

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT**

RAD REFERRAL: 19L-14
DATE OF REFERRAL: July 2, 2019
DATE OF NOTIFICATION: July 8, 2019
LAST RESPONSE RECEIVED: September 27, 2019
DATE ACTIVATED: November 4, 2019

EXPIRATION OF SOL: January 30, 2023
ELECTION CYCLE: 2018

SOURCE: RAD Referral

RESPONDENTS: DNC Services Corp./Dem. Nat'l Committee and
William Q. Derrough in his official capacity as
treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30104(b)(8)
11 C.F.R. § 104.3(d)
11 C.F.R. § 104.11(a)
11 C.F.R. § 104.11(b)

INTERNAL REPORTS CHECKED: RAD Referral Materials
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Commission's Reports Analysis Division ("RAD") referred DNC Services Corp./Dem. Nat'l Committee and William Q. Derrough in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") as a result of the Committee's amending its 2017 Year-End Report to disclose \$1,704,513.33 in previously-unreported debt. The Committee responds that: (1) it did not fail to timely disclose \$297,963.63 of the debt because it paid off those invoices before the close of the reporting period and timely disclosed those disbursements; (2) it has made significant efforts to comply with its reporting obligations

1 and improve its reporting systems subsequent to amending its disclosures; and (3) the
2 Commission should exercise its prosecutorial discretion and decline to pursue this matter.

3 As it acknowledges, the Committee failed to accurately disclose its outstanding debt on
4 the original 2017 Year-End Report. The Committee is correct that it did not have to disclose in
5 Schedule D debts that it both incurred and paid off during a reporting period, but it still failed to
6 disclose \$1,406,549.70 in debt. Accordingly, we recommend that the Commission open a MUR,
7 find reason to believe that the Committee violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R.
8 §§ 104.3(d), 104.11(a), and 104.11(b), and authorize pre-probable cause conciliation with the
9 Committee.

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 **A. Factual Summary**

12 The Committee — the national committee for the Democratic Party¹ — timely filed its
13 2017 Year-End Report on January 30, 2018, disclosing \$6,107,821.95 in outstanding debts and
14 obligations owed by the Committee on Schedules C and D of that report.² On September 10,
15 2018, the Committee filed a Second Amended 2017 Year-End Report that disclosed additional
16 debts — all of which were invoices received from vendors — that it had not disclosed in its
17 January 30 filing.³ It reported on Schedules C and D of its Second Amended 2017 Year-End
18 Report \$7,139,327.74 in total outstanding debts and obligations owed and \$1,704,513.33 in debts

¹ Amended Statement of Organization (Sep. 10, 2018). William Q. Derrough is the current treasurer. *See id.*

² 2017 Year-End Report (Jan. 30, 2018).

³ Second Amended 2017 Year-End Report (Sep. 10, 2018). The Committee filed a First Amended 2017 Year-End Report on March 19, 2018, which did not disclose additional debt.

1 that were not disclosed in Schedule D of its January 30 filing.⁴ Of that \$1,704,513.33 in newly-
2 disclosed debt, \$1,406,549.70 remained outstanding at the end of the 2017 calendar year and
3 \$297,963.63 was debt that the Committee had paid off before the end of the year.

4 RAD sent the Committee a Request for Additional Information (“RFAI”) regarding the
5 discrepancy on November 29, 2018.⁵ The Committee initially responded via an FEC Form 99
6 on January 3, 2019.⁶ It explained that it “amended its 2017 Year-End Report after staff changes
7 led to an internal audit of records, revealing that the previously reported debt totals required
8 updating to reflect accurate debt amounts.”⁷ It further stated that its supplemental reporting is
9 “in line with its general reporting practice” to amend reports as appropriate and that it has
10 “implemented a new software program that automates processes that in the past were manually
11 performed, thus reducing the chance of future errors.”⁸

12 RAD contacted the Committee on April 12, 2019, to notify it that it could be referred for
13 potential enforcement action. The Committee further responded on September 27, 2019,
14 explaining the reasons for its omissions in greater detail and arguing that the Commission should

⁴ Compare 2017 Year-End Report Schedule D; with Second Amended 2017 Year-End Report Schedule D. The specific vendors and the respective increases in reported debts are: ADP, LLC—\$22,169.27; BULLY PULPIT INTERACTIVE LLC—\$155,000.00; CIT—\$3,587.61; CYBERSOURCE—\$1,307.05; DRINKER BIDDLE & REATH LLP—\$12,091.00; EntIT SOFTWARE—\$76,156.18; EQUINIX SERVICES, INC. #774252—\$31,498.72; JITASA—\$3,450.00; MCINTOSH, JESSICA—\$10,382.00; MAL WARWICK & ASSOCIATES, INC.—\$29,406.75; THE MANAGEMENT ACTION CENTER—\$4,500.00; MERKLE RESPONSE SERVICES, INC.—\$6,150.53; NGP VAN, INC.—\$159,750.00; PACIFIC EAST—\$3,282.57; PDQ PRINTING OF LAS VEGAS—\$2,156.46; PERKINS COIE—\$892,338.07; REVOLUTION MESSAGING LLC—\$3,000.00; SD&A TELESERVICES INC.—\$7,159.50; SKD Knickerbocker—\$41,843.36; STARBUCKS—\$2,191.72; TARGETSMART COMMUNICATION LLC—\$191,050.00; TELEFUND, INC.—\$39,070.12; UNITED BUSINESS TECHNOLOGIES—\$6,972.42.

⁵ RFAI at 2 (Nov. 29, 2018).

⁶ Committee Miscellaneous Electronic Submission (Sep. 10, 2018).

⁷ *Id.* at 1.

⁸ *Id.*

1 take no further action in this matter.⁹ The Committee stated that it became aware of the
2 undisclosed debts from its annual external financial audit, which concluded in the summer of
3 2018, and “worked diligently to ensure that it publicly disclosed all Committee debts.”¹⁰ It
4 emphasized that the amount of late-disclosed debt was “but a small fraction of the thousands of
5 transactions the Committee reported”¹¹

6 In its response to the referral, the Committee represented that a significant portion of the
7 undisclosed debt resulted from issues with its accounts payable and disbursements software
8 systems.¹² Because those systems were not integrated, staff were required to manually input
9 invoice data twice, causing errors.¹³ Moreover, the Committee’s general ledger and reporting
10 software was difficult to operate and frequently recorded the wrong date associated with an
11 invoice.¹⁴ As a result, the Committee incorrectly identified approximately \$400,000 worth of
12 invoices as due in 2018 when they were actually due before the end of 2017.¹⁵ According to the
13 Committee, it learned only after it filed its 2017 Year-End Report of invoiced debt totaling
14 \$1,047,643.38 that it incurred during the reporting period.¹⁶ It states that it became aware of
15 these invoices through communications with vendors and cannot determine whether those

⁹ Resp. (Sep. 27, 2019).

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.* at 3-4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 4.

1 invoices were lost or never received in the first place.¹⁷ The Committee, however, disputes that
 2 “the entirety of the \$1,704,513.33 amount was not disclosed in its original report” because
 3 “\$297,963.63 of the \$1,704,513.33 increase was paid off in December 2017 and had already
 4 been reported as operating expenditures in Schedule B of the Committee’s original report.”¹⁸

5 **B. The Committee Failed to Disclose the Entirety of Its Debts as Required**
 6 **under the Act**

7 The Federal Election Campaign Act of 1971, as amended (the “Act”) requires
 8 committees to disclose “the amount and nature of outstanding debts and obligations owed by or
 9 to such political committee[s]”¹⁹ For each regular report, Commission regulations require
 10 disclosure of a committee’s outstanding debts on Schedule D²⁰ and clarify that “[a] debt or
 11 obligation, including a loan, written contract, written promise or written agreement to make an
 12 expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt
 13 or obligation is incurred”²¹ In addition, “[d]ebts and obligations owed by or to a political
 14 committee which remain outstanding shall be continuously reported until extinguished.”²²

15 The Committee was thus obligated to disclose in its 2017 Year-End Report all debts
 16 outstanding through the end of the calendar year, but it failed to do so. Although the Committee
 17 provides several justifications for this failure — and ultimately corrected its reports seven

¹⁷ *Id.*

¹⁸ *Id.* at 2-3.

¹⁹ 52 U.S.C. § 30104(b)(8).

²⁰ 11 C.F.R. § 104.3(d).

²¹ 11 C.F.R. § 104.11(b). Excepting certain categories of regularly-reoccurring administrative expenses not relevant here.

²² 11 C.F.R. § 104.11(a).

1 months after its filing deadline — it does not dispute its obligation to disclose these debts on
2 Schedule D of its 2017 Year-End Report.

3 We agree, however, that the Committee did not need to disclose on Schedule D the debts
4 that it both incurred and paid off during the reporting period.²³ Thus, rather than disclosing the
5 entire amount of debt that was referred, \$1,704,513.33, the Committee was obligated to disclose
6 \$1,406,549.70, the debt that was outstanding at the end of the reporting period.

7 Although the Committee does not contest that it failed to timely disclose all of its debts, it
8 contends that the Commission should dismiss this matter in the exercise of its prosecutorial
9 discretion.²⁴ The Committee cites to prior matters involving debt disclosures that the
10 Commission has declined to pursue and asks that the Commission act similarly here.²⁵ The
11 matters cited by the Committee, however, are factually distinct in several key ways: some
12 involve far less late-disclosed debt than here;²⁶ while others involved a good-faith belief by the
13 relevant committee that the debt at issue need not be reported.²⁷

²³ See Instructions for Schedule D, Debts and Obligations (FEC FORM 3X) at 1, <https://www.fec.gov/resources/cms-content/documents/fecfrm3xi.pdf#page=20> (committees must report “debts and obligations owed BY the reporting committee *at the close of the reporting period*” and “the payment(s) this period to retire the debt” (emphasis added)).

²⁴ Resp. at 3; *see also Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

²⁵ Resp. at 5.

²⁶ See MUR 6712 (Kreegel for Congress) (\$49,762.63); MUR 6525 (Friends of Christine O’Donnell) (\$5,058.55 of contested debt).

²⁷ See MUR 6732 (North Carolina Democratic Party) (Committee under belief that timely-paid invoices that were not past due did not qualify as reportable debt); MURs 6606, 6572, 6676 (Danny Tarkanian for Congress) (Failure to disclose \$250,000 loan from candidate to committee where treasurer incorrectly believed that candidate had forgiven loan before start of reporting period).

The Committee contends that “it is frequently not clear what, when, or how debt is to be reported.” Resp. at 5. But the Committee did not fail to disclose the debt at issue here because of any such confusion. It does not dispute that it is obligated to disclose the \$1,406,549.70 in invoiced amounts on Schedule D — in fact it recognized as much by filing its Second Amended 2017 Year-End Report to make this additional disclosure. And it initially

1 The Commission has pursued matters involving similar debt-reporting violations, and it
2 should do so here. For example, in MUR 6177 (21st Century Democrats), the Commission
3 entered into a conciliation agreement in which a committee agreed to pay \$24,000 in civil
4 penalties for, among other things, failing to timely disclose \$671,498.05 in vendor debts.²⁸ The
5 Commission has also pursued enforcement matters where the respondent raised similar
6 justifications and ameliorative factors as the Committee does here. In MUR 6508 (Republican
7 National Committee), the Commission approved a \$96,000 civil penalty for a committee's
8 failure to timely disclose \$9,232,903 in debt over the course of five consecutive monthly
9 reports.²⁹ Like here, the committee in MUR 6508 argued that the amounts it failed to disclose
10 were a small percentage of its overall transactions and that it "took aggressive, proactive action
11 to conduct a comprehensive internal review and file amended reports where necessary as
12 expeditiously as possible."³⁰

13 Accordingly, we recommend that the Commission find reason to believe that that the
14 Committee violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a), and
15 104.11(b) by failing to disclose debt on its 2017 Year-End Report.

failed to make a complete disclosure because of errors in capturing invoice data, not because of confusion about its reporting obligations.

²⁸ Conciliation Agreement §§ V-VI, MUR 6177; *see also* Conciliation Agreement §§ IV.4, VI.1, MUR 6639 (Gary Johnson 2012, Inc.) (\$10,000 penalty for committee's failure to disclose \$447,567 in debts and obligations, among other violations); Conciliation Agreement §§ IV.4-5, VI.1, MUR 6965 (Warriors of Liberty) (\$7,150 penalty after Committee amended its 2013 Year-End Report to disclose \$592,541 in receipts, disbursements, and debt not previously disclosed).

²⁹ Conciliation Agreement §§ IV.4-8, V-VI, MUR 6508.

³⁰ *Id.* §§ IV.9-10.

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V. RECOMMENDATIONS

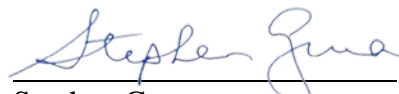
1. Open a MUR;
2. Find reason to believe that DNC Services Corp./Dem. Nat'l Committee and William Q. Derrough in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a), and 104.11(b) by failing to disclose debt on its 2017 Year-End Report;
3. Approve the attached Factual and Legal Analysis;
4. Authorize pre-probable cause conciliation with DNC Services Corp./Dem. Nat'l Committee and William Q. Derrough in his official capacity as treasurer;
5. Approve the attached proposed conciliation agreement; and
6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

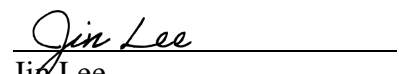
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March 25, 2020
Date


Charles Kitcher
Acting Associate General Counsel
For Enforcement



Stephen Gura
Deputy Associate General
Counsel for Enforcement



Jim Lee
Acting Assistant General Counsel
for Enforcement



Aaron Rabinowitz
Attorney

Attachments
1. Factual and Legal Analysis