

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

Alaska Public Offices Commission Staff,

Complainant,

vs.

Chris Tuck,

Respondent.

Case No. 13-11-CD

AMENDED CONSENT AGREEMENT

I. SUMMARY OF PROCEEDINGS LEADING TO CONSENT AGREEMENT

A. Parties

The parties to this Consent Agreement are Representative Chris Tuck (“Respondent”) and the Alaska Public Offices Commission Staff (“APOC Staff”).

B. Complaint

This Consent Agreement is entered into regarding the complaint (13-11-CD) filed by APOC Staff on October 11, 2013. Alleged violations in the complaint and additional violations identified during investigation include:

- Failure to disclose and accurately report contributions and expenditures;
- Failure to timely return prohibited contributions;
- Failure to timely adhere to the disbursement limits; and
- Use of campaign contributions for personal benefit.

C. Intent of the Agreement

This Consent Agreement intends to resolve all pending proceedings between APOC Staff and Respondent. The Parties understand that this Consent Agreement is not effective unless and until it is approved by the Alaska Public Offices Commission.

II. FACTS

Chris Tuck, a sitting legislator, ran for re-election in the 2012 state election. Over the course of the 2012 campaign cycle, APOC Staff identified several issues during routine audits of the campaign's reports, each requiring follow up action from the campaign.

In August 2012, APOC Staff requested documentation that a non-monetary contribution disclosed on the campaign's 30 Day Primary Report had been made personally by the contributor and not by her business. The report indicated that the contribution was from Diane Thompson for a fundraiser event held at the Firetap restaurant.¹ Upon receiving additional records after the complaint was filed, it is clear that the campaign was not able to verify if Ms. Thompson personally paid for the service provided by her business. Payment of \$382.75 was issued to Firetap for the July 16, 2012 fundraiser on September 5, 2013 by the Tuck campaign. The failure to timely report this expenditure was a violation of AS 15.13.040(a).

On April 12, 2013, after an in-depth audit of the Year End Report, APOC Staff sent an audit letter requesting corrective action be taken once the legislative session concluded. The Year End Report disclosed an apparent excessive disbursement and also indicated that two contributors had exceeded their annual limits. This letter again requested the documentation regarding the Thompson contribution for the Firetap fundraiser.

On August 19, 2013, Rep. Tuck filed amendments correcting some of the campaign's minor reporting errors, unfortunately he was not able to resolve all issues.

On August 21, 2013, APOC Staff requested records from the campaign including bank statements and transaction activity for the 2012 campaign, documentation that the over-the-limit contributions had been returned, and documentation for the Thompson non-monetary contribution (Firetap Fundraiser). Rep. Tuck delivered records for his campaign, but due to a series of ongoing banking errors, his records were not complete.

On October 11, 2013, APOC Staff filed the complaint alleging violations based on the campaign's reports of record.

During APOC Staff's various interactions with Rep. Tuck, he advised that several factors had led to his inaccurate reports and had required extensive time to reconcile. Chiefly, his campaign account was set up as a sub-account of a personal account. According to Rep. Tuck,

¹ Dianne Thompson is a co-owner of the restaurant.

various errors made by both him and the bank resulted in contributions and expenditures being made to and from the campaign and personal accounts. Additionally, Rep. Tuck inadvertently used his campaign debit card for numerous personal expenditures. In an effort to fix the problem Rep. Tuck transferred funds from his personal account to the campaign account, but never determined the exact amounts that needed to be transferred. He also failed to reconcile the activity of his 2010 campaign prior to filing the Year End Report and started the 2012 campaign with inaccurate numbers, affecting each 2012 report. Finally, the campaign reported numerous credit card contributions that were not timely processed which lead the transactions to expire, so the funds were never received.

After the complaint was filed and because of the extensive issues with his campaign's accounting and the intermingled banking issues, Rep. Tuck retained an accountant to assist in reconciling his reports with his banking statements and conferred with APOC staff repeatedly.

III. LEGAL QUESTIONS PRESENTED

A. Failure to accurately report contributions and expenditures

Rep. Tuck's 2010 and 2012 campaigns violated AS 15.13.040 by failing to timely file complete and accurate campaign disclosure reports. Candidates must file periodic campaign disclosure reports disclosing detailed financial activity through the life of their campaign.² Each report covers a specific reporting period, and begins where the previous left off.³

Rep. Tuck's disclosure reports and subsequent amendments indicate that each of the campaign reports for both the 2010 and 2012 campaigns failed to accurately disclose contributions and expenditures. For example, there were instances where contribution amounts were reported, but not for the amount actually received due to data entry errors; contributions were double reported; and various credit card contributions were reported, never processed, but were never reported as returned. Similarly, there were various campaign expenditures that were reported as either more or less than what was actually spent, and expenditures that were double reported.

The 2010 campaign originally reported \$86,619.97 in itemized contributions and \$86,921.65 in itemized expenditures for the entire campaign. However, upon reconciliation of

² AS 15.13.040(a).

³ AS 15.13.110(a).

the reports with the banking records and completing numerous amendments the 2010 campaign actually received \$81,187.47 in contributions and had \$81,889.01 in expenditures.

Similarly, the 2012 campaign originally reported \$64,731.94 in contributions and \$67,131.90 in expenditures. But again, the reconciled totals reflect \$58,640.29 in contributions received and \$52,826.18 in expenditures.

B. Failure to return prohibited contributions

Rep. Tuck's reports disclosed receipt of excess contributions from three individuals that were not timely returned in violation of AS 15.13.114. Individuals may contribute up to \$500 per calendar year to a candidate.⁴ If a campaign receives a contribution in excess of the allowable limit, the overage must be returned to the contributor, no later than ten days after receipt.⁵ Candidates must report the receipt and disposition of prohibited contributions.⁶

The 2012 campaign reports disclosed receipt of contributions in calendar 2012 from Owen Ascott totaling \$800, Michael Gault totaling \$700, and Karen Malcom-Smith totaling \$700. Each of these exceeded the allowable limit, and each overage should have been returned to the contributor within ten days.

The campaign has now taken corrective action and returned the overages to each of the individuals, provided documentation of the returns, and disclosed the returns on the campaign's amended reports.

C. Failure to adhere to disbursement limits

Rep. Tuck's 2012 Year End Report disclosed a disbursement to a future campaign account in excess of the prescribed limits. After an election, a candidate for state house may transfer leftover campaign contributions up to \$5,000 to a future campaign account.⁷

Rep. Tuck's original 2012 Year End report disclosed a transfer to a future campaign account in the amount of \$10,910.57. Reconciliation of the accounts indicate that this was not accurate, but instead the campaign had a remaining balance of \$5,814.11.

⁴ AS 15.13.070(b)(1)

⁵ AS 15.13.114(a); 2 AAC 50.266(a).

⁶ 2 AAC 50.266(a).

⁷ AS 15.13.116(a)(7)(C).

D. Use of campaign funds for personal expenditures

Several factors related to the campaign's bank account and its set up, resulted in the use of contributions for personal expenses. In 2010, the campaign account was established as a sub-account associated with a personal account. There were two checking accounts, each with a different suffix, that were linked under one account number. During set up the wrong checking account was designated for online credit card processing. So instead of depositing online credit card contributions directly into the campaign account, they were deposited into Rep. Tuck's personal account. Rep. Tuck reports that checks were issued from the bank with the incorrect suffix so that campaign checks were being drawn from the personal account. To further exacerbate these issues, Rep. Tuck also inadvertently used his campaign debit card for numerous personal expenditures.

As a short term fix of the problem, Rep. Tuck made various transfers of campaign contributions that had been deposited to his personal account into the campaign account, or he directly paid campaign expenses from his personal account. However, he never determined the exact amounts that needed to be transferred between the accounts.

With limited exceptions, campaign contributions may be used only to pay the expenses of the candidate and for expenses that reasonably relate to election campaign activities.⁸ Candidates may not use contributions for their own personal benefit and cannot convert contributions into personal income.⁹

After reconciling all of his accounts and reports, Rep. Tuck discovered that over the course of both campaigns, \$16,486.95 in campaign contributions flowed through his personal account to his campaign account. Additionally, \$2,395.14 in expenses that should have been charged against his POET account and personal expenditures totaling \$11,617.47 had been made using the campaign account in violation of AS 15.13.112.

⁸ AS 15.13.112(a).

⁹ AS 15.13.112(b).

III. MAXIMUM POTENTIAL CIVIL PENALTIES

Penalties for each violation are calculated and presented below. The combined maximum civil penalty for all violations is **\$705,850**.

A. Failure to disclose contributions and expenditures

Rep. Tuck violated AS 15.13.040 when he failed to timely file complete and accurate campaign disclosure reports. Based on the reconciliation of his accounts, it appears that all reports were either incomplete or inaccurate for both 2010 and 2012 campaigns. Staff has used the date that each report was due as the beginning date for the accrual of penalties, and has used the date of the complaint to toll the accrual.

1. 2010 Reports

Civil penalties for incomplete reports during the 2010 elections were assessed for each day of the delinquency.¹⁰ The daily penalty rate for 30 day and year end reports was \$10/day¹¹ and the daily penalty rate for 7 day reports was \$50/day.¹²

Report	Due Date	Penalty Days	Penalty Rate	Total Penalty
YS	2/15/2010	1333	\$10	\$13,330
30P	7/26/2010	1172	\$10	\$11,720
7P	8/17/2010	1150	\$50	\$57,500
30G	10/4/2010	1102	\$10	\$11,020
7G	10/26/2010	1058	\$50	\$54,000
YE	2/15/2011	968	\$10	\$9,680

Total Maximum Civil Penalty for 2010 \$157,250

¹⁰ 2 AAC 50.399(d) (repealed, revised, and relocated into 2 AAC 50.855, eff. 12/22/11).

¹¹ *Id.*

¹² *Id.*

2. 2012 Reports

The maximum daily penalty rate in 2012 for a 30 Day and Year End Report is \$50/day.¹³

The maximum daily penalty rate for a 7 Day report is \$500/day.¹⁴

Report	Due Date	Penalty Days	Penalty Rate	Total Penalty
YS	2/15/2012	603	\$50	\$30,150
30P	7/30/2012	437	\$50	\$21,850
7P	8/21/2012	415	\$500	\$207,500
30G	10/8/2012	367	\$50	\$18,350
7G	10/30/2012	345	\$500	\$172,500
YE	2/15/2013	237	\$50	\$11,850

Total Maximum Civil Penalty for 2012 \$462,200

B. Failure to timely return prohibited contributions

Rep. Tuck violated AS 15.13.114 when he accepted contributions in excess of the allowable limits from three individuals, and failed to return them within the timeframe prescribed under 2 AAC 50.266. The maximum civil penalty for these violations is \$50 per day for each day the violation continued.¹⁵ Staff used the dates that the overages first occurred as the start date for the accrual and the dates of return to stop the accrual, and did not include the ten days allowed by regulation to return the contributions.

Contributor	+ 10 Days	Returned Date	Penalty Days	Penalty Rate	Total Penalty
Malcolm-Smith Received 9/4/12	9/14/12	12/6/13	458	\$50	\$22,900
Ascott Received 10/31/12	11/10/12	8/19/13	282	\$50	\$14,100
Gault Received 10/31/12	11/10/12	8/19/13	282	\$50	\$14,100

Total Maximum Civil Penalty \$51,100

¹³ AS 15.13.390(a).

¹⁴ *Id.*

¹⁵ AS 15.13.390(a).

C. Use of campaign contributions for expenses unrelated to campaign

Rep. Tuck used campaign funds for expenses that were not reasonably related to his campaign in violation of AS 15.13.112, and as a violation it incurs a civil penalty of not more than \$50/day for each day the violation continues.¹⁶ In calculating the penalty, staff has used the earliest date the campaign account was used for a personal expense, November 5, 2011, as the start date for the penalties, and has used the date of the complaint to toll the accrual. This represents 706 penalty days.

Total Maximum Civil Penalty \$35,300

IV. MITIGATION CRITERIA

In reaching this agreement, the parties have considered mitigation criteria applicable to the campaign that would allow for a reduction of the maximum penalties.

Mitigation criteria would allow reduction of more than fifty percent up to a complete waiver when the penalty is significantly greater and out of proportion to the degree of harm to the public.¹⁷ Alaska's campaign disclosure statutes have been created to ensure open and transparent campaigns; to provide the public with information to allow them to make informed choices when they vote; and to ensure that campaigns are accountable. Although the violations at hand undermine the intent of campaign disclosure, the parties agree that a penalty of more than \$700,000 is extreme and have agreed to a considerable reduction.

This agreement is in the best interest of the public for several reasons. First, Rep. Tuck's reports contained so many errors that it is beyond the expertise of APOC staff to untangle the skein of errors that have been compounded since 2010. Second, it is unclear that Rep. Tuck could provide sufficient evidence that could remedy existing reporting errors and ensure that revisions would provide a clear and accurate picture of his last two campaigns. Finally, the time that staff would be required to examine and potentially revise Rep. Tuck's reports would not be a fruitful use of staff time.

Rep. Tuck has worked to follow the intention of Alaska's campaign disclosure law, by trying to accurately reconcile his bank statements and reports after APOC staff filed this complaint.

¹⁶ *Id.*

¹⁷ 2 AAC 50.865(b)(6).

V. TERMS OF CONSENT AGREEMENT

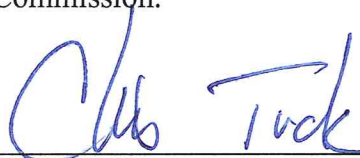
APOC Staff and Respondent agree to a consent agreement in which:

1. The above facts and conclusions are acknowledged.
2. Respondent will pay a penalty of **\$14,117** within one year of the date of approval of this agreement.
3. Upon approval of this agreement, Respondent will immediately forfeit leftover campaign funds to the State of Alaska that were not timely disbursed in the amount of **\$5,814.11** in accordance with AS 15.13.116(c).
4. Respondent will file a final 2012 campaign disclosure report to disclose the forfeiture of leftover funds within 15 days of approval of this agreement.
5. Respondent acknowledges that his 2010 and 2012 reports have been amended to disclose the financial activity of his campaign to the best of his ability.
6. Respondent agrees to submit records substantiating his campaign reports and campaign bank records for the 2014 campaign no later than February 17, 2015, so that staff may complete a thorough audit.
7. Respondent agrees to attend APOC training prior to August 19, 2014.¹⁸

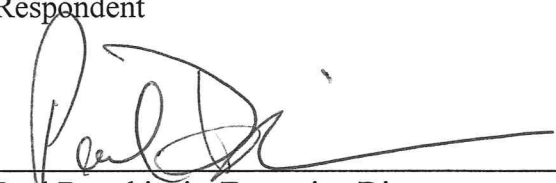
Staff expended 100.5 hours investigating this matter. Investigation costs are \$4,271.25. It is recommended that no costs be assessed, as Rep. Tuck has acknowledged his fault in the violations and has taken great efforts to reconcile his finances and account logistics to ensure accurate reporting going forward.

This agreement is subject to approval by the Commission.

Dated: June 16, 2014

By: 
Chris Tuck
Respondent

Dated: 6-17-14

By: 
Paul Dauphinais, Executive Director
Alaska Public Offices Commission

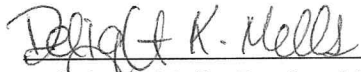
¹⁸

Upcoming training dates include: June 10, June 20, July 11, and August 7.

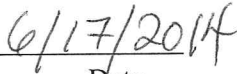
CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered as indicated to the following:

Chris Tuck 8220 Barnett Drive #2 Anchorage, AK 99518 ctuck@ibew1547.org	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Fax
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Delight K. Mells, Paralegal II



Date