

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

Mr. Brad Woodhouse  
American Democracy Legal Fund  
455 Massachusetts Avenue, NW  
Washington, DC 20001

**MUR #** 7379

*Complainant,*

v.

Mr. Donald J. Trump  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Donald J. Trump for President, Inc.  
725 Fifth Avenue  
New York, NY 10022

Mr. Bradley T. Crate  
c/o Red Curve Solutions  
138 Conant St., 2nd Floor  
Beverly, MA 01915

Mr. Michael Cohen  
725 Fifth Avenue  
New York, NY 10022

*Respondents.*

OFFICE OF  
GENERAL COUNSEL  
2018 MAY -4 PM 1:35

**COMPLAINT**

Complainant files this complaint with the Federal Election Commission (the “FEC” or “Commission”) under 52 U.S.C. § 30109(a)(1) against Mr. Donald J. Trump, and his principal campaign committee, Donald J. Trump for President, Inc.; Mr. Bradley T. Crate, in his official capacity of treasurer; and Mr. Michael Cohen (collectively, “Respondents”) for violating the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations, as described below. News sources and publicly available reports suggest that Respondents violated

52 U.S.C. § 30114(b)(1) by using campaign funds to pay for Mr. Michael Cohen's legal fees—fees unrelated to Mr. Trump's campaign or his official duties as President. Given the significance of these allegations, we request an immediate investigation by the Commission into these claims, both to determine the scope of any violations and to take swift, appropriate action against Respondents to remedy any violations.

## I. FACTS

Mr. Michael Cohen has served as a personal lawyer of Donald Trump for about a decade—working first at the Trump Organization between 2007 and 2016, then moving to private practice to serve as Mr. Trump's personal attorney and his self-proclaimed “fix-it guy” after the 2016 election.<sup>1</sup> According to sources, Mr. Cohen “did not have a formal role in the Trump campaign” at any point.<sup>2</sup>

After Robert Mueller was appointed “as special counsel to investigate possible collusion between the Trump campaign and Russia,”<sup>3</sup> Mr. Cohen hired his own personal attorney “to help him navigate the expanding Russia investigation.”<sup>4</sup> For these purposes, Mr. Cohen “retained Stephen M. Ryan, a Washington-based lawyer from the law firm McDermott, Will & Emery” to represent him.<sup>5</sup>

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<sup>1</sup> Michael Rothfeld & Joe Palazzalo, *Trump Lawyer Arranged \$130,000 Payment for Adult-Film Star's Silence*, WALL. ST. J. (Jan. 12, 2018), <https://www.wsj.com/articles/trump-lawyer-arranged-130-000-payment-for-adult-film-stars-silence-1515787678>; Maggie Haberman, *Michael D. Cohen, Trump's Longtime Lawyer, Says He Paid Stormy Daniels Out of His Own Pocket*, N.Y. TIMES (Feb. 13, 2018), <https://www.nytimes.com/2018/02/13/us/politics/stormy-daniels-michael-cohen-trump.html>.

<sup>2</sup> Katherine Faulders, John Santucci & Soo Rin Kim, *Trump Campaign Has Paid Portions of Michael Cohen's Legal Fees: Sources*, ABC NEWS (Apr. 30, 2018), <http://abcnews.go.com/Politics/trump-campaign-paid-portions-michael-cohens-legal-fees/story?id=54831269>.

<sup>3</sup> Reuters Staff, *Timeline of Mueller Probe*, REUTERS (Apr. 10, 2018), <https://www.reuters.com/article/us-usa-trump-russia-timeline/timeline-of-mueller-probe-of-trump-campaign-and-russia-idUSKBN1HH395>.

<sup>4</sup> Philip Rucker & Rosalind S. Helderman, *Trump's Personal Lawyer, Michael Cohen, Hires His Own Lawyer in Russia Probe*, WASH. POST (Jun. 16, 2017), [https://www.washingtonpost.com/news/post-politics/wp/2017/06/16/trumps-personal-lawyer-michael-cohen-hires-his-own-lawyer-in-russia-probe/?noredirect=on&utm\\_term=.7f5e39891bbb](https://www.washingtonpost.com/news/post-politics/wp/2017/06/16/trumps-personal-lawyer-michael-cohen-hires-his-own-lawyer-in-russia-probe/?noredirect=on&utm_term=.7f5e39891bbb).

<sup>5</sup> *Id.*

While Mr. Ryan was initially retained by Cohen in connection with the Russia investigation, the scope of Mr. Ryan's services shifted over time. Specifically, news sources report that Mr. Ryan also represented Mr. Cohen in connection with Stephanie Clifford—the adult film star who claimed to have an extramarital affair with Mr. Trump in 2006.<sup>6</sup> Mr. Cohen originally represented Mr. Trump in the Stephanie Clifford matter,<sup>7</sup> even paying Ms. Clifford \$130,000 “as part of an agreement that precluded her from publicly discussing [the] alleged sexual encounter with Mr. Trump.”<sup>8</sup>

While the original \$130,000 payment was made by Mr. Cohen to Ms. Clifford in October of 2016, the public did not become aware of the payment until January of 2018, after Mr. Cohen had retained the services of Mr. Ryan.<sup>9</sup> When asked to comment on the \$130,000 payment once the story broke, Mr. Cohen explained that “[n]either the Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed [him] for the payment, either directly or indirectly... The payment to Ms. Clifford was lawful, and was not a campaign contribution or a campaign expenditure by anyone.”<sup>10</sup> According to news sources, “Cohen’s reason for announcing the payment’s private nature seems to have been to emphasize that it was not connected to or motivated by the 2016 election,” and thus did not need to be reported as a campaign expense on an FEC report.<sup>11</sup>

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<sup>6</sup> Faulders, Santucci & Kim, *supra* note 2.

<sup>7</sup> Ryan Lucas, *Trump Acknowledges Lawyer Michael Cohen Represented Him In Stormy Daniels Deal*, NPR (Apr. 26, 2018), <https://www.npr.org/2018/04/26/606153390/trump-acknowledges-lawyer-michael-cohen-represented-him-in-stormy-daniels-deal>.

<sup>8</sup> Rothfeld & Palazzalo, *supra* note 1.

<sup>9</sup> *Id.*

<sup>10</sup> Haberman, *supra* note 1.

<sup>11</sup> Ben Mathis-Lilley, *Trump’s Lawyer Says the Trump Campaign Didn’t Reimburse Him for his \$130,000 Payment to Stormy Daniels. But...*, SLATE (Feb. 14, 2018), <https://slate.com/news-and-politics/2018/02/michael-cohen-stormy-daniels-usd130-000-rent-payments-does-it-add-up.html>.

Since Mr. Cohen initially retained the services of Mr. Ryan through McDermott, Will & Emery, Donald J. Trump for President, Inc. (the “Trump Campaign”) has reported a series of payments for legal fees to the law firm.<sup>12</sup> In total, through three separate payments between October of 2017 and January of 2018, the Trump Campaign has paid McDermott, Will & Emery \$227,936.31 for “legal consulting” as of its latest FEC report on file with the Commission.<sup>13</sup> According to a recent report by *ABC News*, “those three payments...were related to Cohen’s legal defense” though “[i]t is not clear what type of legal work” the payments cover.<sup>14</sup>

## II. LEGAL ARGUMENT

Under the Act and Commission regulations, contributions accepted by a candidate may not be converted to “personal use” by any person.<sup>15</sup> The Act specifies that conversion to personal use occurs when a contribution is used “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”<sup>16</sup> While the Commission has definitively identified some expenses as personal use *per se*, for items not on this list, the Commission will determine on a case-by-case basis whether an expense would fall within the definition of “personal use.”<sup>17</sup> Legal expenses are subject to a case-by-case determination.<sup>18</sup>

As a general rule, “the Commission has concluded that the use of campaign funds for legal fees and expenses does not constitute personal use when the legal proceedings

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<sup>12</sup> Donald J. Trump for President, Inc. still serves as Mr. Trump’s principal campaign committee and is still registered with the Commission. *See* Donald J. Trump for President, Inc., FEC Form 1 Statement of Organization (amended Jan. 1, 2017). *See also* Donald J. Trump for President, Inc., 2017 Year End Report at 5628-29 (amended Apr. 12, 2018); Donald J. Trump for President, Inc., April Quarterly Report at 8545 (filed Apr. 15, 2018).

<sup>13</sup> 2017 Report, *supra* note 12; April Quarterly Report, *supra* note 12.

<sup>14</sup> Faulders, Santucci & Kim, *supra* note 2.

<sup>15</sup> 52 U.S.C. § 30114(b)(1); 11 C.F.R. 113.1(g).

<sup>16</sup> 52 U.S.C. § 30114(b)(2).

<sup>17</sup> 11 C.F.R. § 113.1(g)(1)(ii).

<sup>18</sup> *Id.* § 113.1(g)(1)(ii)(A).

involve allegations *directly relating to the candidate's campaign or duties as a Federal officeholder*.”<sup>19</sup> However, the Commission has recognized that “[l]egal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder’s status.”<sup>20</sup>

Additionally, while the Commission has recognized that campaign funds may be used to pay the legal expenses of persons *other than* a candidate or officeholder, the Commission appears to only recognize this allowance for current or former employees of a campaign or officeholder.<sup>21</sup> For example, in considering whether campaign funds may be used to pay the legal expenses of a candidate’s former campaign consultant, the Commission concluded that because the civil lawsuit at issue arose from the consultant’s alleged conduct “in his role as a campaign consultant,” the lawsuit would not exist irrespective of the candidate’s campaign, and thus campaign funds could be used to pay those legal fees.<sup>22</sup>

Here, Mr. Cohen has made clear that he did not serve a formal role in the Trump Campaign and thus was not a campaign consultant or employee.<sup>23</sup> Additionally, news sources and FEC data confirm not only that Mr. Ryan currently represents Mr. Cohen in the ongoing Stephanie Clifford matter,<sup>24</sup> but also that the Trump Campaign paid for “legal fees related to Cohen’s legal defense” when it paid McDermott, Will & Emery \$227,936.31 for “legal

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<sup>19</sup> FEC Adv. Op. 2011-07 (Fleischman) (emphasis added) (approving the use of campaign funds for legal expenses of a campaign consultant facing civil suit for activities as the campaign’s consultant).

<sup>20</sup> *Explanation and Justification for Final Rules on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7868 (Feb. 9, 1995).

<sup>21</sup> See, e.g., FEC Adv. Op. 2011-07 (Fleischman). Similarly, when a Member’s current and former congressional staffers were expected to receive grand jury subpoenas in connection with a federal investigation into the Member, the Commission concluded the staffers’ legal expenses could be paid for with campaign funds, as the costs would not exist irrespective of the Member’s campaign or federal officeholder duties. See FEC Adv. Op. 2009-20 (Visclosky).

<sup>22</sup> FEC Adv. Op. 2011-07 (Fleischman).

<sup>23</sup> Faulders, Santucci & Kim, *supra* note 2.

<sup>24</sup> Haberman, *supra* note 1.

consulting.”<sup>25</sup> In fact, the last payment made by the Trump Campaign to McDermott, Will & Emery was made just weeks after the public learned of the \$130,000 payment from Mr. Cohen to Ms. Clifford.<sup>26</sup>

However, any legal fees related to Ms. Clifford or her nondisclosure agreement would undoubtedly exist irrespective of the Trump Campaign or Mr. Trump’s official duties. Not only were the allegations by Clifford made nearly a decade before Mr. Trump launched his presidential campaign, Mr. Cohen himself vehemently denied any involvement by the Trump Campaign in the 2016 payment to Stephanie Clifford.<sup>27</sup> Moreover, Mr. Cohen highlighted the private nature of this payment “to emphasize that it was not connected to or motivated by the 2016 election”—if that is true and the \$130,000 payment was entirely unrelated to the Trump Campaign, any payment by the Trump Campaign related to that transaction qualifies as personal use of campaign funds. To put it differently, Respondents cannot have it both ways—either the \$130,000 payment to Clifford was a campaign-related expense and should have been treated as such, or the payment was made by Cohen unrelated to the Trump Campaign and is not subject to FEC regulation. However, if it’s the latter, as Cohen’s public statement suggests, campaign funds cannot be used to pay for legal fees related to that payment, as that is the definition of impermissible personal use under the Act and Commission regulations.<sup>28</sup>

If we are to take Mr. Cohen at his word, and believe that the \$130,000 payment was made irrespective of the Trump Campaign, then payments by the Trump Campaign to McDermott, Will & Emery for Mr. Cohen’s legal defense blatantly violate the Act and Commission regulations to the extent those costs are related to the ongoing Stephanie Clifford matter. Unless

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<sup>25</sup> 2017 Report, *supra* note 12; April Quarterly Report, *supra* note 12.

<sup>26</sup> April Quarterly Report, *supra* note 12; Rothfeld & Palazzalo, *supra* note 1.

<sup>27</sup> Haberman, *supra* note 1.

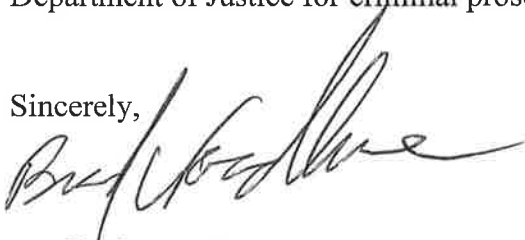
<sup>28</sup> 52 U.S.C. § 30114(b)(1); 11 C.F.R. 113.1(g).

the three payments totaling \$227,936.31 were entirely unrelated to Ms. Clifford, the use of campaign funds to pay Cohen's legal fees qualifies as an impermissible conversion of campaign funds to personal use by Respondents, and blatantly violates federal law.

### III. REQUESTED ACTION

As we have shown above, there is reason to believe that Respondents have violated federal law by using Trump Campaign funds to pay for legal fees incurred by Michael Cohen, unrelated to the Trump campaign or Mr. Trump's official duties as President. Complainant respectfully requests that the Commission promptly investigate these violations, fine Respondents the maximum amount permitted by law, and refer any relevant violations to the Department of Justice for criminal prosecution, as appropriate.

Sincerely,



Mr. Brad Woodhouse  
American Democracy Legal Fund

SUBSCRIBED AND SWORN to before me this 1 day of May, 2018.



Notary Public

My Commission Expires:

11-30-2021

