

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4)
5 MUR 5915R)

6 MARTINEZ FOR SENATE;)

7 AND NANCY H. WATKINS IN HER)

8 OFFICIAL CAPACITY AS TREASURER)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY

9)
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11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System, matters that are low-rated

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14 are forwarded to the Commission with a recommendation for dismissal.¹

15 Additionally, recommended dismissals include complaint-generated matters that are
16 presented to the Commission that have already been resolved through the Commission's
17 compliance and enforcement processes. The Commission has determined that pursuing low-
18 rated matters compared to other higher rated matters on the Enforcement docket warrants the
19 exercise of its prosecutorial discretion to dismiss these cases.

20 The Office of the General Counsel scored MUR 5915R as a low-rated matter. In this
21 case, the complainant, Citizens for Responsibility and Ethics in Washington, through its
22 representative Melanie Sloan, alleges that the Martinez for Senate committee ("Committee")
23 violated the Federal Election Campaign Act by failing to file 48-hour notices, properly
24 redesignate or reattribute contributions, disclose contributor information, and provide
25 information or itemization concerning certain disbursements. The complaint was based
26 primarily on the Commission's prior audit of the Committee, which was approved by the

¹ the Commission directed the matter be returned to the Office of General Counsel and be held in abeyance for the resolution of MUR 5939. Furthermore, as noted in the Commission's conciliation agreement with the Committee at paragraph IX, the Commission has agreed that all issues arising from the Commission's audit of the Committee have been resolved through the MUR 5939.

Commission on April 17, 2007. The prior audit was referred from the Audit Division to the Office of General Counsel on July 30, 2007. The Commission opened a Matter Under Review concerning the audit referral on December 14, 2007, and then converted the audit referral to MUR 5959. Subsequently, the Commission conciliated with the Committee and agreed to accept a civil penalty of \$99,000 (*see* attached Conciliation Agreement).


In light of the fact that the Commission has already addressed the issues arising from the audit of the Committee in a prior case, the Office of General Counsel believes that it would not be a prudent use of the Commission's resources to pursue this complaint further. Accordingly, in furtherance of the Commission's priorities and resources, relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

RECOMMENDATION

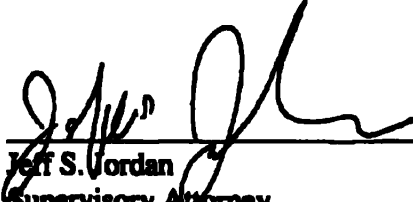
The Office of the General Counsel recommends that the Commission dismiss MUR 5915R, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

10/23/08
Date

BY:

Thomasenia P. Duncan
General Counsel


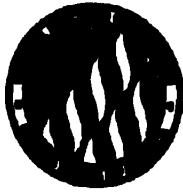
Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Attachment:
Conciliation Agreement for MUR 5959

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William J. McGinley, Esq.
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037

OCT 10 2008

RE: MUR 5959
Martinez for Senate
Nancy H. Watkins in her official
capacity as Treasurer


Dear Mr. McGinley:

On September 10, 2008, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. §§ 434(a), 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 102.17. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the date of this letter. If you have any questions, please contact me at (202) 694-1530.

Sincerely,


Jin Lee
Attorney

Enclosure
Conciliation Agreement

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RECEIVED
FEDERAL ELECTION CENTER

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Martinez for Senate
Nancy H. Watkins, in her official capacity
as Treasurer

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MUR 5959

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe Martinez for Senate and Nancy H. Watkins, in her official capacity as Treasurer (collectively "Respondents"), violated 2 U.S.C. §§ 441a(f) and 434(a), of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. §§ 102.17(c)(8) and 104.5(f).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondents enter voluntarily into this agreement with the Commission.
- III. The pertinent facts in this matter are as follows:

Applicable Law

1. The Act states that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$2,000 in any calendar year. 2 U.S.C. § 441a(a)(1)(A). Increased contributions are provided for candidates facing self-

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financed candidates once the self-financed candidates make expenditures from their personal funds that exceed a specific amount. 2 U.S.C. § 441a(f).

2. No candidate or political committee shall knowingly accept any contributions that exceed the limits established by 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).
3. If a committee receives a contribution that appears to be excessive, the committee must either: 1) return the questionable contribution to the donor; or 2) deposit the contribution into its federal account and keep enough funds in the account to cover all potential refunds until the legality of the contribution is established. 11 C.F.R. § 103.3(b)(3) and (4).
4. A committee may redesignate the excessive portion of a contribution to another election, but the committee must, within 60 days of receipt of the contribution, notify the contributor of the amount of the contribution that was redesignated and the option to request a refund. 11 C.F.R. § 110.1(b)(5).
5. A committee may retribute the excessive portion of a contribution to another individual whose name appears on the written instrument used to make the contribution. 11 C.F.R. § 110.1(k). However, the committee must, within 60 days of receipt of the contribution, notify the contributor of the retribution and the option to request a refund. 11 C.F.R. § 110.1(k)(3)(ii)(B).
6. When the principal campaign committee of a candidate receives a contribution of \$1,000 or more after the 20th day, but more than 48 hours, before the day of the election in which the candidate is running, the committee must file a notice(s) within 48 hours after the receipt of such contribution. 2 U.S.C. § 434(a)(6); 11 C.F.R. § 104.5(f).

7. A participating committee of a joint fundraising effort must report joint fundraising proceeds in accordance with 11 C.F.R. § 102.17(e)(8) when such funds are received from the fundraising representative. 11 C.F.R. § 102.17(e)(3)(iii). Under 11 C.F.R. § 102.17(e)(8), a participating political committee must report its share of the net proceeds as a transfer-in from the fundraising representative and must itemize its share of gross receipts as contributions from the original contributors to the extent required under 11 C.F.R. § 104.3(a). 11 C.F.R. § 102.17(e)(8)(i)(B).

Factual Background

8. Respondents are Martinez for Senate, the principal campaign committee for Mel Martinez, and Nancy H. Watkins, in her official capacity as Treasurer.
9. Nancy H. Watkins became Treasurer of the Committee after the transactions described in this conciliation agreement occurred and did not provide any services in connection with such transactions.
10. Pursuant to 2 U.S.C. § 438(b), the Commission conducted an audit of Martinez for Senate (the "Committee"). The audit covered the period from January 5, 2004 through December 31, 2004.
11. Based upon the audit, the Commission found that the Committee received 186 contributions, totaling \$313,235, that exceeded the limits established by 2 U.S.C. §§ 441a(a)(1)(A) and 441a(l).
12. Of the excessive contributions, \$218,628 resulted from improper redesignations and/or retributions because the Committee failed to obtain signed redesignations or retributions from contributors or provide notifications to contributors of such redesignations or retributions within 60 days of receipt of the contributions. In

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response to the interim audit report, the Committee provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or retribution. The Committee also provided evidence that the notices were sent to both the contributors and the individuals to whom the contributions were retributed.

13. Of the remaining \$94,607 in excessive contributions, the Committee issued refund checks totaling \$94,607 prior to the issuance of the Final Audit Report and the Commission's Reason to Believe finding in this matter. However, because refund checks totaling approximately \$11,500 have not been negotiated, \$11,500 remains unresolved.
14. The Commission's audit also discovered that the Committee failed to file 26 48-hour notices for contributions totaling \$162,014 that should have been filed pursuant to 2 U.S.C. § 434(a)(6) and 11 C.F.R. § 104.5(f).
15. The Commission's audit further discovered that the Committee did not properly disclose the receipt of net proceeds, totaling \$319,816, from four joint fundraising committees.
16. The Committee did not itemize its share of gross receipts as contributions from the original contributors as required for transfers totaling \$260,487 from two joint fundraising committees, the 2004 Joint Candidate Committee II and the Majority Fund for America's Future. The Committee, however, did disclose the net transfers to the Committee for these joint fundraising committees.
17. The Committee did not itemize transfers totaling \$59,329 from two other joint fundraising committees, Senate Majority Committee and Martinez Victory Fund.

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18. With respect to the receipts from the joint fundraising committees identified in Paragraph 17, the Committee did not itemize the transfers on Schedule A, Line 12, Transfers from Other Authorized Committee, as required. Instead, the Committee disclosed the contributors as a net amount on Schedule A, Line 11a, Contributions from Individuals, without any reference to the joint fundraising committees.

19. The Commission does not allege that Senator Mel Martinez personally violated the Act or any regulations thereunder.

20. The Committee contends that any violations were inadvertent, and they have taken steps to remedy their internal compliance procedures by hiring an experienced C.P.A. firm and compliance specialist. The Commission has made no findings that the violations described in this Conciliation Agreement were knowing and willful.

IV. Respondents committed the following violations:

1. The Committee violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions.
2. The Committee violated 2 U.S.C. § 434(a) and 11 C.F.R. § 104.5(f) by failing to file 48-hour notices of contributions.
3. The Committee violated 11 C.F.R. § 102.17(c)(8) by failing to properly disclose proceeds from its joint fundraisers.

V. Respondents will take the following actions:

1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of ninety-nine thousand dollars (\$99,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). In considering the appropriate civil penalty in this matter, the

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Commission has found mitigating circumstances, including the Committee's cooperation during the audit process.

2. Respondents will cease and desist from violating 2 U.S.C. §§ 434(a), 441a(f), and 11 C.F.R. §§ 102.17(c)(8) and 104.5(f).
 3. Although Respondents have attempted to refund the \$11,500 in unresolved excessive contributions, which were received in violation of 2 U.S.C. § 441a(a), Respondents will disgorge to the U.S. Treasury the \$11,500 in unresolved excessive contributions because the refund checks issued by the Committee were not negotiated within a reasonable amount of time.
- VI. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.
- VII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.
- VIII. Except as otherwise provided, Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.
- IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and resolves all allegations that may arise from the Commission's audit of the Committee described in section 3, paragraph 10 of this agreement. No other statement, promise, or agreement, either


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written or oral, made by either party or by agents of either party, that is not
contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

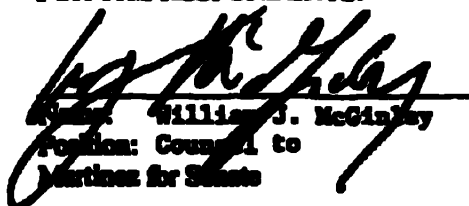
Thomsonia P. Duncan
General Counsel

BY:


Kathleen Guish- ~~Acting Associate General Counsel~~
Acting Associate General Counsel
For Enforcement

9/16/08
Date

FOR THE RESPONDENTS:


William J. McKinley
Position: Council to
Martinez for Senate

3/4/2008
Date

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