

SEP 10 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 470
DATE RECEIVED: April 23, 2008
DATE ACTIVATED: May 13, 2008

RAD REFFERRAL: 08L-22
DATE OF REFERRAL: May 30, 2008
DATE ACTIVATED: June 9, 2008

EXPIRATION OF SOL: March 5, 2006 to
October 29, 2012¹

SOURCE:

Sua Sponte Submission by National Republican
Congressional Committee (Pre-MUR 470)
Internally Generated (RR 08L-22)

RESPONDENTS:

National Republican Congressional Committee and
Keith Davis, in his official capacity as treasurer;
Christopher Ward

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 432(b)
2 U.S.C. § 432(c)
2 U.S.C. § 434(b)
2 U.S.C. § 437g(a)(5)(B)
11 C.F.R. § 102.15
11 C.F.R. § 104.3(a)(1)
11 C.F.R. § 104.3(b)
11 C.F.R. § 104.14(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports
RAD Referral Materials

FEDERAL AGENCIES CHECKED:

¹ We are not yet able to assign a precise range for the statute of limitations dates because we do not yet know the precise dates of the potential violations. The NRCC submitted a list of "apparently unauthorized" disbursements that were previously unreported on the Committee's monthly disclosure reports. These disbursements began in March 2001 and ended in October 2007.

I. INTRODUCTION

Pre-MUR 470 is a *sua sponte* submission filed by the National Republican Congressional Committee ("NRCC" or "the Committee") and Keith Davis, in his official capacity as treasurer, regarding possible campaign finance violations. Information contained in the NRCC's April 23, 2008 *sua sponte* submission and additional materials submitted by the NRCC on June 20, 2008 (the "Covington & Burling Investigation Summary") allege that the NRCC's former treasurer, Christopher Ward, made unauthorized disbursements totaling approximately \$725,000 of NRCC funds, in violation of the Federal Election Campaign Act of 1971, as amended ("the Act").

Additionally, RR 08L-22 is a referral of the NRCC from the Reports Analysis Division to this Office for apparent reporting violations resulting from the unauthorized disbursements. Specifically, the NRCC disclosed a cash-on-hand balance for the period ending January 31, 2008 on its March 2008 Monthly Report that was \$740,152.89 lower than the closing cash-on-hand balance reported in the NRCC's February 2008 Monthly Report. The NRCC's current treasurer, Keith Davis, explained in correspondence with RAD that the NRCC's cash-on-hand balance discrepancy is the result of Ward's unauthorized disbursements that are at issue in Pre-MUR 470.

Based on the available information, we recommend that the Commission find reason to believe that the National Republican Congressional Committee and Keith Davis, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c) and 434(b). We also recommend that the Commission find reason to believe that Christopher Ward knowingly and willfully violated

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2 U.S.C. §§ 432(b), 432(c) and 434(b). As discussed below, an investigation is necessary to determine the full extent of Ward's embezzlement from the Committee and the extent of misreporting by the NRCC.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Christopher Ward worked at the NRCC starting in November 1995, served as the NRCC's long-time comptroller, was the treasurer of NRCC from 2003 through July 2007, and was a consultant for the NRCC from August 2007 until his termination in January 2008. NRCC *Sua Sponte* Submission at 1-2. The NRCC discovered the alleged embezzlement on January 28, 2008 when Ward informed the NRCC that there had been no audit of the Committee for the year 2006. *Id.* at 2. Ward's consultancy was terminated that same day. *Id.* The NRCC then discovered that Ward fabricated a draft final audit report and submitted false 2006 financial statements to the NRCC's bank, and had been forging outside audit reports for several years. *Id.* As a result, the NRCC retained outside counsel, reported the matter to the FBI and the Commission, and hired PricewaterhouseCoopers to conduct a forensic audit of the NRCC's financial records. *Id.*

1. Embezzlement and False Reporting

During the course of an internal investigation, the NRCC learned that after becoming treasurer in 2003, Ward submitted false audit reports to the NRCC's bank for the years

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1 2002-2006.² NRCC *Sua Sponte* Submission at 2. The NRCC's submission also states that it
2 appears likely that Ward made several hundred thousand dollars in unauthorized wire transfers of
3 NRCC funds to outside committees whose bank accounts Ward had access to, including joint
4 fundraising committees. *Id.* It appears that Ward subsequently made transfers from those
5 accounts to his personal or business bank accounts. *Id.* The NRCC also discovered that there are
6 numerous instances in which the unauthorized transfers were not accurately reported, or not
7 reported at all, on the NRCC's disclosure reports. *Id.*

8 The NRCC's initial investigation also revealed that it likely had inaccurately disclosed its
9 cash on hand as a result of Ward's unauthorized transfers. NRCC *Sua Sponte* Submission at 2.
10 At year-end 2006, the NRCC's actual cash on hand was approximately \$990,000 less than the
11 amount disclosed in its FEC reports. *Id.* at 3. The actual cash on hand for the January 2008
12 monthly report (filed February 20, 2008) was approximately \$740,000 less than what was
13 disclosed. *Id.* The committee has also learned that the amount disclosed as outstanding on its
14 line of credit was \$200,000 less than the amount actually owed. *Id.*

15 On June 20, 2008 the NRCC provided us with Covington & Burling's summary of the
16 audit conducted by PricewaterhouseCoopers. The NRCC did give us the audit report itself. The
17 document provided largely restated information contained in the Committee's original ~~and reports~~
18 submission and press articles. It reported that the total estimated loss to the NRCC was
19 approximately \$725,000, that evidence of embezzlement was found in the earliest records

² According to news articles, the former head of the NRCC Oversight Committee, Rep. Greg Walden, stated that he had sought a meeting with the outside auditors (Deloitte & Touche, LLP) but that Ward always had a seemingly legitimate reason why the meeting did not happen. Paul Kane, *NRCC Says Ex-Treasurer Diverted up to \$1 Million*, WASHINGTON POST (March 14, 2008). Rep. Walden stated that the false audit reports were almost perfect forgeries. *Id.*

1 reviewed (2001), and that Deloitte and Touche, LLP never completed an audit of the 2002 fiscal
2 year. Covington & Burling Investigation Summary at 2-3. The document also confirmed that
3 Ward's unauthorized transfers were either not reported or inaccurately reported in the NRCC's
4 reports to the Commission. Covington & Burling Investigation Summary at 3.

5 The NRCC submitted additional information on July 22, 2008 which it had obtained in
6 the course of its internal investigation and audit that were completed on June 6, 2008. The five
7 categories of information included in these documents are: (1) calculations for the amount of loss
8 to the NRCC; (2) unauthorized disbursements from affiliated joint fundraising committees, the
9 President's Dinner Committees; (3) unauthorized payments to other committees for whom
10 Christopher Ward was treasurer; (4) unauthorized disbursements from the NRCC to the
11 President's Dinner Committees; and (5) copies of audit reports fabricated by Ward and provided
12 to the NRCC's bank. One document includes a \$723,866.50 figure representing the "Total
13 Estimated Loss" to NRCC, which is the sum of "apparently unauthorized" transfers by Ward
14 from the NRCC to the President's Dinner Committees and other committees for which Ward
15 served as treasurer.

16 The calculation of "apparently unauthorized" transactions in this set of documents is not
17 entirely clear. Aside from several footnotes, there is no indication specifically identifying the
18 instructions given by the NRCC to the forensic auditors of Pricewaterhouse, the source of
19 information that the auditors worked with, or the methods used by the auditors to evaluate the
20 transactions in order to determine what should be included in the analysis and how they
21 determined what was "apparently unauthorized." However, according to counsel for the NRCC,
22 the list of \$723,866.50 in "apparently unauthorized" transactions may include merely undisclosed

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1 but authorized disbursements, that is, the lists may not be limited solely to unauthorized
2 transactions resulting from Ward's embezzlement. The documents include additional loss
3 numbers for the NRCC (as well as the National Republican Senatorial Committee, which has not
4 reported any Ward-related increased activity to the Commission) that similarly will need to be
5 clarified. The sources of information, the scope of the audit, and the methods used by the
6 auditors will need to be clarified during the course of the proposed investigation. Consequently,
7 while the lists reveal undisclosed activity, further investigation will be necessary to better
8 understand which transactions were indeed embezzlement and which the NRCC simply failed to
9 report, in order to determine the NRCC's and Chris Ward's liability for the undisclosed
10 transactions.

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17 **B. Legal Analysis**

18 **1. NRCC's Liability**

19 Although the NRCC's failure to accurately report disbursements stems from Christopher
20 Ward's alleged embezzlement scheme, the NRCC nevertheless violated the Act when it filed the
21 resulting inaccurate reports. Committees, through their treasurers, are required to disclose
22 disbursements and cash-on-hand balances accurately. See 2 U.S.C. § 434(b)(1), (4) and

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(6)(B)(v); 11 C.F.R. § 104.3(a)(1) and (b). Committee treasurers are responsible for the timely and complete filing of disclosure reports and for the accuracy of the information contained therein. See 11 C.F.R. § 104.14(d). Under the Act, a committee, through its treasurer, is also required to keep an accurate account of receipts and disbursements. See 2 U.S.C. §§ 432(c)(5), 434(b)(2), (3), (4), and (6) and 11 C.F.R. § 104.3(b). The Commission has held committees responsible for failure to file accurate reports even when the submission of inaccurate information is due to embezzlement by committee staff. See, e.g., MUR 5610 (Date North Carolina Victory Committee).

When determining committee liability, the Commission has examined whether the embezzlement resulted from the failure to implement adequate internal control procedures over committee finances (e.g., regular audits, controls procedures over receipts and disbursements, segregated duties, or periodic review of finances). See MUR 5923 (American Dream PAC); MUR 5920 (Women's Campaign Fund); MUR 5872 (Jane Hague for Congress); MUR 5721 (Lockheed Martin Employee's PAC); MUR 5811 (Doggett for U.S. Congress); MUR 5812 (Ohio State Medical Association PAC); MUR 5813 (Georgia Medical PAC); and MUR 5814 (Lamutt for Congress). In the *Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement*, the Commission stated that it would not seek a monetary penalty against a committee for filing inaccurate reports due to embezzlement if the committee had certain minimal internal controls in place at the time of the embezzlement and the committee took certain steps after discovering the embezzlement. 72 Fed. Reg. 16,695 (April 5, 2007). In order to determine the NRCC's liability in this matter, we will need to know more about the internal controls the committee had in place at the time of the alleged embezzlement.

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1 The information available thus far suggests that the NRCC may not qualify for the self-
2 reported embezzlement safe harbor. The NRCC claims that it had unspecified internal controls
3 in place that are similar to those listed in the safe harbor. NRCC *Sua Sponte* Submission at
4 page 4, note 2, and page 5. However, it appears that at least two (and likely more) of the
5 minimum internal controls specified in the safe harbor, dual signature requirements for wire
6 transfers and monthly reconciliation of bank statements for unauthorized transactions, were not
7 in place at the NRCC at the time of Ward's embezzlement. According to NRCC's *sua sponte*
8 submission and the Covington & Burling Investigation Summary, Ward may have accomplished
9 his embezzlement by single-handedly executing hundreds of thousands of dollars of wire
10 transfers from the NRCC's accounts. The NRCC stated that it has now instituted a new
11 requirement that wire transfers require confirmation by a second individual. NRCC *Sua Sponte*
12 Submission at 4-5; Covington & Burling Investigation Summary at 3. New procedures for
13 periodic bank reconciliation may also be implemented. NRCC *Sua Sponte* Submission at 5;
14 Covington & Burling Investigation Summary at 4. The NRCC *sua sponte* submission indicates
15 that Ward conducted bank reconciliations for years when he served as comptroller to the NRCC
16 and presented the results to the Committee's treasurer. Once Ward became treasurer himself, the
17 reconciliations became less frequent. NRCC *Sua Sponte* Submission at 5, note 5.

18 There has been some suggestion that the NRCC had stricter internal financial controls in
19 place in the past but reduced some of these controls in order to give staffers more freedom to
20 quickly spend money in the heat of campaign season. For example, according to one news
21 article, rules that required the NRCC Executive Committee to approve expenditures over
22 \$10,000 were reportedly waived, various department budgets were merged, and a prohibition

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1 against staffers having outside employment was repealed. Josh Bresnahan and Patrick
2 O'Connor, *GOP Sources Cite Lax Controls at NRCC*, POLITICO (February 26, 2008),
3 <http://www.politico.com/news/stories/0208/8691.html>. One reportedly pivotal change was the
4 departure of the NRCC's former treasurer, Donna Anderson, who oversaw NRCC's accounting,
5 followed by the elevation of Ward to treasurer. *Id.* Ward was also able to establish a consulting
6 business, Political Compliance Services, and serve as treasurer to numerous other committees,
7 through which he allegedly diverted the funds of NRCC and his other clients. *Id.* Although at
8 one time no individual could single-handedly authorize the wire transfer of money from one
9 account into another, Ward eventually became the only NRCC official empowered to use wire
10 transfers without a second person's approval. *Id.*

11 Therefore, there is reason to investigate whether the embezzlement resulted from a lack
12 of internal controls. Accordingly, we recommend that the Commission find reason to believe
13 that the National Republican Congressional Committee and Keith Davis, in his official capacity
14 as treasurer, violated 2 U.S.C. §§ 432(c) and 434(b) by misreporting due to the embezzlement of
15 its treasurer, Christopher Ward.

16 2. Christopher Ward's Liability

17 According to the Commission's *Statement of Policy Regarding Treasurers Subject to*
18 *Enforcement Proceedings*, a former treasurer may be named as a respondent in his or her
19 personal capacity when it appears that he or she, while serving as treasurer, may have violated
20 obligations imposed by the Act or regulations, and where the violation was knowing and willful.
21 70 Fed. Reg. 3 (January 3, 2005). See MUR 5610 (Earl Allen Haywood), MUR 5721 (Lockheed
22 Martin), MUR 5971 (Lindsey Graham for Senate). Because Ward appears to have transferred

1 hundreds of thousands of dollars from the NRCC to himself over the course of at least six to
2 seven years, it is appropriate to make findings as to Christopher Ward in his personal capacity for
3 his actions while serving as treasurer of the NRCC.

4 Under the Act, a treasurer is required to accurately keep an account of and report
5 disbursements. See 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6). Committee treasurers are also
6 personally responsible for the timely and complete filing of reports and statements required by
7 the Act and for the accuracy of any information or statement contained in it. 11 C.F.R.
8 § 104.14(d). In this matter, it appears that Ward failed to report disbursements of NRCC funds to
9 other committees and then to his own personal account while he served as treasurer, and should
10 be named in his personal capacity for these violations.

11 The Act also prohibits the commingling of committee Federal funds with "the personal
12 funds of any individual." 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15. The Commission has
13 previously made findings that individuals violated 2 U.S.C. § 432(b)(3) in matters where those
14 individuals misappropriated committee funds by making unauthorized disbursements to
15 themselves. See, e.g., MUR 5610 (Dole), MUR 5721 (Lockheed Martin Employees PAC),
16 MUR 5811 (Doegett for Congress), MUR 5814 (Lamutt for Congress), MUR 5872 (Hagus for
17 Congress), MUR 5920 (Women's Campaign Fund), MUR 5971 (Lindsey Graham for Senate). In
18 this matter, Christopher Ward appears to have commingled NRCC funds with his personal funds
19 by wiring NRCC's funds to the bank accounts of other committees and then subsequently
20 transferring those funds to his own bank accounts.

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1 The Act also addresses violations that are knowing and willful. *See* 2 U.S.C.
2 § 437g(a)(5)(B). The knowing and willful standard requires knowledge that one is violating the
3 law. The phrase "knowing and willful" indicates that "acts were committed with full knowledge
4 of all of the relevant facts and a recognition that the action is prohibited by law..." 122 Cong.
5 Rec. H3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02
6 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such
7 reckless disregard of the consequences as to be equivalent to a knowing, conscious, and
8 deliberate flaunting of the Act," but concluding on the facts before it that this standard was not
9 met) (*cited in* *National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)).
10 An inference of knowing and willful conduct may be drawn "from the defendant's elaborate
11 scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th
12 Cir. 1990). The evidence need not show that the defendant "had specific knowledge of the
13 regulations" or "conclusively demonstrate" a defendant's "state of mind," if there are "facts and
14 circumstances from which the jury reasonably could infer the [the defendant] knew her conduct
15 was unauthorized and illegal." *Id.* at 213 (*quoting* *United States v. Bordelon*,
16 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)). In this matter, available
17 information indicates that Ward attempted to disguise his activities wiring funds to other
18 committees and omitting the disbursements from the NRCC's records, and then subsequently
19 making transfers into his personal account, from which we can infer that he had knowledge his
20 conduct was prohibited by law.

Consequently, we recommend that the Commission find reason to believe that Christopher Ward knowingly and willfully violated 2 U.S.C. §§ 432(b), 432(c) and 434(b).³

3. Related RAD-Referral – RR 08L-22

In its March 2008 Monthly Report, NRCC disclosed a cash-on-hand balance for the period ending January 31, 2008 that was \$740,152.89 lower than the closing cash-on-hand balance reported in NRCC's February 2008 Monthly Report. The NRCC's current treasurer, Keith A. Davis, explained to RAD that this amendment was the NRCC's best estimate of the correct cash-on-hand amount and that the discrepancy was due to the activities of Christopher Ward.⁴ Consequently, RAD referred the NRCC to this Office. Because the relevant facts of RR 08L-22 are the same as those in Pre-MUR 470, we recommend opening a MUR for RR 08L-22 and merging it with the MUR opened for Pre-MUR 470.

III. INVESTIGATION PLAN

The goals of the proposed investigation will include verifying the accuracy of the NRCC's list of Ward's unauthorized transactions, determining the extent of Ward's embezzlement as opposed to misreporting, and identifying the inaccurate FEC reports filed with the Commission. As mentioned above, the list of "apparently unauthorized" transactions provided by the NRCC may include unreported disbursements that were authorized and not the result of embezzlement, which may have resulted in reporting violations by the Committee.

³ Ward is also a respondent in several other matters: Pre-MUR 465 (Tuesday Group PAC), Pre-MUR 466 (DENT PAC), Pre-MUR 467 (JEBFUND), and Pre-MUR 468 (COLDPAC). Ward allegedly embezzled funds from each of these committees while he served as treasurer. Recommendations as to each of these matters are being submitted to the Commission simultaneously with this Report. Recommendations in several other matters involving Christopher Ward will be forthcoming.

We recommend formal discovery be authorized, to be used if needed, to ensure the efficient, accurate, and complete discovery of the information required to resolve this matter.


IV. RECOMMENDATIONS

1. Open a MUR as to Pre-MUR 470.
2. Open a MUR as to RR 08L-22.
3. Merge the two MURs.
4. Find reason to believe that the National Republican Congressional Committee and Keith Davis, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c) and 434(b).
5. Find reason to believe that Christopher Ward knowingly and willfully violated 2 U.S.C. §§ 432(b), 432(c) and 434(b).
6. Approve the attached Factual and Legal Analyses.
7. Authorize the use of compulsory process.
8. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

7/10/08
Date

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

⁴ RAD had also requested additional information regarding a \$200,000 discrepancy in the NRCC's disclosure of loan payments. The NRCC explained that a previously disclosed \$200,000 loan payment did not occur.

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