

JAN 18 2009

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6066
DATE COMPLAINT FILED: 9/08/2008
DATE OF NOTIFICATION: 9/12/2008
LAST RESPONSE RECEIVED: 10/06/2008
DATE ACTIVATED: 10/21/2008

EXPIRATION OF SOL: Earliest: 8/28/2013
Latest: 10/15/2013

COMPLAINANT:

Jerry Northington

RESPONDENTS:

Karen Hartley-Nagle for Congress and
Brenda L. Irwin, in her official capacity as
treasurer¹
Karen Hartley-Nagle
Friends for Mike Miller and Denise Diane Miller, in
her official capacity as treasurer
Micheal C. Miller

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(2)
2 U.S.C. § 434(a)
2 U.S.C. § 434(b)
11 C.F.R. § 100.3(a)(1)
11 C.F.R. § 100.74
11 C.F.R. § 104.5(a)(2)

INTERNAL REPORTS CHECKED:

Disclosure reports; Commission indices

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that Karen Hartley-Nagle and Micheal Miller, candidates in the
September 9, 2008, Democratic Primary for Delaware's at large congressional seat, and their
respective principal campaign committees, failed to file certain FEC disclosure reports and to

¹ Brenda L. Irwin, the current treasurer for Karen Hartley-Nagle for Congress, became the treasurer on October 10, 2008. Michael R. Dore was the treasurer for the Committee during the period in question.

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1 disclose certain campaign receipts and disbursements.² Respondents have filed responses
2 denying the allegations.

3 As further discussed below, the available information shows that Karen Hartley-Nagle for
4 Congress and Brenda L. Irwin, in her official capacity as treasurer, ("the Hartley-Nagle
5 Committee") filed one report late. However, given the circumstances surrounding the late filing,
6 the low level of financial activity at issue, and in furtherance of the Commission's priorities and
7 resources relative to other matters pending on the Enforcement docket, we recommended that the
8 Commission exercise its prosecutorial discretion to dismiss the matter as it pertains to the
9 Hartley-Nagle Committee's violation of 2 U.S.C. § 434(a), and issue an admonishment to the
10 Hartley-Nagle Committee.³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

11 Further, the available information reflects that the Hartley-Nagle Committee properly
12 disclosed all financial activity. Accordingly, we recommend no reason to believe that the
13 Hartley-Nagle Committee violated 2 U.S.C. § 434(b) with regard to the allegations that it failed
14 to disclose certain receipts and disbursements.

15 Complainant did not articulate any factual or legal basis to support the allegations that the
16 candidate, Karen Hartley-Nagle, violated the Federal Election Campaign Act of 1971, as
17 amended, ("the Act"). Accordingly, we recommend that the Commission find no reason to
18 believe that Karen Hartley-Nagle violated the Act in connection with the allegations in this
19 matter.

20 Finally, the available information shows that Friends for Mike Miller ("the Miller
21 Committee") failed to file two disclosure reports. However, in light of the apparent low level of

² Micheal Miller lost the primary election. Karen Hartley-Nagle won the primary, but lost in the general election.

³ It does not appear that the Hartley-Nagle Committee would have met the Report Analysis Division's ("RAD") threshold for referral to OGC or AGR or be subject to the Administrative Fine Program for this violation. See RAD Review and Referral Procedures for 2007-2008.

1 financial activity and in furtherance of the Commission's priorities and resources relative to
2 other matters pending on the Enforcement docket, we recommend that the Commission exercise
3 its prosecutorial discretion to dismiss the matter as it pertains to the Miller Committee's violation
4 of 2 U.S.C. § 434(a), and issue an admonishment to the Miller Committee.⁴ *See Heckler v.*
5 *Chaney*, 470 U.S. 821 (1985).

6 Complainant did not articulate any factual or legal basis to support the allegations that the
7 candidate, Michael Miller, violated the Act. Accordingly, we recommend that the Commission
8 find no reason to believe that Michael C. Miller violated the Act in connection with the
9 allegations in this matter.

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 **A. Allegation that the Karen Hartley-Nagle Campaign Failed to File the 2008** 12 **Pre-Primary Report**

13 All campaigns that have reporting obligations must file periodic reports on financial
14 activity. In an election year, authorized committees of House and Senate candidates must file
15 pre-election reports before any election in which the candidate runs. 2 U.S.C. § 434(a)(2)(A)(i).
16 For candidates running in the 2008 Delaware primary, the pre-primary report, covering the
17 period July 1, 2008 through August 20, 2008, was due on August 28, 2008. *See* 2008
18 Congressional Pre-Election Reporting Dates, [http://www.fec.gov/info/charts_primary_dates.](http://www.fec.gov/info/charts_primary_dates.shtml#anchor2)
19 [http://www.fec.gov/info/charts_primary_dates.](http://www.fec.gov/info/charts_primary_dates.shtml#anchor2)
20 [shtml#anchor2](http://www.fec.gov/info/charts_primary_dates.shtml#anchor2) (last visited Jan. 5, 2009).

21 Complainant alleges, and the facts support, that Karen Hartley-Nagle and the Hartley-
22 Nagle Committee failed to timely file a required disclosure report.⁵ *See* Complaint as to
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⁴ It does not appear that the Miller Committee would have met the RAD threshold for referral to OGC, AGR, or be subject to the Administrative Fine Program for this violation. *See* RAD Review and Referral Procedures for 2007-2008.

⁵ Complainant apparently mistakenly thought that August 20, 2008, the end of the reporting period for the 2008 Pre-Primary Report, rather than August 28, 2008, was the due date of the report.

1 Candidate Hartley-Nagle and Karen Hartley-Nagle for Congress ("Hartley-Nagle Complaint").
2 RAD sent the committee a non-filer notice, dated August 29, 2008, and the committee filed its
3 report on September 5, 2008, 8 days after it was due. The report disclosed \$4,175 in receipts and
4 \$3,774.56 in disbursements. In its response to the complaint, the committee's treasurer
5 explained that the delay in filing was caused by a virus attack on their computer. See Response
6 from the Hartley-Nagle Committee ("Hartley-Nagle Response"). RAD telephone logs show that
7 the Committee advised RAD of the computer virus problem on September 4, 2008.

8 Though the Hartley-Nagle Committee filed its 2008 Pre-Primary Report late, given the
9 circumstances surrounding the delay in filing the report, the low level of financial activity at
10 issue, and in furtherance of the Commission's priorities and resources relative to other matters
11 pending on the Enforcement docket, we recommend that the Commission exercise its
12 prosecutorial discretion to dismiss the matter as it pertains to the Hartley-Nagle Committee's
13 violation of 2 U.S.C. § 434(a), and issue an admonishment to the Hartley-Nagle Committee. See
14 *Heckler v. Chaney*, 470 U.S. 821 (1985).

15 **B. Allegation that the Karen Hartley-Nagle Campaign Failed to Disclose Certain**
16 **Receipts and Disbursements**

17 Committee treasurers must file complete and accurate reports of receipts and
18 disbursements. 2 U.S.C. § 434(b). Complainant alleges that Ms. Hartley-Nagle publicly stated
19 raising over \$100,000, which the Hartley-Nagle Committee had not disclosed. See Hartley-
20 Nagle Complaint. Complainant also alleges that the Hartley-Nagle campaign failed to disclose
21 disbursements in connection with purchasing lawn signs, opening a campaign office, maintaining
22 a campaign website, hiring a campaign consultant, and other campaign activity. *Id.*

23 In its response to the complaint, the Hartley-Nagle Committee asserts that its latest
24 disclosure report accurately reflect its fundraising activities and expenses paid to date for
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1 campaign activities. See Hartley-Nagle Response. Specifically, the committee denies that
2 Ms. Hartley-Nagle stated that she raised over \$100,000 in campaign donations or that her
3 campaign raised that amount. Complainant did not provide any evidence and we could not find
4 any publicly available information to support the assertion that the campaign raised over
5 \$100,000. Further, the committee asserts that invoices for office space had not yet been
6 submitted, expenditures for signs were disclosed in its last filing, and maintenance to the website
7 was being done on a volunteer basis. The committee further asserts that its payments for
8 consulting services would be disclosed in its October 15, 2008, report.

9 The Hartley-Nagle Committee's last three disclosure reports, the 2008 Pre-Primary,
10 Pre-General, and October Quarterly Reports, reflect disbursements for signs, advertisements, and
11 other campaign expenses. The committee's 2008 October Quarterly Report reflects a \$2,500
12 disbursement to a campaign consultant.

13 Based on the Hartley-Nagle Committee's response to the allegations and information
14 contained in its disclosure reports, it appears that the committee properly disclosed its receipts
15 and disbursements. Therefore, there is no reason to believe Karen Hartley-Nagle for Congress
16 and Brenda L. Irwin, in her official capacity as treasurer, violated 2 U.S.C. § 434(b) in
17 connection with these allegations.

18 C. Allegations as to Karen Hartley-Nagle
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20 Complainant did not articulate any factual or legal basis for finding the candidate
21 personally liable for any of the alleged reporting violations. Accordingly, we recommend that
22 the Commission find no reason to believe that Karen Hartley-Nagle violated the Act in
23 connection with the allegations in this matter.
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D. Allegation that the Miller Campaign Failed to File Disclosure Reports

Under the Act, an individual becomes a candidate for Federal office, thus triggering registration and reporting obligations, when his or her campaign exceeds \$5,000 in either contributions received or expenditures made. 2 U.S.C. § 431(2). If a campaign has not exceeded the \$5,000 threshold, it is not required to file reports. 11 C.F.R. § 100.3(a)(1). All campaigns that have a reporting obligation must file periodic reports of financial activity. 2 U.S.C. § 434(a). Authorized committees of House and Senate candidates must file quarterly reports and pre-primary election and pre-general election reports before any election in which the candidate runs. Candidates running in the 2008 Delaware primary were required to file the Pre-Primary Report due on August 28, 2008, 48-Hour Notices if applicable, and the October Quarterly Report due on October 15, 2008.

Complainant alleges that Micheal Miller and the Miller Committee did not file disclosure reports with the Commission even though Mr. Miller publicly stated that he had raised over \$40,000 for his campaign and purchased various campaign materials such as palm cards, large highway signs, and lawn signs, rented billboards and placards on city buses and maintained a website. See Complaint filed as to Candidate Michael Miller and Friends of Mike Miller ("Miller Complaint").

In his response to the complaint, Mr. Miller acknowledges that he had "nearly \$40,000 dollars in signs and infrastructure" for his current campaign, but asserts that the signs were purchased and paid for by his last two campaigns. See Response of Mike Miller. Mr. Miller also indicates that he purchased a billboard for \$2,343 and palm cards for \$1,060 and he provided copies of invoices for palm cards and a billboard with his response. Mr. Miller also states that the website was designed by him and family members and that the domain name was purchased for \$120. Mr. Miller acknowledges that he met the \$5,000 threshold on August 11, 2008, and

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1 that he filed his Statement of Organization on August 18, 2008.⁶ Mr. Miller notes that as of the
2 date of his response, September 25, 2008, his campaign had not raised or spent over \$20,000.
3 Finally, Mr. Miller asserts that he was preparing a disclosure report which he intended to file
4 within a week of the date of his response. To date, the Miller Committee has not filed any
5 disclosure reports.

6 Mr. Miller has acknowledged that the Committee reached the \$5,000 threshold on
7 August 11, 2008. Mr. Miller was a candidate in Delaware's primary, and was thus required to
8 file a Pre-Primary Report, 48 Hour Notices if applicable, and an October Quarterly Report. To
9 date, the Miller Committee has not filed any disclosure reports. Accordingly, it appears that the
10 Miller Committee violated 2 U.S.C. § 434(a).

11 It does not appear, based on the information provided by Mr. Miller, that the Miller
12 Committee raised or spent more than \$20,000. In light of the apparent low level of financial
13 activity at issue in this matter and in the furtherance of the Commission's priorities and resources
14 relative to other matters pending on the Enforcement docket, we recommend that the
15 Commission exercise its prosecutorial discretion to dismiss the matter as it pertains to the Miller
16 Committee's violation of 2 U.S.C. § 434(a), and issue an admonishment to Friends for Mike
17 Miller and Denise Diane Miller, in her official capacity as treasurer, for failure to file disclosure
18 reports.⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

19 **E. Allegations as to Micheal Miller**
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21 Complainant did not articulate any factual or legal basis for finding the candidate
22 personally liable for any of the alleged reporting violations. Accordingly, we recommend that

⁶ A review of the disclosure database shows that the Statement of Candidacy and Statement of Organization are dated August 18, 2008; but that they were received by the Commission on September 22, 2008.

the Commission find no reason to believe that Micheal Miller violated the Act in connection with the allegations in this matter, and close the file.

III. RECOMMENDATIONS

1. Dismiss as a matter of prosecutorial discretion and issue an admonishment to Karen Hartley-Nagle for Congress and Brenda L. Irwin, in her official capacity as treasurer, in connection with a violation of 2 U.S.C. § 434(a);
2. Find no reason to believe that Karen Hartley-Nagle for Congress and Brenda L. Irwin, in her official capacity as treasurer, violated 2 U.S.C. § 434(b);
3. Find no reason to believe that Karen Hartley-Nagle violated the Federal Election Campaign Act of 1971, as amended, in connection with the allegations in this matter;
4. Dismiss as a matter of prosecutorial discretion and issue an admonishment to Friends for Mike Miller and Denise Diane Miller, in her official capacity as treasurer, in connection with a violation of 2 U.S.C. § 434(a);
5. Find no reason to believe that Michael C. Miller violated the Federal Election Campaign Act of 1971, as amended, in connection with the allegations in this matter;
6. Approve the attached Factual and Legal Analyses;
7. Approve the appropriate letters; and,
8. Close the file.

Thomasenia P. Duncan
General Counsel

Ann Marie Terzaken
Associate General Counsel for Enforcement

January 16, 2009
Date

BY:

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