

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

MUR: 7093

DATE COMPLAINT FILED: June 27, 2016

DATE OF NOTIFICATION: July 5, 2016

RESPONSE RECEIVED: August 25, 2016

DATE ACTIVATED: December 28, 2016

EXPIRATION OF SOL: April 1, 2020

ELECTION CYCLE: 2016

COMPLAINANT:

Fergus Cullen

RESPONDENTS:

Friends of Frank Guinta and Paul Kilgore in his
official capacity as treasurer

Frank Guinta

**RELEVANT STATUTE AND
REGULATION:**

52 U.S.C. § 30114(b)

11 C.F.R. § 102.9

11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

MUR: 7145

DATE COMPLAINT FILED: October 5, 2016

DATE OF NOTIFICATION: October 13, 2016

RESPONSE RECEIVED: November 20, 2016

DATE ACTIVATED: December 28, 2016

EXPIRATION OF SOL: April 1, 2020

ELECTION CYCLE: 2016

COMPLAINANT:

New Hampshire Democratic Party

RESPONDENTS:

Friends of Frank Guinta and Paul Kilgore in his
official capacity as treasurer

Frank Guinta

RELEVANT STATUTE:

52 U.S.C. § 30114(b)

11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaints arise out of the Conciliation Agreement ("CA") entered into between former Congressman Frank Guinta, Friends of Frank Guinta and Paul Kilgore in his official capacity as treasurer ("the Committee") and the Commission in MUR 6440. In the CA, the Committee agreed to repay \$355,000 to Guinta's parents that it previously reported as a personal loan from Guinta. The Complaints allege that Guinta violated the CA and the Federal Election Campaign Act of 1971, as amended ("the Act"), by not returning loan repayments he received from the Committee before entering into the CA, and by maintaining access to the \$355,000 that the Committee refunded to Guinta's parents. The Complaints also allege that the Committee violated Commission regulations because the loan repayments to Guinta caused the Committee to have less cash on hand than general election contributions received.

As set forth below, we recommend that the Commission find no reason to believe that Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) or the CA by converting the \$355,000 to personal use and dismiss as a matter of prosecutorial discretion the allegations that the loan repayments to Guinta violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) and that Respondents violated 11 C.F.R. § 102.9(e)(2) by having less cash on hand than general election funds.

II. FACTUAL BACKGROUND

On April 29, 2015, the Commission approved a CA with Guinta and the Committee in MUR 6440.¹ Prior to reaching the CA with the Commission, Guinta categorized a loan from the Guinta Family Fund as a personal loan he made to the Committee. Under the terms of the CA, the Committee agreed that it received excessive contributions from the Guinta Family Fund,

¹ Conciliation Agreement, MUR 6440 (Guinta) (May 6, 2015) ("CA"); Cert., MUR 6440 (Guinta) (Apr. 30, 2015).

1 which the Commission determined belonged to Guinta's parents.² Guinta previously argued that
2 he had legal or equitable title to the Guinta Family Fund under various theories, but the
3 Commission ultimately disagreed.³ The CA also required the Committee to refund \$355,000 to
4 the Guinta Family Fund and pay a \$15,000 civil penalty.⁴ After the CA was executed, the
5 Committee removed the remaining debt it reported owing from its disclosure and recorded a new
6 debt of \$355,000 owed to the Guinta Family Fund, which was refunded on January 15, 2016.⁵

7 Prior to the execution of the CA, the Committee over time repaid Guinta \$81,500 of the
8 purported loan.⁶ While these repayments were known at the time the CA was executed, the CA
9 did not address the payments the Committee made to Guinta prior to the reclassification of the
10 loan.

11 The Complaints allege three violations. The Complaint in MUR 7093 alleges that Guinta
12 kept the loan repayments he received even after the debt was reclassified as owed to, and later
13 repaid to, the Guinta Family Fund.⁷ It argues that "[b]y not reimbursing the Committee, Frank
14 Guinta has illegally received and retained \$81,500 in contributions to his campaign for his
15 personal use."⁸

16 The Complaint in MUR 7093 also alleges that the Committee violated 11 C.F.R.
17 § 102.9(e)(2) because it did not have enough cash on hand after making the repayment to the

² *Id.* ¶ IV, 1.

³ Factual & Legal Analysis at 4-7, MUR 6440 (Guinta) ("F&LA").

⁴ CA ¶ VI.

⁵ Resp. at 1-2; *see* 2016 April Quarterly Report at 52, Friends of Frank Guinta (April 15, 2016).

⁶ *Id.* at 4, n.1. Respondents submitted a joint response.

⁷ Compl. at 1-2, MUR 7093.

⁸ *Id.* at 2.

1 Guinta Family Fund.⁹ It argues that when the \$355,000 repayment was made during the 2016
2 primary election period, the Committee only had \$279,371.14 of primary election funds
3 available to it. That repayment, it alleges, caused the Committee to have less cash on hand than
4 general election funds received, in violation of Commission regulations.

5 Finally, the Complaint in MUR 7145 argues that Respondents violated the Act and the
6 CA by converting campaign funds to personal use.¹⁰ Specifically it argues, based on media
7 reports regarding Guinta's congressional financial disclosures, that after the Committee refunded
8 the \$355,000, those funds were either "laundered" to Guinta or put into a bank account that he
9 could personally access.¹¹ They argue that the money was supposed to be refunded to Guinta's
10 parents, who the Commission determined had legal title to the funds.¹² Guinta or his
11 representatives have made statements in response to media inquiries confirming that the
12 \$355,000 was repaid to the Guinta Family Fund and that Guinta has access to that account.¹³

13 Respondents do not address many of the allegations, and instead dedicate the bulk of
14 their Response to arguing that the Complainants lack standing to complain about whether
15 Respondents violated the CA or to attack the terms of the CA.¹⁴ Specifically, they argue that the
16 Act allows only the Commission and not outside individuals or organizations to review

⁹ *Id.*

¹⁰ Compl. at 1-2, MUR 7145.

¹¹ *Id.*; The media reports were purportedly based on Guinta's 2015 House of Representatives Financial Disclosure Report. See *Financial Disclosure Reports Database*, U.S. HOUSE OF REP. OFFICE OF THE CLERK, http://clerk.house.gov/public_disc/financial-search.aspx; see also Compl. Ex. 1, MUR 7145.

¹² Compl. at 1-2, MUR 7145.

¹³ See, e.g., Compl. at Ex. 1, MUR 7145.

¹⁴ Resp. at 2-4.

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1 compliance with a conciliation agreement.¹⁵ They further argue that because they have complied
2 with the terms of the CA, there is no basis for any Commission action.¹⁶

3 With respect to the substantive allegation in the Complaints, Respondents state that the
4 repayment of the \$81,500 was not governed by the CA, and in any event Guinta repaid that
5 money to the Committee, so there is no violation.¹⁷ Respondents also confirm that, as required
6 by the CA, the \$355,000 was repaid to the Guinta family.¹⁸

7 III. LEGAL ANALYSIS

8 At the outset, Respondents' standing and jurisdictional arguments can be dismissed. The
9 very terms of the CA state that "[t]he Commission, on the request of *anyone* filing a complaint
10 under 52 U.S.C. § 30109(a)(1) . . . concerning the matters at issue [in the CA] or on its own
11 motion, may review compliance with [the CA]."¹⁹ There is nothing in the Act that prevents the
12 Commission from examining whether a party to a conciliation agreement has complied with its
13 terms, and there is nothing that prevents the general public from filing a complaint alleging the
14 terms were violated. Any other reading of the Act would leave the Commission powerless to
15 enforce its own agreements.

16 A. Personal Use

17 The bulk of the allegations in the Complaints argue that Guinta has converted campaign
18 funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by retaining
19 the \$81,500 he received from the Committee and by having access to the \$355,000 that the

¹⁵ *Id.* at 2-3.

¹⁶ *Id.*

¹⁷ Resp. at 4-5; *see* 2016 July Quarterly Report at 41, Friends of Frank Guinta (July 15, 2016).

¹⁸ Resp. at 4-5; *see* 2016 April Quarterly Report at 52, Friends of Frank Guinta (April 15, 2016).

¹⁹ CA ¶ VII (emphasis added); *see also* 52 U.S.C. § 30109(a)(1).

1 Committee refunded to the Guinta Family Fund. Personal use is defined as “any use of funds in
2 a campaign account of a present or former candidate to fulfill a commitment, obligation or
3 expense of any person that would exist irrespective of the candidate’s campaign or duties as a
4 Federal officeholder.”²⁰ The Act prohibits converting contributions made to candidate
5 committees to personal use.²¹

6 The record indicates that the Committee returned the \$355,000 to the Guinta Family Fund
7 as required by the CA.²² The Complaint does not allege that Guinta used funds from the Guinta
8 Family Fund in connection with his campaign after the resolution of MUR 6440. The
9 Committee’s filings with the Commission reflect that it has not received any personal loans from
10 Guinta or the Guinta Family Fund subsequent to the resolution of MUR 6440. Once the
11 Committee repaid the Guinta Family Fund, the \$355,000 was no longer a “contribution accepted
12 by a candidate” or “any other donation received by an individual as support for the activities of
13 the individual as a holder of Federal office,” and the funds in the Guinta Family Fund would not
14 be subject to the personal use restrictions of the Act.²³ We therefore recommend the
15 Commission find no reason to believe the Respondents violated the terms of the CA or violated
16 the Act’s personal use prohibition of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) in regard to
17 the \$355,000.

18 The record also indicates that although the \$81,500 payments to Guinta were not
19 governed by the CA, he has since repaid those funds to the Committee.²⁴ Although the CA did

²⁰ 11 C.F.R. § 113.1(g).

²¹ See 52 U.S.C. § 30114(b).

²² See 2016 April Quarterly Report at 52, Friends of Frank Guinta (April 15, 2016).

²³ 52 U.S.C. § 30114(b).

²⁴ See 2016 July Quarterly Report at 41, Friends of Frank Guinta (July 15, 2016).

1 not address how Guinta should handle the \$81,500 that had already been repaid by the
2 Committee, it did require the redesignation of the loan to reflect that the funds were from the
3 Guinta Family Fund and not Guinta personally. Given the circumstances behind the initial
4 payment to Guinta, which was known at the time that the Commission resolved MUR 6440, we
5 do not believe this matter warrants additional use of Commission resources to further assess
6 whether the \$81,500 payment violated the Act. Accordingly, we recommend that the
7 Commission exercise its prosecutorial discretion and dismiss the allegations that Respondents
8 violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) in regard to the \$81,500 payment to
9 Guinta.

10 **B. Use of General Election Funds**

11 Commission regulations provide that a candidate or authorized committee may, prior to a
12 primary election, accept contributions designated by the contributor for use in connection with
13 the general election.²⁵ The recipient committee, however, must “use an acceptable accounting
14 method to distinguish between contributions received for the primary and contributions received
15 for the general election.”²⁶ The committee’s “records must demonstrate that, prior to the primary
16 election, recorded cash on hand was at all times equal to or in excess of the sum of general
17 election contributions received less the sum of general election disbursements made.”²⁷ “These
18 regulations are designed to ensure that candidates . . . do not use general election contributions

²⁵ 11 C.F.R. § 102.9(e).

²⁶ *Id.*

²⁷ *Id.* § 102.9(e)(2); *see also* Advisory Opinion 1986-17 (Green) at 4 (“[T]he Act does not prohibit [an authorized committee] from using contributions designated for the general election to make expenditures, prior to the primary election, exclusively for the purpose of influencing the prospective general election”); *cf.* Advisory Opinion 2016-16 (Gary Johnson 2012) (discussing that a committee may use general election funds to pay civil penalties and reimbursements to the U.S. Treasury).

1 for the primary election.”²⁸ If the candidate is not a candidate in the general election, the general
2 election contributions must be refunded to the contributors or redesignated.²⁹

3 Here, it appears that the repayment of the \$355,000, which occurred prior to the primary
4 election, may have caused the Committee to have less cash on hand than general election
5 contributions received. According to the Complaint, at the time of the refund, the Committee
6 had \$367,171.14 on hand, \$87,800 of which was designated as general election funds.³⁰ A
7 \$355,000 disbursement would result in the Committee having approximately \$12,000 cash on
8 hand, less than the required \$87,800 of general election contributions.

9 The circumstances present in this matter, however, warrant the Commission exercising its
10 prosecutorial discretion and dismissing the allegations that the Respondents violated
11 Commission regulations regarding general election funds. Because Guinta was a candidate in
12 the general election, there is no issue of the Committee having enough cash on hand to refund its
13 general election contributors. And unlike other matters where the Commission proceeded past
14 the reason to believe stage, the disbursement here was not made to pay for primary election
15 expenses.³¹ Moreover, any potential violation was created because the Committee complied
16 with the terms of the CA and refunded \$355,000 to the Guinta Family Fund prior to the primary
17 election. Accordingly, we recommend that the Commission dismiss the allegation that the
18 Committee violated 11 C.F.R. § 102.9(e)(2).³²

²⁸ Advisory Opinion 1992-15 (Russo for Congress) at 1.

²⁹ 11 C.F.R. § 102.9(e)(3); *see also id.* § 110.1(b)(3)(i) (“If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated . . . , or reattributed . . . , as appropriate.”).

³⁰ Compl. at 2, MUR 7093.

³¹ *See, e.g.*, MUR 6639 (Gary Johnson 2012, Inc.) Factual & Legal Analysis at 6.


³² *See Heckler v. Chaney*, 470 U.S. 821 (1985).

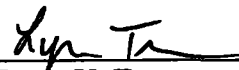
IV. RECOMMENDATIONS

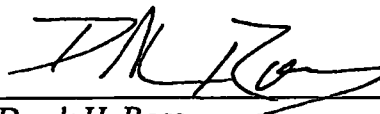
1. Find no reason to believe that Frank Guinta and Friends of Frank Guinta and Paul Kilgore in his official capacity as treasurer violated the Conciliation Agreement entered into in MUR 6440;
2. Find no reason to believe that Frank Guinta and Friends of Frank Guinta and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) in regard to the \$355,000 repayment to the Guinta Family Fund;
3. Dismiss the allegation that Frank Guinta and Friends of Frank Guinta and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) in regard to the \$81,500 payment to Guinta;
4. Dismiss the allegation that Frank Guinta and Friends of Frank Guinta and Paul Kilgore in his official capacity as treasurer violated 11 C.F.R. § 102.9(e)(2);
5. Approve the attached Factual and Legal Analysis;
6. Approve the appropriate letters; and
7. Close the file.

Lisa J. Stevenson
Acting General Counsel

4/27/17
Date


Kathleen M. Guith
Associate General Counsel for Enforcement


Lynn Y. Tran
Assistant General Counsel


Derek H. Ross
Attorney

Attachment
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Frank Guinta and Paul Kilgore in his official capacity
as treasurer
Frank Guinta

MURs 7093 & 7145

I. INTRODUCTION

The Complaints arise out of the Conciliation Agreement ("CA") entered into between former Congressman Frank Guinta, Friends of Frank Guinta and Paul Kilgore in his official capacity as treasurer ("the Committee") and the Commission in MUR 6440. In the CA, the Committee agreed to repay \$355,000 to Guinta's parents that it previously reported as a personal loan from Guinta. The Complaints allege that Guinta violated the CA and the Federal Election Campaign Act of 1971, as amended ("the Act"), by not returning loan repayments he received from the Committee before entering into the CA, and by maintaining access to the \$355,000 that the Committee refunded to Guinta's parents. The Complaints also allege that the Committee violated Commission regulations because the loan repayments to Guinta caused the Committee to have less cash on hand than general election contributions received.

As set forth below, the Commission finds no reason to believe that Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) or the CA by converting the \$355,000 to personal use. The Commission also dismisses as a matter of prosecutorial discretion the allegations that the loan repayments to Guinta violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g), and that Respondents violated 11 C.F.R. § 102.9(e)(2) by having less cash on hand than general election funds.

II. FACTUAL BACKGROUND

On April 29, 2015, the Commission approved a CA with Guinta and the Committee in MUR 6440.¹ Prior to reaching the CA with the Commission, Guinta categorized a loan from the Guinta Family Fund as a personal loan he made to the Committee. Under the terms of the CA, the Committee agreed that it received excessive contributions from the Guinta Family Fund, which the Commission determined belonged to Guinta's parents.² Guinta previously argued that he had legal or equitable title to the Guinta Family Fund under various theories, but the Commission ultimately disagreed.³ The CA also required the Committee to refund \$355,000 to the Guinta Family Fund and pay a \$15,000 civil penalty.⁴ After the CA was executed, the Committee removed the remaining debt it reported owing from its disclosure and recorded a new debt of \$355,000 owed to the Guinta Family Fund, which was refunded on January 15, 2016.⁵

Prior to the execution of the CA, the Committee over time repaid Guinta \$81,500 of the purported loan.⁶ While these repayments were known at the time the CA was executed, the CA did not address the payments the Committee made to Guinta prior to the reclassification of the loan.

The Complaints allege three violations. The Complaint in MUR 7093 alleges that Guinta kept the loan repayments he received even after the debt was reclassified as owed to, and later

¹ Conciliation Agreement, MUR 6440 (Guinta) (May 6, 2015) ("CA"); Cert., MUR 6440 (Guinta) (Apr. 30, 2015).

² *Id.* ¶ IV, 1.

³ Factual & Legal Analysis at 4-7, MUR 6440 (Guinta) ("F&LA").

⁴ CA ¶ VI.

⁵ Resp. at 1-2; *see* 2016 April Quarterly Report at 52, Friends of Frank Guinta (April 15, 2016).

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1 repaid to, the Guinta Family Fund.⁷ It argues that “[b]y not reimbursing the Committee, Frank
2 Guinta has illegally received and retained \$81,500 in contributions to his campaign for his
3 personal use.”⁸

4 The Complaint in MUR 7093 also alleges that the Committee violated 11 C.F.R.
5 § 102.9(e)(2) because it did not have enough cash on hand after making the repayment to the
6 Guinta Family Fund.⁹ It argues that when the \$355,000 repayment was made during the 2016
7 primary election period, the Committee only had \$279,371.14 of primary election funds
8 available to it. That repayment, it alleges, caused the Committee to have less cash on hand than
9 general election funds received, in violation of Commission regulations.

10 Finally, the Complaint in MUR 7145 argues that Respondents violated the Act and the
11 CA by converting campaign funds to personal use.¹⁰ Specifically it argues, based on media
12 reports regarding Guinta’s congressional financial disclosures, that after the Committee refunded
13 the \$355,000, those funds were either “laundered” to Guinta or put into a bank account that he
14 could personally access.¹¹ They argue that the money was supposed to be refunded to Guinta’s
15 parents, who the Commission determined had legal title to the funds.¹² Guinta or his
16 representatives have made statements in response to media inquiries confirming that the
17 \$355,000 was repaid to the Guinta Family Fund and that Guinta has access to that account.¹³

⁷ Compl. at 1-2, MUR 7093.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ Compl. at 1-2, MUR 7145.

¹¹ *Id.*; The media reports were purportedly based on Guinta’s 2015 House of Representatives Financial Disclosure Report. *See Financial Disclosure Reports Database*, U.S. HOUSE OF REP. OFFICE OF THE CLERK, http://clerk.house.gov/public_disc/financial-search.aspx; *see also* Compl. Ex. 1, MUR 7145.

¹² Compl. at 1-2, MUR 7145.

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1 Respondents do not address many of the allegations, and instead dedicate the bulk of
2 their Response to arguing that the Complainants lack standing to complain about whether
3 Respondents violated the CA or to attack the terms of the CA.¹⁴ Specifically, they argue that the
4 Act allows only the Commission and not outside individuals or organizations to review
5 compliance with a conciliation agreement.¹⁵ They further argue that because they have complied
6 with the terms of the CA, there is no basis for any Commission action.¹⁶

7 With respect to the substantive allegation in the Complaints, Respondents state that the
8 repayment of the \$81,500 was not governed by the CA, and in any event Guinta repaid that
9 money to the Committee, so there is no violation.¹⁷ Respondents also confirm that, as required
10 by the CA, the \$355,000 was repaid to the Guinta family.¹⁸

11 III. LEGAL ANALYSIS

12 At the outset, Respondents' standing and jurisdictional arguments can be dismissed. The
13 very terms of the CA state that "[t]he Commission, on the request of *anyone* filing a complaint
14 under 52 U.S.C. § 30109(a)(1) . . . concerning the matters at issue [in the CA] or on its own
15 motion, may review compliance with [the CA]."¹⁹ There is nothing in the Act that prevents the
16 Commission from examining whether a party to a conciliation agreement has complied with its
17 terms, and there is nothing that prevents the general public from filing a complaint alleging the

¹⁴ Resp. at 2-4.

¹⁵ *Id.* at 2-3.

¹⁶ *Id.*

¹⁷ Resp. at 4-5; *see* 2016 July Quarterly Report at 41, Friends of Frank Guinta (July 15, 2016).

¹⁸ Resp. at 4-5; *see* 2016 April Quarterly Report at 52, Friends of Frank Guinta (April 15, 2016).

¹⁹ CA ¶ VII (emphasis added); *see also* 52 U.S.C. § 30109(a)(1).

terms were violated. Any other reading of the Act would leave the Commission powerless to enforce its own agreements.

A. Personal Use

The bulk of the allegations in the Complaints argue that Guinta has converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by retaining the \$81,500 he received from the Committee and by having access to the \$355,000 that the Committee refunded to the Guinta Family Fund. Personal use is defined as “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”²⁰ The Act prohibits converting contributions made to candidate committees to personal use.²¹

The record indicates that the Committee returned the \$355,000 to the Guinta Family Fund as required by the CA.²² The Complaint does not allege that Guinta used funds from the Guinta Family Fund in connection with his campaign after the resolution of MUR 6440. The Committee’s filings with the Commission reflect that it has not received any personal loans from Guinta or the Guinta Family Fund subsequent to the resolution of MUR 6440. Once the Committee repaid the Guinta Family Fund, the \$355,000 was no longer a “contribution accepted by a candidate” or “any other donation received by an individual as support for the activities of the individual as a holder of Federal office,” and the funds in the Guinta Family Fund would not be subject to the personal use restrictions of the Act.²³ The Commission therefore finds no

²⁰ 11 C.F.R. § 113.1(g).

²¹ See 52 U.S.C. § 30114(b).

²² See 2016 April Quarterly Report at 52, Friends of Frank Guinta (April 15, 2016).

²³ 52 U.S.C. § 30114(b).

1 reason to believe the Respondents violated the terms of the CA or violated the Act's personal use
2 prohibition of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) in regard to the \$355,000.

3 The record also indicates that although the \$81,500 payments to Guinta were not
4 governed by the CA, he has since repaid those funds to the Committee.²⁴ Although the CA did
5 not address how Guinta should handle the \$81,500 that had already been repaid by the
6 Committee, it did require the redesignation of the loan to reflect that that the funds were from the
7 Guinta Family Fund and not Guinta personally. Given the circumstances behind the initial
8 payment to Guinta, which was known at the time that the Commission resolved MUR 6440, we
9 do not believe this matter warrants additional use of Commission resources to further assess
10 whether the \$81,500 payment violated the Act. Accordingly, the Commission exercises its
11 prosecutorial discretion and dismisses the allegations that Respondents violated 52 U.S.C.
12 § 30114(b) and 11 C.F.R. § 113.1(g) in regard to the \$81,500 payment to Guinta.

13 **B. Use of General Election Funds**

14 Commission regulations provide that a candidate or authorized committee may, prior to a
15 primary election, accept contributions designated by the contributor for use in connection with
16 the general election.²⁵ The recipient committee, however, must "use an acceptable accounting
17 method to distinguish between contributions received for the primary and contributions received
18 for the general election."²⁶ The committee's "records must demonstrate that, prior to the primary
19 election, recorded cash on hand was at all times equal to or in excess of the sum of general

²⁴ See 2016 July Quarterly Report at 41, Friends of Frank Guinta (July 15, 2016).

²⁵ 11 C.F.R. § 102.9(e).

²⁶ *Id.*

1 election contributions received less the sum of general election disbursements made.”²⁷ “These
2 regulations are designed to ensure that candidates . . . do not use general election contributions
3 for the primary election.”²⁸ If the candidate is not a candidate in the general election, the general
4 election contributions must be refunded to the contributors or redesignated.²⁹

5 Here, it appears that the repayment of the \$355,000, which occurred prior to the primary
6 election, may have caused the Committee to have less cash on hand than general election
7 contributions received. According to the Complaint, at the time of the refund, the Committee
8 had \$367,171.14 on hand, \$87,800 of which was designated as general election funds.³⁰ A
9 \$355,000 disbursement would result in the Committee having approximately \$12,000 cash on
10 hand, less than the required \$87,800 of general election contributions.

11 The circumstances present in this matter, however, warrant the Commission exercising its
12 prosecutorial discretion and dismissing the allegations that the Respondents violated
13 Commission regulations regarding general election funds. Because Guinta was a candidate in
14 the general election, there is no issue of the Committee having enough cash on hand to refund its
15 general election contributors. And unlike other matters where the Commission proceeded past
16 the reason to believe stage, the disbursement here was not made to pay for primary election

²⁷ *Id.* § 102.9(e)(2); *see also* Advisory Opinion 1986-17 (Green) at 4 (“[T]he Act does not prohibit [an authorized committee] from using contributions designated for the general election to make expenditures, prior to the primary election, exclusively for the purpose of influencing the prospective general election”); *cf.* Advisory Opinion 2016-16 (Gary Johnson 2012) (discussing that a committee may use general election funds to pay civil penalties and reimbursements to the U.S. Treasury).

²⁸ Advisory Opinion 1992-15 (Russo for Congress) at 1.

²⁹ 11 C.F.R. § 102.9(e)(3); *see also id.* § 110.1(b)(3)(i) (“If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated . . . , or reattributed . . . , as appropriate.”).

³⁰ Compl. at 2, MUR 7093.

1 expenses.³¹ Moreover, any potential violation was created because the Committee complied
2 with the terms of the CA and refunded \$355,000 to the Guinta Family Fund prior to the primary
3 election. Accordingly, the Commission dismisses the allegation that the Committee violated 11
4 C.F.R. § 102.9(e)(2).³²

³¹ See, e.g., MUR 6639 (Gary Johnson 2012, Inc.) Factual & Legal Analysis at 6.

³² See *Heckler v. Chaney*, 470 U.S. 821 (1985).