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STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

IN THE MATTER OF

Robert Porter

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MAR 27 2019
BY
LEG. ETHICS COMM.

SUBSTANTIAL BASIS INVESTIGATION REPORT AND SETTLEMENT AGREEMENT

Case No. 18-212

WHEREAS, the Joint Commission on Public Ethics ("JCOPE") is authorized by Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of Section 73-a of the Public Officers Law has occurred, to issue a report of its findings of fact and conclusions of law, and to refer JCOPE's findings with respect to Legislative candidates to the New York State Legislative Ethics Commission ("LEC") for enforcement;

WHEREAS, the LEC is authorized by Legislative Law §80 to assess penalties on candidates of the Legislature for any violation of the Public Officers Law;

WHEREAS, Robert Porter, ("Respondent") was required to comply with the reporting requirements set forth in Section 73-a of the Public Officers Law;

WHEREAS, the JCOPE has found that the Respondent was required to file the 2017 Financial Disclosure Statement(s) (the "Statement(s)") by the statutory due date(s) pursuant to Public Officers Law §73-a;

WHEREAS, the Respondent was notified by JCOPE that his/her filing was overdue, and was given an opportunity to submit the required filings and avoid administrative enforcement procedures and applicable penalties, but still failed to file the required Statement;

WHEREAS, on July 30, 2018, a Notice of Failure to File was issued to the Respondent which afforded Respondent fifteen (15) days to file;

WHEREAS, on August 15, 2018, a Notice of Delinquency was issued to the Respondent;

WHEREAS, on October 5, 2018, a letter was sent to the Respondent alleging violation(s) of the Public Officers Law § 73-a which afforded Respondent fifteen (15) days to respond ("15 day letter");

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between JCOPE, the LEC, and Respondent;

WHEREAS, in lieu of appearing in an adjudicatory proceeding that could result in the assessment of a civil penalty against Respondent, the parties to this Agreement have agreed to

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resolve their dispute in a manner that avoids further administrative and/or adjudicatory proceedings;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree that:

I. The Respondent admits that he did not file the Statement prior to receiving the 15-day letter.

II. The Respondent admits that he/she knowingly and willfully failed to file the Statement(s) by the statutory deadline in violation of the Public Officers Law §73-a.

III. The Respondent filed an accurate and complete 2017 Financial Disclosure Statement(s) on October 10, 2018.

IV. The Respondent agrees to pay to the LEC the amount of $100.00 in settlement of said violation within fifteen (15) days of the execution of this Agreement. If full payment is not received within fifteen (15) days of the execution of this Agreement, this Agreement shall become null and void in its entirety.

V. JCOPE and the LEC have agreed to the terms of this Agreement based on, among other things, the representations made to JCOPE by Respondent. To the extent that representations made by Respondent are later found by JCOPE or the LEC to be materially incomplete or inaccurate, Respondent shall be in breach of this Agreement.

VI. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.

VII. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which JCOPE and the LEC are not parties. A violation of this Paragraph constitutes a breach of this Agreement by Respondent.

VIII. Upon a breach of this Agreement, JCOPE and/or LEC may, in their discretion, deem the Agreement null and void in its entirety, issue a Notice of Substantial Basis Investigation and Hearing, which may include additional charges against Respondent, proceed with an enforcement action, and then issue a new Substantial Basis Investigation Report; or deem the Respondent in breach of this Agreement and pursue, in court, any other remedy to which JCOPE and/or LEC are entitled at law or in equity, including, but not limited to, specific performance or injunction. As to any new Substantial Basis Investigation Report or enforcement action by JCOPE and/or LEC pursuant to this paragraph: (1) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses; and (2) Respondent expressly acknowledges and agrees that JCOPE

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and/or LEC may use any statements herein, or any other statements, documents or materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of Respondent, in any proceeding against Respondent relating to the allegations herein.

IX. Respondent shall, upon request by JCOPE and/or LEC, provide all documentation and information reasonably necessary for JCOPE and/or LEC to verify compliance with this Agreement.

X. Respondent understands and acknowledges that JCOPE may investigate any other conduct not covered by this Agreement, by Respondent and take any appropriate action.

XI. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of JCOPE and/or the LEC relating to this matter in any forum.

XII. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

XIII. Respondent consents to the jurisdiction of JCOPE and LEC in any proceeding to enforce this Agreement.

XIV. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§94(14) & (19) and Legislative Law §§ (9) & (12).

XV. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.

XVI. Any amendment or modification to this Agreement shall be in writing and signed by all parties.

XVII. This Agreement shall become effective upon execution by JCOPE and the LEC or their designees.

XVIII. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

XIX. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement.

Dated: 3/26/19

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BY_____

LEG. ETHICS COMM.

Seth H. Agata, Executive Director
New York State Joint Commission on Public Ethics

4/1/19

Lisa Reid, Executive Director
New York State Legislative Ethics Commission

ACCEPTED AND AGREED TO
THIS 26 DAY OF MARCH, ~~2018~~ 2019

Respondent

Robert Porter

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BY_____
LEG. ETHICS COMM.

Approved: Michael K. Rozen

Robert Cohen
James E. Dering
Colleen C. DiPirro
Julie A. Garcia
Marvin Jacob
Gary J. Lavine
J. Gerard McAuliffe, Jr.
David J. McNamara
Barry C. Sample
George H. Weissman
James A. Yates

Members