

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re Post-Election Review Findings Related to
Certain Integrated Campaign Service Providers

File No. 2019-200

Findings & Conclusions

The Commission initiated nine enforcement actions in May 2018 after performing post-election reviews of 2016 candidate committees that spent a majority of their funds on the consultants.¹ The review of those nine matters referred for investigation revealed patterns of inadequate documentation and disclosure associated with the use of certain consultants. The investigation into these 2016 candidate committees grew to include other committees audited by the Commission to examine these patterns of disclosure and expenditure anomalies in committees that spent a significant amount of their grant monies on these consultants.

Treasurers are the key to the effective operation of Connecticut's campaign finance system and the continued success of the Citizens' Election Program (the "CEP"). The Commission enforces legal obligations against treasurers and candidates participating in the CEP. The Commission does not, however, have similar authority over consultants who fail to provide sufficient documentation to treasurers or who draft insufficiently detailed agreements.

The Commission has concluded that the patterns of inadequate documentation and disclosure extend beyond a single committee and result, in large part, from the committees' interactions with the consultants. As a result, the Commission declines to find the treasurers of these committees liable in relation to these 2016 and 2017 post-election reviews. Instead, the Commission issues this document to detail documentation practices that triggered these enforcement matters. This document also provides instructional guidance on the type of documentation that will be deemed adequate and sufficient to support expenditures of public funds.

The Commission makes the following Findings and Conclusions:

¹ Pursuant to General Statutes § 9-7b (1) and (5), the State Elections Enforcement Commission (the "Commission") is authorized to audit committees and to conduct investigations on its own initiative. Accordingly, the Commission conducts post-election reviews on a certain number of committees after each regular election. Post-election reviews are performed to ensure that campaign funds are spent for permissible purposes. They are also conducted to provide the Commission an opportunity to learn how campaigns are operating so that staff may improve trainings materials, provide individual advice through post-election review findings, make legislative recommendations for ways to improve the Program or the treasurer experience, and, in certain instances, refer matters for further investigation and enforcement.

1. In May 2018, the State Elections Enforcement Commission initiated investigations into nine candidate committees that had been active in the 2016 election cycle.² The enforcement matters stemmed from post-election reviews conducted of 2016 candidate committees. Specifically, the Commission found that these committees had failed properly to document payments to consultants Michael Farina, Geoffrey Luxenberg, and/or the consulting firms through which they did business in 2016, the Vinci Group and Farina Consulting, (the “Consultants”) when those consultants provided them with integrated campaign services, or “campaign-in-a-box” type services.
2. The resulting investigation of these nine referred committees revealed similar patterns of inadequate documentation and violations of law among the committees with respect to the expenditures related to the Consultants. After investigating the committees that the Commission had initially referred for enforcement, it became apparent that the issues involving these integrated campaign service providers were much more widespread. The Commission expanded its investigation into seven other 2016 candidate committees that also had spent a majority of their CEP grant monies on the Consultants and whose audits revealed significant issues related to their interactions with the integrated campaign service providers.³ Ultimately, the investigation also encompassed several committees that used the Consultants where

² See SEEC File No. 2018-033, *In re. SEEC Initiated: Arconti 2016 – Audit Findings*, May 16, 2018 (initiating investigation against treasurer Peter N. Buzaid and candidate David A. Arconti related to audit findings); SEEC File No. 2018-034, *In re. SEEC Initiated: Candelaria 2016 – Audit Findings*, May 16, 2018 (initiating investigation against treasurer Frank Alvarado and candidate Juan Candelaria related to audit findings); SEEC File No. 2018-036, *In re. SEEC Initiated: Linehan 2016 – Audit Findings*, May 16, 2018 (initiating investigation against treasurer Jeffrey Falk and candidate Liz Linehan related to audit findings); SEEC File No. 2018-038, *In re. SEEC Initiated: Friends of Russ – Audit Findings*, May 16, 2018 (initiating investigation against treasurer John C. Flynn and candidate Russell A. Morin related to audit findings); SEEC File No. 2018-039, *In re. SEEC Initiated: Citizens for Mushinsky – Audit Findings*, May 16, 2018 (initiating investigation against treasurer Martin A. Mador and candidate Mary M. Mushinsky related to audit findings); SEEC File No. 2018-040, *In re. SEEC Initiated: Friends of Lonnie Reed – Audit Findings*, May 16, 2018 (initiating investigation against treasurer Anthony Giardiello and candidate Lonnie Reed related to audit findings); SEEC File No. 2018-041, *In re. SEEC Initiated Reynolds4staterrep – Audit Findings*, May 16, 2018 (initiating investigation against treasurer Paul M. Donahue and candidate Patrick Reynolds); SEEC File No. 2018-042, *In re. SEEC Initiated: Friends of Emmett Riley – Audit Findings*, May 16, 2018 (initiating investigation against treasurer Arthur O. Guertin and candidate Emmett D. Riley related to audit findings); and SEEC File No. 2018-043, *In re. SEEC Initiated: Tomchik 138 – Audit Findings*, May 16, 2018 (initiating investigation against treasurer Jose L. Pires and candidate Jeffrey A. Tomchik related to audit findings).

³ Additional committees investigated by the Commission included *Arlene Avery for Senate*, *Boyd for Connecticut*, *Christine Conley 2016*, *Currier for Connecticut*, *David Pena For State Senate 2016*; *GREG CAVA 2016*, and *Osten 2016*.

that usage appeared to have led to violations or where the committees did not comply with the post-election review requests.⁴

3. Given the scope of the investigation, the Commission consolidates the nine matters docketed in May 2018 as well as the finalization of the post-election reviews for the additional campaigns wrapped into this investigation into a single matter captioned as “*In re* Post Election Review Findings Related to Certain Integrated Campaign Service Providers, SEEC File No. 2019-200.”⁵
4. This document lays out the investigation with respect to the 2016 candidate committees chosen for post-election review which spent the majority of their grant funds on the Consultants. It also explains the requirements of the Citizens’ Election Program with respect to documentation and treasurer oversight (paragraphs 6 – 17), reviews the findings of the investigations regarding the way in which the committees working with the Consultants functioned during the 2016 cycle (paragraphs 18 – 72) and provides guidance for committees who choose to work with these or similar “campaign-in-a-box” consultants in future election cycles (paragraphs 73 – 92).
5. The Commission has decided to take no further action with respect to the above-referenced 2016 election and 2017 special election committees whose use of the Consultants resulted in the problems detailed below. But it urges the candidates and treasurers concerned, as well as all of the committees referred to in this document, to review carefully CEP requirements and to follow them closely in the future, as outlined in this document.

The Law

6. Treasurers are the lynchpins to campaign finance reporting in Connecticut. This role is especially vital for committees participating in the Citizens’ Election Program, where the public fisc is involved.
7. Treasurers must authorize all expenditures made by committees organized under Chapter 155 of the Connecticut General Statutes.⁶ They must also accurately report these expenditures⁷ and ensure that the expenditures are supported by sufficient documentation to show that they were made for a permissible purpose.⁸

⁴ These committees included *Kathy For State Rep 2016*, *Candelaria 2016*, and from the 2017 special elections: *Rickey Pinckney for State Representative* and *Esposito for Rep.*

⁵ In total, this Findings and Conclusions resolves docketed matters and post-election reviews for nineteen committees.

⁶ See General Statutes § 9-607 (a) (1).

⁷ See General Statutes § 9-608 (a).

⁸ Regs. Conn. State Agencies § 9-706-1 (b).

8. CEP treasurers must ensure that expenditures directly promote the candidacy of the candidate in support of whom the committee was established.⁹ Expenditures must reflect “market value,” in that a committee may not pay in excess of the “usual and normal charge” for goods and services.¹⁰ If a consultant or vendor provides goods or services for free or at a special discount, this would result in an impermissible contribution.¹¹
9. Expenditures may not be made to family members of the candidate.¹² Bonus payments to consultants and to committee workers are impermissible,¹³ as are payments for which any portion of the outstanding liability is made contingent on the participating candidate committee’s receipt of a grant from the Citizens’ Election Fund.¹⁴ Finally, CEP committees voluntarily agree to abide by a strict expenditure limit and not to accept any in-kind or non-qualifying contributions.¹⁵
10. Unused grant monies must be returned to the CEF following the election.¹⁶ They may not give bonuses at the end of a campaign to use up surplus funds, except in limited amounts to treasurers or deputy treasurers.¹⁷ Any equipment costing more than a certain amount purchased on behalf of the campaign must be sold and the proceeds returned to the CEF.
11. Treasurers are required to obtain documentation for all expenditures made by a committee and to keep that documentation for four years.¹⁸ Keeping this documentation is particularly important for CEP treasurers because: “The absence of contemporaneous detailed documentation indicating that an expenditure was made to directly further the participating candidate’s nomination for election or election shall mean that the expenditure was not made to directly further the participating candidate’s nomination for election or election, and thus was an impermissible expenditure.”¹⁹

⁹ Regs. Conn. State Agencies § 9-706-1 (a) and § 9-706-2 (b) (8) & (10).

¹⁰ Regs. Conn. State Agencies § 9-706-2 (b) (6).

¹¹ General Statutes §§ 9-601a (a) (1) & 9-613 (a).

¹² Regs. Conn. State Agencies § 9-706-2 (b) (3) & (4).

¹³ Regs. Conn. State Agencies § 9-706-2 (b) (11).

¹⁴ Regs. Conn. State Agencies § 9-706-2 (b) (16).

¹⁵ General Statutes §§ 9-703 & 9-704.

¹⁶ General Statutes § 9-608 (e) (1) (A).

¹⁷ General Statutes § 9-608 (e) (1) (G).

¹⁸ General Statutes § 9-607.

¹⁹ Regs. Conn. State Agencies § 9-706-1 (b).

12. Treasurers may spend campaign funds to pay for campaign workers and professional services.²⁰ This includes services of pollsters, graphic or web designers, strategists, attorneys, accountants, consultants providing campaign management services such as selecting and managing vendors or any of the aforementioned other service providers, and other professional persons assisting with campaign activities.
13. Treasurers may not, however, avoid their own responsibilities as treasurer by delegating those duties to consultants who act as campaign managers, devising campaign strategies expending a majority of the campaign's funding and hiring service providers or vendors to execute them. When a committee chooses to hire a consultant to, for example, design and implement a communication strategy the committee treasurer remains responsible for ensuring that the consultant, and others hired by the committee, are paid at market value for their work, that the committee adheres to any expenditure limit, that the committee does not accept business contributions or in-kind contributions, that the nature of all expenditures are accurately reported, and that the committee receives all goods and services for which it has paid. The treasurer must obtain and keep accurate records reflecting the permissible nature of each expenditure payment.
14. In order to assist the treasurer with these duties, the law provides that treasurers should obtain certain documentation. Agreements with campaign service providers are required to be made in writing, laying out the amount and duration of the fee arrangement as well as a description of the work to be performed for any services valued in excess of \$100 *before* any services are rendered or work performed.²¹ In addition, the regulation requires a treasurer to retain "contemporaneous records" setting forth the nature and detail of the work performed or services rendered once those services are rendered.²² When the consultant hired by the treasurer in turn hires other service providers or vendors to perform work on behalf of the committee then the treasurer must report the full name and complete address of each consultant payee, including secondary payees, whenever the primary or principal consultant payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity.²³

²⁰ General Statutes § 9-607 (g) (2) (P); *see also* Regs., Conn. State Agencies § 9-706-2 (a) (4).

²¹ Regulations of Conn. State Agencies, § 9-607-1(a)(1) (requiring written agreement, signed before work performed, when fee will exceed \$100).

²² *Id.*

²³ General Statutes § 9-608 (c) (l) (B).

15. The Commission has recently provided further guidance with respect to the disclosure required of a treasurer in Declaratory Ruling 2019-03: *Secondary Payees and Polling Expenditures*. To the extent that the treasurer has knowledge that a consultant or other service provider has hired a sub-vendor or service provider on behalf of the committee, disclosure is required. If the treasurer is not sure whether a sub-vendor or provider was hired on the committee's behalf, she has a duty to inquire. In most circumstances it would be enough to ask for and to rely on the response from a consultant; however, in some instances a good faith effort to obtain secondary payee information might involve more. The Commission is reasonable and applies the same common sense principles used generally in the marketplace.
16. In some circumstances a good faith inquiry by a treasurer may involve more than a single question. Such situations may include: (1) When the amount being paid to the campaign services provider, relative to overall campaign expenditures, is substantial; (2) When the treasurer or candidate can gain the information easily due to a close relationship with the campaign services provider or its employees, such as when former colleagues or family members of the treasurer or candidate are involved with the campaign service provider being hired; (3) When the treasurer can find the information or should know to ask for it based on other reports that the treasurer had filed or other invoices that the treasurer has received; (4) When the treasurer has been put on notice of problems as a result of media coverage questioning their committee's prior filings, advice given as part of the Commission's post-election review of a previous committee for which he was treasurer, or via an enforcement action involving that campaign service provider; and (5) When there are indications in the campaign service provider's contracts or documentation that they are likely using secondary payees.²⁴
17. The laws work together to require treasurers to perform duties that ultimately assist them in confirming that expenditures are permissible. For example, requiring back-up documentation, such as receipts or invoices, to support expenditures allows a treasurer to confirm that payments to campaign workers, including consultants, are only for permissible purposes of the committee and at market value. Obtaining information about secondary payees serves a similar purpose in some situations and in others allows the treasurer to confirm that the committee is being charged market value or that costs are not being defrayed through improper discounts.

²⁴ Declaratory Ruling 2019-03: *Secondary Payees and Polling Expenditures*, pp. 2 & 9-13.

Investigation

18. Post-election reviews have revealed a growing problem with consultants providing “campaign-in-a-box” (“CIB”) services without providing treasurers adequate documentation. These consultants provided various services for all types of committees registered with the Commission, including candidate committees, political committees, and party committees. The services provided by these consultants touched upon all aspects of the modern political campaign: communication plan formulation and implementation; target voter identification; polling; campaign strategy; website set-up and design; fundraising; direct field management; printing and direct-mail services; social media campaigns; obtaining lawn signs, stickers and t-shirts; canvassing; choosing vendors or service providers on behalf of the campaign; and organizing phone banking or campaign telephone calls.
19. In 2014, spending for consultants by candidate committees totaled approximately \$2,872,000. This total from 2014 included spending by statewide candidates as well as General Assembly candidates. By the 2016 election cycle, the amount of money that went to consultants ballooned to over \$4,084,000 – in an election that was solely for General Assembly candidates.
20. There were several consultants that provided these “campaign-in-a-box” services during the 2016 election cycle. The Commission’s reviews of the candidate committees that hired them and that were selected for post-election review revealed many documentation problems. The most common problems stemmed from the failure of the treasurers to enter into written agreements specifying how much the candidate committees would pay for the work that these consultants provided to them and then, once work was completed, failure of the consultants to provide sufficient documentation to allow the treasurers to complete mandated reporting or to verify that work was actually performed, as required under state statute and regulations.
21. All together, the 2016 committees investigated for this report received \$726,806 from the Citizens’ Election Fund. Using their grant funds and contributions from the public gathered to qualify for grant monies, these committees discussed herein paid

approximately \$738,109 to the Consultants in 2016.²⁵ These Consultants were paid more than \$2,043,000 in the 2016 election cycle from all committees combined.

22. Commission staff reviewed the documentation provided in response to the 2016 post-election review document request as well as the public campaign finance filings of the committees that had spent a majority of their grant funds on the Consultants. The treasurer of each such committee was interviewed and, when the treasurer was not the main point of contact for the campaign with the Consultants, candidates were also interviewed. Additional documentation, including emails or any other contemporaneous documentation, was sought and sometimes provided. In an effort to understand pricing issues, the print house hired on behalf of these committees was also asked for documents and interviewed.
23. The Consultants' 2016 principals were asked to participate in the investigation. One declined to make himself available and the second participated in a short interview but was unable to answer many questions because, he claimed, he was not generally involved in billing and contract negotiations for either company..
24. The investigation revealed several problems with documentation that these Consultants supplied to treasurers for purposes of reporting to the Commission. In particular, there was a lack of specificity included on invoices provided to treasurers to justify expenses that the Consultants charged committees for services provided. More concerning, there were indications of business discounts in certain instances and possible expenditure limit violations. Those problems are explained in more detail below.

Issues with Monthly Fees

25. Of the issues identified during the course of this investigation into potential problems with campaign-in-a-box service providers, none were more problematic than payments

²⁵ During the course of the 2016 election cycle, these Consultants were paid over two million dollars and worked for approximately 70 committees. This investigation does not cover all of those payments. Some of them were from party committees and political committees, some were from candidate committees that were not selected for post-election review and some were from candidate committees that did not pay a majority of their grant to a single consultant, using them as a "campaign-in-the-box." Unless the committees are listed above as part of this on-going investigation, the SEEC has not determined whether or not the other committees were or were not in compliance. The Commission notes that the documentation issues which caused problems in the above investigated committees appear to have been the norm for these consultants and further notes that many of those selected that used these consultants but were not further investigated in the above matter did receive findings in their final post-election review reports alerting them that there was a problem with the documentation provided.

made to the Consultants for which treasurers had little to no documentation of the work that was performed to earn the fees.

26. In nine of the seventeen 2016 committees reviewed as part of this investigation, monthly fees were paid by the committees to the Consultants that totaled approximately \$126,850 in consulting payments during a five-month timeframe (June through November). Minimal documentation – both in terms of pre-performance service agreements and post-performance invoices – for these expenses was provided in response to the post-election review requests. It is impossible to tell from the consulting agreements and from the invoices to support payments based on those agreements what work was done, how much was done, and by whom.
27. The types of services billed and the amounts billed the committees included: approximately \$84,876 for “direct field management”, \$22,675 for “strategic consulting”, \$6,000 for “consulting”, \$2,300 for “creative services”, and \$8,000 for “fundraising.”
28. Section 9-607-1 of the regulations of Connecticut state agencies lays out the standards that a treasurer must meet in order to document expenditures.²⁶ As noted above, the regulations require pre-performance and post-performance documentation to justify expenditures, including written agreements between committee treasurers and service providers for any work that exceeds \$100. The agreement must set forth in writing the nature and duration of the fee arrangement, including the amount to be billed, and a description of the scope of the work to be performed.
29. All of the work envisioned by the Consultants investigated here should have been the subject of a pre-performance agreement under Regulation § 9-607-1. An explanation of the work that was to be performed should have been included in these fee agreements for any work for which payment exceeded \$100.

²⁶ Regs., Conn. State Agencies, § 9-607-1(a) (stating “Pursuant to the requirements described in sections 9-607(f), 9-607(g), 9-706(e) of the Connecticut General Statutes, and any regulations adopted thereto, in order to substantiate any payment for services of campaign or committee staff, or campaign or committee services of attorneys, accountants, consultants, or other professional persons for campaign activities, the campaign treasurer shall maintain internal records, including but not limited to: 1. a written agreement, signed before any work or services for which payment in excess of \$100 is sought is performed, which sets forth (i) the nature and duration of the fee arrangement and (ii) a description of the scope of the work to be performed or services to be rendered; and 2. contemporaneous records and/or invoices created by the close of the reporting period but in no event later than the date of the primary or election to which the expenditure relates, which set forth the nature and detail of the work performed or services rendered.”)

30. Of the nine committees that paid the monthly fees, seven had the agreements in their possession and provided the Commission with the agreement in response to the post-election review request or investigation. In one of the seven, the agreement focused only on mailers and other communications – the monthly fees weren't mentioned at all.
31. Three of the remaining six had the similar boiler-plate language used to describe the work to be done: “provide those services typically performed by a political consultant,” including “strategic management,” “strategic oversight of campaign operations,” and “strategic oversight of field operations and staff.” The prices to be charged under this same description of work to be performed ranged from \$1,000 per month to \$11,000 per month. A fourth committee had an agreement to pay \$1,000 for work “as a field consultant [to] oversee the campaigns [sic] field program and perform those duties and services typically required for a field campaign.” The agreement for this committee also specified that the consultant would work as a finance consultant.
32. The contracts that the Commission was able to obtain failed to meet several primary requirements for those pre-performance agreements; most significantly, the agreements lacked a description of what services the Consultants would provide to that specific campaign to justify their fee. Work “typically performed” is not an adequate description to satisfy the requirements of regulation 9-607-1. The Consultants’ description of their work with a few words – “consulting” or “direct field management” did not satisfy the requirements of the statutes and regulations. Such practices make it impossible for the treasurer to fulfill their duty to ensure market value is charged – knocking on 10 doors or ordering one poll or working for one or two hours a week for \$10,500 a month would likely be in excess of the usual and normal charge but with the documentation provided by these Consultants the treasurer is unable to assess the work done for the amount charged.
33. Some of the ambiguity about the exact scope of work to be performed can be resolved if invoices that a service provider issues to a committee treasurer include detailed information about what work a service provider actually performed. The invoices supplied by the Consultants here, however, lacked that level of specificity. Most had less information than the agreements, limiting the description of work to only a couple vague words: “direct field management,” “strategic consulting,” “consulting,” “creative services,” or “fundraising.” The invoices did not provide any clue as to why one committee paid only \$1,000 a month for “direct field management” while another committee paid \$10,500 for work with the exact same invoice description.
34. Without specificity, the services afforded to committees under invoices supplied by the Consultants for broad categories – such as, direct field management, or consulting – are

indistinguishable from other service itemized in other invoices. This pattern of seemingly overlapping billing is repeatedly evident in the Consultants' invoicing.

35. For instance, the Osten candidate committee paid for field calls and field canvassing. Those invoices contained itemization of work done: hours worked or number of calls and rate of payment. The candidate committee, however, also paid for "direct field management" and "strategic consulting." Nothing on the invoices distinguished what constituted "direct field management" and "strategic consulting" or explained how the services differed from what the Consultants had already billed the committee for calls and canvassing.²⁷
36. The Tomchik candidate committee paid \$1,000 per month for four months for "field management" but also paid three separate invoices for phone calls and canvassing during three of those four months. Two of these invoices included hourly rates and the number of hours for which the committee was billed; the other two did not. But the committee was also charged for "field work" in addition to the calls and canvassing, with no explanation about the work that the Consultants performed that was separate from the calls and canvassing for which the committee was already billed.
37. Invoices supplied to the David Pena candidate committee also reflected significant overlap. The invoices supplied for "direct field management" and those for calling and phone/calling/canvassing bills differed, but investigators were unable to discern how the two service charges differed.²⁸
38. Perhaps of most concern with the documentation in this area are the red flags that arise with respect to changes to negotiated monthly consulting. In several instances, the Consultants altered fees that they charged candidate committees without written explanation or any documentation of how the work they were performing would change to justify such fee adjustments. Some committees resisted pressure to pay additional fees, such as the Candelaria candidate committee, which refused to pay an

²⁷ Billing for overlapping services not only occurred for services provided exclusively by the Consultants but also when the committee wanted to have services provided by another individual. The Reed committee paid a graphic design company, Words by Jen, a total of \$1,651.09 to design mailers and other printed materials over the course of the campaign. On Nov. 7, 2016, the committee was billed \$2,300 by Consultants for "creative services." It paid that bill on Nov. 8, 2019. There was no specification on the invoice as to the services provided or items designed by the Consultants to support that \$2,300 bill. The contract between the candidate committee and Consultants, however, did authorize a \$2,300 payment to Consultants for writing and designing all communications pieces.

²⁸ Consultants sent an email message to the committee saying the committee had to pay an additional fee of \$4,500 or they would risk being charged with having received something of value from a business without paying for it.

additional \$500 charge associated with fundraising that showed up in an invoice after the work had been performed but was not included in the original contract.

- a. The Osten candidate committee entered into a contract in which it agreed to pay a “Consultant Fee” of \$2,000 per month for June, July, and August of 2016 and \$4,000 for the months of September and October of 2016.²⁹ The agreement required the Consultants to submit “a detailed statement of services provided and hours worked” during the relevant period. The contract between the Osten candidate committee and the Consultants specified that the committee would pay \$14,000 over the course of the election cycle in consultant fees. But, in actuality, the committee paid a total of \$42,745.95 in payments for non-tangible items, including: the contracted \$14,000 in “strategic consulting fees;”³⁰ \$2,000 for “monthly consulting fee;” \$2,675.95 for “paid field calls;” \$11,220.50 for paid field canvassing;³¹ and \$12,849.50 for “direct field management.”
- b. The Consultants, at times, unilaterally increased – or decreased – the amounts of fees that had been agreed to in writing ahead of time, without written notice or documentation beyond unexplained invoices reflecting the charges. The Reed committee’s draft post-election review contained a finding that the committee had paid \$1,000 less than was due. The investigation revealed that the fee had been adjusted because the candidate’s opponent had withdrawn from the race; the work was no longer required and therefore wasn’t performed. Adequate written documentation from the Consultants to reflect this change and the reason for it could have avoided the potential violation.
- c. For the Pena committee, the Consultants changed the amount to be charged for work already invoiced and presumably performed, reducing those incurred charges drastically, while simultaneously raising the amount the committee would pay in future months, pushing expenditures to a time in the future when the committee had additional funds, such as when it had secured public campaign financing. Due to the poor documentation provided by the Consultants, however, it is unclear why they were increasing their prices. The scope of work listed in writing did not change. Similarly, the justification for the reduction in billing for work already performed and invoiced is not reflected in writing.

²⁹ Neither the consultant nor the candidate committee had an executed copy of the contract for 2016, but the treasurer did supply an unsigned draft of the contract that she had obtained from the consultant.

³⁰ This also includes on \$2,000 payment for “strategic management fee.”

³¹ This was alternatively invoiced as “paid field,” “canvassing,” or “paid field canvassing.”

39. Another particularly concerning instance also involved the Pena candidate committee. The Consultants billed the committee late in the cycle for fundraising, despite the fact that earlier emails indicated at least some fundraising assistance was included in other fees. With the lack of documentation and the late invoicing, it appears that the work may have been double-billed, or offered on a contingency basis and only billed when the committee received a grant.³²
40. In two other instances, candidate committees were told that the Consultants wanted to hire a specific individual to work on behalf of the committees and urged those committees to sign an agreement with the Consultants so that the individual could be hired. Nothing provided to the committees by the Consultants reflected what specific work the individual would be performing. Later, one of the candidates expressed frustration that the worker hired by the Consultants, supposedly specifically to work on her campaign, was also working for other campaigns.
41. When a consultant tells a campaign that they need a commitment from the campaign in writing so that they can move ahead with hiring someone to work on behalf of that candidate committee and then bills that campaign for that time, it raises the question as to the status of the worker: are they an employee of the consultant who would be paid regardless of the needs of this particular campaign and whose work is included in the amounts invoiced for a certain scope and duration of work which is pre-agreed with the campaign in writing, or are they a subcontractor hired to work on behalf of the campaign and paid only because this particular campaign had a need, and thus a secondary payee of the campaign? If the latter, then the committee treasurer would need to report that worker as a secondary payee of the campaign, given that the funds from the campaign are going directly to pay that worker.
42. Without adequate disclosure from the Consultants, the committees had no way to understand the amounts that they were being charged. The treasurers must rely on the Consultant's disclosure in order to report expenditures correctly. Consultants should report to each committee the hours worked by a given individual on behalf of the committee in order to justify the fees paid for the work and to specify whether that

³² A June 20, 2016 email from the Consultants to the committee raised the possibility of assisting with fundraising. The Consultants stated "If you want to block out a minimum time block of 4 hours for making fundraising calls – I will send an intern or staffer to sit with you and help you track the results of the calls. You have not hired us for fundraising help – but we are inspired by the work Matt and Melissa are putting in as volunteers (almost no other campaign has this level of volunteer help) and we are willing to provide some administrative help in this area as part of our general consulting fee because we want you to succeed." By October 1, 2016, however, the Consultants sent an invoice for \$4,500 for fundraising stating: "Public financing rules prohibit us from raising money for you for free – (that would be an in-kind business contribution to your campaign which is not permissible) – so we attached our standard fundraising invoice for State Senate races."

individual was hired by the Consultant on behalf of the campaign. This resolves three issues: (1) the lack of detailed documentation to support expenditures, (2) the potential overlap in billing where the Consultant charged for an umbrella service – “direct field management” performed by the Consultant – while also charging for components of that service – “paid field” performed, presumably, by the hired worker, and (3) whether secondary payees need to be reported by the treasurer. This was not done.

43. Because of the lack of documentation and the problems created by the alteration of charges in the middle of the election cycle, absence of specifics on bills, and seemingly overlapping services, the Commission spent a significant amount of resources and time to interview treasurers and candidates, review documents, and conduct multiple searches of emails and other documentation while gaining little insight into what the Consultants did and the services they provided.
44. Given that lack of transparency into the work that the consultants did, the Commission cannot confirm that all expenditures authorized by the treasurers of the candidate committees that it investigated as part of this report were permissible.

Printed Communications

45. All seventeen of the 2016 candidate committees included in this investigation used the Consultants to provide their committee with printed materials, including direct mail communications. According to candidates and treasurers, the Consultants designed and had printed quality mailers which were timely delivered during the 2016 election cycle.
46. The documentation of these services, however, was both lacking and inconsistent.
47. As noted above, the regulations require service providers to enter into written agreements with campaigns before work is begun. Once the work is done, invoices reflecting that work need to be provided to the treasurer.
48. Here the Consultants were providing services to the campaigns. These Consultants were working with the campaigns to design a communication strategy and then hire the providers necessary to implement that strategy. The services of helping to create a communication strategy, designing the mailers, assisting in creating the mailing lists, identifying and overseeing the vendors to print the mailers, hiring people to canvas or arranging for calls to be made are all services that require the

documentation specified in 9-607-1.³³ Unlike print shops, like Staples, that merely accept a document design for printing and provide 1,000 copies of that design on cardstock, the Consultants here were service providers giving professional design and messaging advice to assist the candidate committees in their campaigns.

49. Two of the committees reviewed by the Commission did not have agreements ahead of time: One did not know an agreement was needed; the other refused to enter into the exclusive consulting agreement that the Consultants offered. At least two other committees did not have the agreements initially in their possession to produce in response to the post-election review or investigation.
50. The remaining committees entered into agreements with the Consultants containing largely boiler-plate language that was consistent across most of the Consultant's performance agreements and generally omitted any specific terms related to fees or payment arrangements. Although the Consultants provided lawn signs, t-shirts, stickers, walkcards, postcards and website design, as well as mailers and other print media, the service agreements lacked any pricing information for these services.
51. Many contracts referred to an "attached price sheet" that ostensibly showed the pricing for mail pieces but few of the treasurers who executed the agreements received the price sheet before signing those agreements or placing orders for printed materials. The price sheets that were supplied to treasurers in response to the post-election draft reviews reflected only pricing for mailers not the other services that Consultants provided. These price sheets guaranteed that the Consultants would only use unionized printers, which would entitle the mailers to carry a "union bug," a small symbol showing that a printed item was created using a union workforce. They also represented that postage would be billed at cost.
52. The Linehan candidate committee, established for a first-time General Assembly candidate, received an agreement without reference to any pricing schedule. She was informed that the number of pieces mailed would depend on available resources and an

³³ In January 2017, the Consultants gave the Currier committee a new contract, identifying them as vendors rather than consultants. This contract however provided the same design and strategy services as all of the other contracts. The Consultants did not function like Staples or printhouses, providing printing services to all clients at the same published prices. The Commission will look to the nature of services provided and not the word that consultants use to describe themselves. The disclosure needed from consultants as described herein relates to disclosure necessary with respect to any person that provides (i) campaign strategy, (ii) design or management of campaign communications, literature or advertising, or (iii) fundraising or management services, or has duties that include identifying, hiring or paying subvendors for goods or services on behalf of a committee in a manner that would be done by a campaign manager if the consultant had not been hired.

agreed upon budget. The treasurer reported in response to the draft post-election review that he was never provided any pricing information but instead was “assured that the contractor would provide the best pricing possible to meet our needs.”

53. Another committee obtained a 2016 pricing sheet only after they requested it in response to the Commission’s draft post-election review. The Consultant said this 2016 version was the same as the 2014 price sheet that had been supplied to the committee in an earlier cycle, but it is not clear whether the candidate committee knew before entering into the 2016 agreement what prices they would pay and whether they had received that 2014 version at all.
54. The lack of pricing information in the agreements could have been solved by relaying the pricing to treasurers in emails and seeking approval in writing before incurring the cost on the committee’s behalf. Although the Commission’s investigation uncovered multiple emails from almost all the committees discussing content development and approval of the wording and pictures in the mailers in great detail, there were very few, if any, instances of such similar written approval of the costs associated with a mailer being provided to the treasurer before a mailer went out to voters. Most often the content communications were with the candidate and only sometimes copied to the treasurer.
55. In addition, while treasurers for the candidate committees were able to supply invoices for billed costs, those invoices were problematic in several ways. First, they were not always timely, arriving after the mailers had been printed and, normally, mailed. This combined with the lack of pricing information up front left the treasurer in a bind of having to accept the price charged or accept an in-kind contribution. Second, they omitted necessary information needed for the treasurer to be able to fulfill reporting requirements such as secondary payee information. Third, they often lacked accurate descriptions of mailers, such as message notation or other accurate identifying information that would allow the treasurer to identify which invoice was associated with which mailer. Finally the recipient universe was sometimes left off the invoice, making it impossible to tell the charge per piece or ascertain whether the amount charged was in excess of usual and normal charges.
56. The lack of specific information in the invoices, coupled with a deficient pre-performance agreement laying out how much will be spent, rendered treasurers incapable of exercising their most fundamental duty – overseeing committee expenditures. Some committees were billed multiple times for “mailer 1,” and others were billed for multiple mailers in a single invoice, with little to distinguish them, making it difficult to determine if a committee had paid for all the mailers they had ordered. Invoices for other committees omitted a description of the mailers’