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FIRST GENERAL COUNSEL'S REPORT

Pre-MUR 547
DATE RECEIVED: August 21, 2012
DATE ACTIVATED: September 24, 2012

EXPIRATION OF SOL:
Earliest: January 31, 1994
Latest: August 20, 2017

SOURCE: *Sua Sponte* Submission
RESPONDENT: American Association for Justice Political Action
Committee and Heather Tureen in her official
capacity as treasurer

**RELEVANT STATUTE AND
REGULATION:** 2 U.S.C. § 434(b)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The American Association for Justice Political Action Committee and Heather Tureen in her official capacity as treasurer ("AAJ PAC" or "Committee") notified the Federal Election Commission (the "Commission") under the Commission's *sua sponte* policy that it did not accurately disclose its cash on hand and misreported certain transactions related to credit card processing fees for many years.¹ In particular, as documents AAJ PAC provided to supplement its submission show, AAJ PAC had a cash-on-hand discrepancy of \$326,551.02 as of September

¹ See AAJ PAC *Sua Sponte* Submission (Aug. 20, 2012) (citing Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("*Sua Sponte* Policy")).

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1 2011, and between 2008 and 2009, it misreported credit card processing fees by about
2 \$61,201.42.² AAJ PAC, aided in part by its outside accountant, conducted a lengthy review to
3 determine the specific causes for these discrepancies, but because the misreporting at issue dates
4 back more than 16 years, they lack the contemporaneous financial records needed to pinpoint the
5 original sources of discrepancies.³ Nevertheless, based on its review, AAJ PAC has
6 implemented corrective measures that have ensured that these discrepancies are no longer
7 present in its reporting.⁴

8 After reviewing the available information, the Office of the General Counsel ("OGC")
9 concluded that, as AAJ PAC has acknowledged, AAJ PAC failed to accurately disclose its
10 receipts, disbursements, and cash on hand in its reports to the Commission, in violation of 2
11 U.S.C. § 434(b). Because these reporting violations are relatively straightforward and the issues
12 are clear and well documented — based in part on AAJ PAC's candor and cooperation in self-
13 disclosing and attempting to document its violations — we pursued this matter through Fast-
14 Track Resolution.⁵ Having completed negotiations, we now recommend that the Commission
15 open a Matter Under Review, accept the attached executed Conciliation Agreement, and close
16 the file in this matter.

² See AAJ PAC Supp. *Sua Sponte* Submissions (Oct. 24, 2012 and Dec. 20, 2012) (collectively the "Supp. Submission"). In October and December 2012, at OGC's request, AAJ PAC supplemented its *sua sponte* submission by providing additional documentation concerning the issues discussed in its original submission.

³ AAJ PAC *Sua Sponte* Submission at 3-4.

⁴ *Id.* at 7.

⁵ See OGC Mem. to Commission at 5-6 (Jan. 18, 2013) (citing *Sua Sponte* Policy, 72 Fed. Reg. at 16,698).

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1 **II. FACTUAL SUMMARY**

2 The American Association for Justice ("AAJ") is a trade association that is tax-exempt
3 under 26 U.S.C. § 501(c)(6). Its mission is to "promote a fair and effective justice system . . .
4 and to support the work of attorneys in their efforts to ensure that any person who is injured by
5 the misconduct or negligence of others can obtain justice in America's courtrooms."⁶ AAJ PAC
6 is AAJ's separate segregated fund ("SSF"), which has distributed about \$6 million in
7 contributions per election cycle since 2000.⁷ In its role as AAJ PAC's connected organization,
8 AAJ pays certain administrative and solicitation costs for AAJ PAC. AAJ also has affiliates in
9 each state, and each affiliate has its own connected non-federal political committee.⁸ AAJ acts
10 as a collecting agent for these affiliates and their SSFs, collecting and processing dues payments
11 and associated credit card processing fees.⁹

12 In August 2012, AAJ PAC, through its outside counsel, reported to OGC that it had
13 identified two types of discrepancies in its disclosure reports filed with the Commission over
14 more than a decade. First, AAJ PAC discovered in 2009 that it had misreported the fees it
15 incurred for processing credit card transactions (reported as "other federal operating
16 expenditures" on line 21b in Form 3X of its disclosure reports) and the corresponding
17 reimbursements from AAJ for these processing fees (reported as "offsets to operating
18 expenditures" on line 15 of the form) since as early as 1996.¹⁰ Second, AAJ PAC discovered in

⁶ See AAJ PAC *Sua Sponte* Submission at 1-2 (internal quotation marks omitted). Until it changed its name in 2006, AAJ was known as the Association of Trial Lawyers of America. *Id.* at 2 n.2.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *id.* at 2-4.

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1 2010 that it had overstated its cash on hand.¹¹ After undertaking a detailed internal review of
2 these issues, aided in part by an outside accountant, AAJ PAC concluded that this cash-on-hand
3 misreporting had occurred going back to as early as 1989.¹²

4 Regarding the credit-card-processing-fees discrepancy, AAJ PAC explained that,
5 although it incurred those fees itself, AAJ's finance department was responsible for providing the
6 fee figures to the Committee for reporting purposes. In or around March 2009, AAJ
7 management discovered that its finance department had been providing the wrong fee figures to
8 the AAJ PAC personnel responsible for filing the Committee's disclosure reports, and therefore
9 its reports included inaccurate operating-expenditure figures.¹³ Rather than providing the credit
10 card processing fees associated with AAJ PAC, AAJ finance personnel had been providing a
11 processing-fee figure for the state affiliates and their connected non-federal committees.¹⁴ AAJ
12 finance personnel also provided the wrong reimbursement figure — again, providing the state
13 affiliate figure instead of the AAJ PAC figure — which AAJ PAC then incorrectly reported as an
14 offset to its operating expenditures in its disclosure reports.¹⁵ In fact, AAJ PAC believes AAJ
15 may never have reimbursed it for its credit card processing fees, which may have contributed to
16 the overstatement of its cash on hand.¹⁶ In April 2009, AAJ PAC began correctly reporting the

¹¹ See *id.* at 4-6.

¹² *Id.* at 3-5.

¹³ *Id.* at 3.

¹⁴ *Id.* Based on its review, AAJ PAC believes that this aspect of the problem arose as early as 1997, but because it lacks records from that time period, it cannot confirm this date. *Id.* at 4.

¹⁵ *Id.* AAJ PAC believes this problem arose around August 1, 1996, when AAJ's policy changed to allow AAJ to reimburse AAJ PAC for administrative expenses. *Id.*

¹⁶ *Id.* at 3-4. AAJ PAC is not able to confirm whether it ever actually received reimbursement of the processing fees because it lacks the financial records for much of the relevant post-1996 time period. *Id.* It believes, however, the payments actually went into AAJ's state account for distribution to the state affiliates. See *id.* at 3 n.7.

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1 credit card processing fees it paid and ceased reporting that AAJ had reimbursed those fees.¹⁷
2 Based on our review of a spreadsheet prepared as part of AAJ PAC's internal reconciliation of
3 the processing-fee discrepancies, the difference between the amount of fees reported and the
4 amount actually incurred by AAJ PAC during 2008 and 2009 totaled approximately
5 \$61,201.42.¹⁸

6 Turning to the cash-on-hand discrepancy, in April 2010, AAJ PAC received the results of
7 an annual audit, conducted by an outside accountant, which concluded that the cash on hand
8 reported to the Commission in AAJ PAC's August 2009 monthly report was \$349,000 higher
9 than the actual balance.¹⁹ After learning of this discrepancy, AAJ personnel, assisted in part by
10 the outside accountant, conducted an internal review and found that the cash-on-hand
11 discrepancy arose sometime between 1989 and December 1992.²⁰ The amount of the
12 discrepancy fluctuated up and down between December 1992 and 2011 before settling at
13 between \$325,000 and \$335,000 per month.²¹ Because of this fluctuation, AAJ PAC concluded
14 that the cash-on-hand discrepancy could not have arisen from the inaccurate processing-fee

¹⁷ *Id.* at 3. AAJ PAC explained that it did not amend prior reports because it has been unable to identify definitively the source of the error. *Id.* at 8.

¹⁸ *See* Supp. Submission at AAJ-02-0009 to 0010 (aggregating rows 234-50 of column AC, which represent discrepancies in reports filed in 2008 through May 2009). Although AAJ PAC believes the credit-card-processing-fee discrepancy originated as early as 1996, only the discrepancies during 2008 and 2009 are relevant here because they fall within the five-year limitations period. *See* 28 U.S.C. § 2462 (providing five-year limitations period in cases seeking payment of civil penalties).

¹⁹ AAJ PAC *Sua Sponte* Submission at 4.

²⁰ *Id.* at 5-6, 8 (describing AAJ staff's review of documents and analysis of disclosure reports along with outside accountant's reconciliation of financial activity).

²¹ *Id.* at 5.

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1 reimbursement figures alone.²² Because it lacks sufficient records from the 1989-1992 time
2 period when the discrepancy appeared to arise, however, AAJ PAC could not identify the root
3 cause.²³ AAJ PAC's outside accountant conducted a detailed reconciliation of financial activity
4 for the first nine months of 2011 and identified a cash-on-hand discrepancy of \$326,551.02 as of
5 September 2011.²⁴

6 As to the time lapse between 2009, when AAJ PAC discovered the errors, and 2012,
7 when it reported them to the Commission, AAJ PAC explained that it filed its *sua sponte*
8 submission "as soon as practicable" under the circumstances.²⁵ AAJ PAC stated that when it
9 discovered the processing-fee discrepancy issue it promptly began an internal review.²⁶ This
10 review was prolonged by several factors, including the need to locate and review a large volume
11 of archived documents, the expansion of its inquiry based on its subsequent discovery of the
12 cash-on-hand discrepancy, and the need to conduct multiple analyses and ultimately involve its
13 outside accountant.²⁷ AAJ PAC reported that in sum AAJ staff reviewed approximately 260
14 boxes of paper documents and thousands of pages of electronic documents, analyzed report line
15 totals for 18 years of disclosure reports, and engaged its outside accountant to reconcile all

²² *Id.* As discussed above, based on an analysis undertaken as part of AAJ PAC's internal reconciliation of the processing-fee discrepancies, the credit card processing-fee discrepancy between 2008 and 2009 totaled approximately \$61,201.42, *see supra* n.18 and accompanying text, an amount much less than the approximately six-figure monthly cash-on-hand discrepancy during the same period.

²³ *Id.* at 5-6. Although they identified certain technical reporting errors — such as stale-dated checks and flawed refund entries — AAJ PAC informed OGC that it could not identify "the cause (or causes) of the disparity in cash-on-hand totals since 1992." *Id.* at 6.

²⁴ Supp. Submission at AAJ-02-0003.

²⁵ Letter from Rebeca H. Gordon & Andrew H. Werbrock, Counsel, AAJ PAC, to Leonard O. Evans III, Att'y, FEC at 1 (Jan. 16, 2013).

²⁶ *Id.* at 2.

²⁷ *Id.*

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1 financial activity for a 9-month period.²⁸ AAJ PAC then made its *sua sponte* submission after
2 “realiz[ing] that, given the lack of complete records, their avenues for further investigation were
3 exhausted.”²⁹

4 AAJ PAC’s submission also describes corrective actions that it took immediately after
5 discovering the cash-on-hand and credit-card-processing-fee discrepancies. First, it took steps to
6 correct the communication between AAJ finance personnel and AAJ PAC personnel regarding
7 the applicable processing-fee figures for Commission reporting purposes.³⁰ Second, AAJ
8 implemented a monthly reconciliation procedure that culminates in review and approval of
9 reports by AAJ’s Controller before AAJ PAC files them with the Commission.³¹ Third, AAJ
10 PAC has enacted measures to address technical reporting practices in areas that may have
11 contributed to the discrepancies (*e.g.* stale-dated checks and double-counted refunded
12 contributions).³² Finally, AAJ PAC reported that it had started to train its employees responsible
13 for carrying out its campaign-finance disclosure obligations on the relevant legal requirements
14 and procedures.³³ Because of these efforts, AAJ PAC states, “its activity has reconciled
15 monthly, demonstrating that the sources of the error that may have been a problem in the past are
16 no longer present.”³⁴

²⁸ AAJ PAC *Sua Sponte* Submission at 5-6, 8.

²⁹ Letter from Rebecca H. Gordon & Andrew H. Werbrock to Leonard O. Evans III, *supra* note 25, at 2.

³⁰ AAJ PAC *Sua Sponte* Submission at 7.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 8. AAJ PAC also proposed correcting its past disclosure reports, using a one-time cash adjustment, as an additional corrective measure, if the Commission determines that doing so would be permissible. *Id.*

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1 **III. LEGAL ANALYSIS**

2 In making its *sua sponte* submission, AAJ PAC acknowledges that the misreporting of its
3 operating expenditures and cash on hand constitute violations of the Federal Election Campaign
4 Act (the "Act") and Commission regulations. The Act and Commission regulations require
5 committee treasurers to file reports of receipts and disbursements according to the requirements
6 of 2 U.S.C. § 434.³⁵ The reports must disclose, *inter alia*, the committee's total receipts and
7 disbursements and its cash on hand at the beginning and end of the reporting period.³⁶
8 Committees also are required to itemize certain receipts and disbursements and disclose each
9 person who made contributions, or provided any interest or other receipts, or received any
10 disbursements, in an aggregate amount greater than \$200 within the calendar year, together with
11 the date and amount of any such receipt or disbursement.³⁷

12 Here, as it acknowledges, AAJ PAC did not comply with the Act's reporting
13 requirements because it had a cash-on-hand discrepancy and misreported its administrative
14 expenditures and offsets for more than 16 years. Based on our review of AAJ PAC's
15 submission, we have concluded that during the last five years, AAJ PAC overstated its cash on
16 hand by \$326,551.02 and failed to accurately disclose administrative expenses totaling
17 \$61,201.42, both in violation of 2 U.S.C. § 434(b).³⁸

³⁵ 2 U.S.C. § 434(a)(4); 11 C.F.R. § 104.1(a).

³⁶ 2 U.S.C. § 434(b); 11 C.F.R. § 104.3.

³⁷ 2 U.S.C. § 434(b)(3)-(6); 11 C.F.R. § 104.3(a)(4), (b)(3).

³⁸ See 28 U.S.C. § 2462 (providing five-year limitations period in cases seeking payment of civil penalties). On September 5, 2012, AAJ PAC agreed to a 120-day tolling agreement so that it could supplement its *sua sponte* submission with additional documents and information.

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12 **V. CONCLUSION**

13 For the reasons discussed above, we recommend that the Commission accept the
14 executed Conciliation Agreement attached to this Report.

15 **VI. RECOMMENDATIONS**

- 16 1. Open a Matter Under Review;
17 2. Accept the attached Conciliation Agreement with AAJ PAC;

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