

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 623
DATE FILED: February 15, 2019
DATE OF NOTIFICATION: February 21, 2019
LAST RESPONSE RECEIVED: April 3, 2020
DATE ACTIVATED: June 1, 2020

EARLIEST SOL: January 1, 2020¹
LATEST SOL: November 30, 2023
ELECTION CYCLE: 2016-2018

SOURCE: *Sua Sponte* Submission

RESPONDENT: Friends of Dave Joyce and Natalie Baur in her
official capacity as treasurer

MUR: 7692
DATE COMPLAINT FILED: February 5, 2020
DATE OF NOTIFICATION: February 6, 2020
LAST RESPONSE RECEIVED: April 3, 2020
DATE ACTIVATED: June 1, 2020
EPS: 65
EARLIEST SOL: January 1, 2020
LATEST SOL: November 30, 2023
ELECTION CYCLE: 2016 and 2018

COMPLAINANT: Friends of Dave Joyce and Natalie Baur in her
official capacity as treasurer

RESPONDENT: Scott Coleman

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30102(c)
52 U.S.C. § 30104(b)
52 U.S.C. § 30114(b)(1)
11 C.F.R. § 102.9
11 C.F.R. § 104.3
11 C.F.R. § 104.14(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

¹ The Committee has executed a 90-day tolling agreement to extend the earliest statute of limitations date to April 1, 2020, and the latest statute of limitations date to March 2, 2024. See Tolling Agreement, Friends of Dave Joyce (July 8, 2020).

1 **FEDERAL AGENCIES CHECKED:** None

2

3 **I. INTRODUCTION**

4 These matters arose from a *sua sponte* submission, supplemental *sua sponte* submission,
5 and Complaint filed by Friends of Dave Joyce and Natalie Baur in her official capacity as
6 treasurer (the “Committee”) alleging that Scott Coleman (“Coleman”), former treasurer,
7 embezzled \$174,952.40 from the Committee between January 1, 2015, and November 30, 2018.²
8 Coleman perpetrated the fraud by making \$88,679 in unauthorized ATM withdrawals from the
9 Committee's bank account, and charging \$86,273.40 in personal expenses on a Committee credit
10 card obtained in his own name and paying the credit card bills with campaign funds.³

11 In the *sua sponte* submission, the Committee acknowledges that Coleman’s
12 embezzlement and concealment caused it to file disclosure reports that did not accurately reflect
13 its receipts, disbursements and cash-on-hand balances.⁴ The Committee also acknowledges that
14 Coleman’s embezzlement was made possible by the Committee’s failure to institute proper
15 internal controls that would have prevented the fraud.⁵

16 On August 29, 2019, Coleman pled guilty to one count of grand theft in the 4th degree
17 under Ohio Revised Code 2913.02(A)(1) in connection with the embezzlement of \$174,592.40
18 from the Committee.⁶ On October 2, 2019, he was sentenced to 30 days in jail, 2 years of

² See *Sua Sponte* Submission, Pre-MUR 623 (Friends of Dave Joyce) (Feb. 15, 2019) (“Submission”); *Sua Sponte* Suppl. Submission, Pre-MUR 623 (Friends of Dave Joyce) (Oct. 25, 2019) (“Suppl. Submission”); Complaint, MUR 7692 (Scott Coleman) (Feb. 5, 2020) (“Complaint”).

³ Suppl. Submission at 1.

⁴ Submission at 1.

⁵ See Email from Stephen Kenny to Kimberly Hart, OGC (Jan. 31, 2020, 9:39 a.m.) (“January 31, 2020 E-mail”).

⁶ Suppl. Submission at 1.

1 probation, and a \$5,000 fine.⁷ In addition, Coleman made restitution to the Committee in the
2 amount of \$341,983.06 to cover the embezzled funds, the legal fees associated with the matter,
3 and the internal audit fees incurred by the Committee.⁸

4 We recommend that the Commission transfer Pre-MUR 623 to the Alternative Dispute
5 Resolution Office (“ADRO”). Doing so would be consistent with the Commission’s practice in
6 similar embezzlement matters, and further, the Committee is the only respondent in the *sua*
7 *sponte* submission and is not a respondent in the Complaint. We further recommend that the
8 Commission find reason to believe that Scott Coleman knowingly and willfully violated
9 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1) and 11 C.F.R. §§ 102.9, and 104.3, 104.14(d) by
10 converting Committee funds to personal use, failing to keep complete Committee financial
11 records, and failing to file accurate disclosure reports. In addition, we recommend that the
12 Commission enter into pre-probable cause conciliation with Coleman.

13 **II. FACTUAL BACKGROUND**

14
15 Rep. Dave Joyce (“Joyce”) was elected in 2012 to succeed Rep. Steven LaTourette for
16 the 14th Congressional District of Ohio.⁹ Joyce chose to retain LaTourette’s campaign treasurer,
17 Scott Coleman, as the Committee’s treasurer, and Dino DiSanto as his chief of staff.¹⁰ The
18 information indicates that Coleman, in his capacity as treasurer, was responsible for preparing
19 and filing campaign finance reports, processing incoming contributions, reviewing

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.* In June 2018, DiSanto resigned as chief of staff to become Joyce’s campaign manager. *Id.* DiSanto also provided consulting services to the Committee for \$10,000 per month. *Id.*

1 reimbursement requests, and issuing refunds and disbursements.¹¹ During the relevant period,
2 Coleman and DiSanto were the only authorized signatories on the Committee's bank account.¹²

3 1. Events Leading to Discovery of Embezzlement

4 On or about November 20, 2018, Coleman informed Joyce that DiSanto made four
5 reimbursement requests totaling \$64,000 in connection with consulting services provided to the
6 Committee.¹³ Joyce, being concerned about the amount of the reimbursement requests, met with
7 Coleman on November 26, 2018, to discuss the DiSanto requests, as well as the overall financial
8 condition of the Committee.¹⁴

9 During this same meeting, Joyce informed Coleman that his services were no longer
10 required and requested that Coleman turn over the Committee's books and records to the new
11 treasurer, Natalie Baur.¹⁵ Coleman resisted the request and offered to continue to serve as
12 treasurer at no compensation.¹⁶ Coleman's resistance to the transition and delay in turning over

¹¹ *Id.*, generally; *see also* Suppl. Submission at 2.

¹² Submission at 2.

¹³ *Id.*

¹⁴ *Id.* at 2. On December 7, 2018, Joyce requested an inventory of the Committee's equipment. *Id.* He also met with DiSanto to obtain an explanation for billing the Committee in excess of \$10,000 per month for consulting fees and to determine the whereabouts of various electronic equipment purchased with Committee funds. *Id.* at 3. During the meeting, Joyce terminated the Committee's consulting relationship with DiSanto and requested that he return any equipment purchased with Committee funds. *Id.* The Committee states that at the end of January 2019, DiSanto returned all of the Committee's electronic equipment. *Id.*

In its Submission, the Committee indicated that unnamed "individuals" might be responsible for misappropriating Committee funds. *Id.* at 1. It did not, however, name DiSanto as one of those individuals who might have been involved in the misappropriation. *Id.* The Committee later informed the Commission that its internal review determined that there had been no misappropriation of Committee funds or equipment by DiSanto. *See* January 31, 2020 E-mail. In addition, the Committee states that the issues regarding the reimbursement requests and Committee equipment were satisfactorily resolved by the parties. *Id.* Based on the foregoing and the lack of information indicating any misappropriation on his part, we did not name DiSanto as a respondent, and we make no recommendations regarding him.

¹⁵ Submission at 2.

¹⁶ *Id.*

1 the Committee's records and books for several weeks concerned both Joyce and Baur.¹⁷ On
2 December 12, 2018, Coleman produced an incomplete set of financial records to Baur, which
3 failed to include the Committee's bank statements.¹⁸ On the same day, Joyce requested that the
4 state prosecutor subpoena all of the Committee's bank records since he and Baur were not
5 authorized to obtain them directly from the bank.¹⁹

6 On or about January 23, 2019, Baur received the subpoenaed bank records showing that
7 Coleman signed bank withdrawal slips totaling approximately \$4,000 from the Committee's
8 account, and received cash back when depositing checks on several occasions.²⁰ In addition,
9 Baur's review of the bank records and video surveillance confirmed that between May 2015 and
10 November 16, 2018, Coleman made regular, small, unauthorized ATM withdrawals that totaled
11 approximately \$82,000.²¹

12 2. Results of Criminal Investigation and Internal Review

13 On August 29, 2019, Coleman was charged with one count of grand theft in the 4th
14 degree under Ohio Revised Code 2913.02(A)(1).²² Coleman pled guilty and was sentenced on

¹⁷ *Id.* at 2. As a result, Joyce, on or about December 7, 2018, contacted the Geauga County Prosecutor's Office to report his suspicions about potential issues with the Committee's account. *Id.* The prosecutor's office began its investigation by obtaining information regarding the Committee's bank account balance. *Id.* Baur was able to confirm that the account balance matched the cash-on-hand figure last reported to the Commission in its disclosure report. *Id.*

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 3.

²⁰ *Id.* The criminal investigator ultimately did not subpoena Coleman's personal banking records or the credit card statements. *See* E-mail from Stephen Kenny to Kimberly Hart, OGC (Dec. 4, 2019, 12:46 p.m.) ("December 4, 2019 E-mail").

²¹ *Id.*

²² Suppl. Submission at 1.

1 October 2, 2019, to 30 days in jail, 2 years' probation, and a \$5,000 fine.²³ On the same date, the
2 Committee filed a Form 99 with the Commission detailing the results of the Committee's internal
3 review.²⁴ On August 30, 2019, Coleman made full restitution to the Committee in the amount of
4 \$341,983.06 to cover the embezzled amounts, the legal fees associated with the criminal
5 investigation, and the internal review costs.²⁵

6 On October 25, 2019, the Committee filed a supplemental submission detailing the
7 results of the criminal investigation, internal review, terms of Coleman's plea agreement, and
8 steps taken to assist in the criminal investigation.²⁶ The internal review of its financial records
9 and disclosure reports covered the time period of January 1, 2015, through November 30, 2018.²⁷
10 The internal review determined that Coleman embezzled \$174,952.40 from the Committee.²⁸

11 According to the Committee, Coleman made \$88,769 in unauthorized withdrawals from
12 the Committee's bank account in the form of ATM withdrawals, counter withdrawals, and cash
13 back from bank deposits.²⁹ In addition, unbeknownst to Joyce, Coleman obtained a Committee

²³ *Id.*

²⁴ *See* Form 99, Friends of Dave Joyce (Aug. 29, 2019).

²⁵ *Id.* The restitution payment is reflected on the Committee's 2019 October Quarterly Report. *See* 2019 October Quarterly Report, Friends of Dave Joyce (Oct. 15, 2019). The Committee states that it has instituted new internal controls to prevent a recurrence of the misappropriation. Suppl. Submission at 2-3.

²⁶ Suppl. Submission at 1.

²⁷ *Id.*

²⁸ *Id.* at 1-2; *see also* E-mail from Stephen Kenny to Kimberly Hart, OGC (Nov. 22, 2019) (copies of bank account statements and deposit items for 2015 through 2018). The Committee indicates that Coleman also reimbursed the campaign for \$6,675.85 for some additional expenses. Suppl. Submission at 1. In addition, the Committee provided a spreadsheet compiled during its internal review of Coleman's fraudulent activity using bank records and the expenses listed on its FEC reports. *See* December 4, 2019 E-mail. The Committee indicates that it did not have access to the underlying credit card statements—because the prosecutor's office did not subpoena them and Coleman did not produce them—so they used this spreadsheet in discussions with Coleman during the criminal investigation, and Coleman attested to its substantial accuracy before pleading guilty. *Id.*

²⁹ *Id.* at 2.

1 credit card in his own name and incurred numerous expenses on it, both personal and campaign-
2 related.³⁰ Coleman paid the credit card balances by authorizing checks from the Committee's
3 bank account.³¹ He then reported the campaign-related expenses as direct payments to the
4 recipients rather than as payments to the credit card company with the expenses further
5 itemized.³² In its supplemental submission, the Committee assumed that expenses on the
6 Committee's disclosure reports that could not be reconciled with the underlying financial records
7 had to have been paid with the credit card.³³ Thus, the Committee concluded that the
8 unauthorized expenses equal \$86,273.40, which is the difference between the amounts reported
9 to the Commission and amounts paid to the credit card company, minus expenses that appeared
10 to be campaign-related.³⁴

11 In response to the Committee's MUR 7692 Complaint, Coleman admits to the violations
12 and asserts that no action should be taken against him because he accepted responsibility for his
13 actions, fully repaid the misappropriated funds (including the costs of the criminal investigation

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* The Committee identified numerous likely legitimate expenses reported to the FEC that were most likely paid by credit card but could not be matched with a specific payment from the Committee's bank account. *See* December 4, 2019 E-mail. Since these expenses could not be matched with a particular payment to the credit card company, but would have accounted for a portion of the excessive amounts paid to the credit card company identified in other transactions, the prosecutor agreed with the Committee that the total amount of such expenses (\$26,246.98) should be deducted from the total amount of underreported payments (\$113,511.88). *Id.* This yielded a total amount of \$87,264.90 in fraudulent expenses. *Id.* During the criminal investigation, Coleman agreed to both the accuracy of this methodology and the amounts. *Id.* We acknowledge that there are slight discrepancies between the amount of fraudulent credit card expenses shown on the Committee's supplemental submission, \$86,273.40, the amount shown on the spreadsheet used in the criminal investigation, \$87,264.90, and the amount on the Form 99 filed by the Committee, \$87,802.84. *See* Suppl. Submission at 1; December 4, 2019 E-mail; Form 99. However, as the differences are relatively minor, we will assume that the lowest figure (\$86,273.40) is correct and will use it to calculate the proposed opening settlement offer.

1 and internal review), is no longer engaged in politics, and has faced harsh consequences for his
2 actions, including losing his job.³⁵

3 **III. Legal Analysis**

4 1. The Committee

5 The Act requires a committee, through its treasurer, to keep an accurate account of
6 receipts, disbursements, and cash-on-hand balances.³⁶ Committee reports must disclose: (1) the
7 amount of cash-on-hand at the start of the reporting period; (2) the total amount of receipts;
8 (3) the identity of any person who contributes more than \$200 in the election cycle, and the date
9 and amount of his contribution(s); (4) the total amount of disbursements; (5) the identity of any
10 person to whom the committee disburses over \$200 during the election cycle, together with the
11 date, amount, and purpose of the expenditure(s); and (6) the amount of cash-on-hand at the close
12 of the reporting period.³⁷

13 In 2007, the Commission established a safe harbor to benefit committees that file
14 inaccurate reports because their funds were unknowingly misappropriated by committee
15 fiduciaries and staff.³⁸ The Commission concluded that it would not seek a monetary penalty
16 from a committee for filing inaccurate reports due to embezzlement if the committee maintained
17 certain internal controls at the time and took certain steps after discovery.³⁹ The Commission
18 concluded that those internal controls and post-discovery steps “represent the *minimum* efforts a

³⁵ See Resp., MUR 7692 (Scott Coleman) (Apr. 3, 2020).

³⁶ 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

³⁷ *Id.* § 30104(b)(1)-(6); 11 C.F.R. § 104.3(a)-(b).

³⁸ See Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007) (“Safe Harbor Policy”).

³⁹ *Id.*

1 committee must take to qualify for this safe harbor.”⁴⁰ Nonetheless, the Commission will
2 consider “the presence of some but not all” of the controls as mitigating factors when fashioning
3 a civil penalty offer even if a committee fails to satisfy the policy’s additional requirements.⁴¹

4 In its supplemental submission, the Committee acknowledges that Coleman’s
5 embezzlement of \$174,952.40 caused it to under-report its receipts, disbursements, and cash-on-
6 hand balances on its disclosure reports over a 34-month period.⁴² The Committee states that it
7 has implemented several new internal control policies in compliance with the safe harbor policy
8 including: (1) retaining the services of a new treasurer, (2) opening all campaign bank accounts
9 using the Committee’s name and Employer Identification Number instead an individual’s name
10 or social security number, and (3) appointing an employee, who is not authorized to write checks
11 or responsible for handling the Committee’s accounting, to review and reconcile bank statements
12 with accounting every month and with FEC reports prior to filing.⁴³

⁴⁰ *Id.* (emphasis added).

⁴¹ *Id.* The internal controls identified in the policy include: (1) opening all bank accounts in the name of the committee using its Employer Identification Number; (2) reviewing monthly bank statements for unauthorized transactions and reconciling the statements by someone other than the individual with check-signing authority or who has responsibility for the committee’s accounting; (3) requiring two signatures on checks over \$1,000; (4) instituting procedures for handling incoming receipts by someone other than the individuals with accounting or banking authority; and (5) maintaining safeguards for managing a petty cash account. Further, when a committee discovers misappropriation of funds, under the policy the committee must notify the Commission and relevant law enforcement authorities and also promptly amend its reports. *Id.*

⁴² The Committee also indicated that it made some miscellaneous clerical adjustments to items on the reports. *See* Form 99.

⁴³ Suppl. Submission at 2-3; *see also* Amended Statement of Organization, Friends of Dave Joyce (Dec. 13, 2018). The Committee further states that its new internal control policies require that all expenses be authorized in writing by individuals identified in its written policies, and that all approvals must be stapled to the copy of each check or expenditure; and only one person has check-signing authority. Suppl. Submission at 2. It further states that only certain employees and vendors are to receive contribution checks, and they are required to record receipts immediately and place a restrictive endorsement on any check as soon as they are received. *Id.* at 3. The Committee also periodically reviews the record of receipts and compares the recorded amounts to the amounts on the Committee's bank statements. *Id.* Lastly, the Committee's credit and debit cards are issued in the name of the Committee, only certain employees are authorized to use these cards, and the cards have credit limits and withdrawal prohibitions. *Id.* We recognize that the Committee’s new policy of giving check-signing authority to only one person on all checks is inconsistent with the Commission’s guidance, and should the Commission approve

1 Because of Coleman's embezzlement and attempts to conceal it, the Committee, between
2 January 1, 2015, and November 30, 2018, failed to disclose \$84,160 in contributions as well as
3 the source of those contributions on its disclosure reports, failed to timely refund \$5,200 in
4 corporate contributions, and failed to report \$22,109.61 in refunds to vendors as offsets to
5 operating expenditures.⁴⁴ These actions also caused the Committee to report its cash-on-hand
6 inaccurately on the same disclosure reports.

7 The Committee, by its own admission, lacked effective internal controls in its accounting
8 and financial operations, but it did not provide specific information regarding how Coleman
9 managed its finances.⁴⁵ However, the available information indicates that Coleman had primary
10 responsibility for managing all of the Committee's accounting and financial operations.⁴⁶ He
11 was one of the two authorized signatories on the Committee's bank account and used his control
12 of the Committee's finances to open a credit card in the Committee's name without its
13 knowledge and charge personal expenses, which he then paid for with Committee funds.⁴⁷
14 Coleman was also responsible for preparing the Committee's disclosure reports.

the recommendation to transfer the *sua sponte* to ADRO, we intend to inform ADRO to raise that issue with the Committee.

⁴⁴ See Form 99.

⁴⁵ Suppl. Submission at 2-3.

⁴⁶ Submission at 1-2; Suppl. Submission at 1-2. Coleman took full responsibility for the embezzlement and the reporting inaccuracies. See Suppl. Submission, Attach. (Coleman Plea Agreement).

⁴⁷ Suppl. Submission at 1-2. Although Coleman and DiSanto were authorized signatories on the Committee's bank account, there is no available information to suggest that DiSanto exercised any control over the bank account. The Committee has indicated that it conducted an internal review of all its records and found no information suggesting that DiSanto had misappropriated Committee funds or equipment. See January 13, 2019 E-mail.

1 Although the Committee lacked effective controls, the Commission has, in similar
2 circumstances, referred committees to ADRO.⁴⁸ We recommend that the Commission do
3 likewise in this instance. The record is substantially complete in that the Committee was able to
4 determine the nature and extent of the Coleman's embezzlement through its financial records.
5 Further, Coleman reviewed and approved the auditor's methodology for determining the extent
6 of the embezzlement, and he pled guilty to the stipulated amounts.

7 2. Scott Coleman

8 Each treasurer is required to keep an accurate account of and disclose, among other
9 things, its receipts, disbursements, and cash-on-hand balances.⁴⁹ The Act prohibits any person
10 from converting contributions to a federal candidate to personal use.⁵⁰ The Act prescribes
11 additional monetary penalties for violations that are knowing and willful.⁵¹ A violation of the
12 Act is knowing and willful if the "acts were committed with full knowledge of all the relevant
13 facts and a recognition that the action is prohibited by law."⁵² This does not require proving
14 knowledge of the specific statute or regulation the respondent allegedly violated.⁵³ Rather, it is

⁴⁸ See *e.g.*, MUR 7225 (Rohrabacher)(assigning Committee to ADRO for embezzlement of \$238,347.18); Pre-MUR 596/MUR 7132 (Amedisys PAC/Michael Pitts) (assigning Committee to ADRO for embezzlement of \$79,640); MUR 6834 (formerly RR 13L-33/ADR 739) (Lynn Jenkins for Congress) (assigning committee to ADRO for embezzlement of \$21,300). MUR 6980 (formerly RR 15L-03/ADR 78) (McConnell Senate Committee) (assigning committee to ADRO for embezzlement of \$100,634).

⁴⁹ 52 U.S.C. §§ 30102(c), 30104(a), (b).

⁵⁰ *Id.* § 30114(b)(1). A contribution or donation shall be considered to be converted to personal use if the contribution or amount 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. *Id.* § 30114(b)(2).

⁵¹ *Id.* §§ 30109(a)(5)(B), 30109(d).

⁵² 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

⁵³ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show

1 sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was
2 unlawful.”⁵⁴ This awareness may be shown through circumstantial evidence from which the
3 respondent’s unlawful intent reasonably may be inferred.⁵⁵

4 The available information, including the Committee’s internal audit, the criminal
5 investigation, and the plea agreement, confirms that Coleman converted campaign funds to
6 personal use. Coleman pleaded guilty to embezzling \$174,952.40 from the Committee by
7 making \$88,679 in unauthorized ATM withdrawals from its bank account and by incurring
8 numerous personal expenses totaling \$86,273.40 on the Committee’s credit card, which Coleman
9 had paid with the Committee’s funds.⁵⁶

10 In addition, the information supports a knowing and willful finding. Coleman, without
11 informing Joyce or any other Committee employee, obtained a committee credit card in his own
12 name, incurred numerous personal expenses totaling \$86,273.40, and paid for them with
13 Committee funds.⁵⁷ In an effort to conceal his embezzlement, Coleman also failed to disclose
14 \$84,160 in contributions, timely refund \$5,200 in corporate contributions, and report \$22,109.61
15 in refunds to vendors as offsets to operating expenditures.⁵⁸ Coleman’s actions, which caused

only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁵⁴ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁵⁵ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁵⁶ *See Resp., Attach (Coleman Sentencing Memorandum), MUR 7692 (Coleman) (Apr. 3, 2020).*

⁵⁷ *Suppl. Submission at 2.*

⁵⁸ *See Form 99.*

1 the Committee to underreport and misreport its receipts, disbursements and cash-on-hand
2 balances, indicate an intent to conceal the embezzlement.⁵⁹

3 Therefore, we recommend that the Commission find reason to believe that Scott Coleman
4 knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1), and 11 C.F.R.
5 §§ 102.9, 104.3, 104.14(d) by converting Committee funds to personal use, failing to keep
6 complete Committee financial records, and failing to file accurate disclosure reports.

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⁵⁹ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3.

Pre-MUR 623 and MUR 7692 (Friends of Dave Joyce *et al.*)

First General Counsel's Report

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10 **V. RECOMMENDATIONS**

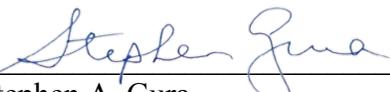
- 11 1. Transfer Pre-MUR 623 to the Office of Alternative Dispute Resolution.
- 12
- 13 2. Find reason to believe that Scott Coleman knowingly and willfully violated
- 14 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1), and 11 C.F.R. § 102.9, 104.3,
- 15 104.14(d).
-

- 1 3. Enter into pre-probable cause conciliation with Scott Coleman prior to a finding
- 2 of probable cause to believe.
- 3
- 4 4. Approve the attached Conciliation Agreement.
- 5
- 6 5. Approve the attached Factual and Legal Analysis.
- 7
- 8 6. Approve the appropriate letter.
- 9

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11 Lisa J. Stevenson
12 Acting General Counsel

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14 Charles Kitcher
15 Acting Associate General Counsel

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18 8.31.20
19 Date

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18 
19 _____
20 Stephen A. Gura
21 Deputy Associate General Counsel

22
23 
24 _____
25 Mark D. Shonkwiler
26 Assistant General Counsel

27
28 
29 _____
30 Kimberly D. Hart
31 Attorney

32 Attachments

- 33 1. Factual and Legal Analysis for Scott Coleman
- 34

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
4

5 **MUR 7692**

6
7 **RESPONDENT:** Scott E. Coleman
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9

10 **I. INTRODUCTION**
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12 This matter was generated based on information ascertained by the Federal Election
13 Commission (the “Commission”) in the normal course of carrying out its supervisory
14 responsibilities, *see* 52 U.S.C. § 30109(a)(2), and by a Complaint filed by Friends of Dave Joyce
15 and Natalie Baur in her official capacity as treasurer (“Committee”) alleging that Scott E.
16 Coleman (“Coleman”), former treasurer of the Committee, embezzled \$174,952.40 from the
17 Committee.¹ Coleman made \$88,769 in unauthorized withdrawals from the Committee’s bank
18 account in the form of ATM withdrawals, counter withdrawals, and cash back from bank
19 deposits, and \$86,273.40 in unauthorized personal charges on the Committee’s credit card.

20 Coleman pled guilty to one count of grand theft in the 4th degree in connection with
21 embezzling \$174,952.40 between January 1, 2015 and November 30, 2018. On August 30,
22 2019, Coleman made full restitution to the Committee in the amount of \$341,983.06 to cover the
23 embezzled amounts, the legal fees associated with the criminal investigation, and the internal
24 review costs. He was sentenced to on October 2, 2019, to 30 days in jail, 2 years’ probation, and
25 a \$5,000 fine.

¹ Compl. at 1, Attachs., MUR 7692 (Scott Coleman) (Feb. 5, 2020). The Complaint attached a supplement to the Committee’s *Sua Sponte* submission. Pre-MUR 623 (Friends of Dave Joyce (Oct. 25, 2019) (“Suppl. Submission”). That supplement attached documents associated with Coleman’s criminal court case, and it referenced the Committee’s initial submission in Pre-MUR 623, but did not attach it. Suppl. Submission at 1.

1 Based on this information, there is reason to believe that Scott E. Coleman (“Coleman”)
2 knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1) and 11 C.F.R.
3 §§ 102.9, and 104.3, 104.14(d) of the Federal Election Campaign Act of 1971, as amended (the
4 “Act”) by converting Committee funds to personal use, failing to keep complete Committee
5 financial records, and failing to file accurate disclosure reports.

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. BACKGROUND**

8 Information in the Commission’s possession indicates that Rep. Dave Joyce (“Joyce”)
9 was elected in 2012 to succeed Rep. Steven LaTourette for the 14th Congressional District of
10 Ohio and chose to retain LaTourette’s campaign treasurer, Scott Coleman, as the Committee’s
11 treasurer. Coleman, in his capacity as treasurer, was responsible for preparing and filing
12 campaign finance reports, processing incoming contributions, reviewing reimbursement requests,
13 and issuing refunds and disbursements. Information in the Commission’s possession provides
14 that during the relevant period, Coleman and Dino DiSanto, committee campaign manager, were
15 the only two authorized signatories on the Committee’s bank account.

16 1. Events Leading to Discovery of Embezzlement

17 Information in the Commission’s possession indicates that, on or about November 20,
18 2018, Coleman informed Joyce that DiSanto made four reimbursement requests totaling \$64,000
19 in connection with consulting services provided to the Committee. Joyce, being concerned about
20 the amount of the reimbursement requests, met with Coleman on November 26, 2018, to discuss
21 the DiSanto requests, as well as the overall financial condition of the Committee.

22 Information in the Commission’s possession indicates that during this same meeting,
23 Joyce informed Coleman that his services were no longer required and requested that Coleman

1 turn over the Committee's books and records to the new treasurer, Natalie Baur. The same
2 information in the Commission's possession indicates that Coleman resisted the request and
3 offered to continue to serve as treasurer at no compensation. Coleman's resistance to the
4 transition and delay in turning over the Committee's records and books for several weeks
5 concerned both Joyce and Baur.² On December 12, 2018, Coleman produced an incomplete set
6 of financial records to Baur, which failed to include the Committee's bank statements. On the
7 same day, Joyce requested that the state prosecutor subpoena all of the Committee's bank records
8 since he and Baur were not authorized to obtain them directly from the bank.

9 Information in the Commission's possession indicates that on or about January 23, 2019,
10 Baur received the subpoenaed bank records showing that Coleman signed bank withdrawal slips
11 totaling approximately \$4,000 from the Committee's account, and received cash back when
12 depositing checks on several occasions.³ Baur's review of the bank records and video
13 surveillance confirmed that between May 2015 and November 16, 2018, Coleman made regular,
14 small, unauthorized ATM withdrawals that totaled approximately \$82,000.

15 2. Results of Criminal Investigation and Internal Review

16 On August 29, 2019, Coleman was charged with one count of grand theft in the 4th
17 degree under Ohio Revised Code 2913.02(A)(1).⁴ Coleman pled guilty and was sentenced on

² Information in the Commission's possession indicates that as a result of Coleman's resistance, Joyce, on or about December 7, 2018, contacted the Geauga County Prosecutor's Office to report his suspicions about potential issues with the Committee's account. The prosecutor's office began its investigation by obtaining information regarding the Committee's bank account balance. Baur was able to confirm that the account balance matched the cash-on-hand figure last reported to the Commission in its disclosure report.

³ Information in the Commission's possession indicates that the criminal investigator ultimately did not subpoena Coleman's personal banking records or the credit card statements.

⁴ Suppl. Submission at 1.

1 October 2, 2019, to 30 days in jail, 2 years' probation, and a \$5,000 fine.⁵ On the same date, the
2 Committee filed a Form 99 with the Commission detailing the results of the Committee's internal
3 review.⁶ On August 30, 2019, Coleman made full restitution to the Committee in the amount of
4 \$341,983.06 to cover the embezzled amounts, the legal fees associated with the criminal
5 investigation, and the internal review costs.⁷

6 On October 25, 2019, the Committee filed a supplemental submission detailing the
7 results of the criminal investigation, internal review, terms of Coleman's plea agreement, and
8 steps taken to assist in the criminal investigation.⁸ The internal review of its financial records
9 and disclosure reports covered the time period of January 1, 2015, through November 30, 2018.⁹
10 The internal review determined that Coleman embezzled \$174,952.40 from the Committee.¹⁰

11 According to the Committee, Coleman made \$88,769 in unauthorized withdrawals from
12 the Committee's bank account in the form of ATM withdrawals, counter withdrawals, and cash
13 back from bank deposits.¹¹ In addition, unbeknownst to Joyce, Coleman obtained a Committee
14 credit card in his own name and incurred numerous expenses on it, both personal and campaign-

⁵ *Id.*

⁶ *See* Form 99, Friends of Dave Joyce (Aug. 29, 2019).

⁷ *Id.* The restitution payment is reflected on the Committee's 2019 October Quarterly Report. *See* 2019 October Quarterly Report, Friends of Dave Joyce (Oct. 15, 2019).

⁸ Suppl. Submission at 1.

⁹ *Id.*

¹⁰ *Id.* at 1-2. The Committee indicates that Coleman also reimbursed the campaign for \$6,675.85 for some additional expenses. *Id.* at 1. Information in the Commission's possession indicates that that the Committee did not have access to the underlying credit card statements—because the prosecutor's office did not subpoena them and Coleman did not produce them—so they used information gathered from its internal review in discussions with Coleman during the criminal investigation, and Coleman attested to its substantial accuracy before pleading guilty.

¹¹ Suppl. Submission at 2.

1 related.¹² Coleman paid the credit card balances by authorizing checks from the Committee's
2 bank account.¹³ He then reported the campaign-related expenses as direct payments to the
3 recipients rather than as payments to the credit card company with the expenses further
4 itemized.¹⁴ In its supplemental submission, the Committee assumed that expenses on the
5 Committee's disclosure reports that could not be reconciled with the underlying financial records
6 had to have been paid with the credit card.¹⁵ Thus, the Committee concluded that the
7 unauthorized expenses equal \$86,273.40, which is the difference between the amounts reported
8 to the Commission and amounts paid to the credit card company, minus expenses that appeared
9 to be campaign-related.¹⁶

10 **B. LEGAL ANALYSIS**

11 Each treasurer is required to keep an accurate account of and disclose, among other
12 things, its receipts, disbursements, and cash-on-hand balances.¹⁷ The Act prohibits any person

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* Information in the Commission's possession indicates that the Committee identified numerous likely legitimate expenses reported to the FEC that were most likely paid by credit card but could not be matched with a specific payment from the Committee's bank account. Since these expenses could not be matched with a particular payment to the credit card company, but would have accounted for a portion of the excessive amounts paid to the credit card company identified in other transactions, the prosecutor agreed with the Committee that the total amount of such expenses (\$26,246.98) should be deducted from the total amount of underreported payments (\$113,511.88). This yielded a total amount of \$87,264.90 in fraudulent expenses. During the criminal investigation, Coleman agreed to both the accuracy of this methodology and the amounts. There are slight discrepancies between the amount of fraudulent credit card expenses shown on the Committee's supplemental submission, \$86,273.40, the amount shown on the documents used in the criminal investigation, \$87,264.90, and the amount on the Form 99 filed by the Committee, \$87,802.84. *See* Suppl. Submission at 1; Form 99. However, as the differences are relatively minor, we will assume that the lowest figure (\$86,273.40) is correct.

¹⁷ 52 U.S.C. § 30104(a), (b).

1 from converting contributions to a federal candidate to personal use.¹⁸ The Act prescribes
2 additional monetary penalties for violations that are knowing and willful.¹⁹ A violation of the
3 Act is knowing and willful if the “acts were committed with full knowledge of all the relevant
4 facts and a recognition that the action is prohibited by law.”²⁰ This does not require proving
5 knowledge of the specific statute or regulation the respondent allegedly violated.²¹ Rather, it is
6 sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was
7 unlawful.”²² This awareness may be shown through circumstantial evidence from which the
8 respondent’s unlawful intent reasonably may be inferred.²³

9 The available information, including the Committee’s internal audit, the criminal
10 investigation, and the plea agreement, confirms that Coleman converted campaign funds to
11 personal use. Coleman pleaded guilty to embezzling \$174,952.40 from the Committee by
12 making \$88,679 in unauthorized ATM withdrawals from its bank account and by incurring

¹⁸ *Id.* § 30114(b)(1). A contribution or donation shall be considered to be converted to personal use if the contribution or amount 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. *Id.* § 30114(b)(2).

¹⁹ *Id.* §§ 30109(a)(5)(B), 30109(d).

²⁰ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

²¹ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

²² *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

²³ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

1 numerous personal expenses totaling \$86,273.40 on the Committee's credit card, which Coleman
2 had paid with the Committee's funds.²⁴

3 In addition, the information supports a knowing and willful finding. Coleman, without
4 informing Joyce or any other Committee employee, obtained a committee credit card in his own
5 name, incurred numerous personal expenses totaling \$86,273.40, and paid for them with
6 Committee funds.²⁵ In an effort to conceal his embezzlement, Coleman also failed to disclose
7 \$84,160 in contributions, timely refund \$5,200 in corporate contributions, and report \$22,109.61
8 in refunds to vendors as offsets to operating expenditures.²⁶ Coleman's actions, which caused
9 the Committee to underreport and misreport its receipts, disbursements and cash-on-hand
10 balances, indicate an intent to conceal the embezzlement.²⁷

11 Therefore, the Commission finds reason to believe that Scott E. Coleman knowingly and
12 willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1), and 11 C.F.R. §§ 102.9, 104.3,
13 104.14(d) by converting Committee funds to personal use, failing to keep complete Committee
14 financial records, and failing to file accurate disclosure reports.

²⁴ See Resp., Attach (Coleman Sentencing Memorandum), MUR 7692 (Coleman) (Apr. 3, 2020).

²⁵ Suppl. Submission at 2.

²⁶ See Form 99.

²⁷ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3.