

# Schwerin Campbell Barnard Iglitzin & Lavitt LLP

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February 16, 2018

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RE: Washington State Labor Council AFL-CIO DIME PAC  
Glen Morgan 10-Day Notice Re: Alleged Violations of RCW 42.17A.235 et seq.  
SCBIL File No. 2800-059

Dear Mr. Perkins and Ms. Dalton:

On behalf of the Washington State Labor Council AFL-CIO DIME PAC ("DIME PAC" or "the Committee"), we are hereby responding to the allegations raised by Glen Morgan in the above-referenced matter. In particular, this letter addresses the following allegations:

- Allegation One: Violation of RCW 42.17A.235 for failure to accurately and timely report contributions and expenditures.
- Allegation Two: Violation of RCW 42.17A.240(8) for failure to accurately, timely report debt.
- Allegation Three: Violation of RCW 42.17A.235 and WAC 390-16-037 for failure to provide detailed breakdowns of expenditures.

Many of Mr. Morgan's allegations are absolutely unfounded, as described herein. Several of the unfounded allegations seem to be based on a fundamental misunderstanding of the internal governing structure of the Committee, of campaign finance law, or even of the basic facts regarding reporting requirements.

Under normal circumstances, the extent of any errors made by the Committee would have merely been addressed by the PDC in a constructive and meaningful way. The Committee does

not believe the extent of any of the actions it allegedly took would justify imposing any sort of penalty in excess of such a referral, if further action is even deemed necessary at all.

We believe that these allegations should be dismissed outright. However, if the State believes further inquiry is warranted, referral to the PDC is the only way for your office to ensure that the purposes of the Fair Campaign Practices Act (“FCPA”) are fairly and properly effectuated. In this way, the Committee may formally resolve these issues with the PDC and the State of Washington. We do not believe this will occur if Mr. Morgan takes action on behalf of the State in Washington Superior Court.

We address the specific claims that were made against the Committee by Mr. Morgan in turn, as follows:

***1. “Failure to file accurate, timely C3 and C4 reports. (Violation of RCW 42.17A.235)”***

Mr. Morgan’s allegation identifies instances of *amended* reports, supplementing or clarifying information previously reported in a timely fashion (as is even admitted by Mr. Morgan’s “Amended Y/N” column in his spreadsheet entitled “Exhibit A”). Mr. Morgan’s complaint is based on a legal fallacy—that merely *amending* a previously filed report renders it late.

With very few exceptions, the 24 amended reports that Mr. Morgan would characterize as late were *actually* timely filed, using the filing date of the unamended report. And, many of those reports were amended to add information of minimal consequence. For instance, amended reports 100726132, 100726153, 100726142, 100779394, 100779403, and 100722142 all amended the original reports to add information about income from bank interest or deposits of less than a dollar. Several other reports, including 100727658, 100724500, 100725980, and 100726151 did not change any information from the original report at all.

Mr. Morgan relies upon the novel legal theory, unsupported by any law or precedent, that merely *amending* a filing thereby renders it late. There is no part of the statute, or any case law applying RCW 42.17A, that supports this claim. Such an application of the law would lead to an absurd result. In order to effectuate the FCPA’s focus on “promot[ing] complete disclosure of all information,” RCW 42.17A.001, the ability for a candidate or committee to amend reports without penalty must be preserved. Mr. Morgan’s assertion here would create the perverse incentive to *withhold* complete disclosure, if a reporting entity is to be penalized for discovering and appropriately correcting a mistake. This position is directly contradicted by the instructions the PDC itself gives to political committees, which includes amending a committee’s reports at the end of the year to correct any discrepancies. *See* Ex. A. Those 24 particular allegations regarding amended reports should therefore be disregarded.

Another 12 allegedly late reports should be disregarded because they reported information that did not need to be reported at all. The Committee should not be penalized for filing late what it was not required to report in the first place. In this instance, the public has been

provided with *more* information than what the law requires. Report numbers 100725981, 100725983, 100725984, 100726063, 100726132, 100779387, 100779355, 100779386, 100781924, 100786415, 100791868, and 100801019 were all C3 reports in which the only activity reported was the accumulation of small amounts (usually less than a dollar) of bank interest. RCW 42.17A.005(13) provides that “standard interest on money deposited in a political committee’s account” is not a contribution. Consequently, it needn’t be reported as a contribution on a C3 report.

Another 12 of the reports Mr. Morgan points to were filed only four or fewer days late and consequently involve only *de minimis* violations of the Act.

Taking into account the explanations surrounding the above-described allegations, the alleged violations in Mr. Morgan’s Exhibit A do not warrant judicial enforcement. The PDC is fully capable of investigating these sorts of *de minimis* violations.

**2. “Failure to accurately, timely report debt. (Violation of RCW 42.17A.240(8), see WAC 390-05-295)”**

Mr. Morgan’s assertions about the Committee’s supposed failure to report debts fail as well. As outlined in “Exhibit B,” Mr. Morgan methodically alleges that certain expenditures made in a given report “should have been reported as debt” in the *prior* reporting cycle. Mr. Morgan provides utterly no factual basis for this assertion that the various expenditures listed were actually incurred as debts earlier than when they were reported as expenditures.

More importantly, however, Mr. Morgan appears to confuse “expenditures”—which were, in fact, properly reported—and “debts.” RCW 42.17A.005(20) defines an expenditure to include:

**“Expenditure” includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.**

(emphasis added.). WAC 390-05-295 further defines the term “promise to pay” for purposes of the definition of an “expenditure” to include “any oral or written order placed, debt or obligation to purchase goods or services or anything of value.” Mr. Morgan does not allege the Committee has failed to report *expenditures* as part of his second allegation. Instead, he alleges that the Committee has failed to report *debt*. The FCPA is clear that “debts” are things that are “outstanding,” *see e.g.* RCW 42.17A.240(8), whereas a “promise to pay” is prospective in nature.

There is nothing to indicate that the *decision* to make an expenditure *without* any further concrete actions being taken—constitutes an “agreement...to make an expenditure.” Mr. Morgan’s interpretation seems to create a new reporting burden on *any* expenditure a committee may even *contemplate* undertaking. And Mr. Morgan has offered no evidence whatsoever that

any specific expenditure was preceded by a promise to pay in an earlier reporting period, and hence a debt that should have been reported. In sum, Mr. Morgan has failed to provide any facts to support his claim that the Committee has failed to report “debt.”

Even assuming, *arguendo*, that the Committee actually incurred debts on the dates that the Plaintiff imagines, his theory of liability is based on a legal fallacy. Specifically, he alleges that the Committee is cumulatively hundreds of days late in reporting these debts, which amount to thousands of dollars in liability. These inflated figures are based on Mr. Morgan’s novel theory that the obligation to report debt survives the life of the debt itself. That is, Mr. Morgan claims that, for each expenditure listed, the Committee had a parallel obligation to report a debt which was not extinguished when the debt itself was paid, and that the Committee’s failure to amend reports to include already paid debt constituted an ongoing violation continuing up to the date Mr. Morgan submitted his complaint (see column “Approx. days late”). By asserting without basis that the debt was actually incurred in a prior month and should have been reported at that time, and then calculating the imagined date the debt was incurred through the filing of his complaint—despite the fact that the obligation was fully satisfied and reported as an expenditure—Mr. Morgan has created an absurd application of the law, with no principle in law or reason that supports such a result. This claim also must fail.

The ultimate goal of the FCPA is transparency. As long as committees are undertaking their best efforts to report the expenditures they undertake—especially when the expenditures are reported in the correct reporting period—the application of the law in the manner suggested by Mr. Morgan is unreasonable.

Even if the AG or the PDC disagree regarding the nature of reporting debt obligations, without the Committee conceding to Mr. Morgan’s allegations, the Committee conscientiously reported the dollar amounts spent, the purpose of the expenditures, and the dates the expenditures were incurred. The public was never deprived of meaningful information by any of the Committee’s actions here.

This allegation should be dismissed outright.

**3. “Failure to properly break down expenses. (Violation of RCW 42.17A.235, see WAC 390-16-205)”**

Mr. Morgan’s “Exhibit C” cites various instances where the Committee did not break down expenses to a degree Mr. Morgan would have found suitable. Even if he were correct that inadequate descriptions were provided—which the Committee does *not* concede—the public was not deprived of meaningful information by the Committee’s actions here. The reports clearly identified the amounts expended and where those funds were spent.

Regarding the number of DIME PAC lapel pins printed, Mr. Morgan presumably relies upon WAC 390-16-37, which provides *examples* of reports made for printing-related expenditures and which include a quantity figure for the copies purchased. The Committee’s reading of the cited WAC is that it is referring specifically to electioneering expenses, and *not* to

ordinary operating and organization building expenses such as lapel pins. Regardless, in response to previous allegations leveled at other candidates, the Attorney General and the PDC have implicitly rejected Mr. Morgan's theory and declined to take enforcement action.<sup>1</sup>

The Committee believes that its overall successful reporting record in this category should be taken into account, and this allegation should be dismissed outright.

### *Conclusion*

With respect to Mr. Morgan's utterly unfounded claim that any of the above actions, if found to be violations of the law—which we again assert is not the case—were done with malice as contemplated by RCW 42.17A.750(2)(c): there has been absolutely no malicious action undertaken by the Committee. Alleging “the possibility” that violations have been committed—with the serious multiplier of allegations of malice—does not amount to sufficient grounds for the criminal prosecution that Mr. Morgan is seeking.

In sum, the allegations in Mr. Morgan's complaint are either unfounded or involve *de minimis* and technical violations that do not warrant judicial enforcement. We request that the Attorney General accordingly inform Mr. Morgan that it has determined enforcement action is unwarranted.

If you have any questions, or if there is anything we can do to be of assistance to you, please do not hesitate to contact us.

Sincerely,



Danielle Franco-Malone  
*Counsel for Washington State Labor Council*  
*AFL-CIO DIME PAC*

cc: Lynne Dodson (via email)  
Fox Blackhorn (via email to fox.blackhorn@pdc.wa.gov)

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<sup>1</sup> For instance, in March 2017, Mr. Morgan filed a complaint with the PDC and a corresponding 45-day notice with the Attorney General alleging that John Wilson, a 2015 candidate for King County assessor, committed various violations of the Act. See PDC Ticket No. 14854. Relying on WAC-390-16-37, Morgan claimed that Wilson failed to properly break down twenty-two expenditures. *Id.* Among these allegedly problematic expenditures were various payments Wilson made to Overnight Printing & Graphics and FedEx Office for printing services. *See id.* While Wilson identified on the C-4s the amount and the purpose of the expenditures, he did not list the quantity of the copies he paid for. Despite this, the PDC and the Attorney General declined to take formal action. In so doing, the PDC noted that, with the exception of one expenditure that fell outside of the limitations period, all of the expenditures Mr. Morgan flagged as unlawful were “sufficiently identified and accounted for.” *Id.*

Violation #	Report #	Report Type	Amended? Y/N	Deposit Date	Due Date	Day Reported	Approximate Days Late	Original Filing Date	Days Late When Originally Filed	Notes from Respondent	Significance
1	100667107	C4	N		10/27/2015	11/4/2015	8	11/4/2015	n/a	More than two years outside the statute of	Not properly included in Mr. Morgan's allegations
2	100690946	C4	Y		4/11/2016	4/15/2016	4	4/11/2016	0	Added expenditure (legal expense)	No violation occurred because the original report was timely.
3	100695969	C4	N		5/11/2016	5/19/2016	8	5/19/2016	n/a		
4	100720070	C4	Y		6/10/2016	9/12/2016	94	6/10/2016	0	Added expenditure of less than \$50	No violation occurred because the original report was timely.
5	100720062	C4	Y		5/11/2016	9/12/2016	124	5/19/2016	8	Added expenditure (credit card charges)	
6	100720043	C4	N		7/26/2016	9/12/2016	48	9/12/2016	n/a		
7	100722142	C4	Y		9/12/2016	9/21/2016	9	9/12/2016	0	Added expenditure of less than \$50	No violation occurred because the original report was timely.
8	100727664	C4	Y		5/11/2016	10/18/2016	160	5/19/2016	8	Moved expenditure for legal consultation originally filed on May 2016 report.	
9	100727658	C4	Y		4/11/2016	10/18/2016	190	4/11/2016	0	No changes appear to have been made in the amended report.	No violation occurred because the original report was timely.
10	100727618	C4	Y		4/11/2016	10/18/2016	190	4/11/2016	0		No violation occurred because the original report was timely.
11	100727671	C4	Y		7/26/2016	10/18/2016	84	9/12/2016	48	Added a deposit, and listed staff time as	
12	100727667	C4	Y		6/10/2016	10/18/2016	130	6/10/2016	0	that was moved to April 2016 report, listed a deposit of \$1.29, and entered staff time as debt.	No violation occurred because the original report was timely.
13	100727669	C4	Y		7/12/2016	10/18/2016	98	7/12/2016	0	Added a deposit of \$1.22, and a total "\$50 or less" expenditure of \$77.11	No violation occurred because the original report was timely.
14	100727615	C4	Y		3/10/2016	10/18/2016	222	3/2/2016	0		No violation occurred because the original report was timely.
15	100728008	C4	Y		9/12/2016	10/18/2016	36	9/12/2016	0	as debt, and added bank fees and legal consultation expenditures	No violation occurred because the original report was timely.
16	100738552	C4	N		12/12/2016	12/14/2016	2	12/14/2016	n/a	Report was only two days late	This is a de minimis violation
17	100738619	C4	Y		12/12/2016	12/15/2016	3	12/14/2016	2	Adjustments made to staff time	The original report was substantially timely.
18	100738618	C4	Y		11/1/2016	12/15/2016	44	11/1/2016	0	Adjustments made to staff time	No violation occurred because the original report was timely.
19	100772802	C4	N		6/12/2017	7/6/2017	24	7/6/2017	n/a		
20	100778946	C4	N		7/25/2017	7/26/2017	1	7/26/2017	n/a	Report was only one day late	This is a de minimis violation
21	100779394	C4	Y		6/12/2017	7/28/2017	46	7/6/2017	24	Added staff time (listed as debt), added	
22	100779390	C4	Y		5/10/2017	7/28/2017	79	5/10/2017	0		No violation occurred because the original report was timely.
23	100779404	C4	Y		7/25/2017	7/28/2017	3	7/26/2017	1	Added two deposits, and added staff time (listed as debt)	The original report was substantially timely.
24	100779403	C4	Y		7/11/2017	7/28/2017	17	7/10/2017	0	Added a deposit of \$0.07, and added staff time (listed as debt)	No violation occurred because the original report was timely.
25	100795679	C4	N		10/17/2017	10/24/2017	7	10/24/2017	n/a		
26	100798577	C4	N		10/31/2017	11/3/2017	3	11/3/2017	n/a	Report was only three days late	This is a de minimis violation
27	100667213	C3	N	10/31/2015	11/2/2015	11/5/2015	3	11/5/2015	n/a	More than two years outside the statute of	Not properly included in Mr. Morgan's allegations
28	100705177	C3	N	6/29/2016	7/4/2016	7/5/2016	1	7/5/2016	n/a	Report was only one day late	This is a de minimis violation
29	100707881	C3	N	7/1/2016	7/4/2016	7/12/2016	8	7/12/2016	n/a		
30	100716022	C3	N	8/12/2016	8/15/2016	8/16/2016	1	8/16/2016	n/a	Report was only one day late	This is a de minimis violation
31	100716959	C3	N	7/31/2016	8/1/2016	8/25/2016	24	8/25/2016	n/a		
32	100716957	C3	N	7/31/2016	8/1/2016	8/25/2016	24	8/25/2016	n/a		
33	100722137	C3	N	9/15/2016	9/19/2016	9/21/2016	2	9/21/2016	n/a	Report was only two days late	This is a de minimis violation
34	100722537	C3	N	8/31/2016	9/5/2016	9/26/2016	21	9/26/2016	n/a		
35	100724496	C3	N	2/26/2016	3/10/2016	10/6/2016	210	10/6/2016	n/a		
36	100724500	C3	Y	3/29/2016	4/11/2016	10/6/2016	178	4/1/2016	0	No changes appear to have been made in the amended report.	No violation occurred because the original report was timely.
37	100725099	C3	N	1/31/2016	2/10/2016	10/10/2016	243	10/10/2016	n/a		
38	100725980	C3	Y	4/1/2016	5/10/2016	10/13/2016	156	4/1/2016	0	No changes appear to have been made in the amended report.	No violation occurred because the original report was timely.
39	100725981	C3	N	3/31/2016	4/11/2016	10/13/2016	185	10/13/2016	n/a	Filed report for \$0.55 bank interest	No violation occurred because standard interest does not need to be reported.
40	100725983	C3	N	4/30/2016	5/10/2016	10/13/2016	156	10/13/2016	n/a	Filed report for \$0.73 bank interest	No violation occurred because standard interest does not need to be reported.
41	100725984	C3	N	5/31/2016	6/10/2016	10/13/2016	125	10/13/2016	n/a	Filed report for \$1.29 bank interest	No violation occurred because standard interest does not need to be reported.
42	100726070	C3	N	7/25/2016	8/1/2016	10/14/2016	74	10/14/2016	n/a		

43	100726153	C3	Y	7/31/2016	8/1/2016	10/14/2016	74	8/25/2016	24	Bank interest not showing on amendment; anonymous donation of \$150 made	
44	100726063	C3	N	6/30/2016	7/4/2016	10/14/2016	102	10/14/2016	n/a	Filed report for \$1.22 bank interest	No violation occurred because standard interest does not need to be reported.
45	100726134	C3	N	7/26/2016	8/1/2016	10/14/2016	74	10/14/2016	n/a		
46	100726132	C3	Y	1/31/2016	2/10/2016	10/14/2016	247	10/10/2016	243	Amendment modified \$0.46 in reported bank interest	No violation occurred because standard interest does not need to be reported.
47	100726149	C3	N	10/1/2016	10/3/2016	10/14/2016	11	10/14/2016	n/a	Filed report for \$1.98 bank interest and \$150 anon. donation	
48	100726142	C3	Y	7/31/2016	8/1/2016	10/14/2016	74	8/25/2016	24	Initial filing was for \$3.20 bank interest; amendment adds \$150 anon. donation	
49	100726141	C3	N	7/27/2016	8/1/2016	10/14/2016	74	10/14/2016	n/a		
50	100726152	C3	N	10/1/2016	10/3/2016	10/14/2016	11	10/14/2016	n/a	Filed report for \$0.90 bank interest and \$150 anon. donation	
51	100726151	C3	Y	7/31/2016	8/1/2016	10/14/2016	74	10/14/2016	74	No changes appear to have been made in the amended report.	
52	100726140	C3	N	7/27/2016	8/1/2016	10/14/2016	74	10/14/2016	n/a		
53	100727657	C3	N	3/25/2016	4/11/2016	10/18/2016	190	10/18/2016	n/a		
54	100779387	C3	N	6/30/2017	7/3/2017	7/28/2017	25	7/28/2017	n/a	Filed report for \$0.07 bank interest	No violation occurred because standard interest does not need to be reported.
55	100779354	C3	N	7/19/2017	7/24/2017	7/28/2017	4	7/28/2017	n/a	Report was only four days late.	This is a de minimis violation
56	100779355	C3	N	4/30/2017	5/10/2017	7/28/2017	79	7/28/2017	n/a	Filed report for \$0.05	No violation occurred because standard interest does not need to be reported.
57	100779386	C3	N	5/31/2017	6/12/2017	7/28/2017	46	7/28/2017	n/a	Filed report for \$0.07	No violation occurred because standard interest does not need to be reported.
58	100781924	C3	N	7/31/2017	8/7/2017	8/11/2017	4	8/11/2017	n/a	Filed report for \$0.24	No violation occurred because standard interest does not need to be reported.
59	100786415	C3	N	8/31/2017	9/4/2017	9/11/2017	7	9/11/2017	n/a	Filed report for \$0.43	No violation occurred because standard interest does not need to be reported.
60	100791868	C3	N	9/30/2017	10/2/2017	10/11/2017	9	10/11/2017	n/a	Filed report for \$0.56	No violation occurred because standard interest does not need to be reported.
61	100801019	C3	N	11/1/2017	11/6/2017	11/21/2017	15	11/21/2017	n/a	Filed report for \$0.17	No violation occurred because standard interest does not need to be reported.

**From:** Jennifer Hansen <[jennifer.hansen@pdc.wa.gov](mailto:jennifer.hansen@pdc.wa.gov)>

**Date:** January 8, 2018 at 4:49:22 PM PST

**Subject:** PDC Info for End of Year Reporting - Continuing PACs

## Continuing political committees: How to close out the year

Continuing political committees “close out” at the end of every calendar year. This means that you stop adding new activity to the aggregate totals for contributions and expenditures. The C-4 reports aggregate totals from January 1 to December 31 of a specific calendar year. You will need to know the “cash on hand” balance from Line 18 of the December C-4 from the previous calendar year. In preparation for the end of year C-4 report due on Jan. 10, 2018, there are a few steps that you can take in order to clean up your campaign for the year.

- **Check for any outstanding checks.** You may have written contribution checks to candidates or other PACs earlier in the year that were not cashed or were lost in the mail. You will need to review the specific circumstances for each expenditure to see if you are able to reissue the check. (\*Remember that some candidates cannot accept contributions due to the session freeze prohibition.)
- **Check your ending balance for the year.** Look at the total appearing on Line 18 of your December 2017 C-4 and compare it to your actual bank balance. **If there is a significant difference you may need to make some corrections to your earlier reports and file amendments.** Un-cashed checks, duplicate entries, missing bank interest or fees could all be to blame for the discrepancy. Since you must use the ending balance from 2017 as the carry forward amount for 2018, your December C-4 will need to be accurate.
- **If you are using ORCA to electronically file, clean up your contact list to prepare for importing.** You can import your list(s) of contacts from the 2017 ORCA data into your newly created 2018 ORCA campaign so you don't have to re-type them. The import process will go smoothly if you don't have any errors in your current list. Use the “browse” button found in the bottom right corner of ACCOUNTS>CONTACTS>INDIVIDUALS (or the appropriate choice) to review your list. Delete any empty lines you find in your list. Be sure all your “couple” contacts have both an appropriate “couple name” and separate unique contact entries. If you import contacts from 2017 to 2018 and errors exist in the 2017 campaign, ORCA will halt the import process. If you import a second time it will import the entire list again, subsequently duplicating the names from the first attempt. You can delete the duplicates after the import process is successful or choose to start over with a newly created 2018 campaign.
- **Check File your final C-4 for the calendar year.** When you have the 2017 campaign in order, including entering all of the activity for the month of December, you will be ready to submit your December 2017 C-4 report. This report is due no later than Wednesday, January 10<sup>th</sup>. It is important to complete this final task for the calendar year carefully as you will be using the cash on hand balance from Line 18 of this C-4 as your beginning balance in 2018.
- **Last, if you are an ORCA user, make a backup of your 2017 campaign.** When you have the 2017 campaign in order, you have made all of your corrections and filed your December 2017 C-4 and any C-3s for December deposits, you should make a backup of your data. Save this backup in a location other than the computer that you are using to file. Remember that if something should happen to your computer everything on it will be jeopardized including your campaign information. If you will be passing the task of filing on to someone else you should provide this backup to them.

You will also find a video tutorial and PowerPoint presentation on the PDC website [here](#) regarding this same topic. The video is less than 10 minutes long. Please share this information with anyone you think will find it helpful.

**Jennifer Hansen**

Filer Assistance Specialist

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