

California Fair Political Practices Commission

# Reporting and Termination Advice for Committees Subject to Campaign Fraud in 2011

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## Background

In 2011, the Federal Bureau of Investigation opened an investigation involving an unprecedented misappropriation of campaign funds. Committee principal officers and candidates that hired Kindee Durkee to administer a committee's financial affairs and prepare reports required pursuant to the Political Reform Act discovered that funds were allegedly misappropriated and reports may not have been properly completed.

In addition, many committees are also subject to an interpleader action in Los Angeles County Superior Court filed by the bank holding committee funds. Pending a final resolution of this action, committee funds are inaccessible to affected committees.

In the wake of this situation, the FPPC conducted two public hearings on the matter to solicit comments from committees affected by the fraud as well as remarks from other interest groups and the public. Following the hearings, the FPPC's legal division has provided advice relating to campaign reporting and termination procedures.

This fact sheet addresses issues in Part 1 on committee reporting requirements and in Part 2 on committee termination rules for those committees that request an administrative termination.

## 1. Committee Reporting Requirements

The Political Reform Act requires that committees fully disclose campaign activity, and both candidates and treasurers must (1) verify that to the "best of their knowledge" the committee's campaign statements are "true and complete" and (2) use "all reasonable diligence" in the preparation of the statements." In the case of reporting misappropriated funds, the committee must continue to take all reasonable steps necessary to fully disclose campaign activity based on the information available or that becomes available as follows:

- The committee should report the amount of misappropriated funds as an expenditure with a short description stating that the funds are believed to have been misappropriated by the former campaign treasurer (Form 460-Schedule E).
- Funds inaccessible because of the interpleader action must be reported as an expenditure made to the court with a short description (Form 460-Schedule E). The disputed funds should also be reported as a cash equivalent until a final disposition, at which time any recovered funds should be reported as a miscellaneous increase to cash (Form 460-Summary Page, Schedule I).

Committees without access to their campaign account because of the interpleader action may open new bank accounts to continue political activity. However, a candidate controlled committee may open a second account only under the following conditions:

- The committee files an amendment to its statement of organization within 10 days of opening the second account.
- All additional contributions shall be deposited into, and additional expenditures made from, the second account.

- Funds recovered from the first bank account must be immediately deposited into the second bank account and the first bank account simultaneously closed.

Other committees are encouraged to open new committees and bank accounts but may also maintain the committee's existing identification number and file an amendment indicating the new treasurer and other relevant information. All committees must have a treasurer in order to receive contributions and make payments.

## 2. Committee Termination

The FPPC's legal division has issued advice letters<sup>1</sup> for committees that wish to terminate due to the exceptional circumstances arising from this matter even if the committees may have funds held by the court. The FPPC will terminate a committee upon written request if the following criteria are met:

- A candidate or principal officer does not know of any deposits and has not authorized payments from the committee's bank account subsequent to the closing date of the committee's last filed campaign statement.
- The balance of the committee's funds inaccessible because of the interpleader action including funds believed to have been misappropriated is less than the likely costs of recovering the funds.
- The committee has ceased to receive contributions or make expenditures.
- The committee, in the case of a candidate controlled committee, has no surplus funds.
- Funds recovered will be immediately paid to the Secretary of State for deposit in the State General Fund, paid to the general fund of the local jurisdiction in which the committee is based, deposited by a candidate controlled committee into the account of the committee reopened upon the approval of the FPPC's Executive Director or as permitted under Regulation 18404.1(g)(1)(A)-(C), or deposited by a non-candidate controlled committee into the account of a committee established by the same sponsor or person for the same purpose.

A committee wishing to terminate must disclose the balance of campaign funds inaccessible because of the interpleader action including funds believed to have been misappropriated and verify that the above conditions have been met in a letter addressed to: Brian Lau, Legal Counsel, 428 J Street, Suite 620, Sacramento, California 95814 or [BLau@fppc.ca.gov](mailto:BLau@fppc.ca.gov). The FPPC will respond with a written reply as soon as possible and, if termination is granted, notify the Secretary of State.

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<sup>1</sup> Kaufman Advice Letter, 1-11-213; Rios Advice Letter, A-11-198-additional letters are available on the FPPC website.