

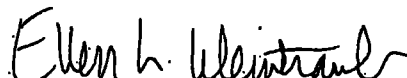


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We have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that your client wishes the investigation to be made public.

We look forward to your response.

On behalf of the Commission,

  
Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis

## **FEDERAL ELECTION COMMISSION**

### **FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Debra Doherty

**MUR:** 6768

#### **I. INTRODUCTION**

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Based on this information, there is reason to believe that Debra Doherty knowingly and willfully failed to file timely and accurate reports in connection with her duties as treasurer of the Official 12th Dist Dem Party (the "Committee") and commingled the Committee's funds with personal funds, in violation of 2 U.S.C. §§ 432(b)(3), 434(a), and 434(b) of the Federal Election Campaign Act of 1971, as amended (the "Act").

#### **II. FACTUAL AND LEGAL ANALYSIS**

##### **A. Factual Background**

Debra Doherty served as treasurer of the Committee from January 31, 2006 to April 15, 2011. The Commission notified Doherty that it had information that she made six unauthorized withdrawals of Committee funds totaling \$14,500 between January 15, 2010, and January 24, 2011, failed to disclose the withdrawals and her subsequent refunds of some of the amounts she withdrew in disclosure reports filed with the Commission, and failed to file the Committee's 2010 Post-General and 2010 Year End reports with the Commission.

Doherty issued Committee checks payable to cash and bearing only her signature, contrary to the Committee's policy that checks must be signed by two officers. During the course of the scheme, Doherty returned \$4,500 to the Committee's account in separate

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deposits of \$2,500 and \$2,000. Doherty concealed her activity by failing to disclose the unauthorized transactions in the Committee reports she prepared and filed with the Commission. Doherty tracked her unauthorized transactions, evidenced by her handwritten notes on bank statements tabulating what the Committee's account should have held absent the unauthorized transactions. Doherty further attempted to hide her misappropriations by reconciling the Committee's bank account with the disbursements and cash-on-hand amounts she reported to the Commission. Doherty also failed to file the Committee's 2010 Post-General and Year End reports altogether. On June 30, 2011, the balance of the funds Doherty misappropriated were repaid to the Committee.<sup>1</sup>

According to Doherty, it was during this time that she was asked to serve as treasurer of the Committee. Doherty stated that she deluded herself to believe that she could "borrow" Committee funds on a short term basis to cover her pressing financial needs.

#### **B. Legal Analysis**

According to the Commission's *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, a former treasurer may be named as a respondent in his or her personal capacity when it appears that the treasurer may have violated obligations imposed

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<sup>1</sup> See Advisory Opinion 2006-16 (Nancy Detert).

by the Act or Commission regulations and where the violation was knowing and willful.

70 Fed. Reg. 3, 5 (Jan. 3, 2005); *see* MUR 6475 (Andrew McCrosson); MUR 6179 (Christopher Ward); MUR 5971 (Jennifer Adams); MUR 5721/5772 (Kenneth Phelps); MUR 5610 (Earl Allen Haywood). A violation is knowing and willful where the unlawful "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law." 122 Cong. Rec. 12197, 12199 (May 3, 1976). It is undisputed that, while serving as treasurer of the Committee, Doherty made six unauthorized withdrawals totaling \$14,500. She did not disclose these transactions on reports filed with the Commission. She also failed to file two reports. The Commission therefore concludes that Doherty violated 2 U.S.C. §§ 434(a) and (b) and 11 C.F.R. § 104.14(d) by failing to file accurate reports with the Commission.

The Commission also concludes that Doherty violated 2 U.S.C. § 432(b)(3) by commingling the Committee's funds with her personal funds. Doherty explains that she had become delinquent on bills, and "borrowed" the Committee's funds so she could satisfy her delinquent financial obligations. are unlikely to be paid in cash. The Commission concludes, therefore, that after cashing the unauthorized checks at issue, Doherty likely deposited the Committee's funds in a personal bank account and drew funds from that personal account to pay those bills. If so, she impermissibly mixed Committee funds with personal funds in violation of the Act's prohibition against commingling "funds of a political committee . . . with[] the personal funds of any individual." 2 U.S.C. § 432(b)(3).

Doherty's actions also support a reasonable inference that her actions were knowing and willful. When making the withdrawals, Doherty acted contrary to the Committee's internal policy that required two officers to sign each check. Doherty failed to include the withdrawals in disclosure reports. She also kept personal records of the withdrawals to reconcile the disbursements and cash-on-hand amounts she disclosed to the Commission. Before detection, she repaid a portion of the funds she misappropriated. These facts demonstrate that she knew her conduct was illegal. Accordingly, there is reason to believe that Debra Doherty knowingly and willfully violated 2 U.S.C. §§ 432(b)(3) and 434(a) and (b).