intervenor General Counsel may appeal the decision of the Hearing Officer to the full commission by filing a notice stating:

- 1) each party taking the appeal and each party against whom the appeal is taken:
- 2) the name, address, telephone number and email address of counsel for the appellant:
- 3) the decision or part of a decision from which the party appeals, and
- 4) the specific grounds for the appeal, including specific references to any evidence or law interpreted by the hearing officer.

NMAC 1.8.3.15.