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MEMORANDUM

TO:

The Commission

FROM:

Adav Noti

Associate General Counsel

Policy Division

Lorenzo Holloway LU by AN

Assistant General Counsel

Compliance Advice

Margaret J. Forman MJ 4

Attorney

SUBJECT:

Administrative Termination Referral – Kevin Powell for Congress

(AT 15-02)

I. INTRODUCTION

We recommend that the Commission, on its own initiative, administratively terminate the Kevin Powell for Congress committee ("Committee"), the principal campaign committee of Kevin Powell, who lost the 2008 primary election for New York's 10th Congressional District. The Committee last filed a report on March 13, 2009 – the 2008 Year End Report, disclosing \$0.00 in receipts and \$0.00 in disbursements and an ending cash-on-hand balance of \$56,889.70. The Reports Analysis Division ("RAD") referred the Committee to the Office of General Counsel ("OGC") for possible administrative termination pursuant to Standard 4 of RAD's 2013-2014 Review and Referral Procedures for Authorized Committees. See Attachment 1. See also 11 C.F.R. § 102.4(a) (containing standards for administrative termination).

II. FACTORS THE COMMISSION CONSIDERS FOR ADMINISTRATIVE TERMINATION

The Commission may administratively terminate a political committee's reporting obligation on its own initiative or upon the committee's request based on the following eight factors set forth at 11 C.F.R. § 102.4(a):

Memorandum to the Commission Kevin Powell for Congress AT 15-02 Page 2 of 5

- (1) The committee's aggregate reported financial activity in one year is less than \$5,000;
- (2) The committee's reports disclose no receipt of contributions for the previous year;
- (3) The committee's last report disclosed minimal expenditures;
- (4) The committee's primary purpose for filing its reports has been to disclose outstanding debts and obligations;
- (5) The committee has failed to file reports for the previous year;
- (6) The committee's last report disclosed that the committee's outstanding debts and obligations do not appear to present a possible violation of the prohibitions and limitations of 11 C.F.R. parts 110 and 114;
- (7) The committee's last report disclosed that the committee does not have substantial outstanding accounts receivable; and
- (8) The committee's outstanding debts and obligations exceed the total of the committee's reported cash-on-hand balance.

The Committee satisfies all but two of the factors which apply to it under 11 C.F.R. § 102.4(a). We address each of the factors and make our recommendation below. Our analysis includes a review of written information provided by the candidate regarding the disposition of the Committee's last reported cash-on-hand.

III. APPLICATION OF ADMINISTRATIVE TERMINATION FACTORS

A. The Committee's cash-on-hand does not satisfy factor eight

The Committee's 2008 Year End, its last filed report, did not disclose any outstanding debts and obligations but did report a cash-on-hand balance totaling \$56,889.70. See 11 C.F.R. § 102.4(a)(8). Thus, the Committee's outstanding debts and obligations do not exceed the total of the Committee's reported cash-on-hand balance. 11 C.F.R. § 102.4(a)(8). To determine whether the Committee was eligible for administrative termination, OGC contacted the Committee by letter and telephone to inquire about the disposition of its last reported cash-on-hand. See Attachment 2.

¹ See Memorandum from Office of General Counsel to Commission: New Proposed Procedure for Contacting Committees in Administrative Termination Referrals, December 8, 2011 (Commission authorized OGC to contact committees whose cash-on-hand balances and debts owed to the committee exceed the committee's total debt and obligations by \$35,000 to determine how the committee disposed of or intended to dispose of the remaining funds prior to making a recommendation to the Commission about a committee's eligibility for administrative termination).

Memorandum to the Commission Kevin Powell for Congress AT 15-02 Page 3 of 5

The treasurer of the Committee stated in a phone conversation with OGC that no records from the 2008 committee have been retained. *See* Attachment 2; 11 C.F.R. § 102.9(c). Because the Committee no longer possesses those records, we asked the Committee and candidate for an explanation as to the status of the cash on hand. The candidate responded in a written statement that "all the funds raised for Kevin Powell's 2008 and 2010 campaigns were used and allocated towards campaign expenses. There is no remaining balance or bank accounts still active from either of these campaigns." Attachment 3.

Nevertheless, both the Office of the General Counsel and the Reports Analysis Division made a number of subsequent attempts to obtain more specific information as to the disposition of the funds, and attempts to persuade the Committee to file on the public record the disposition of the funds. *See* Attachment 2. Neither the candidate nor the Committee provided such information.

B. The Committee does not satisfy factor one

The Committee's aggregated reported financial activity in one year – as disclosed in the election activity on the Committee's 2008 Year End Report, Detailed Summary Page – shows that the Committee's contributions totaled \$956.00 and its disbursements totaled \$11,810.22. Consequently, the Committee's last reported annual financial activity exceeded \$5,000. See 11 C.F.R. § 102.4(a)(1). However, we believe it is highly unlikely that the Committee exceeded the \$5,000 threshold in any year after 2008 because the candidate lost the 2008 primary election for New York's 10th Congressional District and sought Federal office again in 2010 with a separate committee that the Commission has since administratively terminated. We have checked 2010 disclosure reports and find no indication that the Committee's funds were transferred to or spent by the 2010 committee. The 2010 Committee also did not have any reported debts and obligations.

C. The Committee satisfies factors three, five and seven

The Committee satisfies factor three because its last report disclosed no expenditures. See 11 C.F.R. § 102.4(a)(3). The committee satisfies factor five because it failed to file disclosure reports for the previous year (and in fact failed to file for over six years). See 11 C.F.R. § 102.4(a)(5). The Committee also satisfies factor seven because the Committee's last report disclosed that it did not have any outstanding accounts receivable. See 11 C.F.R. § 102.4(a)(7).

² Mr. Powell's 2010 authorized committee was administratively terminated by the Commission on September 5, 2012.

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D. Factors two, four, and six do not apply to the Committee

Factor two does not apply since the Committee did not file any disclosure reports for the previous year. See 11 C.F.R. § 102.4(a)(2). Additionally, the Committee's last filed report indicated that it did not have any outstanding debts or obligations. See 11 C.F.R. § 102.4(a)(4) and (6).

IV. THE COMMISSION SHOULD ADMINSTRATIVELY TERMINATE THE COMMITTEE

The Office of General Counsel recommends that the Commission administratively terminate the Committee, but we are concerned about the disposition of the last reported cashon-hand. The candidate's general statement that these funds were "used and allocated towards campaign expenses" does not provide any details about how the Committee actually used these funds. As a result we considered recommending that a compliance action be opened. We decided not to take that approach for several reasons. First, the statute of limitations has passed with respect to any potential violations that might have occurred with regard to the disposition or reporting of the remaining cash on hand in 2008-2009. While the Committee could be subject to enforcement for its ongoing failures to report, we believe (as noted above) that the Committee has likely engaged in no activity since 2008, and therefore the potential penalties for this nonreporting would be minimal. Second, we have no basis in the record to question the veracity of the candidate's statement that the funds were disbursed.³ See ATs 06-269 to 06-273 (Bob Stump Election Committee, John Glenn for Senate, Foglietta for Congress, and Ron Kirk for U.S. Senate) (Commission accepted oral or written explanations provided by committee staff or candidates, respectively, regarding the disposition, or intended disposition, of substantial cashon-hand balances). Finally, we do not possess any information suggesting that the Committee's cash-on-hand was converted, in whole or in part, to personal use in violation of the Act and Commission regulations. See 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g). Cf. Thousands of South Dakotans for Bill Janklow for Congress (AT 15-04) (approving termination where inquiries into committee's disposition of remaining cash-on-hand indicated that conversion to personal use was unlikely).

Thus, on balance, we believe that the facts presented here support administratively terminating the Committee. The Commission has already expended resources in this matter to determine how the Committee disbursed the cash-on-hand, *see* Attachment 2, and because of the considerations noted above – primarily the lapsing of the statute of limitations – we believe that further efforts in that regard are unlikely to effectively further the Commission's interests in timely and accurate reporting.⁴

³ If the Committee spent the funds on campaign-related expenses, as the candidate has asserted in his statement, the Committee neglected to disclose these expenditures in its reports. But pursuing the Committee for such failures to disclose would be time-barred.

⁴ In light of the Commission's limited ability to remedy or address time-barred reporting violations, the Office of Compliance and the Office of General Counsel have revised their internal procedures for administrative

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V. RECOMMENDATION

We recommend that the Commission administratively terminate Kevin Powell for Congress.

Attachments:

Attachment 1 – Administrative Termination Referral from Patricia C. Orrock, Chief Compliance Officer and Debbie Chacona, Assistant Staff Director, Reports Analysis Division, dated June 10, 2015.

Attachment 3 – Correspondence from Kevin Powell to Jennifer Waldman, dated September 9, 2015.

termination matters. Going forward, the Office of Compliance will attempt to refer such matters to the Office of General Counsel sufficiently in advance of the expiration of the statute of limitations such that there will be sufficient time to conduct an enforcement action if the results of OGC's inquiries indicate that such an action is warranted.



June 10, 2015

MEMORANDUM

To:

Lisa J. Stevens

Deputy General Counsel - Law

Through:

Alec Palmer

Staff Director

From:

Patricia C. Orrock

Chief Compliance Officer

Debbie Chacona AC Assistant Staff Director Reports Analysis Division

By:

Kristin Roser KOR

Compliance Branch Chief Reports Analysis Division

Subject:

Administrative Termination Referral

The three (3) committees referenced within this memorandum are being referred to the Office of General Counsel (OGC) pursuant to the Reports Analysis Division (RAD)'s 2015-2016 Review and Referral Procedures for Authorized Committees (Standard 29).

The highlighted committees do not meet the criteria for administrative termination by RAD and, as such, are being referred to your office for further research and a final recommendation of disposition to the Commission.

A brief summary of the committee's status, activity and supporting information is provided for the convenience of OGC.

If you should have any questions, please contact Kristin Roser, Compliance Branch Chief, at extension 1153.

Committee:

James A. Gardner Congressional Committee (C00392506)

7 12th Street

Garden City, NY 11530

Treasurer: Candidate: Rod Cyrus Tabriztchi James A. Gardner **Authorized Committee**

Committee Type:

Year of Last Election:

Last Report Filed:

Amended 2004 12 Day Pre-General (Image: 24991453217)

Cash on Hand:

\$67,793.91

Total Obligations:

\$0.00

Committee Contacts:

Rod Cyrus Tabriztchi, Treasurer - (516) 746-4200 Charles Robinson, General Counsel - (212) 476-3223 Louis Eustache, (Title Unknown) - (516) 565-3582

The James A. Gardner Congressional Committee last filed a report on December 2, 2004. The Committee filed the Amended 2004 12 Day Pre-General Report, disclosing \$21,895.00 in receipts and \$45,375.08 in disbursements and an ending cash-on-hand balance of \$67,793.91. A termination report has never been filed and the committee has failed to respond to the past fortythree (43) consecutive Non-Filer Notifications (RQ-7).

The Committee has no outstanding compliance or enforcement matters. RAD last made contact with the treasurer on June 3, 2010. The Committee has been unresponsive to RAD's request to bring the Committee's reporting into compliance. The Committee has not filed a report for ten (10) years. RAD most recently attempted to contact the Committee on June 9, 2015, but was unsuccessful.

Attachment 1: O-Index

Attachment 2: RAD Communication Log

AT 15-02

Committee:

Kevin Powell for Congress (C00437863)

93 Montague Street - PMB 240

Brooklyn, NY 11201

Treasurer:

Tyra Washington Kevin Powell

Candidate:

Authorized

Committee Type: Year of Last Election:

Last Report Filed:

2008

Cash on Hand:

\$56,889.70

Total Obligations:

\$0.00

Committee Contacts:

Kevin Powell, Candidate - (914) 843-9083

2008 Year-End (Image: 29991744108)

Tyra Washington, Treasurer - (917) 593-5840

Erica Perkins, Campaign Manager - (646) 326-1761

Llyod Calana, Custodian of Records - (841) 441-9173

The Kevin Powell for Congress committee last filed a report on March 13, 2009. The Committee filed the 2008 Year-End Report, disclosing \$0.00 in receipts and \$0.00 in disbursements and an ending cash-on-hand balance of \$56,889.70. A termination report has never been filed and the committee has failed to respond to the past twenty-seven (27) consecutive Non-Filer Notifications (RQ-7).

The Committee has two Administrative Fines from 2008 (AF 1882 and AF 1919) that were sent to the Treasury Department for debt collection on 6/9/2009 and 9/9/2009, respectively. The cases were returned to the FEC on 3/31/2011 and 4/14/2011, respectively. Both Administrative Fines were written off by the FEC on 6/30/2011. There are no other outstanding compliance or outstanding enforcement matters. RAD last made contact with the Committee on The Committee has been unresponsive to RAD's request to bring the May 22, 2012, Committee's reporting into Compliance. RAD most recently attempted to contact the Committee on June 9, 2015, but was unsuccessful.

Attachment 3: O-Index

Attachment 4: RAD Communication Log

AT 15-03

Committee:

Powell For Congress (C00471961)

454 East 119th Street - #3F

New York, NY 10035

Treasurer:

Debra E. Fields

Candidate: Committee Type:

Adam Clayton Powell IV Authorized Committee

Year of Last Election:

2016

Last Report Filed:

2012 October Quarterly (Image: 12960661835)

Cash on Hand:

\$36,596.33

Total Obligations:

\$0.00

Committee Contacts:

Debra E. Fields, Treasurer - (917) 868-9106

Pamela Stone, Former Treasurer - (631) 604-2178

The Powel For Congress committee last filed a report on October 21, 2012. The Committee filed the 2012 October Quarterly Report, disclosing \$0.00 in receipts and \$0.00 in disbursements and an ending cash-on-hand balance of \$36,596.33. A termination report has never been filed and the committee has failed to respond to the past ten (10) consecutive Non-Filer Notifications (RQ-7).

The Committee has no outstanding compliance or enforcement matters. RAD last had contact with the treasurer on October 15, 2010. The Committee has been unresponsive to RAD's request to bring the Committee's reporting into compliance. RAD most recently attempted to contact the Committee on June 9, 2015, but was unsuccessful.

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AT 15-02 Kevin Powell for Congress, Attachment 3

September 9, 2015

Kevin Powell 137 Montague St PMB 221 Brooklyn, NY 11201

Jennifer Walkman Federal Election Commission 999 E Street NW, Washington, DC 20463

To Whom It May Concern:

This letter is to inform the Federal Election Committee that all the funds raised for Kevin Powell's 2008 and 2010 campaigns were used and allocated towards campaign expenses. There is no remaining balance or bank accounts still active from either of these campaigns.

Sincerely,

Kevin Powell