



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Facsimile & First Class Mail

(202) 457-6315

Ben Ginsberg, Esq.

Patton Boggs LLP

2550 M Street, NW

Washington, D.C. 20037

FEB 01 2012

RE: MUR 6234
Arlen B. Cenac, Jr.
Cenac Towing Co., LLC, as the
successor-in-interest to Cenac
Towing Co., Inc.

Dear Mr. Ginsberg:

By letter dated June 28, 2011, the Federal Election Commission ("Commission") notified your clients Arlen B. Cenac, Jr. and Cenac Towing Co, Inc., that on June 29, 2010, based on a complaint filed by Citizens for Responsibility and Ethics in Washington, the Commission found reason to believe that "Unknown Respondents" may have violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441b and 441f by making excessive contributions, prohibited corporate contributions, and contributions in the names of others to the Friends of Mary Landrieu, Inc. That letter stated that the Commission had information indicating that Mr. Cenac was one of the "Unknown Respondents" who violated the Federal Election Campaign Act of 1971, as amended, ("the Act"), as described above. The letter also notified your clients that the Commission had information in its possession indicating that Cenac Towing Co., Inc. and Arlen B. Cenac, Jr., as President, may have violated 2 U.S.C. §§ 441b and 441f by making prohibited corporate contributions and contributions in the names of others to the David Vitter for U.S. Senate Committee. The letter further notified your clients that these violations of the Act may have been knowing and willful.

On January 24, 2012, after reviewing all the available information, including your response to the notification letter, the Commission substituted the name Arlen B. Cenac, Jr. in place of "Unknown Respondent" in its previous reason to believe finding that "Unknown Respondents" violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441b and 441f and also found that Mr. Cenac's violations were knowing and willful. Further, the Commission found reason to believe that Cenac Towing Co., LLC, as the successor-in-interest to Cenac Towing Co., Inc.,

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knowingly and willfully violated 2 U.S.C. §§ 441b and 441f. The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

Your clients may submit any factual or legal materials that they believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receiving this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that your clients wish the investigation to be made public. Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you have any questions, please contact Marianne Abely or Audra Hale-Maddox, the attorneys assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Arlen B. Cenac, Jr. MUR: 6234

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). On May 14, 2008, Friends of Mary Landrieu, Inc. ("Landrieu Committee") received six sequentially numbered cashier's checks, totaling \$25,300, issued by Whitney National Bank ("Bank"). At some point after receiving these funds, the Landrieu Committee attempted to confirm the legality of each contribution by contacting the 11 individuals listed as remitters on the six cashier's checks. The Landrieu Committee received various responses from the alleged contributors ranging from denial of any knowledge of a contribution to signed Contributor Information Forms verifying that the contributions were personal contributions drawn on a personal/joint checking account containing personal funds. One of the putative contributors disclaimed any knowledge of making any contributions to the campaign. After receiving the responses to its inquiries, the Landrieu Committee disgorged the \$25,300 to the U.S. Treasury because it suspected that the funds may have come from a prohibited source or may have been made by a person other than the listed remitter.

Based on the information outlined above, the Commission found reason to believe that Unknown Respondents may have violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441b and 441f.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Summary**

3 **1. Contributions to the Landrieu Committee**

4 The information shows that Arlen B. Cenac, Jr. was the original source of the
 5 \$25,300 used to purchase the six cashier's checks made out to the Landrieu Committee.
 6 The Commission has information that the Landrieu Committee approached Louisiana
 7 attorney C. Berwick Duval in the spring of 2008 and asked him to raise funds for the
 8 campaign. The Commission has information that after failing to meet a fundraising
 9 deadline of March 30, and after an inquiry from the Landrieu Committee, Duval
 10 informed the Landrieu Committee that he would shortly forward the contributions to the
 11 campaign. A few days later, on May 14, the Landrieu Committee received a FedEx
 12 envelope containing six sequentially numbered cashier's checks. The information in the
 13 Commission's possession indicates that Duval raised these funds from Cenac, who was
 14 a friend and client.¹ Cenac is the president and sole owner of Cenac Towing Co., LLC,
 15 the successor-in-interest to Cenac Towing Co., Inc. ("Cenac Towing"), and he is the
 16 sole owner of numerous other related companies headquartered in Houma, Louisiana.

17 The Commission has information that, on April 24, 2008, Cenac arranged to
 18 obtain the six subject cashier's checks by calling the Bank's Houma branch. The
 19 available information also indicates that Cenac's secretary arrived at the Bank shortly
 20 after Cenac's telephone call with written instructions and a personal check from Cenac

¹ At the time of this solicitation, Cenac had already made a \$2,300 contribution to the Landrieu Committee.

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1 in the amount of \$25,300. These instructions directed the Bank to prepare six cashier's
2 checks (totaling \$25,300) made payable to Friends of Mary Landrieu, and listed the
3 names and addresses of the "remitters" and the specific amounts to appear on each
4 check. The listed "remitters" were: Mr. & Mrs. Roger Beaudean (\$4,600); Mr. & Mrs.
5 Travis Breaux (\$4,600); Mr. & Mrs. Kurt Fakier (\$4,600); Mr. James Hagen III
6 (\$2,300); Mr. & Mrs. Andrew Soudelier (\$4,600); and Mr. & Mrs. Melvin Spinella
7 (\$4,600). The Commission also has information that, on the same day, Cenac's
8 secretary collected the six cashier's checks and the written instructions. Of the 11
9 individuals listed as "remitters" on these cashier's checks, six are employed as
10 managers in one of several companies owned by or affiliated with Cenac: Cenac
11 Towing; CENAC Offshore, LLC; CTCO Shipyard of Louisiana; Southern Fabrications,
12 LLC; Bayou Black Electric Supply, LLC; and Louisiana Paint & Marine Supply, LLC.
13 The remaining five individuals listed as "remitters" are married to five of these
14 managers.

15 The Commission has information that Cenac's secretary collected the six
16 cashier's checks and the written instructions from the Bank on the same day as the
17 checks were purchased, April 24, 2008. The Commission also has information that
18 Cenac delivered the cashier's checks to Duval, who in turn forwarded them to the
19 Landrieu Committee.

20 Cenac's response corroborates almost all of the material facts outlined above,
21 except Cenac states the instructions he gave his secretary were oral, not written. Cenac
22 admits in his response that he used a personal check in the amount of \$25,300 to

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1 purchase the six cashier's checks from the Bank in order to make contributions to the
2 Landrieu Committee in the names of the individuals listed above. Cenac also
3 acknowledges that making these contributions to the Landrieu Committee was
4 "improper" and claims he was "unskilled in election law." In addition, Cenac states that
5 he made these contributions in the mistaken belief that it was not improper to make
6 contributions in the names of others.

7 **2. Contributions to the Vitter Committee**

8 There is information in the Commission's possession that in February of 2008,
9 Cenac used \$15,000 in corporate funds to purchase six cashier's checks in the amount
10 of \$2,500 each made out to David Vitter for U.S. Senate ("Vitter Committee"). Five of
11 those checks listed names other than Cenac's as the "remitters."

12 The available information indicates that, in late 2007 or early 2008, Senator
13 Vitter personally invited Cenac to his campaign's annual fundraising event in New
14 Orleans. On or about February 4, 2008, Cenac bought the six cashier's checks from the
15 Bank using a \$15,000 check dated January 31, 2008, issued from an account held by
16 Cenac Towing. The Commission has information that Cenac used the same method to
17 buy these cashier's checks as he used to buy the cashier's checks made out to the
18 Landrieu Committee: following a telephone call between Cenac and the Bank, Cenac's
19 secretary arrived at the Bank with written instructions and the \$15,000 check. Cenac
20 directed the Bank to prepare six cashier's checks made payable to the Vitter Committee
21 and listed the names and addresses of the "remitters" along with the specific amounts to
22 appear on each check. The following individuals were listed as "remitters": Mr. &

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Mrs. Berwick Duval (\$2,500); Mr. & Mrs. Arlen Cenac, Sr. (\$2,500); Mr. & Mrs. Kurt Fakier (\$2,500); Mr. & Mrs. Tim Solso (\$2,500); Mr. Arlen Cenac, Jr. & Guest (\$2,500), and Mr. Chet Morrison & Guest (\$2,500). The Bank prepared the checks and, at Cenac's direction, returned the written instructions to his secretary along with the cashier's checks.

In his response, Cenac admits that he signed the Cenac Towing check used to buy the six cashier's checks, although he states he does not remember authorizing or using corporate funds to contribute to the Vitter Committee. Cenac reiterates his claim that he was unskilled in election law and made these contributions in the mistaken belief that it was not improper to make contributions in the names of others.

B. Legal Analysis

1. There is reason to believe that Cenac Violated 2 U.S.C. §§ 441a(a)(1)(A), 441(a)(3), 441b and 441f.

The Federal Election Campaign Act of 1971, as amended, ("the Act") provides that no person shall make contributions to a candidate for federal office or his or her authorized political committee, which in the aggregate exceed \$2,300 for the primary and general elections, respectively. 2 U.S.C. § 441a(a)(1)(A) (2008 election cycle limit). Individuals are also subject to a biennial limit of \$42,700 to federal candidates. 2 U.S.C. § 441a(a)(3) (2008 election cycle limit).

The Act also provides that no person shall make a contribution in the name of another person, or knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f. This prohibition also applies to any person knowingly helping or assisting any person in making a contribution in the name of another,

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1 including "those who initiate or instigate or have some significant participation in a plan
2 or scheme to make a contribution in the name of another..." 11 C.F.R.
3 § 110.4(b)(1)(iii); Explanation and Justification for 11 C.F.R. § 110.4(b)(1)(iii) at 54
4 Fed. Reg. 34,105 (1989).

5 The evidence indicates, and Cenac admits, that he used funds drawn on a
6 personal checking account to make at least \$25,300 in contributions to the Landrieu
7 Committee in the names of others in violation of 2 U.S.C. § 441f. As a result, Cenac
8 appears to have made an excessive contribution to the Landrieu Committee in the
9 amount of \$23,000 and may have exceeded the biennial limitation on contributions.
10 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), and 441f.

11 The Act further prohibits a corporation from making a contribution in
12 connection with a federal election and prohibits any person, including a corporation,
13 from making contributions in the names of others. 2 U.S.C. §§ 441b and 441f. The Act
14 further prohibits a corporate officer from consenting to a corporation making a federal
15 contribution. 2 U.S.C. § 441b. It is undisputed that Cenac improperly authorized the
16 use of Cenac Towing funds to make contributions in the names of others to the Vitter
17 Committee in violation of 2 U.S.C §§ 441b and 441f.

18 Accordingly, the Commission is substituting Arlen B. Cenac, Jr.'s name in place
19 of "Unknown Respondent" in the Commission's previous finding of reason to believe.
20 2 U.S.C. §§ 441a(a)(1)(A), 441(a)(3), 441b and 441f.

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2. There is reason to believe that Cenac's Violations Were Knowing and Willful

There is sufficient information to support a finding of reason to believe that Cenac's violations relating to the contributions made to both the Landrieu and Vitter Committees were knowing and willful.

The Act permits enhanced penalties for knowing and willful violations. 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Taking steps to disguise the source of funds used in illegal activities is evidence of "motivation to evade lawful obligations" and knowing and willful conduct. *Id.* at 213-14 (citing *Ingram v. United States*, 360 U.S. 672, 679 (1959)). It is hornbook law that a principal is liable for the acts of its agents committed within the scope of his or her employment. RESTATEMENT (THIRD) OF AGENCY § 7.07; *U.S. v. Sun-Diamond Growers of California*, 138 F.3d 961 (D.C. Cir. 1998) (criminal convictions affirmed against Sun-Diamond in connection with a corporate contribution reimbursement scheme carried out by officer).

In support of the claim that his violations were not knowing and willful, Cenac states that he was an unsophisticated contributor "unskilled in election law" and the contributions to the Landrieu Committee were "mistakes" resulting from inexperience. Cenac denies that his actions in buying the six cashier's checks at issue reflect "a

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1 knowing and willful attempt to conceal the source of the funds" because they did not
2 involve the use of false names or records. To support his position, Cenac's response
3 points to his lack of concern about either his personal check to the Bank serving as a
4 record of the transaction or his directions that the cashier's checks made out to the
5 Landrieu Committee should be bought on the same day from the same bank. The
6 response also cites the fact that Cenac had his secretary send the cashier's checks
7 together in a single packet as evidence that he did not try to disguise the checks'
8 relationship to each other. Cenac similarly denies that the violations related to the
9 Vitter Committee were knowing and willful.

10 Cenac's response is not persuasive. The available information indicates that
11 Cenac took multiple deliberate steps to conceal that he was the source of the funds used
12 to make illegal contributions to the Landrieu Committee, including sending his
13 secretary to the Bank with written instructions to buy six cashier's checks in the names
14 of 11 individuals and forwarding those checks to the Landrieu Committee through a
15 proxy without informing the campaign that he had raised those funds. There is
16 information that a number of the individuals listed on the cashier's checks did not even
17 know that Cenac had used their names as remitters until the Landrieu Committee
18 contacted them. The Commission has information indicating that Cenac insisted the
19 Bank return the instructions, which undercuts his claim that he was unconcerned about
20 leaving evidence of the transaction. Cenac, as a corporate officer of Cenac Towing,
21 acted in a similarly deceptive way regarding the Vitter Committee contributions.

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1 Cenac's claims that he was an unsophisticated contributor "unskilled in election
2 law" and therefore the contributions to the two committees in the names of others were
3 mistakes resulting from inexperience are not credible, and they are inconsistent with
4 information gleaned from Commission records. The FEC disclosure database shows
5 that between 1987 and 2008, Cenac made no fewer than 67 contributions exceeding
6 \$71,000 to 26 federal political committees. All of these contributions, which were
7 made in Cenac's name and publicly reported, appear to have conformed to the Act's
8 amount and source limitations. Further, Cenac's use of the names of actual people he
9 employed and their spouses to make the contributions, rather than making up names,
10 does not demonstrate a lack of willfulness. In fact, by using the real names of
11 employees and spouses, many of whom appear to have dissembled when they told the
12 Landrieu Committee that the contributions came from their own funds, Cenac may have
13 drawn others into the scheme.

14 Accordingly, the Commission finds reason to believe that Arlen B. Cenac Jr.
15 knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441b, and
16 441f.

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Cenac Towing, Co., LLC, as **MUR: 6234**
6 successor-in-interest to Cenac
7 Towing Co., Inc.
8
9

10 **I. INTRODUCTION**

11 This matter was generated based on information ascertained by the Federal
12 Election Commission ("the Commission") in the normal course of carrying out its
13 supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Factual Summary**

16 Arlen B. Cenac, Jr. is the President and sole owner of Cenac Towing Co., Inc.
17 In or about June 2008, Cenac Towing Co., Inc. merged into Cenac Towing Co., LLC
18 ("Cenac Towing"). Cenac Towing is headquartered in Houma, Louisiana. The
19 Commission has information that Cenac used funds from an account maintained by
20 Cenac Towing to buy six cashier's checks (\$2,500 each), totaling \$15,000, made out to
21 David Vitter for U.S. Senate ("Vitter Committee"). Five of those checks listed names
22 other than Cenac's as the "remitters."

23 The Commission has information that, in late 2007 or early 2008, Senator Vitter
24 personally invited Cenac to his campaign's annual fundraising event in New Orleans.
25 On or about February 4, 2008, Cenac arranged to obtain the six subject cashier's checks
26 by calling Whitney National Bank's Houma branch ("Bank"). The available
27 information also shows that Cenac's secretary arrived at the Bank shortly after Cenac's
28 telephone call with written instructions and the corporate check in the amount of

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1 \$15,000. These instructions directed the Bank to prepare six cashier's checks made
2 payable to the Vitter Committee, and listed the names and addresses of the "remitters"
3 and the specific amounts to appear on each check. The following individuals were
4 listed as "remitters": Mr. & Mrs. Berwick Duval (\$2,500); Mr. & Mrs. Arlen Cenac, Sr.
5 (\$2,500); Mr. & Mrs. Kurt Fakier (\$2,500); Mr. & Mrs. Tim Solso (\$2,500); Mr. Arlen
6 Cenac, Jr. & Guest (\$2,500), and Mr. Chet Morrison & Guest (\$2,500). The Bank
7 prepared the checks and, at Cenac's direction, returned the written instructions to his
8 secretary along with the cashier's checks.

9 In a response filed on behalf of Cenac Towing, Cenac admits that he signed the
10 corporate check used to buy the six cashier's checks, although he states he does not
11 remember authorizing or using corporate funds to contribute to the Vitter Committee.

12 B. Legal Analysis

13 The Federal Election Campaign Act of 1971, as amended, ("the Act") provides
14 that corporations and national banks are prohibited from making contributions from
15 their general treasury funds in connection with any election of any candidate for federal
16 office. 2 U.S.C. § 441b(a). Corporate officers are prohibited from consenting to
17 contributions made by the corporation or national bank. *Id.*

18 The Act also provides that no person shall make a contribution in the name of
19 another person, or knowingly permit his or her name to be used to effect such a
20 contribution. 2 U.S.C. § 441f. This prohibition also applies to any person knowingly
21 helping or assisting any person in making a contribution in the name of another,
22 including "those who initiate or instigate or have some significant participation in a plan
23 or scheme to make a contribution in the name of another..." 11 C.F.R.

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Cenac Towing Co. LLC

1 § 110.4(b)(1)(iii); Explanation and Justification for 11 C.F.R. § 110.4(b)(1)(iii) at 54
2 Fed. Reg. 34,105 (1989).

3 It is undisputed that Cenac Towing used corporate funds to make contributions
4 to the Vitter Committee in the names of others. Accordingly, the Commission finds
5 reason to believe that Cenac Towing Co., LLC, as the successor-in-interest to Cenac
6 Towing, Inc. violated 2 U.S.C. §§ 441b and 441f.

7 There is sufficient information to support a finding of reason to believe that
8 Cenac Towing's violations in this matter were knowing and willful. The Act permits
9 enhanced penalties for knowing and willful violations. 2 U.S.C. §§ 437g(a)(5)(B) and
10 437g(d). The knowing and willful standard requires knowledge that one is violating the
11 law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J.
12 1986). A knowing and willful violation may be established "by proof that the defendant
13 acted deliberately and with knowledge that the representation was false." *United States*
14 *v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Taking steps to disguise the source of
15 funds used in illegal activities is evidence of "motivation to evade lawful obligations"
16 and knowing and willful conduct. *Id.* at 213-14 (citing *Ingram v. United States*, 360
17 U.S. 672, 679 (1959)). It is hornbook law that a principal is liable for the acts of its
18 agents committed within the scope of his or her employment. RESTATEMENT (THIRD)
19 OF AGENCY § 7.07; *U.S. v. Sun-Diamond Growers of California*, 138 F.3d 961 (D.C.
20 Cir. 1998) (criminal convictions affirmed against Sun-Diamond in connection with a
21 corporate contribution reimbursement scheme carried out by officer).

22 In Cenac Towing's response, it claims that the violations in this matter were not
23 knowing and willful. The response states that Cenac was an unsophisticated contributor

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1 "unskilled in election law" and the contributions to the Vitter Committee were a
2 mistake. Cenac Towing denies that Cenac's purchase of the six cashier's checks at
3 issue reflect a knowing and willful attempt to conceal this transaction because Cenac
4 signed the corporate check himself and did not use false names or references.

5 This response is not persuasive. The available information indicates that Cenac
6 took multiple deliberate steps to conceal that he used corporate funds to make illegal
7 contributions to the Vitter Committee, including sending his secretary to the Bank with
8 written instructions to buy six cashier's checks in the names of others without informing
9 the campaign that he had raised those funds. The Commission has information
10 indicating that Cenac insisted the Bank return the instructions, which undercuts his
11 claim that he was unconcerned about leaving evidence of the transaction. Cenac's
12 actions as Cenac Towing's agent are properly attributed to the corporation.

13 Accordingly, the Commission finds reason to believe that Cenac Towing Co.,
14 LLC knowing and willfully violated 2 U.S.C. §§ 441b and 441f.

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