

CONFIDENTIAL

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

REPORT

Review No. 19-4101

The Board of the Office of Congressional Ethics (hereafter “the Board”), by a vote of no less than four members, on January 31, 2020, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives (hereafter “the Committee”).

SUBJECT: Delegate Michael San Nicolas

NATURE OF THE ALLEGED VIOLATION: Del. San Nicolas may have omitted required information from or disclosed false information in his Federal Election Commission (“FEC”) candidate committee reports. If Del. San Nicolas failed to disclose required information or disclosed false information in his FEC filings, then he may have violated House rules, standards of conduct, and federal law.

Del. San Nicolas may have accepted cash contributions that were in excess of FEC limits for individual donors and in excess of the limits for cash contributions. If Del. San Nicolas accepted such contributions, then he may have violated House rules, standards of conduct, and federal law.

Del. San Nicolas’ campaign committee, Michael San Nicolas for Congress (the “campaign committee”), reported campaign disbursements that may not be legitimate and verifiable campaign expenditures attributable to bona fide campaign or political purposes. If Del. San Nicolas converted campaign funds to personal use, or if Del. San Nicolas’ campaign committee expended funds that were not attributable to bona fide or verifiable campaign or political purposes, then Del. San Nicolas may have violated House rules, standards of conduct, and federal law.

RECOMMENDATION: The Board recommends that the Committee further review the above allegation concerning Del. San Nicolas because there is substantial reason to believe that Del. San Nicolas failed to disclose required information or disclosed false information in his FEC filings.

The Board recommends that the Committee further review the above allegation concerning Del. San Nicolas because there is substantial reason to believe that Del. San Nicolas accepted cash contributions that were in excess of FEC limits for individual donors and in excess of the limits for cash contributions.

The Board recommends that the Committee further review the above allegation concerning Del. San Nicolas because there is substantial reason to believe that Del. San Nicolas converted campaign funds to personal use.

VOTES IN THE AFFIRMATIVE: 6

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VOTES IN THE NEGATIVE: 0

ABSTENTIONS: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO
THE COMMITTEE: Omar S. Ashmawy, Staff Director & Chief Counsel.

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FINDINGS OF FACT AND CITATIONS TO LAW

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 19-4104

On January 31, 2020, the Board of the Office of Congressional Ethics (hereafter “the Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules and standards of conduct (*in italics*). The Board notes that these findings do not constitute a determination of whether a violation actually occurred.

I. INTRODUCTION

A. Summary of Allegations

1. Del. San Nicolas may have omitted required information from or disclosed false information in his Federal Election Commission (“FEC”) candidate committee reports. If Del. San Nicolas failed to disclose required information or disclosed false information in his FEC filings, then he may have violated House rules, standards of conduct, and federal law.
2. The Board recommends that the Committee further review the above allegation concerning Del. San Nicolas because there is substantial reason to believe that Del. San Nicolas failed to disclose required information or disclosed false information in his FEC filings.
3. Del. San Nicolas may have accepted cash contributions that were in excess of FEC limits for individual donors and in excess of the limits for cash contributions. If Del. San Nicolas accepted such contributions, then he may have violated House rules, standards of conduct, and federal law.
4. The Board recommends that the Committee further review the above allegation concerning Del. San Nicolas because there is substantial reason to believe that Del. San Nicolas accepted cash contributions that were in excess of FEC limits for individual donors and in excess of the limits for cash contributions.
5. Del. San Nicolas’ campaign committee, Michael San Nicolas for Congress, may have reported campaign disbursements that may not be legitimate and verifiable campaign expenditures attributable to bona fide campaign or political purposes. If Del. San Nicolas converted campaign funds to personal use, or if Del. San Nicolas’ campaign committee expended funds that were not attributable to bona fide campaign or political purposes, then Del. San Nicolas may have violated House rules, standards of conduct, and federal law.
6. The Board recommends that the Committee further review the above allegation concerning Del. San Nicolas because there is substantial reason to believe that Del. San Nicolas converted campaign funds to personal use, or that Del. San Nicolas’ campaign committee expended funds that were not attributable to bona fide or verifiable campaign or political purposes.

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B. Jurisdiction Statement

7. The allegations that were the subject of this review concern Del. San Nicolas, a Delegate to the United States House of Representatives from Guam. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (“OCE”) directs that, “[n]o review shall be undertaken ... by the [B]oard of any alleged violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, review by the Board is in accordance with the Resolution.

C. Procedural History

8. The OCE received a written request for preliminary review in this matter signed by at least two members of the Board on September 13, 2019. The preliminary review commenced on September 14, 2019.²
9. On September 17, 2019, the OCE notified Del. San Nicolas of the initiation of the preliminary review, provided him with a statement of the nature of the review, notified him of his right to be represented by counsel in this matter, and notified him that invoking his right to counsel would not be held negatively against him.³
10. At least three members of the Board voted to initiate a second-phase review in this matter on October 11, 2019. The second-phase review commenced on October 14, 2019.⁴ The second-phase review was scheduled to end on November 27, 2019.
11. On October 16, 2019, the OCE notified Del. San Nicolas of the initiation of the second-phase review in this matter, and again notified him of his right to be represented by counsel in this matter, and that invoking that right would not be held negatively against him.⁵
12. The Board voted to extend the second-phase review by an additional period of fourteen days on November 13, 2019. The additional period ended on December 11, 2019.
13. The Board voted to refer the matter to the Committee on Ethics for further review and adopted these findings on January 31, 2020.
14. The report and its findings in this matter were transmitted to the Committee on Ethics on February 7, 2020.

¹ H. Res. 895 of the 110th Congress § 1(e) (2008) (as amended) (hereafter “the Resolution”).

² A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is received by the OCE on a date certain. According to the Resolution, the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board’s request.

³ Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Del. San Nicolas, September 17, 2019.

⁴ According to the Resolution, the Board must vote (as opposed to make a written authorization) on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second-phase, the second-phase commences the day after the preliminary review ends.

⁵ Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Del. San Nicolas, October 16, 2019.

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D. Summary of Investigative Activity

15. The OCE requested documentary and in some cases testimonial information from the following sources:

- (1) Del. San Nicolas;
- (2) Campaign Treasurer;
- (3) District Director;
- (4) Campaign Manager (former);
- (5) Campaign Donor;
- (6) Expedia Group, Inc.;
- (7) Outrigger Enterprises Group; and
- (8) Shangri-La International Hotel Management Ltd.

16. The following individuals and entities refused to cooperate with the OCE's review:

- (1) Del. San Nicolas;
- (2) District Director;
- (3) Expedia Group, Inc.; and
- (4) Outrigger Enterprises Group.

II. DEL. SAN NICOLAS MAY HAVE EXECUTED A SCHEME TO ACCEPT \$10,000 IN ILLEGAL CONTRIBUTIONS

A. Applicable Law, Rules, and Standards of Conduct

17. Federal Law

Pursuant to 52 U.S.C. § 30104 “[e]ach treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection.”

52 U.S.C. § 30116(a)(1) states, “. . . no person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$2,000”⁶

52 U.S.C. § 30104 (b)(3)(A) states that “each report under this section shall disclose – the identification of each – person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution”

⁶ Limits are increased each year according to federal law. 52 U.S.C. § 30116(c). During the relevant period, the individual contribution limit was \$2,700.

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52 U.S.C. § 30109(d) states that “[a]ny person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure-

- (i) aggregating \$25,000 or more during a calendar year shall be fined under title 18, or imprisoned for not more than 5 years, or both; or
- (ii) aggregating \$2,000 or more (but less than \$25,000) during a calendar year shall be fined under such title, or imprisoned for not more than 1 year, or both.

18 U.S.C. § 1343 states that “[w]hoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.”

18. Federal Election Commission Regulations

Pursuant to 11 C.F.R. § 104.3(a)(3) “[a]n authorized committee of a candidate for Federal office shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the election cycle in each of the following categories:

- (i) Contributions from persons other than any committees;
 - (A) Itemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;
 - (B) Unitemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;
 - (C) Total contributions from persons other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees”

11 C.F.R. § 110.1(b) states, “[n]o person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed \$2,000.”⁷

Pursuant to 11 C.F.R. § 110.4(c) no person shall make contributions to a candidate or political committee of currency of the United States, or of any foreign country, which in the aggregate exceed \$100 A candidate or committee receiving a cash contribution in excess of \$100 shall promptly return the amount over \$100 to the contributor.”

⁷ This limit applies to each election the candidate participates in (e.g., primary, general, run-off, etc.) and is adjusted for inflation every two years. See 11 C.F.R. § 110.1(b).

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B. Scheme to Receive \$10,000 in Illegal Cash Contributions

19. In this review, the OCE investigated whether Del. San Nicolas accepted a \$10,000 contribution from a Guam businessman, in excess of the \$2,700 individual contribution limit.⁸
20. Based on witness interviews and documents showing contemporaneous communications, the OCE found substantial evidence showing that Del. San Nicolas formulated a scheme for his campaign committee to receive a \$10,000 cash contribution. Del. San Nicolas then undertook efforts to conceal the contribution from the FEC and from the public.
21. In September 2018, Del. San Nicolas's former chief of staff in the Guam legislature and former campaign manager ("Campaign Manager"), began making allegations to the media regarding a \$10,000 contribution Del. San Nicolas accepted from a single donor during his 2018 congressional campaign.⁹
22. The OCE interviewed Campaign Manager who stated that after Guam's primary election on August 25, 2018, then-candidate San Nicolas was having difficulty raising money for the general election.^{10, 11} Around that time, Del. San Nicolas, Campaign Manager, and a friend and donor to Del. San Nicolas's campaign committee had a conversation about the funding shortage.¹² The conversation occurred at a bar in Guam called Sidelines, where Del. San Nicolas, Campaign Manager, and the donor met for drinks sometime after the primary election.¹³ During that conversation, Campaign Manager said "Congressman was just lamenting about the fact that he could not raise money. [The donor] offered \$10,000 to the congressman who said, 'Great, but you have to give it to me in cash.'"¹⁴
23. Campaign Manager stated that Del. San Nicolas asked for the contribution to be made in cash because "his intent was to wash it out in low dollar fundraisers."¹⁵ This meant that Del. San Nicolas intended to deposit the contribution into his campaign treasury along with small cash contributions that were under the FEC's reporting requirements. This was an attempt to circumvent reporting regulations and conceal the illegal contribution. Campaign Manager

⁸ This was the limit in place for the 2017-2018 election. Including the primary, the total contribution limit at the time for the primary and general elections was \$5,400.

⁹ Gaynor D. Daleno, *Delegate's former aide details allegations*. The Guam Daily Post, Sep. 3, 2019, https://www.postguam.com/news/local/delegate-s-former-aide-details-allegations/article_16372fa8-cc0f-11e9-ac86-4b9a07e39dfd.html. Daleno, *supra* note 9.

¹⁰ Transcript of Interview of Campaign Manager ("Campaign Manager Transcript I"), Nov. 18, 2019 (Ex. 1 at 19-4104_0052).

¹¹ The OCE notes that because Campaign Manager was not hired onto Del. San Nicolas' congressional staff as he hoped to be. The OCE considered this factor in assessing the witness's credibility, but found that many of his allegations were well founded given independent corroboration of certain facts, as explained in these findings.

¹² Campaign Manager Transcript I (Ex. 1 at 19-4104_0052).

¹³ *Id.* at 19-4104_0053.

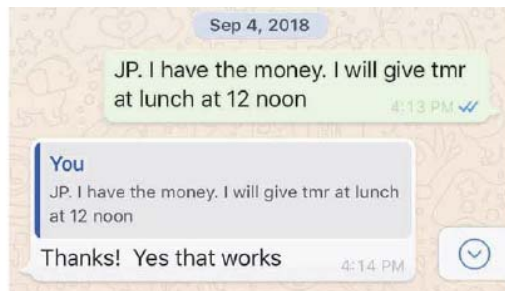
¹⁴ *Id.*

¹⁵ *Id.* at 19-4104_0054.

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specified that Del. San Nicolas explicitly explained this reasoning to him the night the three individuals agreed on the contribution at Sidelines.¹⁶

24. In the following months, September and October, Campaign Manager picked up two separate cash contributions of \$5,000 from the donor.¹⁷
25. Though Campaign Manager could not recall the specific dates on which he picked up the separate cash installments, text messages between Campaign Manager and the donor establish that the first contribution likely occurred on or around September 5, 2018 and the second occurred on October 5, 2018.



26. Campaign Manager stated that he picked up both contributions at the donor's office and was given the cash in sealed envelopes.¹⁸ He recalled that he immediately brought the sealed envelopes to Del. San Nicolas in his office in the Guam legislature.¹⁹
27. Campaign Manager could not recall details around the September 5, 2018 contribution but provided numerous details about the October 5, 2018 interaction with Del. San Nicolas during which he handed over the cash contribution.²⁰

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 19-4104_0056-57.

¹⁹ *Id.*

²⁰ Transcript of Interview of Campaign Manager ("Campaign Manager Transcript II"), December 6, 2019 (Ex. 2 at 19-4104_0069-70).

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28. On October 5, 2018, Campaign Manager recalled picking up the sealed envelope of cash from the donor's office and immediately driving in his personal vehicle to then-Senator San Nicolas' office in the Guam legislature.²¹ He hand delivered the envelope to Del. San Nicolas, who opened the envelope and counted the money in front of Campaign Manager. After counting the money, he confirmed that there was \$5,000 in the envelope.²²
29. Campaign Manager told the OCE that Del. San Nicolas counted the money at that time because the donor had indicated that the second installment would only be \$4,000 instead of the agreed upon \$5,000, but that he in fact contributed the full \$5,000.²³
30. According to Campaign Manager, after counting the money, Del. San Nicolas placed the money in a corner ceiling tile in the library attached to his office in the Guam legislature that he used as a "hiding place."²⁴
31. When asked what Del. San Nicolas did with the funds, Campaign Manager testified that "he would then deposit the amount into the campaign account. I don't know if he kept some of the money, or if he put all of the money into the campaign. I'm not sure."²⁵
32. The campaign's 2018 Amended Pre-Primary FEC report shows that as of August 5, 2018, the campaign reported a cumulative total of \$8,414.00 in unitemized individual contributions.²⁶ In its next report filed on October 15, 2018, the October Quarterly report for the period of August 6, 2018 to September 30, 2018, the campaign reported having received a cumulative total of \$18,122.00.²⁷ However, according to that report there was only an additional \$250 in unitemized individual contributions received in the interim after August 5, 2018.²⁸ This appears to leave \$9,458 of small contributions unaccounted for during the time that Campaign Manager alleges Del. San Nicolas received a \$10,000 cash contribution that he planned to conceal as small cash contributions.
33. The OCE interviewed another witness that was able to corroborate Campaign Manager's allegations regarding the cash contribution.²⁹ The second witness also had firsthand knowledge of the events and confirmed that a cash contribution was made to Del. San

²¹ *Id.* at 19-4104_0068, 72.

²² *Id.* at 19-4104_0068-69.

²³ *Id.*

²⁴ *Id.* at 19-4104_0069.

²⁵ Campaign Manager Transcript I (Ex. 1 at 19-4104_0057).

²⁶ Michael San Nicolas for Congress, 2018 Amended Pre-Primary Rpt. at 3, line 11(a)(ii) (Nov. 2, 2019). The 2018 Pre-Primary Report was amended on November 2, 2019. The original Pre-Primary Report (Aug. 13, 2018) listed a total of \$17,872.00 in unitemized contributions as of August 5, 2018. The April Quarterly and July Quarterly Reports were amended in 2019 as well. While the most up-to-date April Quarterly report (the campaign committee's first regularly filed report) shows a cumulative total of \$16,902.00 in unitemized contributions, the most up-to-date July Quarterly Report shows a cumulative total of \$8,414.00.00 in unitemized contributions. There appears to be an unexplained decrease of \$8,488.00 in the total unitemized contributions between these two consecutive reports.

²⁷ Michael San Nicolas for Congress, 2018 October Quarterly Rpt. at 3 (Oct. 15, 2018).

²⁸ *Id.*

²⁹ The OCE agreed not to name the second witness and to keep confidential the transcript of the interview conducted by OCE staff. The OCE will transmit a copy of the transcript for confidential review by the Committee on Ethics but will not attach the transcript as an exhibit to these findings.

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Nicolas in September or October of 2018. The witness also confirmed that Del. San Nicolas was present and aware of the contribution when it was discussed at the Sidelines bar after the Guam primary election. Finally, the witness confirmed that the contribution was accepted in person by Campaign Manager, and that it was above the amount allowed by federal law.

34. After this review was initiated and approximately fourteen months after Del. San Nicolas received the \$10,000 contribution, the OCE received information and documents showing that Del. San Nicolas and his staff were attempting to return the contribution while at the same time claiming that Del. San Nicolas had never received the money.³⁰
35. The OCE reviewed a December 4, 2019 letter directed to the donor from the campaign committee.³¹ In the letter, Del. San Nicolas' new campaign manager and current District Director wrote to the donor claiming that Del. San Nicolas' campaign committee had become aware of the contribution on September 11, 2019 when it received a complaint filed with the Guam Election Commission by Campaign Manager about the contribution.³²
36. Among other things, the letter repeatedly refers to the contribution as "inadvertent" and claims that Del. San Nicolas never received the money, but nonetheless offers to reimburse the donor.³³ Attached to the letter was a separate draft letter to be signed by the donor avowing that Campaign Manager was the individual that handled the contribution and that Del. San Nicolas was never provided with the money by Campaign Manager.³⁴ The letter appears to have been a deliberate attempt by Del. San Nicolas to conceal his misconduct and influence the donor.
37. The OCE also received a January 21, 2020 letter written by the donor to the campaign committee that requests the campaign committee return the contribution.³⁵ The letter notes that the donor "was informed by the San Nicolas campaign that [the contribution] would be entirely lawful" but that the donor now understands that may not be true.³⁶
38. In summary, the OCE found substantial evidence that Del. San Nicolas orchestrated a scheme to accept an excessive cash contribution, and then made a deliberate attempt to conceal his misconduct and influence other witnesses to the fraud. Additionally, Del. San Nicolas refused to participate in an interview to explain the alleged misconduct.

³⁰ Dec. 4, 2019 Letter from campaign committee to donor (Ex. 3 at 19-4104_0075-76).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Jan. 21, 2020 Letter from donor to campaign committee (Ex. 4 at 19-4104_0078).

³⁶ The donor's January 21, 2020 letter indicates that the contribution was in the amount of \$9,000.00 and not \$10,000.00 as Campaign Manager alleges. This discrepancy may be related to the apparent miscommunication regarding the amount of the October 5, 2018 cash contribution discussed in paragraph 29 above, which the donor believed was \$4,000.00 but that Campaign Manager testified was counted and determined to be \$5,000.00. Either amount would be in excess of the general contribution limits and the limits placed on cash contributions.

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39. Based on the foregoing information, the Board finds that there is substantial reason to believe that Del San Nicolas failed to disclose required information or disclosed false information in his FEC filings.

40. Based on the foregoing information, the Board finds that there is substantial reason to believe that Del. San Nicolas accepted cash contributions that were in excess of FEC limits for individual donors and in excess of the limits for cash contributions.

III. DEL. SAN NICOLAS MAY HAVE REPORTED DISBURSMENTS THAT WERE NOT FOR LEGITIMATE OR VERIFIABLE CAMPAGIN EXPENDITURES

A. Applicable Law, Rules, and Standards of Conduct

41. Federal Law

Pursuant to 52 U.S.C. § 30114(b)(1), a “contribution or donation [to a Member of Congress] shall not be converted by any person to personal use.”

Pursuant to 52 U.S.C. § 30104, “[e]ach treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection.”

42. Federal Election Commission Regulations

Pursuant to 11 C.F.R. § 113.1(g), which defines personal use of campaign funds: “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.

(1)(i) Personal use includes but is not limited to the use of funds in a campaign account for any item listed in paragraphs (g)(1)(i)(A) through (J) of this section: . . .

(J) A vacation.”

Pursuant to 11 C.F.R. § 104.3(b)(4), “[e]ach authorized committee shall report the full name and address of each person in each of the following categories, as well as the information required by each category.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the election cycle is made by the reporting authorized committee to meet the authorized committee’s operating expenses, together with the date, amount and purpose of each expenditure.”

43. House Rules

House Rule 23, clause 6 states: “A Member, Delegate, or Resident Commissioner— (a) shall keep the campaign funds of such individual separate from the personal funds of such individual; (b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and (c) except as provided

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended in clause 1(b) of rule XXIV, may not expend funds from a campaign account of such individual that are not attributable to bona fide campaign or political purposes.”

44. House Ethics Manual

*The House Ethics Manual states, “Members have wide discretion in determining what constitutes a bona fide campaign or political purpose to which campaign funds and resources may be devoted, but Members have **no** discretion whatsoever to convert campaign funds to personal use. Furthermore, House rules require that Members be able to verify that campaign funds have not been used for personal purposes.”³⁷*

With respect to verification, the Manual also explains: “With the huge number of outlays that Members’ campaigns typically make, often on a nearly continuous basis, the propriety of particular outlays may not be subject to review for months or years after the fact, when recollections as to the circumstances or specific purposes of an outlay may well have faded. Absent a requirement for verification, the prohibition against converting campaign funds to personal use would be nullified in substantial part. Furthermore, the verification requirement should serve to cause Members and their campaign staffs to exercise caution in spending campaign funds, and to ensure that no outlay is for an impermissible personal purpose. Members and their campaign staffs should bear in mind that the verification requirement imposed by the House rules is separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission on federal candidates generally (or, with regard to Members who are candidates for a state or local office, the requirements imposed by applicable state or local law).³⁸

B. Failure to Properly Account for or Verify \$14,840.49 of Disbursements to Del. San Nicolas

45. In this review, the OCE examined approximately forty disbursements by Del. San Nicolas’ campaign committee to Del. San Nicolas that were described in reports to the FEC as “loan repayments made to candidate.”³⁹ In conjunction with reviewing those disbursements, the OCE investigated allegations that Del. San Nicolas converted campaign funds to personal use by paying for personal trips with a campaign staffer with whom he was having an affair.
46. The OCE found that Del San Nicolas’ campaign committee failed to properly account for and report at least \$14,840.49 of disbursements to Del. San Nicolas. Because the campaign committee could not produce an itemized account of the expenditures underlying the \$14,840.49 of disbursements, the OCE cannot conclusively determine whether all or some of this amount was converted to personal use.

³⁷ House Ethics Manual at 173 (emphasis in original).

³⁸ *Id.* at 164-65.

³⁹ Some disbursements appear to have been misreported or duplicative of each other, so the actual number of disbursements is indeterminate.

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47. Though Del. San Nicolas refused to cooperate with the OCE review and participate in an interview to explain certain spending practices, it is apparent from FEC reports and campaign records that Del. San Nicolas frequently made personal outlays for expenses on behalf of the campaign, reported these expenditures as loans to the campaign, and then made disbursements to himself from the campaign described as “Loan Repayment[s].”⁴⁰
48. Contrary to FEC regulations which require itemization of the outlays or advances made by Del. San Nicolas,⁴¹ neither the reporting entries disclosing the loans nor the entries disclosing the disbursements paying back the loans contain any itemization, and many contain no purpose descriptions that shed light on the underlying expenditures.⁴²
49. In its production to the OCE, the campaign committee produced an internally created ledger that purportedly accounts for all loans or advances made by Del. San Nicolas and all disbursements back to Del. San Nicolas that were repayments for these loans.⁴³
50. While FEC reports show that there were approximately forty “loan repayment” disbursements made to Del. San Nicolas, the ledger produced by the campaign committee shows that those disbursements were made in twenty-eight payments by check from the campaign bank account.⁴⁴ Thus, some of the disbursements reported separately on FEC reports were paid together to Del. San Nicolas with one check.
51. The OCE reviewed each of these twenty-eight payments, comparing the ledger, the checks written to Del. San Nicolas, disbursements reported to the FEC, receipts of expenditures maintained and produced by the campaign, and the loans from Del. San Nicolas to the campaign that were reported to the FEC.
52. For most of the twenty-eight payments, the OCE was able to match specific reported loans to a disbursement, a check from the campaign bank account, and receipts produced by the campaign. This was possible by matching the dollar amounts despite the lack of clear descriptions or itemization in the campaign’s reporting.
53. For example, one disbursement of \$1,122.58 to Del. San Nicolas on February 13, 2018 is described only as a “loan repayment” in the FEC reports.⁴⁵ The campaign ledger provided to

⁴⁰ See eg. Michael San Nicolas for Congress, 2018 Amended April Quarterly Rpt. at 19 (Sept. 5, 2019).

⁴¹ Personal payments made by Del. San Nicolas on behalf of his campaign for goods or services should be treated as advances as outlined in the FEC’s Campaign Guide for Congressional Candidates and Committees in Chapter 13, Section 13. Properly reported, an advance from a candidate who had previously contributed or advanced more than \$200 to his campaign (like Del. San Nicolas) should be reported on Schedule A of FEC Form 3 as a Receipt. The reimbursements should be reported on Schedule B and must be itemized or must cross reference the memo entry on Schedule A if that was itemized. If an individual’s payment on behalf of the committee exceeds \$200 in an election cycle to any single vendor, then the committee must identify the ultimate payee (the vendor) in a separate memo entry on Schedule B. Any outstanding advances owed to the candidate at the end of the reporting period should be reported as debts on Schedule D. See also, AO 1992-01.

⁴² See eg. Michael San Nicolas for Congress, 2018 Amended April Quarterly Rpt. at 19 (Sept. 5, 2019).

⁴³ Campaign committee ledger of candidate disbursements (Ex. 5 at 19-4104_0081-83).

⁴⁴ *Id.*

⁴⁵ Michael San Nicolas for Congress, 2018 Amended April Quarterly Rpt. at 19 (Sept. 5, 2019). The April Quarterly 2018 report was amended on September 5, 2019; the original filing contained no purpose description at all.

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the OCE mistakenly records a check payment to Del. San Nicolas of \$122.58. However, receipts produced to the OCE by the campaign for a \$1,122.58 late-December flight to the Philippines, and a copy of Bank of Guam Check 104 for \$1,122.58 to Del. San Nicolas for “Reimbursement Transportation Costs Collect Mat.” all indicate that the loan repayment was for an advance Del. San Nicolas made for the campaign to pay for his flight to the Philippines to collect materials for campaign signs.

54. Though the above-described reporting is incorrect and deficient, the OCE considered similar loans and disbursements accounted for if there were identifiable receipts where the amounts could be matched to specific disbursements. However, without cooperation from Del. San Nicolas, the OCE could not conclusively confirm that all expenditures with matching receipts and loan amounts were actually bona fide campaign expenditures.
55. While the OCE was able to match up receipts of actual expenditures to many of the reported loans and disbursements, the OCE identified \$14,840.49 of disbursements made in three payments by check for which there were no underlying receipts, explanation in FEC reports, or additional information provided by the campaign’s ledger.
56. This ledger identified three checks written to Del. San Nicolas for which there are no corresponding identifiable receipts of expenditures: Check 141 for \$5,000.00, Check 144 for \$4,840.49, and Check 145 for \$5,000.00.⁴⁶
57. The OCE identified these three specific check payments and asked the campaign to describe the specific corresponding loans that were being reimbursed. The OCE also asked the campaign to provide supporting documents for the underlying expenses for which the loans were made.⁴⁷
58. Check 144 for \$4,840.49 appears to be related to four separate disbursements reported to the FEC made on October 30, 2018 that totaled \$4,840.49.⁴⁸ While the campaign committee disclosed to the FEC nothing other than the dollar amount and dates for these transactions, Check 144 appears to correspond to four disclosed loans: a \$1,451.07 loan incurred on 4/30/2018,⁴⁹ a \$340.41 loan incurred on 8/5/2018,⁵⁰ a \$1,503.79 incurred on 5/31/2018,⁵¹ and a \$1,545.22 loan incurred on 6/30/18.⁵²
59. Despite being provided this information, the campaign committee was unable to produce any supporting documents, explanation, or verification for these payments to Del. San Nicolas. In fact, the campaign committee’s treasurer stated in an email to the OCE that “[t]he checks for 141, 144, & 145 are not dollar for dollar reimbursements. All ‘loans’ are reimbursements

⁴⁶ Ex. 5 at 19-4104_0081.

⁴⁷ Email from S. Quinn, Nov. 1, 2019 (Ex. 6 at 19-4104_0085).

⁴⁸ Michael San Nicolas for Congress, 2018 Amended Post General 2018 Rpt. at 14-15 (Jan. 31, 2020).

⁴⁹ *Id.* at 25.

⁵⁰ *Id.* at 41.

⁵¹ *Id.* at 27.

⁵² *Id.* at 37.

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made to the Congressman for campaign expenses. The amounts owed to the delegate actually exceed the amounts reimbursed.”⁵³

60. The campaign committee’s apparent reasoning for these payments to Del. San Nicolas is that the total advances by Del. San Nicolas for campaign expenses exceed the amount the campaign has reimbursed him, and so the campaign committee need not keep a “dollar for dollar” account of the payments made to Del. San Nicolas. This is contrary to FEC regulations and House rules requiring itemization of such disbursements, and record keeping that makes it possible to verify spending after the fact.⁵⁴

C. Use of Campaign Funds for Personal Travel

61. While the failure to provide fulsome reports to the FEC and keep thorough records of expenditures may in some cases represent no more than negligent recordkeeping, in this review deficient record keeping may have been used to obscure personal use, financial misconduct, and fraud.
62. At the time this review began, it was widely reported in the media that Campaign Manager alleged that Del. San Nicolas was having an affair with a staffer that worked on his campaign who was then hired to work in his congressional office as his District Director.^{55, 56} Campaign Manager alleged that Del. San Nicolas was using campaign funds to pay for vacations with District Director.⁵⁷
63. In an interview with the Guam Daily Post, Campaign Manager detailed a trip to the Philippines and a trip to a resort in Guam that Del. San Nicolas allegedly took with District Director and financed with campaign funds.⁵⁸ The Philippines trip occurred in late February and early March of 2018 and included a stay at the Nurture Wellness Spa and the Shangri-La Hotel. In Guam, Del. San Nicolas also allegedly stayed at the Outrigger Resort in May 2018 with his District Director.⁵⁹

⁵³ Email from Campaign Treasurer, Nov. 18, 2019 (Ex. 7 at 19-4104_0088).

⁵⁴ House Ethics Manual (2008) at 164-165.

⁵⁵ See, e.g. Daleno, *supra* note 9.

⁵⁶ House Rule 23, clause 18(a) states that a “Member, Delegate, or Resident Commissioner may not engage in a sexual relationship with any employee of the House who works under the supervision of the Member, Delegate, or Resident Commissioner” If the alleged affair between Del. San Nicolas and his District Director continued after he assumed his seat in the House and after she began employment in his congressional office, then such conduct would violate House rules. Campaign Manager testified that Del. San Nicolas and District Director had a sexual relationship during the campaign, (Campaign Manager Trans. I (Ex. 1 at 19-4104_0018)), but he did not have firsthand knowledge of their relationship during Del. San Nicolas’ service in Congress. The OCE did not interview any witnesses that offered evidence on the current status of their relationship. Because Del. San Nicolas and District Director refused to interview, the OCE did not obtain evidence that would support or refute a finding of a violation of House Rule 23, clause 18(a).

⁵⁷ Daleno, *supra* note 9.

⁵⁸ *Id.*

⁵⁹ *Id.*

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64. Though Del. San Nicolas refused to be interviewed for the OCE's review, he responded to requests for information by providing documents and a narrative response that he wrote refuting some of the allegations.⁶⁰
65. In his written response, he claimed that the February-March 2018 trip to the Philippines was a multi-day trip to procure materials for campaign signs because such materials were much cheaper in the Philippines than in Guam.⁶¹
66. Campaign Manager agreed that it is common for Guamanian politicians to obtain campaign sign materials from the Philippines as a cost savings measure.⁶²
67. Receipts and invoices from this trip indicate that Del. San Nicolas did procure campaign sign materials while in the Philippines.⁶³
68. Del. San Nicolas, District Director, and Campaign Manager all traveled to the Philippines for this trip, all three taking the same outbound and return flights.⁶⁴
69. Del. San Nicolas, in his written response, did not indicate that he traveled with any other individuals, and instead stated "I was not accompanied on my trip to the Nurture Wellness Village nor to the Shangri-La. I did receive a guest during my stays there and no additional official expenses were incurred or accrued by the campaign on their behalf as illustrated in all Exhibits contained in this response."⁶⁵
70. Contrary to Del. San Nicolas' response, the Shangri-La Hotel invoice produced to the OCE by Del. San Nicolas and his campaign indicates that there were two guests in the room.⁶⁶ Campaign Manager also stated in his interview that he booked the hotel room and that he understood that both Del. San Nicolas and District Director would be staying there together.⁶⁷ He also stated that for the stay at the Nurture Wellness Village, he booked the hotel himself through Expedia and listed two guests, and had to call and give Expedia the name of the second guest, which was the District Director.⁶⁸
71. District Director also responded to a request for information from the OCE but refused to participate in an interview. She provided a written, emailed response to the request for information along with documents. While acknowledging that she was in the Philippines at

⁶⁰ Del. San Nicolas' Response to RFI, Oct. 3, 2019 (Ex. 8 at 19-4104_0091-94).

⁶¹ *Id.* at 19-4104_0091.

⁶² Transcript of Campaign Manager I (Ex. 1 at 19-4104_0036).

⁶³ March 3, 2018 JKT invoices (Ex. 9 at 19-4104_0096-97).

⁶⁴ Transcript of Campaign Manager I (Ex. 1 at 19-4104_0043).

⁶⁵ Ex. 8 at 19-4104_0092.

⁶⁶ Shangri-La invoice (Ex. 10 at 19-4104_0099).

⁶⁷ Transcript of Campaign Manager I (Ex. 1 at 19-4104_0040).

⁶⁸ *Id.* at 19-4104_0040-41.

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this time, stated that her reason for being there was for a medical purpose.⁶⁹ District Director produced a document that appears to show she did see a doctor while in the Philippines.⁷⁰

72. Del. San Nicolas, District Director, and Campaign Manager all told the OCE that they paid for their flights and most of their lodging personally.⁷¹ The only lodging paid for by the campaign committee was Del. San Nicolas' stay at the Shangri-La hotel, which he claims is where he was staying when he waited for the campaign sign materials to be produced and where he received those materials.⁷² At the Shangri-La Hotel, Del. San Nicolas appears to have paid for the hotel himself with cash, and then reimbursed himself with campaign funds.⁷³
73. In his interview, Campaign Manager told the OCE that the time needed to order and receive the campaign signs consisted of "a 30-minute transaction to order [the signs] and they will deliver it to the hotel."⁷⁴ He explained that he considered the trip primarily a vacation, and for that reason he paid for his expenses personally and did not expect to be reimbursed by the campaign committee.⁷⁵
74. Similarly, for the stay at the Guam Outrigger Resort, Campaign Manager told the OCE that he knew Del. San Nicolas and District Director would be staying in the room together.⁷⁶ He believes the hotel visit was paid for in cash by Del. San Nicolas but does not believe he reimbursed himself with campaign funds.⁷⁷ The purpose of the stay was to further Del. San Nicolas' romantic affair with District Director.⁷⁸
75. The OCE notes that many of the at-issue transactions for travel occurred with cash. Given the failure to itemize or provide receipts for substantial disbursements to Del. San Nicolas, and the nature of the travel as part of a romantic affair, the OCE found that some of those diverted funds likely were converted to personal use.
- D. Fraudulent Reimbursements from Vendor for Personal Enrichment**
76. During his interview, Campaign Manager described other fraudulent activity that Del. San Nicolas allegedly participated in while on a February-March 2018 trip to the Philippines and during other trips to the Philippines.
77. Del. San Nicolas procured campaign sign materials from a company named JKT, a graphic design firm owned by Jodi K. Topacio in San Jaun, Philippines.⁷⁹ Del. San Nicolas produced

⁶⁹ Email from District Director, Oct. 15, 2019 (Ex. 11 at 19-4104_0101).

⁷⁰ St. Luke's Medical Center records (Ex. 12 at 19-4104_0104).

⁷¹ Ex. 8 at 19-4104_0091; Ex. 11 at 19-4104_0101; Transcript of Campaign Manager I (Ex. 1 at 19-4104_0038).

⁷² Ex. 8. at 19-4104_0092.

⁷³ Ex. 10 at 19-4104_0099; Check 109 for "Lodging Exp. For Sign Purchase" (Ex. 13 at 19-4104_0106).

⁷⁴ Transcript of Campaign Manager I (Ex. 1 at 19-4104_0038).

⁷⁵ *Id.*

⁷⁶ *Id.* at 19-4104_0046.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Ex. 8 at 19-4104_0092.

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an invoice for \$3,000 worth of campaign materials he purchased during his February-March 2018 trip to the Philippines,⁸⁰ as well as invoices from a previous purchase with JKT in January 2018 for a total of \$5,750.⁸¹

78. Campaign Manager told the OCE that it was Del. San Nicolas' practice to "hide expenses" in these invoices, that is, "he would ask [Jodi Topacio] to add to the cost of goods a certain amount of the receipt, so that he could reimburse himself that, the extra amount of money in the receipt."⁸² Campaign Manager heard the negotiations over the inflated invoices on the phone and in person, and said it was a common practice for Del San Nicolas.⁸³
79. Campaign Manager alleged that Del. San Nicolas inflated these invoices at least twice during his 2018 congressional campaign and as many as five times. He said that over approximately six years of purchases from JKT, "this was standard every time he would go to get material from the vendor."⁸⁴
80. Campaign Manager also stated that another individual who does business with JKT told him that since the initiation of the OCE's review, Del. San Nicolas and his staff have reached out to JKT to ask that they reproduce certain receipts.⁸⁵ Campaign Manager was not aware whether there was any intent to alter those receipts.⁸⁶
81. Del. San Nicolas' failure to interview or to provide any information refuting these allegations supports the conclusion that unaccounted for and diverted cash campaign funds were used for some of the activities outlined above, which Del. San Nicolas had an incentive to conceal from others.
82. Based on the foregoing information, the Board finds that there is substantial reason to believe that Del. San Nicolas converted campaign funds to personal use, or that Del. San Nicolas' campaign committee expended funds that were not attributable to bona fide or verifiable campaign or political purposes.

IV. INDIVIDUALS WHO REFUSED TO COOPERATE WITH THE OCE REVIEW

83. Del. San Nicolas and District Director refused to cooperate with this review. Though both had previously produced documents in response to requests for information from the OCE, they each withdrew their agreement to participate in interviews with OCE staff despite having previously agreed to and scheduled those interviews.
84. Del. San Nicolas was scheduled to sit for an interview on December 4, 2019 and District Director was scheduled for a November 26, 2019 interview. They each informed OCE the

⁸⁰ Ex. 9 at 19-4104_0096-97.

⁸¹ January 24, 2018 JKT invoices (Ex. 14 at 19-4104_108-111).

⁸² Transcript of Campaign Manager I (Ex. 1 at 19-4104_0031).

⁸³ *Id.* at 19-4104_0031-32.

⁸⁴ *Id.* at 19-4104_0032.

⁸⁵ *Id.* at 19-4104_0032-34.

⁸⁶ *Id.* at 19-4104_0034.

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day before their respective interviews that they would not be participating in those interviews.

85. The day of Del. San Nicolas' canceled interview, District Director sent the December 4, 2019 letter to the donor who contributed the above described impermissible \$10,000.00 cash contribution.⁸⁷ As noted above, this letter may be an attempt to conceal the impermissible contribution by using misleading conduct to persuade the donor to sign a document falsely absolving Del. San Nicolas of wrongdoing with respect to the contribution. The OCE notes that such conduct may constitute obstruction and witness tampering.⁸⁸

V. CONCLUSION

86. Based on the foregoing information, the Board finds that there is substantial reason to believe that Del. San Nicolas failed to disclose required information or disclosed false information in his FEC filings.
87. Accordingly, the Board recommends that the Committee further review the above allegation that Del. San Nicolas failed to disclose required information or disclosed false information in his FEC filings.
88. Based on the foregoing information, the Board finds that there is substantial reason to believe that Del. San Nicolas accepted cash contributions that were both in excess of FEC limits for individual donors and in excess of the limits for cash contributions.
89. Accordingly, the Board recommends that the Committee further review the above allegation that Del. San Nicolas accepted cash contributions that were in excess of FEC limits for individual donors and in excess of the limits for cash contributions.
90. Based on the foregoing information, the Board finds that there is substantial reason to believe that Del. San Nicolas converted campaign funds to personal use, or that Del. San Nicolas' campaign committee expended funds that were not attributable to bona fide or verifiable campaign or political purposes.
91. Accordingly, the Board recommends that the Committee further review the above allegation that Del. San Nicolas converted campaign funds to personal use, or that Del. San Nicolas' campaign committee expended funds that were not attributable to bona fide or verifiable campaign or political purposes.

VI. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND RECOMMENDATION FOR THE ISSUANCE OF SUBPOENAS

92. The following witnesses, by declining to provide requested information to the OCE, did not cooperate with the OCE review:

a. Del. San Nicolas;

⁸⁷ See *supra* para. 34–36.

⁸⁸ 18 U.S.C. §§ 1505, 1512.

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- b. District Director;
- c. Expedia Group, Inc.; and
- d. Outrigger Enterprises Group.

93. The Board recommends that the Committee on Ethics issue subpoenas to Del. San Nicolas, District Director, Expedia Group, Inc., and Outrigger Enterprises Group.