



**FEDERAL ELECTION COMMISSION**

Washington, DC 20463

August 30, 2021

**By Email Only**

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1776 Eye Street NW, Tenth Floor  
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RE: MUR 7764  
Friends of Dana Balter and Sterling  
Talob Waters in his official  
capacity as treasurer  
Dana Balter

Dear Messrs. Kleinfeld and Clark:

On July 29, 2020, the Federal Election Commission notified your clients, Friends of Dana Balter and Sterling Talob Waters in his capacity as treasurer (“Committee”) and Dana Balter, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on August 26, 2021, voted to dismiss the allegations that the Committee and Dana Balter violated 52 U.S.C. § 30114 and 11 C.F.R. § 113.1(g)(1)(i)(I) by converting campaign funds to personal use in connection with salary payments to the candidate. The Factual and Legal Analysis, which more fully explains the Commission’s decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or [drigsby@fec.gov](mailto:drigsby@fec.gov).

Sincerely,

*Mark Allen*

Mark Allen  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Friends of Dana Balter and Sterling Talob Waters  
in his official capacity as treasurer  
Dana Balter

MUR 7764

**I. INTRODUCTION**

The Complaint alleges that salary payments made to federal candidate Dana Balter by her authorized committee, Friends of Dana Balter and Sterling Talob Waters in his official capacity as treasurer (“Committee”), exceeded the amount permitted by law and constitute a prohibited personal use of campaign funds.<sup>1</sup> For the reasons set forth below, the Commission exercises its prosecutorial discretion and dismisses the allegation that the Committee and Balter violated the personal use provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.

**II. FACTUAL SUMMARY**

Dana Balter was the Democratic Party nominee for U.S. Congress for the 24th Congressional District of New York in 2020.<sup>2</sup> Balter filed her Statement of Candidacy with the Commission on April 17, 2019.<sup>3</sup> Friends of Dana Balter is her principal campaign committee.<sup>4</sup> The primary election filing deadline for becoming a candidate for U.S. Congress in New York was April 2, 2020.<sup>5</sup>

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<sup>1</sup> Compl. at 1 (July 24, 2020).

<sup>2</sup> The primary election was held on June 23, 2020. Balter lost the general election on November 3, 2020.

<sup>3</sup> See Balter Statement of Candidacy (Apr. 17, 2019).

<sup>4</sup> Committee Amended Statement of Organization (Aug. 18, 2020).

<sup>5</sup> See <https://www.elections.ny.gov/NYSBOE/law/2020PoliticalCalendar0608.pdf>.

The Complaint alleges that the Committee paid a salary to Balter in 2020 that “exceeds the amount permitted” under the Act and Commission regulations and that the excess amount constitutes the personal use of campaign funds by Balter.<sup>6</sup> The Complaint alleges that the salary amount that Balter can be paid is based on the amount of her earned income in the year prior to the election, which is 2019.<sup>7</sup> The Complaint states that according to Balter’s 2020 Financial Disclosure Statement filed with the United States House of Representatives (“House Financial Disclosure Statement”), she disclosed income of \$3,000 in 2019, consisting of \$2,300 from Syracuse University and \$700 from the Republic of Kazakhstan.<sup>8</sup> Based on the Committee’s 2020 July Quarterly Report, the Complaint alleges that, as of July 24, 2020, the Committee paid Balter a total salary amount of \$6,213.71, which is \$3,213.71 in excess of the amount that she could receive and represents personal use of campaign funds.<sup>9</sup>

According to its disclosure reports, some of which were filed after the Complaint, the Committee made the following biweekly salary payments to Balter totaling \$18,086.10 during 2020:

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<sup>6</sup> Compl. at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Compl. at 3. *See* Balter 2020 House Financial Disclosure Statement (May 23, 2020), [http://clerk.house.gov/public\\_disc/financial-pdfs/2020/10035624.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2020/10035624.pdf).

<sup>9</sup> Compl. at 3, 4.

<b>Committee Salary Payments to Dana Balter</b>	
<b>Payment Date</b>	<b>Amount</b>
April 20, 2020	\$1,056.54
May 5, 2020	\$1,289.30
May 20, 2020	\$1,289.29
June 5, 2020	\$1,289.29
June 19, 2020	\$1,289.29
July 2, 2020	\$1,289.30
July 20, 2020	\$1,289.29
August 5, 2020	\$1,289.30
August 20, 2020	\$1,289.28
September 4, 2020	\$1,289.30
September 18, 2020	\$1,289.29
October 5, 2020	\$1,289.30
October 20, 2020	\$1,289.28
November 5, 2020	\$1,289.30
November 20, 2020	\$268.75
Total:	\$18,086.10

In response, Respondents assert that the \$6,213.71 in salary that the Committee paid to Balter as of the time of the Complaint was permissive, not excessive, and made in compliance with the Act and Commission’s regulations.<sup>10</sup> Respondents claim that the amount of salary to be paid is based upon earned income in the year prior to filing the Statement of Candidacy with the Commission.<sup>11</sup> Respondents state that Balter became a candidate on April 17, 2019, and the standard for determining the amount of money that the Committee could pay Balter is based upon her earned income in 2018, not 2019 as alleged in the Complaint.<sup>12</sup> Further, Respondents

<sup>10</sup> Resp. at 1 (Aug. 25, 2020). The Response to the Complaint states that the response is on behalf of Balter, the Committee, and Sterling Waters “as treasurer and individually.” Resp. at 1 (Aug. 25, 2020). The Complaint names Waters as a respondent, but it does not make allegations as to Waters in his individual capacity, and the Commission did not notify him as such. *See* Compl. at 1.

<sup>11</sup> Resp. at 2.

<sup>12</sup> *Id.* at 3. Respondents assert that Balter’s salary payments began on April 20, 2020, which was after the primary election filing deadline of April 2, 2020, for being a candidate for U.S. Congress in New York. *Id.* at 2.

assert that Balter earned a salary of \$35,198 in 2018 and submitted a copy of Balter's 2018 federal tax return.<sup>13</sup> Respondents claim that as of August 25, 2020, the date of the response, the Committee has made salary payments to Balter totaling \$12,296.70, which is less than the amount of her 2018 earned income of \$35,198.<sup>14</sup> When the 2020 Post-General Report was filed, which covered activity through November 23, 2020, the Committee had paid Balter a total of \$18,086.10 in 2020.

The Complaint also notes that the Committee paid a salary of \$11,114.96 to Balter in 2019, although it does not allege that this amount constitutes a personal use payment.<sup>15</sup> The Committee disclosed salary payments to Balter totaling \$6,719.76 on its 2019 July Quarterly Report and payments totaling \$4,395.20 on its 2019 October Quarterly Report.<sup>16</sup> The Commission's Reports Analysis Division ("RAD") questioned the salary payments in a Request for Additional Information ("RFAP") explaining that such payments are not permitted to a candidate before the filing deadline for access to the primary election ballot for the Federal office

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<sup>13</sup> *Id.* at 4, Ex. A. Balter filed a 2019 House Financial Disclosure Statement on August 13, 2019, disclosing income of \$32,556 in the preceding year and income of \$35,193 for the current year. *See* Balter 2019 House Financial Disclosure Statement (Aug. 13, 2019), [http://clerk.house.gov/public\\_disc/financial-pdfs/2019/10027698](http://clerk.house.gov/public_disc/financial-pdfs/2019/10027698) ("2019 House Financial Disclosure Statement"). Thereafter, on the same day that the Commission notified Respondents of the Complaint by email, the Committee filed an amended 2019 House Financial Disclosure Statement on July 29, 2020, disclosing income of \$35,193 in 2018 and no income in 2019. *See* Balter Amended 2019 House Financial Disclosure Statement (July 29, 2020), [http://clerk.house.gov/public\\_disc/financial-pdfs/2019/10036154.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2019/10036154.pdf). While the Response asserts that Balter's 2018 income was \$35,198, her 2018 federal tax return and amended 2019 House Financial Disclosure Statement discloses that her 2018 income was \$35,193. Thus, the Commission is using \$35,193 as the amount of Balter's income in 2018.

<sup>14</sup> Resp. at 5. The Committee's 2020 disclosure reports disclose payments to Balter described as salary or payroll totaling \$11,370.88 between April 20, 2020, and August 25, 2020.

<sup>15</sup> Compl. at 3.

<sup>16</sup> *See* Committee 2019 July Quarterly Report at 179-80 (July 15, 2019); Committee 2019 October Quarterly Report at 189-90 (Oct. 15, 2019).

that the candidate seeks. In response to this RFAI, Balter reimbursed the entire \$11,114.96 to the Committee on September 29, 2019.<sup>17</sup>

### III. LEGAL ANALYSIS

Under the Act, a contribution accepted by a candidate may be used by the candidate for otherwise authorized expenditures in connection with the campaign for federal office of the candidate.<sup>18</sup> However, a contribution shall not be converted by any person to personal use.<sup>19</sup> “Personal use” means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate’s campaign or duties as a federal officeholder.<sup>20</sup>

The Act and Commission’s regulations enumerate certain expenses that are considered *per se* “personal use” and thus prohibited, including salary payments to a candidate that do not meet specified criteria.<sup>21</sup> A candidate’s principal campaign committee may pay a salary to the candidate that will not constitute personal use of campaign funds so long as it does not exceed the lesser of the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks or the earned income that the candidate received during the year prior to becoming a candidate.<sup>22</sup> Moreover, the committee shall not pay salary to a candidate before the

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<sup>17</sup> See RFAI to the Committee on its 2019 July Quarterly Report (Aug. 6, 2019); see Committee 2019 October Quarterly Report at 176 (Oct. 15, 2019).

<sup>18</sup> 52 U.S.C. § 30114(a)(1).

<sup>19</sup> *Id.* § 30114(b)(1).

<sup>20</sup> *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g).

<sup>21</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)(I).

<sup>22</sup> 11 C.F.R. § 113.1(g)(1)(i)(I). Any earned income that a candidate receives from salaries or wages from any other source, however, shall count against the minimum salary paid to a federal officeholder holding the seat sought by the candidate. *Id.* Upon request of the Commission, the candidate must provide evidence of earned income. *Id.*

filing deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by state law.<sup>23</sup> During the time period in which a principal campaign committee may pay a salary to a candidate, such payment must be computed on a pro-rata basis.<sup>24</sup> If the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election.<sup>25</sup> The payment of salary to candidates that do not meet these conditions is considered *per se* personal use.<sup>26</sup>

As an initial matter, we address the issue of what salary baseline amount should be used for the calculation of whether Balter's salary was excessive. The Complaint states that the Commission should use Balter's 2019 salary, which was minimal, as the baseline. But the Complaint is mistaken. Balter filed her Statement of Candidacy with the Commission on April 17, 2019. Since Balter became a candidate in 2019, the Commission would use her 2018 salary for the purpose of calculating her potential campaign salary.<sup>27</sup> According to Balter's amended 2019 House Financial Disclosure Statement, her 2018 income was \$35,193.<sup>28</sup> Balter also submitted a 2018 federal income tax return with her Response, which reflects that she earned \$35,193.<sup>29</sup> The salary for a member of the U.S. House of Representatives during the 2020

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<sup>23</sup> 11 C.F.R. § 113.1(g)(1)(i)(I).

<sup>24</sup> *Id.* This is intended to prevent a candidate's principal campaign committee from paying the candidate the entire minimum annual salary for the federal office sought by the candidate, unless he or she is a candidate, as defined by 11 C.F.R. § 100.3(a), for at least one year. *See* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,972 (Dec. 13, 2002) ("Personal Use E&J").

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*; *see also* Personal Use E&J, 67 Fed. Reg. at 76,972.

<sup>27</sup> *See* 11 C.F.R. § 113.1(g)(1)(i)(I).

<sup>28</sup> *See* Amended 2019 House Financial Disclosure Statement.

<sup>29</sup> Resp., Ex. A.



election was \$174,000 per year.<sup>30</sup> Thus, Balter's income was less than the amount of salary paid to a member of the U.S. Congress in 2020 and the Committee is limited to paying Balter a maximum salary of \$35,193, payable on a pro-rata basis.

The next issue is whether the Committee has made salary payments to Balter totaling more than \$35,193 in the period since the primary election candidate filing deadline of April 2, 2020. At the time that the Complaint was filed, the Committee had reported making salary payments to Balter totaling \$6,213.71. As of the Committee's 2020 Post-General Report, which is the latest report filed with the Commission, the Committee has made salary payments to Balter totaling \$18,086.10.<sup>31</sup> Thus, the Committee has not exceeded the total amount of salary payments permitted by the Act and Commission's regulations, which in this instance is Balter's income in 2018 or \$35,193.

As discussed earlier, the Committee made salary payments totaling \$11,114.96 to Balter in 2019, which were impermissible because those payments were made before the qualifying deadline to run in the primary election for Congress from New York, but were subsequently refunded. Under the circumstances of this matter, the Commission exercises its prosecutorial

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<sup>30</sup> See <https://crsreports.congress.gov/product/pdf/RS/97-1011>. The Complaint cites to MUR 5787 (Kalyn Free for Congress) and MUR 7068 (Mowrer for Iowa).

<sup>31</sup> A portion of the Committee's salary payments to Balter was made after the November 3, 2020, general election. Specifically, the Committee paid \$1,289.30 to Balter on November 5, 2020, and \$268.75 on November 20, 2020. See Amended 2020 Post-General Report at 862, 866 (Dec. 7, 2020). Salary payments may be made to candidates through the date of the general election. See 11 C.F.R. § 113(g)(1)(i)(I). The memo entry for each salary payment on the Committee's 2020 disclosure reports states "NY State Filing Deadline 4/2/20; Salary Eligibility Date is 4/3/20." However, the memo entry for the November 20, 2020, salary payment also includes the language "Paid Through 11/3/20." See Amended 2020 Post-General Report at 866. This memo entry suggests that the November 20, 2020, payment corresponded to work performed through November 3, 2020. *Cf.* Factual and Legal Analysis at 6, MUR 7068 (Mowrer) (apportioning a salary payment made shortly after the general election into a permissible portion covering the period through the election and an impermissible portion covering after the election).

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discretion and dismisses the allegation that the Committee and Balter violated 52 U.S.C.

§ 30114(b) and 11 C.F.R. § 113.1(g)(1)(i)(I).<sup>32</sup>

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<sup>32</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).