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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6656

DATE COMPLAINT FILED: October 2, 2012

DATE OF NOTIFICATION: October 10, 2012

DATE OF LAST RESPONSE: November 16, 2012

DATE ACTIVATED: January 16, 2013

EXPIRATION OF SOL: August 13, 2017

COMPLAINANT:

Patricia D. Cornwell

RESPONDENTS:

Anchin, Block & Anchin LLP

Evan H. Snapper

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 437g(a)(12)

11 C.F.R. § 111.21

INTERNAL REPORTS CHECKED:

MUR 6454

OTHER AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter, filed by Patricia D. Cornwell, alleges that Anchin, Block & Anchin LLP ("Anchin") and Evan H. Snapper, a former principal at Anchin, violated the confidentiality provision at 2 U.S.C. § 437g(a)(12)(A). According to the Complaint, this violation took place when Anchin and Snapper identified Cornwell as the subject of an ongoing "FEC investigation" in a motion they filed in a lawsuit in federal district court in Massachusetts. Anchin and Snapper filed a joint response asserting that they merely stated that a complaint has been filed with the Commission or that a Commission complaint remains pending, neither of which is prohibited under the Federal Election Campaign Act of 1971, as amended, ("the Act") or Commission regulations.

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Based on the available information, we recommend that the Commission find reason to believe that Respondents made public a Commission investigation as to Cornwell in violation of 2 U.S.C. § 437g(a)(12)(A). We also recommend that the Commission authorize pre-probable cause conciliation.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

On October 13, 2009, Cornwell sued Anchin, her former concierge business management firm, in federal district court alleging mismanagement of her financial accounts.¹ On April 6, 2010, Anchin filed a *sua sponte* submission with the Commission regarding a scheme to make contributions in the name of another allegedly orchestrated by Cornwell and carried out by Snapper and Anchin.² On April 24, 2012, the Commission found reason to believe that Cornwell violated 2 U.S.C. §§ 441a(a) and 441f and entered into pre-probable cause conciliation.³ Also on that date, the Commission determined to take no action and close the file as to Anchin.⁴ The Commission had previously found reason to believe that Snapper violated the Act and entered into a Conciliation Agreement with Snapper.⁵ The closing letters to both Snapper and Anchin

¹ *CEI et al., v. Anchin, Block & Anchin LLP, et al.*, No. 09-11708-GAO (D. Mass.). An amended complaint named Snapper individually as a co-defendant. On February 19, 2013, a jury found for Cornwell and awarded her \$50.9 million. See Milton J. Valencia, *Author Patricia Cornwell Awarded \$50.9m in Suit*, BOSTON GLOBE, Feb. 19, 2013, available at <http://www.bostonglobe.com/metro/2013/02/19/mystery-writer-patricia-cornwell-wins-boston-lawsuit/srxHZZC5A9j3MsIBVscsON/story.html>.

² See Letter from Michael E. Toner and James M. Cole, Counsel for Anchin, to Ann Marie Terzaken, FEC, Apr. 5, 2010, Pre-MUR 500 (MUR 6454) ("*Sua Sponte*").

³ See Commission Certification at ¶¶ 1-2, MUR 6454 (Anchin *et al.*) (Apr. 26, 2012).

⁴ See *id.* at ¶¶ 5-6.

⁵ See Commission Certification at ¶ 2, MUR 6454 (Feb. 4, 2011) (finding reason to believe and entering into conciliation with Snapper) and Commission Certification at ¶¶ 1, 3, MUR 6454 (Mar. 25, 2011) (accepting the agreement and closing the file as to Snapper). Snapper pleaded guilty on January 3, 2011, to causing a political

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1 informed them that the Act's confidentiality provision at section 437g(a)(12)(A) remained in
2 effect because the matter remained open "with respect to other respondents."⁶ We remain in pre-
3 probable cause conciliation with Cornwell.

4 On August 13, 2012, Respondents filed the motion at issue in the lawsuit with Cornwell
5 representing to the court that "[t]he FEC investigation [as to Cornwell] remains open." The
6 publicly filed motion stated:

7 In 2009, after the relationship between Plaintiffs and Defendants ceased and
8 this lawsuit commenced, Snapper self-reported the [section 441f scheme] to
9 the FBI and the Federal Election Committee [sic] ("FEC"). As a result of
10 Snapper's self-report, the DOJ and the FEC initiated investigations into the
11 facts and circumstances surrounding the violations. Snapper, Anchin and
12 Cornwell were among those that the DOJ and FEC investigated. Ultimately,
13 Snapper pleaded guilty to one count of providing false information — a felony
14 — and settled charges with the FEC. Anchin received no action letters from
15 both the DOJ and FEC indicating that the firm would not be charged.
16 Although the defense has no way of knowing why Cornwell has not been
17 charged, Plaintiffs' counsel has represented that the DOJ chose not to charge
18 Cornwell. *The FEC investigation remains open.*
19

20 (Emphasis added.) The Complaint alleges that this public disclosure of the "open" FEC
21 investigation of Cornwell was intentional and "gratuitous and wholly unnecessary" to the motion
22 and violated section 437g(a)(12)(A). Compl. at 1, 5 (Oct. 2, 2012).

23 Respondents assert that they "did no more than acknowledge that they had [] filed a
24 complaint with the Commission" and that "a MUR was still pending." Resp. at 4-5 (Nov. 16,

committee to file materially false reports with the Commission, a felony violation of 18 U.S.C. §§ 2 and 1001. *U.S. v. Snapper*, Crim. No. 1:10-cr-00325-PLF (D.D.C. Jan. 3, 2011).

⁶ Letter from Christine C. Gallagher, FEC, to Evan T. Barr, Counsel for Snapper, Apr. 6, 2011; Letter from Susan L. Lebeaux, FEC, to Michael E. Toner, Counsel for Anchin, Apr. 30, 2012.

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2012). According to Respondents, they “used the term ‘investigation’ in the broad sense and merely stated that a MUR remained open with respect to Ms. Cornwell.” *Id.* at 6. Respondents assert that they “were not privy to any information concerning the status of MUR 6454 regarding Cornwell,” such as whether the Commission had found reason to believe or issued subpoenas directed to her or any other information that is subject to the Act’s confidentiality provision. *Id.* Respondents further contend that Cornwell herself disclosed to the public “far more information” concerning MUR 6454 than have the Respondents. *Id.* at 6-7.

B. Legal Analysis

The confidentiality provision at section 437g(a)(12)(A)⁸ provides that “[a]ny notification *or investigation* made under [section 437g(a)] shall not be made public by the Commission *or by any person* without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.” 2 U.S.C. § 437g(a)(12)(A) (emphasis added). *See also* 11 C.F.R. § 111.21(a).⁹ Respondents’ statement in open court that “[t]he FEC investigation remains open [as to Cornwell]” violates the plain language of the Act.

⁸ The Act contains another confidentiality provision that prohibits the Commission from making public actions and information regarding the conciliation process that is not at issue here. *See* 2 U.S.C. § 437g(a)(4)(B)(i).

⁹ Section 437g(a)(12)(A) has existed in substantially similar form since the 1974 Amendments to the Act. *See* Federal Election Campaign Act Amendments of 1974, Public Law 93-443, § 314(a)(3), 88 Stat. 1263, 1284 (codified at 2 U.S.C. § 437g(a)(3) (1974)). That provision has always expressly prohibited “any person” from making public any Commission notification or investigation made pursuant to the Act’s section 437g(a) enforcement provisions. The 1976 amendments made the following change to the confidentiality provision as enacted in the 1974 amendments, without explanation as to the deletion of the word “other”:

Any notification or investigation made under paragraph (2) shall not be made public by the Commission or by any other person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

See Federal Election Campaign Act Amendments of 1976, Public Law 94-203, § 313(a)(3)(B), 90 Stat. 475, 483.

A 1976 conference report explains that a violation of the confidentiality provision “occurs when publicity is given to a pending investigation, but does not occur when actions taken in carrying out an investigation lead to

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1 Respondents assert that the *sua sponte* submission they filed with the Commission “was
2 essentially a complaint that the Respondents filed against themselves and Ms. Cornwell”¹⁰ and
3 that that they merely stated that a complaint was filed with the Commission and remains
4 pending. Resp. at 3-4. Therefore, Respondents argue, because the Commission has concluded in
5 prior matters that revealing that a complaint has been filed does not violate the Act,¹¹
6 Respondents did not violate the Act. But those prior matters are not controlling here. Anchin
7 and Snapper did not merely make their complaint public. They could have told the court and the
8 public that “there was an “FEC *complaint* filed naming Cornwell as a respondent.” But they did
9 not say that. Instead, they stated in a written filing in open court that “the FEC *investigation*
10 remains open” into Cornwell’s conduct, thus violating the plain language of the confidentiality of
11 the Act (emphasis added).

12 Respondents also argue, along the same lines, that when, in their court filing, they stated
13 that “[t]he FEC investigation remains open,” they used the term ‘investigation’ in the broad
14 sense and merely stated that a MUR remained open with respect to Ms. Cornwell”—not the
15 narrower sense as the term is used in section 437g(a)(2), which states that the Commission shall

public awareness of the investigation.” House Conference Report, No. 94-1057 at 50 (94th Cong., 2d Sess. 1976),
reprinted in 1976 U.S.C.C.A.N. 946 (statement of Rep. Hays).

¹⁰ The first sentence in the *sua sponte*’s introduction reads: “As is detailed below, in the fall of 2009 Anchin’s Executive Committee became aware of certain reimbursed contributions to federal candidates that took place in 2007 and 2009 at the direction of Patricia Cornwell, who was a client of Anchin’s at that time.” *Sua Sponte* at 1 (Pre-MUR 500).

¹¹ See, e.g., MUR 3222 (McCloud) (public dissemination of letter by complainant in MUR 2673 to FEC regarding the status of that matter and reciting various additional facts in support of that complaint); MURs 3168, 3169, 3170 (Hawke) (public dissemination of copies of MUR 3109 complaint by complainant in that matter and public discussion by complainant of its contents after filing); MUR 2142 (National Rifle Association) (publication in magazine of MUR 2115 complaint by complainant in that matter); MUR 270 (Common Cause) (complainant in MUR 253 issued a press release announcing the filing of that complaint).

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1 investigate an alleged violation upon finding reason to believe. Resp. at 5-6. But whatever they
2 meant, that simply is not what they said in plain words in open court.

3 Nor do we credit Respondents' argument that that they did not know of the
4 Commission's investigation and RTB finding as to Cornwell—that they were “not privy to any
5 information concerning the status of the MUR” when they submitted their court filing. Resp.
6 at 6. First, they represented to the court that the FEC had “initiated [an] investigation[.]” as to
7 Cornwell. Second, Respondents' *sua sponte* submission in MUR 6454 named three persons as
8 orchestrating a contribution reimbursement scheme: Anchin, Snapper, and Cornwell. Anchin
9 and Snapper knew that the matter had been closed as to them, because the Commission letters so
10 informed them. At the time they received their notifications, they were also informed that “this
11 matter is still open with respect to other respondents. The Commission will notify you when the
12 entire file has been closed.” In context, “other respondents” could only be read to refer to
13 Cornwell. Thus, the matters that Respondents cite are inapposite.¹²

14 Finally, Respondents claim that Cornwell divulged “far more information” to the public
15 concerning MUR 6454 than did the Respondents themselves. Resp. at 6-7. Respondents refer to
16 a column Cornwell wrote for the *Huffington Post* in which she stated that she “continue[s] to
17 face a stiff administrative penalty from the Federal Election Commission because of Snapper's
18 use of [her] money for illegal contributions to Hillary Clinton and former Virginia governor Jim

¹² See, e.g., MUR 3192 (Orton) Gen. Counsel's Rpt. at 28 (Sept. 13, 1995) (finding no reason to believe because respondent “could not have known [of the Commission's reason to believe determination] because the notification letters had not yet been mailed”); First Gen. Counsel's Rpt., MUR 1244 (McGovern) (Aug. 15, 1980) (finding no reason to believe where the Commission, on the underlying matter that the respondent was alleged to have made public, had never found reason to believe); see also Advisory Op. 1994-32 (Gasink) (concluding that a complainant may reveal the filing of a complaint but not “discuss or disclose any information relating to any notification of findings by the Commission or any action taken by the Commission in an investigation.”).

1 Gilmore”¹³ Cornwell, however, made this public statement *after* Respondents made the
2 public statement here.¹⁴ And further, section 437g(a)(12)(A) does not prohibit a person from
3 publicly divulging his or her own status as a respondent.¹⁵

4 In sum, Respondents’ public statement in open court that the Commission investigation
5 remained open—with Cornwell as the identified respondent—made public a Commission
6 investigation. In doing so, Respondents did not merely make a complaint public or divulge that a
7 complaint remained pending. Instead, despite receiving a letter from the Commission reminding
8 them of their obligation to keep the Commission proceeding confidential, Respondents’
9 statement divulged the existence of an ongoing investigation. Accordingly, we recommend that
10 the Commission find reason to believe that Anchin and Snapper violated 2 U.S.C.
11 § 437g(a)(12)(A).

¹³ Patricia Cornwell, *Stranger Than My Fiction*, The Huffington Post, Oct. 2, 2012, *available at* http://www.huffingtonpost.com/patricia-cornwell/anchin-campaign-contributions-suit_b_1929734.html (Resp. Ex. B). A subsequent article, based on an interview of Cornwell, states that “[a] civil investigation by the Federal Election Commission is still to be resolved.” James Kidd, *Patricia Cornwell and the Strange Case of the Missing Millions*, Oct. 28, 2012, *available at* <http://www.independent.co.uk/arts-entertainment/books/features/patricia-cornwell-and-the-strange-case-of-the-missing-millions-8227231.html> (Resp. Ex. C).

¹⁴ Moreover, in the litigation regarding the Commission filing subpoena enforcement lawsuits in open court, the D.C. Circuit rejected the Commission’s argument that the appellants in that matter would not suffer any harm from the Commission breaching its duty of confidentiality because the press already has reported on the some aspects of the investigation. *In re Sealed Case*, 237 F.3d 657, 670 (D.C. Cir. 2001). The court found that “[s]tories in the media have no bearing on the confidentiality provision Congress imposed on the FEC. . . . Only the subject’s consent can relieve the FEC of this duty.” *Id.*

¹⁵ See, e.g., Mem. to the Commission, MUR 2936 (Carroll County Republican Central Committee), Sept. 21, 1989, and MUR 2936 Certification dated Oct. 4, 1989.

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IV. RECOMMENDATIONS

1. Find reason to believe that Anchin, Block & Anchin LLP and Evan H. Snapper violated 2 U.S.C. § 437g(a)(12)(A);
2. Approve the attached Factual and Legal Analysis;
3. Enter into conciliation Anchin, Block & Anchin LLP and Evan H. Snapper prior to a finding of probable cause to believe;
4. --

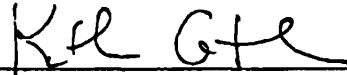
5. Approve the appropriate letters.

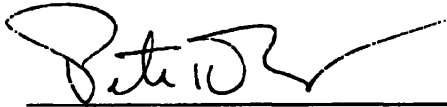
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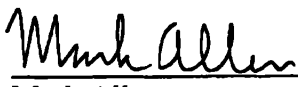
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