

# CLARK HILL

Charles R. Spies  
T 202.572.8663  
F 202.572.8683  
Email: cspies@clarkhill.com

Clark Hill PLC  
1250 Eye Street NW  
Washington, DC 20005  
T 202.772.0909  
F 202.772.0919  
clarkhill.com

July 7, 2011

Elena Paoli  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463  
VIA E-MAIL: epaoli@fec.gov

Re: MUR 6421

Dear Ms. Paoli:

On behalf of our clients, Dan Benishek, Benishek for Congress, and Joseph Shubat, in his official capacity as Treasurer (collectively, "Respondents"), we write to respond to the Commission's reason to believe finding in the above captioned Matter Under Review. At this time Respondents do not wish to submit any additional materials other than this letter in response to the Commission's findings.

The complaint and the Office of General Counsel's Factual and Legal Analysis in this matter allege that Respondents violated the Commission's regulations on campaign travel by using non-commercial aircraft to travel to campaign-related events. Specifically, the complaint accuses Respondents of violating the revised travel rules set forth in 11 CFR § 100.93, for "repeatedly using non-commercial aircraft for campaign travel." Although Respondents disagree with the description, "repeatedly," they concede that Dan Benishek did, in fact, fly on non-commercial flights on two occasions. Before the campaign heated up and Benishek retained counsel, Benishek was the guest of his long-time personal friend, Steven Zurcher, on Zurcher's two-passenger plane, for purposes including travel to Political Party sponsored events in Michigan's Upper Peninsula.

As an initial matter, Respondents want to emphasize that at no time did they act in bad faith or in knowing violation of the Federal Election Campaign Act of 1971 ("FECA") or the Commission's regulations with regard to the two flights in question. Rather, this was entirely the product of an honest mistake by a first-time candidate for office.

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At the times in question, Benishek had just recently announced his candidacy for Congress and had not yet retained election law counsel familiar with the Commission's revised regulations and travel rules. Benishek's campaign staff, which consisted of only several people at that point, regularly looked to the Commission's Campaign Guide for Candidates for any questions that arose in the early stages of the campaign. However, as they were new to the process, and the various nuances of the FECA and the Commission's regulations, they were unaware of the outright ban on the use of non-commercial aircraft by candidates for the U.S. House. Further, the Commission's revised rules on non-commercial aircraft travel had just become final two months before Benishek filed his Statement of Candidacy, and the campaign was unaware of their existence.

Respondents were unaware of the uniquely restrictive new rule for House candidates, and when they became aware of the mistake, they made all reasonable efforts to "cure" the oversight by sending a check to Zurcher for the commercial charter cost of the flights in question. See Benishek for Congress 2010 Post-General disclosure report, filed December 2, 2010.

Respondents take their compliance obligations with the Commission very seriously. As soon as Respondents realized their error, they took measures to correct their mistake the best way they could in accordance with what their understanding of the law was at the time. Respondents regret their oversight of the Commission's requirements and its ban on non-commercial air travel and have taken corrective measures to ensure that such oversight does not occur in the future. Subsequent to their flights in question, Respondents instituted a policy by which Congressman Benishek and all campaign staff will not proceed with any campaign activities without prior consultation with experienced election law counsel.

In light of the foregoing, and pursuant to 11 CFR § 111.18(d) and the June 21, 2011 letter from the Commission's Chair, Cynthia L. Bauerly, Respondents hereby make their written request to enter into negotiations directed towards reaching a pre-probable cause conciliation agreement. We look forward to working with the Commission to resolve this matter as expeditiously as possible. Please do not hesitate to call me directly at (202) 572-8663 should you have any questions.

Respectfully submitted,



Charles R. Spies  
Counsel to Dan Benishek,  
Benishek for Congress, and,  
Joseph Shubat, in his official capacity as Treasurer