

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

RR 20L-13

DATE RECEIVED: July 29, 2020

DATE OF NOTIFICATIONS:

July 29 and Aug. 3, 2020

LAST RESPONSE RECEIVED: Oct. 23, 2020

DATE ACTIVATED: Mar. 18, 2021

EPS: 40

EXPIRATION OF SOL:

Feb. 21, 2018-Jan. 23, 2024

ELECTION CYCLES: 2014, 2016, 2018, 2020

SOURCE:

Internally Generated

RESPONDENTS:

Kern County Republican Central Committee

Laura Sheffield

in her official capacity as treasurer

Bryan Williams

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1 **INTERNAL REPORTS CHECKED:** Disclosure Reports

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3 **FEDERAL AGENCIES CHECKED:** None

4 **I. INTRODUCTION**

5 The matter arose from a referral from the Reports Analysis Division (“RAD”)

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8 describing unauthorized disbursements by Bryan Williams, the Committee’s former treasurer.

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We recommend that the Commission open a

15 Matter Under Review (“MUR”) and find reason to believe that Williams knowingly and willfully

16 violated 52 U.S.C. §§ 30102(b)(3), 30102(c), 30104(b), and 11 C.F.R. §§ 102.9, 102.15, and

17 104.3 by failing to keep complete records and file accurate reports with the Commission and by

18 commingling Committee funds and personal funds. In addition, we recommend that the

19 Commission enter into pre-probable cause conciliation with Williams.

1 **II. FACTUAL BACKGROUND**

2 The Committee is a local party committee registered with the Commission and Laura
3 Sheffield is the current treasurer.² Williams was the treasurer from March 18, 2013, to
4 February 20, 2019. The Committee's Submission states that Williams had signature authority
5 on all Committee accounts, handled all of the Committee's expenses, and was responsible for
6 providing information on receipts and disbursements to Tom Montgomery—owner and operator
7 of Political Visions, a campaign finance reporting business, who handles the Committee's
8 reporting with the Commission.⁴

9 The Committee states that in December 2018 and January 2019, staff members of the
10 Committee's consulting firm that handles the Committee's headquarters operations and
11 activities, Western Pacific Research, became suspicious of possible financial irregularities after
12 Williams failed to attend regular monthly Committee meetings, provided infrequent submissions
13 of monthly treasurer reports, and received notice of non-payment from a vendor of the
14 Committee.⁵ Subsequently, the Committee continues, Williams changed the key to the
15 Committee mailbox preventing anyone else from accessing it and collected contributions from a
16 donor without authorization.⁶ Western Pacific Research staff then analyzed the Committee's
17 reports filed with the Commission and determined they were inconsistent with "their knowledge

² Kern County Republican Central Committee Amended Statement of Org. (Feb. 12, 2020). The Committee is the official local delegation and Central Committee for the Republican Party in Kern County, California. *See About, THE KERN GOP*, <https://www.thekerngop.org/about> (last visited June 16, 2021).

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⁴ Committee Resp. to OGC Request for Additional Information at 2 (Feb. 27, 2021) ("Committee Resp."). Although the information provided by the Committee states that Montgomery filed reports with the Commission, Williams signed all the disclosure reports.

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

1 of the Committee's activities and operations."⁷

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10 On November 7, 2019, RAD identified two refunds, totaling \$218,546.39, from Williams
11 on the Committee's 2019 Mid-Year Report and sent a Request For Additional Information to the
12 Committee.¹³ The Committee filed a Form 99 response in April 2020 explaining that the two
13 refunds were from Williams, who had embezzled funds from the Committee.¹⁴ Subsequently,
14 RAD referred the Committee to OGC "for apparent unauthorized disbursements totaling
15 \$218,546.39 on the 2019 Mid-Year Report."¹⁵

7 *Id.*

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13 Referral at 1, RR 20L-13 (July 24, 2020).

14 Kern County Central Republican Committee Form 99 (Apr. 15, 2020).

15 Referral at 1.

1 detailed spreadsheets

2 of each individual transaction they were able to identify related to the embezzlement from 2013 -
3 2019, signed statements by Williams acknowledging that he owes money to the Committee and
4 that he has paid partial restitution, and copies of restitution checks from Williams.

5 Williams did not respond to the Commission's notification of the Referral.

6 III. LEGAL ANALYSIS

7 A. The Committee

8 The Act requires a committee, through its treasurer, to keep an accurate account of
9 receipts, disbursements, and cash-on-hand balances.¹⁶ In 2007, the Commission established a
10 safe harbor to benefit committees that file inaccurate reports because their funds were
11 unknowingly misappropriated by committee fiduciaries and staff.¹⁷ The Commission concluded
12 that it would not seek a monetary penalty from a committee for filing inaccurate reports due to
13 embezzlement if the committee maintained certain internal controls at the time and took certain
14 steps after discovery.¹⁸ The Commission concluded that those internal controls and post-
15 discovery steps "represent the *minimum* efforts a committee must take to qualify for this safe
16 harbor."¹⁹ Nonetheless, the Commission will consider "the presence of some but not all" of the

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

¹⁷ See Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007).

¹⁸ *Id.*

¹⁹ *Id.* (emphasis added).

1 controls as mitigating factors when fashioning a civil penalty offer even if a committee fails to
2 satisfy the policy's additional requirements.²⁰

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4 Based on the spreadsheets provided by the Committee, it appears that
5 Williams's embezzlement caused the Committee to under-report its disbursements, and
6 misreport the purpose of its disbursements on its disclosure reports since 2013.

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10 The available information indicates that Williams had primary responsibility for
11 managing all of the Committee's accounting and financial operations.²³ Williams was the sole
12 authorized signatory on all of the Committee's bank accounts except for one and transferred
13 Committee funds to himself and paid his personal credit card with Committee funds without the
14 Committee's knowledge or authorization.²⁴ Williams also provided falsified reports to
15 Montgomery, who was responsible for preparing the Committee's disclosure reports.

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²⁰ *Id.*

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²² *Id.* at 2.

²³ Committee Resp. at 2-3.

²⁴ *Id.*

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1 The record is substantially complete in that the
2 Committee was able to determine the nature and extent of Williams's embezzlement through its
3 financial records. Further, it appears that Williams has agreed to the Committee's determination
4 of the extent of the embezzlement, by paying \$218,546.30 in restitution payments and signing
5 statements acknowledging that he owes money to the Committee and that he has paid partial
6 restitution.²⁶

7 **B. Bryan Williams**

8 Each treasurer is required to keep an accurate account of and disclose, among other
9 things, committee receipts, disbursements, and cash-on-hand balances.²⁷ To accomplish this, the
10 Act imposes on committees a series of recordkeeping and reporting requirements to be executed
11 by the committee's treasurer. The Act provides that committees must record the name and
12 address of every person to whom a disbursement is made, and the date, amount, and purpose of
13 the disbursement, and retain records (e.g., receipt, cancelled check, invoice) related to each
14 disbursement in excess of \$200.²⁸ The Act also requires that a committee's funds "shall be
15 segregated from, and may not be commingled with the personal funds of any individual."²⁹

16 While serving as treasurer for the Committee, Williams withdrew over \$200,000 in
17 Committee funds and did not disclose the withdrawals on reports filed with the Commission.

MUR 596/MUR 7132 (Amedisys PAC/Michael Pitts) (assigning committee to ADRO for embezzlement of \$79,640); Cert. ¶ 1 (Sept. 11, 2014), MUR 6867 (formerly RR 13L-33) (Lynn Jenkins for Congress) (assigning committee to ADRO for embezzlement of \$21,300); Cert. ¶ 1 (Oct. 20, 2015), MUR 6980 (formerly RR 15L-03/ADR 78) (McConnell Senate Committee) (assigning committee to ADRO for embezzlement of \$100,634).

²⁶ Committee Resp. at 5 & Attach. A.

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

²⁸ 52 U.S.C. § 30102(c)(5); *see also* 11 C.F.R. § 102.9(b)(1)-(2).

²⁹ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

1 Williams signed each Committee report filed between February 2013 and January 2019.
2 Williams provided false information about the recipient and purpose of certain disbursements on
3 the reports. Therefore, it appears that Williams violated 52 U.S.C. § 30104(b) and 11 C.F.R.
4 § 104.3 by failing to file accurate reports with the Commission.³⁰ Further, it appears that
5 Williams violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 102.9 by failing to keep an account of
6 disbursements made from the Committee's funds.³¹ The Committee did not appear to have a
7 record of Williams's unauthorized activity until the Committee conducted an internal audit and
8 provided a list of the unauthorized disbursements to the Commission for the first time on
9 February 27, 2021. Lastly, the available information, including the Committee's internal
10 investigation and the restitution payments, confirm that Williams commingled Committee funds
11 and personal funds by depositing Committee funds into his personal bank accounts in violation
12 of 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15.³³ By contrast, direct payments to
13 Williams's personal credit cards would appear to not violate the comingling provision of the
14 Act.³⁴

³⁰ See Factual & Legal Analysis at 6-7, MUR 7225 (Jack Wu) (finding treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to file accurate reports with the Commission reflecting his embezzlement); Factual & Legal Analysis at 3, MUR 5610 (Earl Allen Haywood) (same).

³¹ See Factual & Legal Analysis at 6-7, MUR 7225 (Jack Wu) (finding treasurer violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 102.9 by failing to keep an account of his unauthorized and embezzled disbursements); Factual & Legal Analysis at 3, MUR 5610 (Earl Allen Haywood) (same).

³³ See Factual & Legal Analysis at 7, MUR 7225 (Jack Wu) (finding respondent knowingly and willfully violated the comingling provisions by withdrawing funds from the committee account and depositing the money into his personal and business accounts); Factual & Legal Analysis at 4-5, MUR 7132 (Michael David Pitts) (finding respondent knowingly and willfully commingled funds by forging a check drawn on a PAC account and making it payable to a company with a bank account that was controlled by the respondent).

³⁴ See Factual & Legal Analysis at 2-3, MUR 5872 (Jane Hague for Congress) (considering unauthorized checks committee staffer wrote to herself as comingling, but not check payable to her childcare provider).

1 The Act prescribes additional monetary penalties for violations that are knowing and
2 willful.³⁵ A violation of the Act is knowing and willful if the “acts were committed with full
3 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”³⁶ This
4 does not require proving knowledge of the specific statute or regulation the respondent allegedly
5 violated.³⁷

6 The information supports a knowing and willful finding. Williams, without
7 authorization, transferred Committee funds directly to his own accounts and falsified memo and
8 description fields of the transactions to conceal his conduct. In an effort to conceal his
9 embezzlement, Williams never provided Montgomery copies of Committee invoices or
10 Williams’s credit card statements for review and instead, provided falsified information.³
11 Williams’s actions, which caused the Committee to underreport and misreport its disbursements,
12 indicate an intent to conceal the embezzlement.⁴⁰

³⁵ 52 U.S.C §§ 30109(a)(5)(B), 30109(d).

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

³⁷ *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)). It is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.” *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)). This awareness may be shown through circumstantial evidence from which the respondent’s unlawful intent reasonably may be inferred. *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.

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

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V. RECOMMENDATIONS

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2. Open a Matter Under Review in RR 20L-13 with regard to Bryan Williams;
3. Find reason to believe that Bryan Williams knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3), 30102(c), 30104(b) and 11 C.F.R. §§ 102.9, 102.15, and

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104.3 by failing to keep complete records and file accurate reports with the Commission and by commingling Committee funds and personal funds;

- 4. Enter into conciliation with Bryan Williams prior to a finding of probable cause to believe;
- 5. Approve the attached Conciliation Agreement for Bryan Williams;
- 6. Approve the attached Factual and Legal Analysis; and
- 7. Approve the appropriate letters.

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06.16.21
Date

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