

Campaign Integrity Watchdog
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6 August 2020

Federal Elections Commission
Office of Complaints Examination
& Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: MUR 7763

Mr. Jordan, Ms. Dennis –

The following memo is a response on behalf of the Casper for Colorado candidate committee and myself in my official capacity as treasurer (more accurately, designated filing agent acting as consultant via contract with my company, Campaign Integrity Watchdog LLC) to the legally frivolous, groundless, and vexatious complaint filed by Gary Kirkland against Casper for Colorado (reference MUR 7763).

Mr. Kirkland's Complaint is risibly devoid of legal merit, motivated by personal and political animus, intended as harassment, and may constitute a criminal violation of Colorado Revised Statute 1-45-115 (*Encouraging withdrawal from campaign prohibited*) in light of Mr. Kirkland's actions. Both the Casper for Colorado (CFC) committee and Campaign Integrity Watchdog (CIW) respectfully request that the FEC report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities (in this case, the Colorado Attorney General's office) per 52 U.S.C. §30107(a)(9) as necessary.

Background

In filing this Complaint, Mr. Gary Kirkland is acting out of personal and political animus, and his accusations should be viewed in that light. As he admits in the body of his Complaint, he has opposed Mr. Stockham's candidacy for congressional office over multiple election cycles. Mr. Kirkland is also a close associate and political ally of Mr. Steve House, currently a candidate for Congressional District 6 (announcing after Mr. Stockham had been a declared candidate in that district for several months) and formerly the Colorado state Republican Party Chair and serving on the board of the Colorado Republican Independent Expenditure Committee ("CORE IEC"), both organization that have been adjudicated to be in violation of Colorado state campaign finance laws on multiple occasions (in full disclosure, Campaign Integrity Watchdog was the entity bringing Complaints and successfully prosecuting both organizations for multiple failures of state campaign finance law: see e.g. OS 2014-0044 *Campaign Integrity Watchdog v. Colorado Republican Party Independent Expenditure Committee* (CORE fined \$2000, ordered to return \$25000 donation) <https://tracer.sos.colorado.gov/PublicSite/SearchPages/ComplaintDetail.aspx?ID=353> and OS 2015-0026 *Campaign Integrity Watchdog v. Colorado Republican Committee* (CRC penalized \$10,000, ordered to return 5 illegal contributions and ordered to file a corrected amended report), <https://tracer.sos.colorado.gov/PublicSite/SearchPages/ComplaintDetail.aspx?ID=386> among others).

Apparently Mr. Kirkland and Mr. House sought revenge against Mr. Stockham (previously a primary election opponent to Mr. House in Congressional District 6) and against Campaign Integrity Watchdog (having held organizations headed by Mr. House accountable for multiple violations of state campaign finance law over the years). It is also worth noting that Mr. House may have been implicated in mail fraud committed by the Colorado Republican Independent Expenditure Committee ('CORE IEC') during the 2018 election cycle, which had been referred to the Postmaster General for investigation.

COMPLAINT

Irrespective of Mr. Kirkland's personal and political animus towards CIW's client, Mr. Stockham, his complaint is devoid of both factual and legal merit. Although CIW (and myself, as CIW's Director and CFC treasurer/filing agent) are not integrated into CFC campaign operations and therefore not privy to every detail of CFC expenditures (per the terms of CIW's consulting contract with the CFC committee, CIW relies upon information supplied by the candidate/committee regarding specific purpose of any campaign expenditures – see attached **Exhibit 1**, *Contract for Consulting Services Casper for Colorado*) CIW will address each of the allegations raised in Mr. Kirkland's Complaint based on our knowledge.

- 1) Mr. Kirkland alleges that Mr. Stockham's candidate committee filings have not "ever listed a line item for 'Salary' and therefore Mr. Stockham is guilty of "Federal Income Tax Evasion, Colorado State Income Tax Evasion, and failure to pay FICA taxes." Mr. Kirkland bases his accusations on alleged statements by Mr. Stockham that "he is entitled to a salary" (despite the lack of any fact alleged or evidence that Mr. Stockham has in fact drawn a salary from the campaign). Based on disclosures from Mr. Stockham to CIW and as reported by the committee, Mr. Stockham has in fact never drawn any salary from campaign committee funds. In any event, Mr. Kirkland fails to state a valid claim for relief in his complaint on this issue; he fails to allege any violation of FEC regulations or federal campaign finance law (his allegations assert violations of federal and state **tax law**, which is not within the jurisdiction of the Federal Elections Commission; Mr. Stockham can (and on information and belief has) address[ed] these substantially frivolous, groundless, and vexatious allegations of violating **tax law** in his own response to Mr. Kirkland's complaint).
- 2) Mr. Kirkland alleges that Mr. Stockham has "committed mis-appropriation of campaign funds for the specific purpose of funding a business entity that is a sole & separate business that has absolutely nothing to do with the operations of a political campaign" based on the fact that the vehicle used by Mr. Stockham in his business is the same vehicle used by Mr. Stockham in his campaign activities. Again, the accusation is risibly devoid of legal and factual merit. A vehicle may be used for multiple purposes; for personal, business, or multiple business (campaign) use. So long as adequate records are kept distinguishing such use, and costs are apportioned among the different uses, such split usage is not only perfectly legal but expected for most non-wealthy persons seeking elective office and not owning multiple vehicles. Specifically:
 - a. Expenditure of \$810.73 on 9 August 2019 for auto repairs is a legitimate campaign expense given candidate's need to attend campaign events, fundraisers, and activities. At worst, Mr. Stockham *may* have failed to apportion *part* of that expense to personal or business use; however, reimbursement or payment for mileage, vehicle maintenance, and other vehicle expenses is expressly allowed under FEC regulations.
 - b. Similarly, road tolls are expressly allowed under FEC regulations for campaign related travel expenses. Again, the worst case may be that Mr. Stockham **may** have failed to apportion **some** of the tolled travel expenses to personal/business travel by mistake (the E470 tolling authority charges may have been inadvertently charged to the campaign debit card).

Contract for Consulting Services

Campaign Integrity Watchdog

Contract Summary

Parties:

Candidate Committee ***Casper for Colorado*** (Charles Wesley (“Casper”) Stockham, principal) enters into this agreement with ***Campaign Integrity Watchdog*** (“CIW”) (Matt Arnold, principal)

Duration:

This contract enters into effect on the date signed and lasts until 31 December 2020, or until all fees are paid for services rendered.

Duties & Obligations:

Campaign Integrity Watchdog contracts to provide campaign financial management, compliance and reporting services as negotiated and enumerated below, specifically:

- Register Committee with FEC and set up committee banking account
- Record financial data and transactions for compliance reporting purposes
- Follow-up on missing data from Contributions and/or Expenditures
- Bank Statement Reconciliations
- Compliance Reporting (filing with Federal Elections Commission as required by law)

Fee Schedule:

- Committee Setup Fee \$300.00 (Bank Account setup, FEC candidate/committee filings)
- Baseline of \$300.00 per month for campaign finance management services, including review of data and filing campaign finance reports (per schedule of required filing dates)
- Additional volume-based surcharge fee of 2% based on volume of funds raised and processed/reported per filing period

Note that the percentage surcharge is on funds raised *per filing period* (i.e. if your most recent filing was for \$7,500, then your fee for that filing would be \$300 + \$7,500 x 2% (i.e. \$150.00), totaling \$450.00).

Section 1. Terminology

1.a. Consultant.

Campaign Integrity Watchdog, henceforth "CONSULTANT," is an independent contractor engaged in providing campaign financial management, compliance and reporting services to political or issues (campaign) organizations.

1.b. Committee.

(i) The **Casper for Colorado** federal candidate committee shall henceforth be referred to as the "COMMITTEE."

(ii) Consultant may confer with more individuals involved in the campaign as directed by the Committee or the Committee's authorized designee(s), who shall be the primary point of contact for the Consultant.

1.c. Campaign Staff

(i) Henceforth, any other individuals employed (or volunteering for) the Committee shall be referred to as "campaign staff".

(ii) Consultant's contact with such individuals shall be solely at the discretion of the Committee or Committee designee and vice-versa. Any campaign staff should be instructed to conduct as much of their correspondence with the Consultant as possible in writing for documentation.

1.d. Current Election Cycle

(i) Henceforth, the year of election for the Committee shall be referred to as the "current election cycle" and the date of the General Election in that year, 2020, shall be referred to as "Election Day".

Section 2. Term of Agreement.

This contract enters into effect on the date signed and lasts until 31 December 2020, or until all fees are paid for services rendered.

Section 3. Contracted Services

Campaign Integrity Watchdog contracts to provide campaign financial management, compliance and reporting services as negotiated and enumerated below, specifically:

- Record financial data and transactions for compliance reporting purposes
- Follow-up on missing data from Contributions and/or Expenditures
- Bank Statement Reconciliations
- Compliance Reporting (filing with Federal Elections Commission as required by law)

Committee contracts to provide all necessary campaign financial information for reporting, including the amount and source of contributions (name, address, occupation, employer) and amount and recipient of campaign spending (name and address of campaign payees, type & purpose of spending/expenditure, etc).

Committee failure to provide information required for campaign finance reporting absolves **Consultant** of liability for fees or penalties that may accrue for late or incomplete reports.

Section 4. Fees and Payment.

4.a. Fees.

(i) Fees shall be assessed in the following manner and based upon the following schedule (see sections 4.b. for the payment schedule, respectively), unless otherwise specifically negotiated per Section 6.a.(i).

- Baseline of \$300.00 per filing for campaign finance management services, including review of data and filing campaign finance reports (per schedule of required filing dates)
- Additional volume-based surcharge of 2% on funds processed per filing period

4.b. Payment.

Payment for Services rendered will be made by COMMITTEE monthly at the start of each month. CONSULTANT shall submit periodic updates (usually quarterly, per SOS filing schedule) to the attention of COMMITTEE's Coordinator on compliance report filing status (copy of completed report filed).

Section 5. Standards

CONSULTANT shall provide services as described in the Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of any and all Federal, state, and local governmental agencies which may regulate or have jurisdiction over the Services ("Law").

Section 6. Confidentiality

6.a. Campaign Confidentiality Statement.

(i) Consultant shall hold in strict confidence all information and data received in connection with this agreement and during the Consultant's contract with the Candidate; shall use such information and data only in connection with the Committee's campaign during the current election cycle; and shall ensure that any person granted access to such confidential information and data similarly holds such in strict confidence. Said confidential information and data includes, but is not limited to, the following:

- 1) Any emails, phone calls, in-person discussions, or any other communication regarding the election of the Candidates supported by the Committee, Consultant and/or any other campaign staff to which the Consultant is privy;
- 2) Campaign strategy documents (campaign plan, opposition research, memos, etc.);
- 3) Campaign budgets or other financial items;
- 4) Campaign donor and prospective donor lists (as well as contact information);
- 5) Candidate Information; and
- 6) Campaign Personnel information.

Section 7. Non-Competition / Conflict of Interest

Non-Competition Agreement

(i) Upon executing this contract, the Consultant agrees that they shall not work (paid or volunteer) for any other candidate, campaign, or organization in conflict with the campaign (directly or indirectly), unless such a conflict is disclosed in writing and waived by both the Committee and other candidates, campaigns, or organizations in writing in a similar fashion to specific negotiation of exemptions in Section 9.a.(i).

(ii) At no time under the execution of this contract shall the Consultant engage in activities with the direct or indirect intent to harm the Committee, campaign, or other campaign staff. This is to include misrepresentation, misinformation, or any other activities with the intent to harm the Committee, campaign, or other campaign staff.

(iii) Should another staff member of *Campaign Integrity Watchdog* be involved in a conflict with this campaign as properly disclosed above, there shall not be any communication between those two staff members regarding this campaign or the conflict.

Section 8. Jurisdiction and governing law.

Jurisdiction and governing law.

Any action for breaking this contract, for enforcement of this contract, or for any cause of action purported to arise out of this contract is governed by applicable laws of the State of Colorado. The Consultant and Committee agree that Colorado is the proper forum state for the commencement of any legal, mediation, or arbitration action by any party named in the contract. Consultant and Committee further agree to submit to the in-person jurisdiction of the court, mediation, or arbitration center in which an action is commenced by either party.

Section 9. Specific exemptions, clarifications, and severability.

9.a. Specific Exemptions.

(i) All sections of this contract stand as written unless otherwise specifically negotiated in writing, signed by both the Committee and Consultant, notarized, and attached to this contract or severed per the following section (9.c.).

(ii) All remaining provisions of this agreement shall remain in full force and effect.

9.b. Clarifications.

(i) All sections of this contract may be subject to a written request for clarification from the Committee to the Consultant. Requested clarification shall be provided to the Committee in writing by Consultant within 5 (five) business days.

(ii) Should a conflict arise with the clarification, the Committee may compose a written exemption (as described above in 9.a.) and may be agreed upon by the Consultant. Should that not solve the conflict, there is always the option to sever that portion of the contract (see below in 9.c.).

(iii) All remaining provisions of this agreement shall remain in full force and effect.

(iv) Unless specifically noted, the consulting and campaign financial management services provided are NOT considered legal advice; CIW does not directly provide legal services, except via 3rd-party referral.

9.c. Severability.

(i) If any provision of this agreement is held unenforceable, then such a provision shall be first clarified by the Consultant, then if necessary, an exemption may be drawn up, and if resolution still has not occurred, then that provision may be severed from the rest of the contract upon the written agreement of both parties, then signed, notarized, and attached to this contract.

(ii) All remaining provisions of this agreement shall remain in full force and effect.

Section 10. Termination of the contract.**10.a. Conditions of Termination.**

(i) On or before the agreed upon end date in Section 11.b., and upon the termination of this contract, the Committee should expect the return of any campaign records or other campaign property from the Consultant. Additionally, the Consultant will surrender in an appropriate format any data listed in Section 6.b.(i), and then delete such data from any personal electronic devices on which it may have been stored.

(ii) Should the Consultant find themselves in possession of any such campaign materials or data following the end date and termination of this contract, they shall, immediately upon discovery of such possession, surrender it immediately to the Committee.

Section 11. Agreement by Parties and end date.**11.a. Agreement by Parties.**

(i) This contract is made on 24 June 2019 by the Consultant and Committee. By signing this agreement, both parties agree to uphold the conditions of this contract to the letter and spirit of what is written herein, and both parties understand that legal action may be taken by the other party should one fail to uphold their contracted obligation (fees or services).

11.b. End date and end of contract

(i) This contract will expire one month after final report due (31 Dec 2020) for the current election cycle.

(ii) The exception to the above enumerated end date is if all payment has not yet been remitted by the Committee for services rendered by the Consultant at the close of business on the end date of this contract, in which case the contract shall remain in effect (including fees for required quarterly filings) until the remainder of payment has been satisfactorily made.

CONSULTANT**COMMITTEE**

 Signature

 Signature

 Name and Title (printed or typed)

 Name and Title (printed or typed)

 Date

 Date