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2012 DEC 12 AM 9: 44

**SENSITIVE**  
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FEDERAL ELECTION  
COMMISSION  
2012 DEC 12 AM 9: 50

In the Matter of )  
MUR 6547 ) DISMISSAL AND **CELA**  
10th District Republican Congressional ) CASE CLOSURE UNDER THE  
Committee and Shak Hill as treasurer ) ENFORCEMENT PRIORITY  
SYSTEM

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended, (the "Act") and developments of the law. It is the Commission's policy that dismissal of relatively low-rated matters on the Enforcement docket is warranted through the exercise of its prosecutorial discretion under certain circumstances.

The Office of General Counsel has determined that MUR 6547 should not be referred to the Alternative Dispute Resolution Office. Also, for the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6547.<sup>1</sup>

<sup>1</sup> The EPS rating information is as follows: Complaint Filed: April 2, 2012. Supplement filed: April 23, 2012. Response Filed: April 23, 2012. Response to Supplement filed: May 22, 2012.

**I. Factual Background**

On April 2, 2012, Thomas J. Whitmore filed a complaint alleging that the 10th District Republican Congressional Committee and Shak Hill in his official capacity as treasurer (the "Committee") had not accurately reported disbursements made by the Committee in its monthly disclosure reports filed with the Federal Election Commission during the period between January 2011 and December 2011.<sup>2</sup> Compl. at 1. Whitmore stated that he had reviewed financial spreadsheets of the Committee's federal bank account provided to him by the Committee's treasurer, detailing the Committee's receipts and disbursements. He claimed to have found 91 disbursements recorded in the bank account spreadsheets that the Committee had not reported in its prior disclosure reports. *Id.* These financial spreadsheets were included with the Complaint and listed the Committee's monthly contributions and disbursements, with receipts ranging from \$20.00 to \$4,000, and expenditures ranging from \$0.23 to \$12,000. *Id.* at 2-21. Whitmore further alleged that the Committee's changes in treasurer had not been properly reported in 2010 and 2011. Finally, Whitmore alleged that the Committee did not timely amend its reports to reflect that its bank account and address had changed. *Id.* at 1.

On April 23, 2012, Whitmore filed two supplements to the Complaint. The first, dated April 18, 2012 ("Supp. Compl.")<sup>3</sup>, reiterated the prior allegations of inaccurate reporting and claimed that Hill and the Committee's Chairman, Howie Lind, had not sufficiently provided the Committee members with requested documentation of all the Committee's financial

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<sup>2</sup> Although Whitmore stated that he was "self-reporting" as a member of the Committee, there is no evidence that he served as treasurer or was otherwise an authorized official in the position to submit a *sua sponte* complaint on behalf of the Committee.

<sup>3</sup> Whitmore attached the following to the First Supplement to the Complaint: (1) bank statements from the Committee's federal account for 2011 that had been provided to him by Hill; (2) minutes of Committee meetings from June 2010 through December 2011; (3) e-mail exchanges between Whitmore, Hill, and Committee Chairman Howie Lind; and (4) written records of contributions from Whitmore. Supp. Compl. at 4-85.

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1 activity in the manner in which they preferred.<sup>4</sup> Supp. Compl. at 1-2. The First Supplement  
2 also alleged that Whitmore's own personal contributions to the Committee had not been  
3 properly reported. Whitmore claimed that his contributions were, at first, missing entirely  
4 from the reports and later, in amended reports, inaccurately attributed to his wife Sandra  
5 Whitmore. *Id.* at 1-2.

6 The Second Supplement to the Complaint ("2d. Supp. Compl."), dated April 21, 2012,  
7 included bank statements from the Committee's state account. 2d. Supp. Compl. at 3-18. In  
8 this Second Supplement, Whitmore made new allegations that the Committee had inaccurately  
9 reported receipts, stating that the Committee's federal bank account records and disclosure  
10 reports did not reconcile for several months throughout 2011. 2d. Supp. Compl. at 1.  
11 Whitmore acknowledged, however, that "at year end the FEC account and the Bank account  
12 [were] out of balance by less than \$100.00." 2d. Supp. Compl. at 2.

13 In its Response to the initial Complaint, the Committee contended that the Commission  
14 should not take action against the Committee for under-reporting disbursements, asserting that  
15 Whitmore misunderstood the Commission's requirements for itemizing receipts and that the  
16 Committee had accurately reported all disbursements. Specifically, the Committee asserted  
17 that each of the 91 allegedly "missing" disbursements was not listed in the Committee's FEC  
18 reports because it fell below the threshold for itemization, since only disbursements in excess

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<sup>4</sup> The First Supplement made a related allegation that the Committee made disbursements that "were not approved in the budget" or were "personal," including disbursements for gasoline, meals, tolls, wages, donations, rent, and hotel lodging. Supp. Compl. at 2-3. It appears that the complained of violation is that the Committee made disbursements that are impermissible under the Committee's internal policies, regardless as to whether they are impermissible under the Act. This allegation is outside the Commission's jurisdiction. Even if Whitmore were alleging that these disbursements were impermissible under the Act, we note that, as to this Committee, the Act and Commission regulations do not prohibit the type of disbursements alleged by Whitmore. *See, e.g.*, 2 U.S.C. § 439a(b) (personal use prohibition for candidates and federal officeholders); 11 C.F.R. § 113.1(g) (same). In fact, when listing acceptable descriptions of committee expenditures in "purpose of disbursement" entries (for committees other than authorized committees), Commission regulations include terms directly analogous to the expenses that Whitmore alleged to be improper: dinner expenses ("meals"), salary ("wages"), travel ("gasoline, tolls"), party fees ("rent"), and travel expenses ("hotel lodging"). *See* 11 C.F.R. § 104.3(b)(3)(i)(B).

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1 of \$200 aggregate per recipient per calendar year are required to be itemized. Resp. at 1 (Apr.  
2 16, 2012). The Committee also noted that while it was not required to itemize each  
3 disbursement that fell under the minimum threshold, these unitemized disbursements were  
4 nevertheless accurately reflected in the total disbursements of each month's amended report.  
5 The Committee added that this information could be verified by comparing Line 7 "Total  
6 Disbursements" or Line 21b "Other Federal Operating Expenditures" on each report's Detailed  
7 Summary Page, with total disbursements on the Committee's spreadsheets (provided in the  
8 Complaint itself). *Id.* Additionally, the Committee explained that it had recently elected a  
9 new treasurer, Shak Hill, in mid-2011, after the prior treasurer's death. As the new treasurer,  
10 Hill conducted an internal review and determined that some receipts and disbursements had  
11 not been correctly reported, and thus he filed amendments to the Committee's disclosure  
12 reports for 2011.<sup>5</sup> *Id.* Hill also stated that the Committee had recently engaged a compliance  
13 consultant and instituted internal procedures to ensure accurate reporting. *Id.* at 2. The  
14 Committee did not respond to the allegations that it did not timely file amended Statements of  
15 Organization regarding changes to the Committee's treasurers, bank accounts, and address.

16 In response to the Supplements to the Complaint, the Committee referred back to its  
17 explanations in its initial response. Supp. Resp. at 2 (May 22, 2012). The Committee further  
18 asserted that its internal review, amendments, and subsequent on-time and accurate filing of  
19 disclosure reports have all demonstrated a lack of malfeasance. *Id.* The Committee did not  
20 address the allegations in the Second Supplement to the Complaint regarding differences  
21 between its federal bank account records and its disclosure reports, or the alleged inaccurate

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<sup>5</sup> It appears that in March 2012, following an internal review in which it discovered discrepancies in prior disclosure reports and prior to the filing of the Complaint, the Committee filed 20 amended reports covering multiple reporting periods. Since then, it appears that the Committee has continued its remedial efforts by independently filing additional amended reports and has complied with Requests for Additional Information from the Reports Analysis Division by timely filing further amended reports.

1 reporting of receipts, other than to note the Complainant's concession that "at year end the  
2 FEC account and the Bank account [were] out of balance by less than \$100.00." *Id.* at 1.

3 **II. Legal Analysis**

4 **A. Reporting of Receipts and Disbursements**

5 Political committees are required to disclose the total amount of all receipts and  
6 disbursements for the reporting period and the calendar year, as well as all disbursements in  
7 certain categories, including expenditures made to meet committee operating expenses and  
8 "any other disbursements." 2 U.S.C. § 434(b)(2), (b)(4). The Act and regulations require that  
9 disbursements be itemized only to the extent that they exceed \$200 in aggregate per recipient  
10 per calendar year. 2 U.S.C. § 434(b)(3)(A), (b)(5)(A); 11 C.F.R. § 104.3(a)(4)(i), (b)(3)(i); *see*  
11 *also* 11 C.F.R. §§ 104.8(a), 104.9(a). Similarly, committees are required to itemize  
12 contributions received in excess of \$200 in aggregate value per contributor per calendar year.  
13 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i). All deposits of contributions must be  
14 made within 10 days of the treasurer's receipt. 11 C.F.R. § 103.3(a).

15 **Reporting of Disbursements.** The available evidence shows that the Committee met  
16 the requirement to properly itemize its disbursements in excess of \$200 in its disclosure  
17 reports. Specifically, a review of the Committee's financial statements attached to the  
18 Complaint confirms that all of the alleged unreported disbursements fell below the itemization  
19 threshold.<sup>6</sup>

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<sup>6</sup> Although Whitmore contends that there was concealment and obfuscation by Hill and the Committee, the attachments to the First Supplement to the Complaint appear to contradict his assertion. Specifically, e-mails from Hill to Whitmore show that Hill provided financial reports when requested, and indicate that Hill willingly provided bank statements to Whitmore from the Committee's federal and state accounts. Supp. Compl. at 5-9. Further, the First Supplement includes an e-mail from Lind to Committee members detailing efforts to inform the Committee of financial status and activities, including presentations, e-mails, references for members to the Committee's FEC filings, and an explanation that new software difficulties had led to earlier inaccurate figures in Committee reports. Supp. Compl. at 14-16.

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1           Reporting of Receipts. In its December 2011 Monthly report, the Committee itemized  
2 a \$250 receipt from the Complainant, Thomas Whitmore, showing an aggregate year-to-date  
3 figure of \$250 for him, and also itemized a \$50 receipt from Sandra Whitmore, showing an  
4 aggregate year-to-date figure of \$250 for her. Committee records and the First Supplement to  
5 the Complaint indicate that two of the Whitmore contributions to the Committee were made by  
6 personal checks, in the amounts of \$200 on April 30, 2011, and \$50 on November 19, 2011,  
7 respectively. Compl. at 9, 19; Supp. Compl. at 10. The Committee's December 2011 Monthly  
8 Report reflects that these two contributions by check were attributed to Sandra Whitmore,  
9 although Whitmore contends that they should be attributed to him. The address listed in the  
10 Committee's records and on the FEC disclosure report is the same for both Thomas and  
11 Sandra Whitmore. There is no indication from Whitmore or the Committee as to whether the  
12 two contributions that Whitmore contends were incorrectly attributed to his wife were from a  
13 sole or joint checking account held by both of them. The Complaint and Supplements did not  
14 provide copies of the checks, and the Committee did not address the issue in its responses.  
15 Thus, we have insufficient evidence to determine whether the contributions were properly  
16 attributed. However, in light of the *de minimis* amount at issue, we believe further use of  
17 Commission resources is unwarranted.

18           As to Whitmore's more general allegations about the Committee's reporting of  
19 receipts, an examination of the Committee's disclosure reports and the bank statements and  
20 financial documents provided by Complainant indicates that some receipts were misreported.  
21 In particular, it appears that some contributions were not deposited in a timely manner. The  
22 Committee's bank statements appear to show that the Committee deposited contributions into  
23 its federal account at regular intervals. Because of this practice, at times the receipt date and

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1 deposit date of some contributions occurred in different months, thus explaining the lack of  
2 month-to-month reconciliation complained of by Whitmore. For this reason, there are  
3 differences between certain monthly statements of the Committee's federal account and its  
4 FEC filings for the same month. In sum, it appears that the total difference between the  
5 reported cash on hand and the bank statements for all of 2011 was approximately \$80.00. The  
6 total difference between reported receipts and bank statement deposits for all of 2011 appears  
7 to be \$571.72. The Committee's bank records, internal accounting spreadsheets, and FEC  
8 filings indicate that a small number of contributions may not have been properly deposited  
9 within ten days of receipt as required by 11 C.F.R. § 103.3(a). Nevertheless, due to the *de*  
10 *minimis* dollar amount of the apparent reporting discrepancies, we believe further use of  
11 Commission resources is not warranted.

12 **B. Statement of Organization**

13 The Act and Commission regulations require that Statements of Organization include,  
14 among other information, the name and address of the committee, the name and address of the  
15 treasurer, and a listing of all banks used by the committee. *See* 2 U.S.C. § 433(b); 11 C.F.R.  
16 § 102.2(a)(1). The Act requires that any change in information previously submitted in a  
17 political committee's Statement of Organization shall be reported no later than 10 days after  
18 the date of the change, *see* 2 U.S.C. § 433(c), and Commission regulations require that any  
19 such change shall be reported by filing an amended Statement of Organization. 11 C.F.R.  
20 § 102.2(a)(2).

21 The Committee appears to have changed treasurers at least twice since 2010 without  
22 updating its Statement of Organization. Documentation provided by Whitmore indicates that  
23 the Committee's prior treasurer (Proctor) held the position from at least May 2010 until his

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1 death in June 2011. Supp. Compl. at 48-49, 53-54, 57-58, 62-63, 68-69, 76-77. And Hill  
2 admits that he assumed the role of treasurer after Proctor's death in June 2011. Resp. at 1.  
3 The Committee filed an Amended Statement of Organization on June 20, 2009, designating  
4 Melinda Conner as treasurer. The Committee never filed an amended Statement of  
5 Organization naming Proctor as treasurer upon his appointment in May 2010, and it did not  
6 file an Amended Statement of Organization reporting that Hill was the new treasurer until  
7 February 1, 2012. Supp. Compl. at 1, Resp. at 1. The Committee filed an accurate and current  
8 Amended Statement of Organization on February 1, 2012. However, pursuant to 2 U.S.C.  
9 § 434(c) and 11 C.F.R. § 102.2(a)(2), the Committee should have filed an Amended Statement  
10 of Organization when Proctor took office as treasurer in May 2010, and again when Hill took  
11 office as treasurer in June 2011, rather than in February 2012.

12 To the extent that the Complaint alleges that the Committee changed its bank account  
13 and address without timely amending its Statement of Organization, we note that the  
14 Complaint does not include any facts as to when such changes occurred, or even the nature of  
15 such changes. We further note that the Complaint concedes that any such changes were,  
16 ultimately, properly disclosed, even if not in a timely manner.

17 **C. Conclusion**

18 In sum, the facts presented by the Complainant and in the Committee's disclosure  
19 reports indicate that the Committee did not violate the Act or Commission regulations  
20 concerning the reporting and itemization of disbursements as alleged in the Complaint. The  
21 facts also indicate, however, that the Committee appears to have (1) reported improperly its  
22 cash on hand and receipts, including the receipt date of contributions; and (2) failed to amend  
23 its Statement of Organization in a timely manner. But, in light of the loss of the Committee's

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1 treasurer, coupled with the *de minimis* nature of the apparent violations and the Committee's  
2 continuous reporting and supplemental amendments, the Office of General Counsel believes  
3 that further enforcement action is unnecessary, and recommends that the Commission exercise  
4 its prosecutorial discretion and dismiss pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), as  
5 to these allegations. Also, the General Counsel recommends that the Commission approve the  
6 attached Factual and Legal Analysis and the appropriate letters, and close the file.

7 **RECOMMENDATIONS**

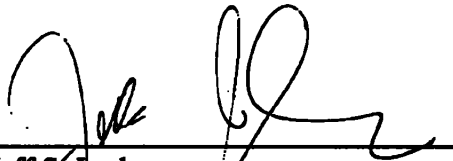
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9 1. Find no reason to believe that the 10th District Republican Congressional  
10 Committee and Shak Hill in his official capacity as treasurer violated 2 U.S.C.  
11 § 434(b) by failing to accurately report its disbursements;  
12  
13 2. Dismiss the allegations that the 10th District Republican Congressional Committee  
14 and Shak Hill in his official capacity as treasurer violated 2 U.S.C. § 434(b) by  
15 failing to accurately report its receipts;  
16  
17 3. Dismiss the allegations that the 10th District Republican Congressional Committee  
18 and Shak Hill in his official capacity as treasurer violated 2 U.S.C. § 433(c) by  
19 failing to timely file an amended Statement of Organization;  
20  
21 4. Approve the attached Factual and Legal Analysis;  
22  
23 5. Close the file, and approve the appropriate letters.  
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Anthony Herman  
General Counsel

12/10/12  
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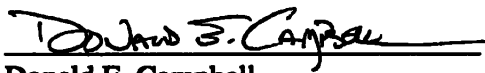
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