

# CLARK HILL

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November 23, 2010

Jeff S. Jordan, Esq.  
Supervisory Attorney  
Complaints Examination &  
Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6421

Dear Mr. Jordan:

This letter responds to the complaint filed by the Michigan Democratic Party ("MDP"), and its Chairman, Mark Brewer, against Benishek for Congress, and Joseph Shubat, in his official capacity as Treasurer (collectively, "Benishek"). Enclosed please find an executed Designation of Counsel form. The alleged violations in this complaint do not rise to a level that warrants the use of Commission resources and the complaint should be dismissed.

The complaint, filed in the closing days of a failed attempt to salvage the campaign of MDP's preferred Democrat candidate in Michigan's First Congressional District, alleges that Benishek violated the Commission's regulations by using non-commercial aircraft for campaign travel. Employing loaded rhetoric, the complaint specifically contends "[i]t is clear" that Benishek "has violated 11 CFR 100.93...by repeatedly using non-commercial aircraft for campaign travel." The complaint fails to cite any specific dates for these alleged flights, and only provides a blurred copy of what appears to be Benishek's Facebook page, and an article referring to the Facebook page, as support for these allegations. Despite such lack of support or hard evidence, the complaint seems to be referencing Benishek's minimal use of a small, two-passenger, propeller-powered plane owned by his good personal friend, Steven Zurcher, to fly to Political Party events.

Benishek disagrees with the complaint's characterization that it "repeatedly" used "non-commercial aircraft for campaign travel." This is simply not the case, and these allegations are no more than a desperate attempt to grab headlines in the last days before the election. In reality, on two isolated occasions before the campaign heated up and Benishek retained counsel, Benishek was the guest of his long-time friend, Steven Zurcher, on Zurcher's two-passenger

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plane, for purposes of travelling to Political Party sponsored events in Michigan's Upper Peninsula. These events were not paid for or sponsored by the Benishek campaign or affiliated with the campaign in any way. Moreover, as mentioned above, Zurcher is Benishek's close, personal friend, and neither Benishek nor Zurcher ever considered Zurcher's invitation to be campaign-related, or involve any campaign issues of any sort. It was simply two friends travelling together to two Political Party sponsored events.

The Commission's revised regulations on non-commercial travel make clear that the scope of the new rules only cover situations involving a so-called "campaign traveler." The revised Final Rule specifically states that a campaign traveler includes "candidates who travel on behalf of their own campaign," and that a campaign traveler does not include "candidates when they engage in personal travel or any other travel that is not in connection with an election for Federal office." 74 Fed. Reg. 63953 (Dec. 7, 2009). This contention is confirmed in the very section of the Final Rule's Explanation and Justification that the complaint cites. The section states, "[n]ew 11 CFR 100.93(c)(2) prohibits House candidates...from engaging in non-commercial campaign travel on aircraft." Benishek has never used a private plane for purposes of "campaign travel" "on behalf of" his own campaign. On the contrary, Benishek has only accepted invitations for personal travel from a close friend to attend Party-related events unaffiliated with the Benishek campaign. For these reasons, Benishek would not be considered a "campaign traveler" within the realm of the Commission's revised rules.

Even assuming arguments that Benishek would be considered a "campaign traveler," and that these two flights, which were entirely personal in nature, somehow triggered campaign finance regulation, the complaint is still problematic because it has not acknowledged the fact that the cost of the flights could have been paid for by a Party committee. The Commission's revised travel rules explicitly state that "travel by a House candidate on behalf of a...political party committee, would be permissible so long as the political party committee...on whose behalf the travel occurs reimburses the service provider at the applicable rate." 74 Fed. Reg. 63956. In this case, the complaint does not mention the fact that it is entirely possible the Political Party could have covered the costs associated with the flights, and could have made those arrangements directly with Zurcher. It has already been established that the flights in question, and the related Political Party events, were not sponsored, paid for by, or affiliated with Benishek, so it is certainly feasible the costs could have been covered by the Political Party.

Lastly, Benishek's acceptance of an invitation from a long-time, close personal friend to attend a Political Party event with like-minded people by way of that friend's two-seater plane should not automatically succumb Benishek to the Commission's scrutiny. It is a misnomer to think Congress crafted the Honest Leadership and Open Government Act of 2007, on which the Commission's revised travel rules are based, to prevent pre-existing friends from enjoying air travel together when one friend happens to be a Federal candidate and the other friend happens to know how to fly a recreational plane. In reality, as stated in the Commission's Final Rules, the intent of the statute was "frequently characterized by its sponsors as an effort to end subsidization of air travel provided by corporations and others to candidates, and thereby reduce

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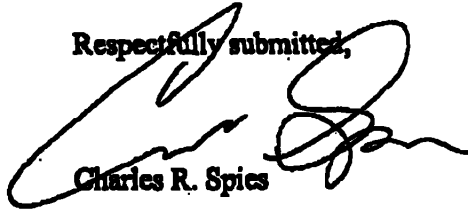
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the potential for corruption or the appearance thereof." 74 Fed. Reg. 63952, n. 4. This is not the sort of arrangement or situation that existed in Benishek's current case.

Benishek takes its compliance obligations with the Commission very seriously, and subsequent to the alleged flights in question retained experienced counsel to ensure compliance. That being said, any potential violations by the campaign or its treasurer that may or may not be referenced in this complaint was inadvertent and unintentional, and not of the scale or import to warrant the Commission's attention.

Accordingly, in light of the foregoing, we respectfully request that the Commission dismiss this complaint. If the Commission feels that this matter does warrant the use of Commission resources to pursue, then in light of Benishek's limited funds and desire to expeditiously resolve this matter, we respectfully request that the complaint be considered for the Commission's Alternative Dispute Resolution Program.

Respectfully submitted,



Charles R. Spies

Counsel to Benishek for Congress,  
and Joseph Shubat, in his official capacity as  
Treasurer

Enc.

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## BEFORE THE FEDERAL ELECTION COMMISSION STATEMENT OF DESIGNATION OF COUNSEL

MUR # 8421

Name of Counsel: Charles R. Spies  
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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11/19/10

Date

*Joseph A. Shubat*

Respondent/Client Signature

Treasurer  
*TREASURER*  
 Title

Respondent/Client: Benishek for Congress  
 and Joseph A. Shubat, Treasurer  
 802 Pentagon Trail  
 Crystal Falls, MI 49920

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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.