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July 21, 2009

David Eberhardt
Mercer County Criminal Division Manager
209 S. Broad Street
PO Box 8068
Trenton, NJ 08650-0068

Re: **State v. Rosemary McClave**
Ind. No. 09-03-00052-S
Criminal Justice File No. 200708065

Dear Mr. Eberhardt:

Please be advised that I represent the State of New Jersey in the prosecution of the above-captioned matter. For the reasons set forth below, the State objects to Rosemary McClave's admission into the Mercer County Pretrial Intervention Program.

In considering defendant's application, I have reviewed the entire Division of Criminal Justice file regarding this matter, as well as McClave's Pretrial Intervention Application. I also reviewed the PTI Guidelines set forth in R. 3:28 and the statutory criteria set forth in N.J.S.A. 2C:43-12.

Rosemary McClave is the current Chief Financial Officer for the Boro of Teterboro, and was the treasurer for former State Assemblyman Neil Cohen's election fund. Between March of 2003 and November of 2006, McClave wrote ten checks to herself from the Election Fund of Neil Cohen totaling \$5,562.54. According to Election Fund of Neil Cohen records, as well as records kept by the New Jersey Election Law Enforcement Commission, the checks were written as reimbursement for various campaign supplies including computers, ink, paper, etc. The checks were written and signed by McClave, and made payable to American Express to pay her American Express bills. However, an examination of the American Express bills indicated that McClave did not purchase campaign supplies, and instead purchased personal items including clothing from QVC and toys from American Girl.



In an audiotaped interview with Det. John Pizzuro, New Jersey State Police, McClave admitted that she wrote checks from the campaign to pay her American Express bills and that the American Express bills contain no campaign supply purchases. However, she claimed that she made cash purchases of supplies and was simply paying the American Express bills in lieu of following formal reimbursement procedures. However, she added that she kept no receipts for the cash purchases and that what she did, "maybe it was wrong." She also acknowledged that she "fudged the numbers" because she did not accurately maintain records of the specific amounts she allegedly spent on campaign supplies. Detective Pizzuro asked McClave why she did not simply use the credit cards issued to the campaign to purchase supplies, and McClave responded, "I don't know."

As treasurer for the Election Fund of Neil Cohen, McClave was also responsible for filing reports of expenditures to the New Jersey Election Law Enforcement Commission. McClave filed six separate reports containing false claims that she was reimbursed by the Election Fund of Neil Cohen for campaign supplies, when, in fact, she did not purchase supplies.

McClave was charged with one count of third degree Theft by Deception, in violation of N.J.S.A. 2C:20-4, and six counts of third degree Tampering with Public Records or Information, in violation of N.J.S.A. 2C:28-7.

In considering the guidelines listed in R. 3:28 and N.J.S.A. 2C:43-12, it is clear that certain of the factors weigh in favor of allowing McClave to enter the PTI program. In particular, the fact that McClave is 65 years of age, has had no prior arrests or convictions, and suffers from Parkinson's Disease. However, the nature of these offenses, in particular, that McClave breached a public trust, weigh heavily against her admission into the program, and the State believes that admission into the program would depreciate the seriousness of the defendant's crimes. R. 3:28, Guideline 3(i)(4). McClave was the treasurer of a State Assemblyman's campaign, and was entrusted by both the candidate and his financial supporters with assuring that donations were used for their intended purpose: to further the Assemblyman's campaign. McClave operated with very little oversight because of the trust granted to her by the candidate, and accordingly was able to commit these thefts over several years.

In addition, McClave was responsible for filing accurate reports regarding the candidate's finances with the New Jersey Election Law Enforcement Commission. But on several occasions, and over the course of several years, she violated the trust of both the candidate and the public by filing false financial reports. These false filings were designed to cover her initial thefts, and had the effect of further breaching the trust placed in her as a campaign treasurer. See, *State v. Imbriani*, 291 N.J. Super 171 (App. Div. 1996)(PTI rejection upheld for repeated thefts by judge); *State v. Mahoney*, 376 N.J. Super. 63 (App. Div. 2005)(PTI rejection upheld for theft of client funds by attorney). For these reasons, the State objects to Rosemary McClave's admission

into the PTI program.

Sincerely,

Erik Daab
Deputy Attorney General
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