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OFFICE OF GENERAL COUNSEL

July 24, 2020

Lisa J. Stevenson
Acting General Counsel
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

MUR 7764

Re: Complaint Against: Dana Balter
Friends of Dana Balter
Sterling Talob Waters, Treasurer

Dear Ms. Stevenson,

This complaint is filed by Josephine Thomas, residing at Syracuse, New York 13209, pursuant to 52 U.S.C. § 30109(a)(1) against Dana Balter, Friends of Dana Balter (C00655183), and Sterling Talob Waters for violations of specific provisions of the Federal Election Campaign Act (FECA) and Federal Election Commission (FEC) regulations. Ms. Balter's payments to herself in 2020 for candidate salary exceeds the amount permitted by law and constitutes a prohibited personal use of campaign funds.

Despite the Commission's previous treatment of the baseline year for determining permissible candidate salary, Ms. Balter has elected to exceed that permissible amount in payments already made in 2020. Each continued payment to herself moving forward will further increase the amount of the prohibited personal use. For that reason, we implore the Commission to intercede and cause Ms. Balter to cease making these prohibited payments.

LEGAL BACKGROUND

The law permits candidate salary payments from campaign funds with strict guidelines to allow candidates with limited financial means to run for public office. However, when this narrow exception is exploited for personal gain the excessive salary payments become a prohibited personal use of donor funds. FEC regulations provide that a candidate may be paid a salary from campaign funds subject to certain restrictions, including:

- (1) The salary must be paid by the candidate's principal campaign committee;

- (2) The salary may not exceed the lesser of (i) the minimum annual salary of a member of Congress or (ii) “the earned income that the candidate received during the year prior to becoming a candidate”;
- (3) Salary payments must be paid on a pro-rata basis;
- (4) Any earned income that a candidate receives from salaries or wages from any other source must count against the salary limit payable to the candidate;
- (4) Salary cannot be paid to the candidate prior to the filing deadline for access to the state primary ballot; and
- (5) Salary payments may be made until the date when the candidate is no longer considered a candidate, or until the date of the general election or general election runoff.¹

A candidate who earns less than a member of Congress, such as Ms. Balter, is subject to a candidate salary cap based on earned income received by the candidate “during the year prior to becoming a candidate.” These rules are intended to “ensure that campaign salaries are not used to enrich candidates, but instead used to compensate candidates for lost income that is forgone due to becoming a candidate.”²

The regulation limits candidate salary payments to a period during the year of the election (from the state’s primary ballot access deadline through the date of the general election). In at least two instances, the FEC has read the regulation’s reference to “the year prior to becoming a candidate” to mean the year prior to the election despite the candidate filing their Statement of Candidacy in that same year.

In MUR 7068, the candidate filed a Statement of Candidacy with the FEC in July 2013 and was paid salary by his campaign committee in 2014. The candidate presented his 2013 salary as the relevant pre-candidacy salary despite declaring his candidacy in that same year. The Commission did not take issue with the candidate’s use of his 2013 salary as the appropriate baseline.³ Although the focus of this enforcement matter was the payment of salary beyond the candidacy period, it is clear that the Commission accepted the candidate’s use of the year prior to the election as “the year prior to becoming a candidate.”

In MUR 5787, the candidate was paid a salary of \$50,000 after her 2004 campaign ended, allegedly on the basis of a previous agreement with her campaign to defer salary payments. Although this matter primarily concerned reporting violations stemming from the unusual arrangement, the Commission noted the candidate failed to provide evidence showing that: “based on her 2003 income, she was entitled to a pro-rata salary based on the salary of a member of Congress in 2004.” The candidate at issue in fact declared her

¹ 11 C.F.R. § 113.1(g)(1)(i)(I). A candidate was recently fined by the FEC for receiving salary payments after the November 2014 general election. See MUR 7068 (Mowrer for Iowa), Conciliation Agreement, <https://www.fec.gov/files/legal/murs/7068/18044452939.pdf>.

² Final Rule on Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,972 (Dec. 13, 2002).

³ The record does not reflect whether the candidate’s 2012 salary was substantially higher or lower than his 2013 salary.

candidacy on October 16, 2003.⁴ As a result, the Commission's chosen baseline for salary payments was the year prior to the election – the same year in which candidacy was declared.

In both of these enforcement matters, the Commission treated the year prior to the election year as determinative baseline salary year *despite the fact that candidacy was declared in that same year*.

ANALYSIS

Unfortunately, Ms. Balter's failure to accurately report her income on public financial disclosures for the past several years obscures the true amount of her income for the past several years. Under any reading of her most recently declared 2019 income, however, she is making excessive salary payments in 2020. While Ms. Balter declared her candidacy for the 2020 election in 2019, her reported income for the year prior to the 2020 election is the relevant baseline in accordance with Commission precedent in MURs 7068 and 5787 as described above.

According to Ms. Balter's 2020 candidate Financial Disclosure Report, her earned income in 2019 was \$3,000.⁵ On her 2019 candidate Financial Disclosure Report, however, she reported current year income (January 1 – August 13, 2019) of \$35,193.⁶ The significant discrepancy between the two reported 2019 figures is partly explained by repayments of impermissible candidate salary payments totaling \$11,114.96 in September 2019, although that still leaves approximately \$17,000 unaccounted for. Nevertheless, her more recent filing reports earned income of \$3,000 in 2019.⁷

Ms. Balter has already exceeded her payable 2020 salary given her reported 2019 baseline figure of \$3,000. According to her July Quarterly Report, Ms. Balter has paid herself a total of \$6,213.71. This is in addition to the \$1,200 she reported in her most recent financial disclosure as income earned in 2020 under a teaching contract.⁸ Given her

⁴ See FEC Form 2 Statement of Candidacy (October 16, 2003), Kalyn Cherie Free.

⁵ See Dana Balter, 2020 Financial Disclosure Report, http://clerk.house.gov/public_disc/financial-pdfs/2020/10035624.pdf (Filing year 2020 reporting preceding year earned income on Schedule C of \$2,300 for part-time work Syracuse University and \$700 for work for the President of the Republic of Kazakhstan).

⁶ Dana Balter, 2019 Financial Disclosure Report, http://clerk.house.gov/public_disc/financial-pdfs/2019/10027698.pdf.

⁷ Previous year disclosures also reflect inaccurate reporting. On a 2017 report filed on February 9, 2018, Ms. Balter reported 2018 year-to-date income of \$41,750, and 2017 income of \$32,556. In her next report, filed on September 11, 2018, she reported these same numbers, which would mean she earned no income from February to September 2018, although it appears she was teaching at the time. Finally, there is no obvious explanation for how her 2017 income figure later became her 2018 income figure, or what happened to the previously reported 2018 income figure.

⁸ See Dana Balter, 2020 Financial Disclosure Report, http://clerk.house.gov/public_disc/financial-pdfs/2020/10035624.pdf (Filing year 2020 reporting 2020 teaching contract salary of \$1,200).

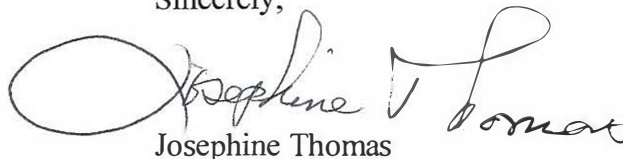
permissible 2019 baseline of \$3,000 and her reported 2020 income of \$1,200 even before drawing a Candidate salary it is clear that **her known salary payments to date are excessive in the amount of \$3,213.71.**

CONCLUSION

Ms. Balter should not be permitted to use her perennial candidacy as a means to inflate her compensation. This apparent abuse of the Commission's rule permitting candidate salary payments flouts the purpose of the rule to make running for office accessible to candidates of all financial means. Unfortunately, Ms. Balter has chosen to pay herself in direct contradiction to the way in which the Commission has applied the salary baseline in the year prior to election. Ms. Balter's continued inability or unwillingness to accurately report her income on financial disclosures further obscures the true nature of her income and merits investigation.

We respectfully request that the FEC open an investigation into the violations described above and then impose all appropriate penalties and fines.

Sincerely,

A handwritten signature in black ink that reads "Josephine Thomas". The signature is written in a cursive style with a large, prominent initial "J".

Josephine Thomas

13209

The above and foregoing is sworn to and is based upon information and belief of the undersigned, _____

Josephine Thomas

ACKNOWLEDGMENT

STATE OF NY)

: ss.

County of Onondaga)

On the 24 day of July, 2020, before me, the undersigned Notary Public, personally appeared Josephine D Thomas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.

Amber Hart

Notary Public

Commission Expires: 11/04/2023

AMBER L HART
NOTARY PUBLIC STATE OF NEW YORK
ONONDAGA
LIC. #01HA6400030
COMM. EXP. 11/04/2023