OFFICE OF THE STATE ATTORNEY
ELEVENTH JUDICIAL CIRCUIT

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

CLOSE-OUT MEMORANDUM

TO: KATHERINE FERNANDEZ RUNDLE
State Attorney

DATE: April 17, 2012

SUBJ: DAVID MAURICIO RIVERA

INV. NO: 64-10-112

FR: JOSE J. ARROJO
Chief Assistant State Attorney

RE: Close-Out

HOWARD R. ROSEN
Assistant State Attorney
Division Chief

Introduction

This investigation was commenced by the Miami Dade State Attorney's Office in October 2010 in partnership with the Florida Department of Law Enforcement's Office of Executive Investigations.[i] A preliminary investigation into one aspect of the various matters and transactions reviewed herein was also initiated by the Miami Dade Police Department in late 2010. For purposes of our review, the latter inquiry has been incorporated into the larger investigation with the Florida Department of Law Enforcement (FDLE).

The subject of this investigation is DAVID MAURICIO RIVERA. The subject is currently an elected federal official serving as the United States Congressman from Florida's 25th Congressional District.

Relevant to this investigation, prior to his election as United States Congressman, the subject was an elected state official serving as a Florida State Representative from Florida House, District 112. He was also a candidate for the Florida Senate, seeking election to the Florida Senate from District 38. The subject ended his candidacy for the Florida Senate in November 2010 when he was elected as a United States Congressman. Finally, during the period under review, the subject was also a candidate for a number of internal political party positions that we refer to as the "committeeman" candidacies. His candidacies for public office and for committeeman occurred simultaneously.

Also concurrent with his public service, from late 2005 through very early in 2008, the subject was engaged as a political strategist in support of expanding gaming in Miami-Dade County to include Las Vegas style slot machines. A company officially headed by members of his immediate family entered into a million dollar agreement with a local gaming entity; monies were to be paid as consideration for the subject's work. Ultimately, over a half a million dollars was paid to this company, and over a hundred thousand dollars of this total has been directly traced back to the subject. The subject never reported these payments as income in public disclosure documents.

As part of this investigation, prosecutors caused to be served numerous bank subpoenas and credit card account subpoenas. Records received in response to those subpoenas have been reviewed by prosecutors, investigators, and forensic analysts. Additionally, public records relating to the subject's various campaigns, including those relating to campaign donations and expenditures, filing and election dates for his various public offices, and official travel reimbursements, have also been obtained and likewise reviewed. Numerous witness statements have been taken, including statements from personal friends and business associates of the subject. Records, reports, and transcripts of interviews are on file with the FDLE and the State Attorney's Office.

The investigation revealed that over a period of several years beginning on or about 2004 and through 2010, the subject raised millions of dollars in contributions in support of his candidacies for public office and for committeeman, and as a paid political strategist for a local slots initiative entity.[ii] All of the contributions were deposited into three bank accounts that the subject variously designated as campaign depository accounts for each of his campaigns for public office.[iii] The political strategist payments were directed to a family corporation.

As regards the contributions, while it appears from our review that there was some effort to separate the contributions in support of candidacies for public office and for committeeman, the investigation revealed comingling of these two categories of funds over a period of many years.

During the same time period reviewed, the subject charged hundreds of thousands of dollars in costs associated with extensive state and national travel to his four personal credit card accounts.[iv] Other costs associated with travel for friends, clothing, and entertainment were also charged to these credit card accounts.[v] The subject engaged in multiple credit card transactions each week and made thousands of charges to his four credit card accounts during the review period.

Thereafter, the subject repeatedly wrote checks directly from the three campaign bank accounts to pay off the expenditures charged and owing on his several personal credit cards. Alternatively, the subject wrote checks from the campaign bank accounts and deposited the checks into his personal bank account, thereafter writing checks from his personal bank account to pay off the expenditures charged and owing on his credit cards.

Slots Referendum Strategist Payments & Public Income Disclosure

Our original and principal felony investigation focused on the subject's role as a highly compensated political strategist in support of expanding gaming in Miami-Dade at the same time that he was an elected member of the Florida House of Representatives and held a leadership position in that chamber.[vi]

By way of background, we learned that in November 2004, voters statewide voted to allow Miami-Dade and Broward counties to put questions on local ballots regarding adding slot machines at certain existing racetracks and other gaming locations. The tax revenue from the machines would then go to schools statewide. In March 2005, Broward voters approved the measure, but Miami-Dade voters rejected slot machines in their referendum.

Contrary to positions of other members of his political party, we learned based upon interviews with associates of the subject, that as early as 2005, the subject, with assistance from a local university professor and political pollster, was engaged in post-mortem political analysis on why the slots initiative failed in Miami-Dade County. The subject at that time had already drafted a position paper that detailed why the slots initiative failed, and also advanced a strategy to secure Miami-Dade voters' support in a subsequent vote.

One of the most significant proponents of the slots initiative in Miami-Dade County was the late Fred Havenick,[vii] the principal of what was then commonly known as Flagler Dog Track and a number of other family-owned and controlled business entities. Mr. Havenick, according to surviving family members and business associates, was devastated by the failure of the 2005 vote and dedicated himself almost immediately to a renewed effort to pass a slots initiative in Miami-Dade County.

As best could be determined from interviews, both the very motivated Mr. Havenick and the subject were brought together in the latter portion of 2005. After their initial contact there were meetings over several months that included various principals and differing retainer amounts. Ultimately, in 2006, an agreement was reached in principal that made the subject the Havenicks' "Chief Campaign Strategist" for the second Miami-Dade slots vote in early 2008.

Some time elapsed between the agreement in principal and the execution of the formal written agreement that secured the subject's consideration. Witnesses advised that at one point in the negotiations there was discussion of the subject being paid for his services through a PAC, but upon advice from Florida House of Representatives counsel, this was ruled out. Prior drafts of the final agreement also had the subject being hired and paid directly. The subject is reported to be have been directly involved in the negotiations as well as the actual drafting of the final written agreement, and his signature is affixed to the contract.

Ultimately, the final written agreement was signed in November 2006, and was between the Havenicks and Millennium Marketing, Incorporated. [viii] The agreement secured the subject's services and contained consideration clauses that totaled one million dollars in payment to Millennium.

Millennium existed in prior corporate forms as early as 2000, and the subject's mother, Daisy Magarino, was an original principal. Over the years the former company dissolved. The entity was revived as Millennium Marketing, Incorporated in 2006, and this time by Ileana Medina, a lifelong companion and roommate to the subject's mother who has been described by some as the subject's "godmother" and is considered as a member of the subject's immediate family.

While an elected member of the Florida House of Representatives, the subject performed substantial work for the Havenicks from 2006, through what has been described as "crunch time" in mid to late 2007, through very early 2008. He has been reported as working almost on a daily basis on behalf of the slots initiative for periods during that time frame from an office at what was then known as Flagler Dog Track. For the subject's services, Millennium was ultimately paid a little more than five hundred thousand dollars.[ix] Millennium invoiced the Havenicks for the remaining half a million dollars in May 2011. Two hundred thousand dollars were paid and the remainder was retained by the Havenicks as costs expended in legal fees relating to their interaction with prosecutors and investigators in this matter.

Again, throughout his time as a strategist for the slots initiative, the subject was an elected member of the Florida House of Representatives, and was obligated pursuant to Florida Statute § 112.3145 to file papers with the state detailing all sources of income. He never disclosed the monies paid to Millennium. He later amended his public filings to reflect loans from the company. Nevertheless, these transactions were reviewed as a possible violation of Florida Statute § 838.022, which prohibits the falsifying of any official record with corrupt intent.

Financial analysis of the money paid by the Havenicks to Millennium shows that the money initially went into several bank accounts. Ultimately, prosecutors and investigators were able to discover that over a hundred thousand dollars of the payments went back to the subject.

Prosecutors and investigators made contact with both the subject's mother and godmother as part of this inquiry. Through counsel, they confirmed their association with the corporation and the fact that it was the subject that performed the services for the slots initiative that Millennium was paid for. We also received confirmation that out of these funds, monies flowed to the subject.

However, from these contacts, we were provided with a series of photocopies of promissory notes that purported to show that the subject actually received his payments as loans from Millennium Marketing that he was still obligated to pay back. Upon receiving copies of the promissory notes, we wanted to determine if the original

promissory notes were, in fact, from the dates reflected on the notes as purported by the witnesses or alternatively whether they were fraudulently created once the investigation commenced and written about in media reports. There were two (2) separate investigative tools which could have been employed to assist in making that determination. The first tool would have been a forensic computer analysis of the computer which was used to create the promissory notes. Such an analysis could have indicated when the documents were created on the computer's hard drive. In order for such an analysis to be conducted, we would have needed the computer. The second investigative tool which may have determined when the documents were created involves ink dating of the original documents. Briefly stated, ink evaporates as it remains on a document. As ink remains on a document for a lengthier period of time, the rate at which it evaporates off of the document changes and utilizing this knowledge there is a process by which writing's relative age can be roughly determined. In order for this analysis to be conducted, we would need the original promissory notes

The prosecutors and investigators in this investigation were planning on executing a search warrant immediately after taking a sworn statement which would indicate where the computer or the original promissory notes resided.

However, we were told during a sworn statement that the original promissory notes were lost, and that the computer stopped working and was discarded. Accordingly, we had no probable cause to execute any such search warrant, and any forensic computer analysis or ink dating to determine the actual creation date or age of the promissory notes was therefore not possible.

Ms. Medina stated that although the subject did all of the work on behalf of Millennium Marketing, it was she and the subject's mother whose entity received the proceeds from his work. She further stated that when the subject, however, needed money, they lent it to him.

Without commenting on the veracity of the explanation that has been provided to us regarding the alleged "loan" and "promissory note" transactions, there is no evidence to disprove the explanation forwarded on behalf of the subject. We cannot disprove the sworn testimony by the subject's family members, and their authentication of the promissory notes. These representations cannot be refuted and therefore if we filed criminal charges against the subject arising out of these transactions, we would not survive a sworn motion to dismiss filed on behalf of the subject. Accordingly, we concluded that we cannot in good faith accuse the subject of making false statements in his Chapter 112 disclosures and are likewise unable to prove a violation of Chapter 838.

Questionable Expenditures of Campaign Contributions

Having concluded that we could not proceed with the principal accusations our against the subject for his actions related to the gaming initiative payments, we, together with our police partners, conducted an extensive review of the subject's political fundraising activities, focusing on the years between 2004 and 2010. The objective of

this inquiry was a possible lesser prosecution of the subject for first or second degree misdemeanor offenses under Florida Statutes, Chapters 106 or 112.

Florida Statute §106.1405 provides that a candidate may not use funds on deposit in a campaign account to defray the normal living expenses for the candidate other than expenses actually incurred for transportation, meals, and lodging by the candidate during travel in the course of the campaign. A violation of this section is a misdemeanor offense and the prosecution for such a violation must be commenced within two years, as provided for in Florida Statute §106.28. We thus considered whether the subject violated §106.1405, because many of the transactions identified above appeared to involve nothing more than expenses incurred as normal living expenses.

Several factors militated against our going forward with a §106.1405 prosecution. Principally, the obstacle to proving this violation lies in the subject's concurrent solicitation of contributions in support of his public office and committeeman candidacies. There are no restrictions on the amount or quantity of contributions that a committeeman candidate can accept. An example of this unregulated source of revenue is a single fifty thousand dollar donation received by the subject in support of one of his committeeman campaigns.

The subject contemporaneously raised and expended contribution funds related to his public office campaigns and committeeman campaigns. At various points during the time periods reviewed, particularly just before and immediately after public office election dates, the funds were comingled in the same campaign depository bank accounts. It was impossible for us to isolate public office campaign donation funds from unrestricted committeeman donation funds. Accordingly, we were unable to prove that restricted funds were being used to defray normal living expenses in violation of §106.1405.

During one of the subject's voluntary interviews with prosecutors and investigators, we requested that he address these transactions and potential violations of §106.1405. The subject responded with a very broad interpretation of what constitutes permissible campaign related expenditures.[x]

Essentially, the subject's position is that he was for a period of almost a decade, continuously and simultaneously engaging in official business, campaigning for public office, as well as campaigning for committeeman; moving from one task to another seamlessly on a daily basis. More specifically, it is the subject's contention that he was continuously campaigning for public office for almost a decade. As a repeat candidate for the Florida House of Representatives, and ultimately a candidate for the Florida Senate, he was required to stand for election every two years. Therefore, upon election to one term, he immediately began to campaign for election for his next term. This was borne out by the dates that he filed to run for each term, and the dates that he began to collect campaign contributions and began to deposit them into his campaign accounts. Moreover, he explained as a single man without children, his entire life's focus was on

political activities related in some manner to campaigns for office. Essentially, he was campaigning almost every day for years.

With this very broad view of the provisions of Florida law that allow for the candidate to use campaign funds to pay for transportation, meals, and lodging during travel in the course of the campaign, coupled with his continuous official office campaigning, the subject concluded that virtually every travel related expenditure: airfare, automobile costs, lodging, meals, and related miscellaneous expenses for personal items and entertainment were indeed permissible campaign related expenditures.

Further, the subject continued, that as a single man running as a political conservative, it was necessary for him to appear at campaign related events with a female escort. According to the subject's broad interpretation of the law, it was appropriate and permissible to pay for his female companion's expenditures as well, as they were essential to his election campaigns. The subject was actually able to identify political party events, functions, or meetings, in connection with most if not all of his out of town trips.

Finally, in his presentations with the assistance of counsel, the subject presented ledgers that he claimed showed use of his personal vehicle for extensive campaign related travel. The subject contends that the mileage, fuel, and wear and tear costs to his personal vehicle were recoverable expenses from his campaign contributions. By his records, he was owed tens of thousands of dollars from his campaign funds for the use of his personal vehicle for which he was not yet reimbursed for.

We do not agree with the subject's contention that Florida law was intended to allow for the use of campaign funds to defray the costs of many of the expenditures described above. Nevertheless, we have been forced to acknowledge that the language of Florida Statute §106.1405 allows for such a broad reading. Additionally, Chapter 106, Florida Statutes, provides no further guidance regarding the definition of "normal living expenses" as opposed to expenses incurred for "transportation, meals, and lodging" by the candidate during travel in the "course of the campaign." There is no definitional section in Chapter 106. No Florida court has ever interpreted the language of the statute, and thus even beyond the statute, there is no appellate case law to assist us in our analysis.

The law appears to allow to raising unlimited amounts of money in support of political party committeeman candidacies, in many instances from the same public office supporters that are limited in contributions by Chapter 106 in support of public office candidacies.

Finally, the legislature has established a statute of limitations for any violation of Chapter 106 at two years. These transactions were only revealed and fully understood many months after the initiation of the investigation, as records obtained pursuant to subpoena were received and analyzed. By calendar year 2011, the statute of limitation had eliminated the possibility of charging the subject with any violations of Florida

Statute §106.1405 for any transactions occurring prior to 2009. Our legal analysis in this matter carried us well into the end of the 2011 calendar year and into the current year. The overwhelming majority of the possible transactions available for prosecution as misdemeanors were barred because of the statute of limitations.

For these reasons, we have concluded that we could not in good faith go forward with a prosecution of the subject for violations of Florida Statute §106.1405.

It would greatly aid prosecutors in these types of inquires and provide clearer guidance to candidates if the law was revised. These matters require an enormous amount of time to investigate due to the volume of paper review involved. A reclassification of §106.1405 from a misdemeanor to a felony offense would have a correspondingly lengthier statute of limitations, thus affording prosecutors and investigators more time to investigate and providing them with greater flexibility in filing and prosecuting potential violations. Similarly, while §775.15(12)(b) extends the statute of limitations to two (2) years from the time that a defendant leaves public office or employment for "any offense based upon misconduct in office by a public officer or employee", this extension does not apply to a *candidate* for public office, as theft from a campaign account is not an offense based upon misconduct "in office." Perhaps this law could also be addressed.

A codified definition of what constitutes "normal living expenses" as opposed to expenses incurred for "transportation, meals, and lodging" would also greatly aid prosecutors in these types of cases. A laundry list of those types of expenses that a candidate cannot pay for with the use of campaign funds would be very helpful.

Finally, some restrictions on the use of committeeman or committeewoman campaign solicitations and expenditures might also be considered. Some restrictions or guidelines on the amount, timing, and reporting of political party committeeman and committeewoman contributions could curb the now permissible scenario that allows an elected official to hold office, campaign for office, and also campaign for committeeman and solicit contributions for his or her public office and party committee positions simultaneously.

Comingled State and Federal Campaign Travel Expenditures & Reimbursements

As we noted above, we reviewed the various filing and primary and general election dates for the subject's numerous campaigns for state and federal elected offices. As a result, we have been able to determine that the subject was simultaneously seeking election to Florida Senate District 38, for a term beginning 2010, while at the same time he was a candidate for United States Representative from Florida's 25th Congressional District.

During this joint candidacy, the subject maintained a campaign depository account for his state Senate campaign and was making campaign contribution deposits into and expenditures from the account. We analyzed the subject's credit card accounts

and personal and campaign depository bank records and publicly filed campaign expenditure reports for the time of the joint candidacy. As a result, we discovered that the subject incurred travel costs associated with airfare, lodging, meals, and automobile expenses spent on trips to Washington, D.C., Los Angeles, Phoenix, Atlanta, Salt Lake City, and Las Vegas.

As part of this portion of our inquiry, prosecutors and investigators also interviewed persons who accompanied the subject on some of these trips. At least one travel companion advised that some of this travel was related to the subject's campaign for federal, not state office.[xi]

We determined that the subject regularly charged to one of his four credit card accounts costs associated with repeated travel outside of the state of Florida. After incurring these costs, the subject wrote checks directly from his campaign depository to pay off the expenditures charged and owing on one of his credit card accounts. Alternatively, the subject wrote checks from his campaign depository and deposited the checks into his personal bank account, thereafter writing checks from his personal bank account to pay off expenditures charged and owing on one of his various credit card accounts.

Once again, we considered a prosecution under §106.1405, under the theory that once the defendant announced he was a candidate for federal office, that he had in effect terminated his state campaign for the Florida Senate. If so, then any expenditures from his state campaign depository account would constitute a violation of §106.1405 as a non-campaign related expenditure as well as a potential violation of Florida Statutes §§ 106.11 and 106.141 that dictate the manner in which a candidate for elected office must dispose of funds at the end of the candidacy as well as unused surplus funds remaining in a campaign depository.

We rejected a prosecution under this theory because while Florida law does not allow for a candidate to hold and run for a second state office, or to simultaneously run for two state offices, there is no similar prohibition as regards to a state and federal office. A citizen may hold state office and run for federal office and likewise may concurrently run for state and federal office.

Comingled Official and Campaign Related Travel Expenditures & Reimbursements

Contemporaneous with our consideration of charges under Chapter 106 arising out of the subject's use of campaign funds, we also reviewed the subject's use of state funds to reimburse his travel costs as an elected state official. Florida Statute § 112.061 provides that elected state officials are entitled to be reimbursed from state funds for those travel expenses incurred as a result of or related to their government duties. Additionally, Florida Statute § 106.141(5) (c), allows elected officials to transfer a specified amount of unused campaign donations from the campaign depository to the elected official's "office account." Thereafter, those funds contained in the office

account can be used for legitimate expenses in connection with the public office, and may include travel expenses for the official or a member of his staff.

As an elected member of the Florida House of Representatives, the subject was allowed reimbursement for legitimate travel costs expended in relation to his public office. The subject was reimbursed for official travel expenses, including transportation, lodging, and meals from these two fund sources by submitting travel vouchers to the Florida House of Representatives. In the forms, the subject provided in writing the purpose or reason for the expenditure; the travel origin and destination; the hour and date of travel; and the amount of expenses incurred.

By analyzing the travel vouchers and expense travel reports submitted by the subject, we were able to identify each of the various trips taken by the subject during his terms as an elected member of the Florida House of Representatives. Additionally, by analyzing the subject's credit card account records from his various credit cards, we were likewise able to determine which credit card the subject used to pay up front for specific travel related expenses on various dates, and the amount of the travel related expense.

It appears that on multiple occasions the subject engaged in travel within the state on official business and incurred travel related expenses, including costs of transportation, lodging, and meals. During the same time periods, the subject also traveled within the state on campaign related business and likewise incurred travel related expenses. The subject paid for both categories of expenses using one of his four credit cards. Thus, he carried credit card balances relating to both categories of travel on his personal credit cards at the same time repeatedly over the years.

The subject then detailed the official state business travel expenses on travel vouchers and expense travel reports, and requested and received reimbursement from the state for these travel related expenses totaling tens of thousands of dollars. Likewise, he reported campaign related travel expenses on his campaign finance reports. He thereafter deposited reimbursement monies from the state and from his campaign accounts into his personal bank accounts and then made payments from his personal bank account towards his credit card balances. On other occasions he made payments towards his credit card balances directly from his campaign account.

It appears that on several occasions, the subject may have been paid for official travel as an elected representative by the state and then was also reimbursed for the same travel from his campaign accounts. Accordingly, we focused on these transactions as potential theft from the state.

The potential theft based upon the theory that the defendant could not be reimbursed for official travel by the state if he was also being reimbursed for the same expenses from his campaign funds. However, this theory was also rejected based upon the First District Court of Appeals decision in *State v. Maloy*, 823 So.2d 815 (Fla. 1st DCA 2002). In *Maloy*, prosecutors charged a county commissioner with felony official misconduct and multiple counts of felony theft. The prosecution alleged that the

defendant submitted false reimbursement travel vouchers in connection with official state travel, thereby constituting theft from the state.

In response, the defendant filed a motion to dismiss, maintaining that he could only be charged with the second degree misdemeanor offense identified in Florida Statute § 112.061(10), as the legislature designated this as the exclusive criminal offense that could be charged for crimes relating to official travel reimbursement matters. The trial court agreed, ruling that the legislature made this the exclusive charge to the exclusion of other offenses identified in the general laws of this state. The appellate court agreed, holding that where particular and specific statutory proscriptions address acts which otherwise might also be circumscribed by more general criminal provisions, the controlling effect is ordinarily given to the more particular and specific statutory proscriptions.

More specifically, the court held that Florida Statute § 112.061 is a comprehensive enactment specifically relating to the per diem and travel expenses of public officers and employees, with subsection (10) specifically addressing fraudulent claims and providing that one who willfully makes and subscribes such a claim as to a material matter which he does not believe to be true and correct "is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

In doing so, the court rejected the prosecution's contention that § 112.061(10) could be treated as merely providing an alternative means of prosecution for the alleged acts. The court stated that exclusive application of Section 112.061(10) is consistent with the principle of criminal law which ordinarily gives controlling effect to the particular and specific statutory proscriptions addressing acts which otherwise might also be circumscribed by more general criminal provisions. *Maloy* at 817.

Accordingly, any prosecution of the subject in the instant case for theft based upon a material misrepresentation on any state travel voucher or travel report would be limited to a prosecution for the second degree misdemeanor in Florida Statute § 112.061(10).

Similarly, Florida Statute § 106.1405 is an enactment specifically related to the prohibition on utilizing campaign funds to defray the normal living expenses for the candidate. A prosecution based upon any statute outside of Florida Statute § 106 likewise would not survive a motion to dismiss based upon the same legal argument as that made in *Maloy*, that where particular and specific statutory proscriptions address acts which otherwise might also be circumscribed by more general criminal provisions, the controlling effect is ordinarily given to the more particular and specific statutory proscriptions.

Alternative Racketeering Theory

Concluding that neither a prosecution under Florida Statute §106.1405 nor a theft prosecution arising out of state travel voucher transactions were viable, in latter 2011

other charges were considered. We explored potential violations of the racketeering and felony theft statutes. These charges would avoid the statute of limitations contained in Florida Statute §106.28, and also would provide a significantly greater potential punishment for some of the subject's actions than that which is afforded for a first degree misdemeanor violation of Florida Statute §106.1405.

Florida Statute §106.021, requires that a candidate for elected office in Florida must designate a primary campaign depository prior to qualifying for office, and prior to accepting any contribution or making an expenditure. The law requires a candidate to open a bank account for the campaign, and report it to the Florida Division of Elections. The candidate must also designate a campaign Treasurer. The campaign depository account essentially becomes the "lockbox" for the campaign, inasmuch as there are legal prohibitions that define what can go into the account and what the funds on account can be used for, or put another way, what can go in and what can come out of the account.[xii]

Florida Statute §106.05 requires that all funds received by the campaign Treasurer for a candidate for elected office in Florida shall be deposited into the designated campaign depository. Also, Florida Statute §106.11 provides in relevant part that the campaign account shall be separate from any personal or other account and shall be used only for the purpose of depositing contributions and making expenditures for the candidate.

As we previously noted, Florida Statute § 106.1405 provides that a candidate or the spouse of a candidate may not use funds on deposit in a campaign account of such candidate to defray normal living expenses for the candidate or the candidate's family, other than expenses actually incurred for transportation, meals, and lodging by the candidate or a family member during travel in the course of a campaign.

The only other manner in which funds on account can be disbursed is described in Florida Statutes §§106.11 and 106.141. These provisions define the manner in which a candidate for elected office must dispose of committed funds at the end of the candidacy as well as unused surplus funds remaining in a campaign depository. Specifically, within ninety (90) days of the end of the candidacy, a candidate may use campaign funds to purchase "thank you" advertising; pay for items or services incurred prior to the end of the candidacy; pay for "close-down" campaign costs related to the campaign office or the filing of final campaign financing reports; return funds pro rata to contributors; make donations to charitable entities; make donations to the candidate's political party; transfer the funds to the State of Florida or a political subdivision of the state; or if elected, deposit a specified amount of the funds into the candidate's office account. A candidate may not dispose of funds at the end of the candidacy in any other manner.

Because of these restrictions, we postulated that the funds placed in a designated campaign depository do not belong to the candidate. As such, the intentional use or disposition of the funds by the candidate in any manner other than that which is specifically allowed for in Chapter 106 would thus under our theory constitute theft, in

violation of Florida Statute §812.014. Theft is a predicate offense for prosecution under Florida's RICO statute.

Florida's RICO Statute, §895.03(3), prohibits an individual associated with an enterprise to conduct or participate, directly or indirectly, in the enterprise through a pattern of racketeering activity. Florida Statute §895.02(3) provides that an "enterprise" may be a corporation. Florida Statute §895.02(1)(a) defines "racketeering activity" as committing, attempting to commit, or conspiring to commit a crime that is chargeable by indictment or information under various Florida penal statutes, including Florida Statute Chapter 812, relating to theft. Florida Statute §895.02(4) defines a "pattern of racketeering activity" as engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.

The subject's campaign depository accounts for all his political campaigns were maintained at Bank of America, a Delaware Corporation. So, the application of this theory to the subject would suggest that as an account holder and as the campaign treasurer for his various campaigns, he associated directly or indirectly with Bank of America through a pattern of racketeering activity by engaging in multiple acts of racketeering conduct consisting of thefts, in violation of Florida Statute §812.014. More specifically, the subject repeatedly and intentionally committed multiple instances of theft by converting funds in his campaign depositories and using them for purposes otherwise not permitted by law.

Having developed this theory, we sought to find legal support for its viability beyond our stacking and combining of various statutes. Plainly stated, we were unable to find any support under Florida law for this theory of prosecution. Florida appellate courts have not addressed this theory. We thereafter sought out of jurisdiction opinions by our sister courts and we were likewise unable to find any support. There are references in cases to prosecution theories based upon thefts from "campaigns" where the campaign is an actual entity but there is no actual campaign entity defined as such under the law of this state. Filing significant felony charges against a subject predicated upon a legal theory that was unsupported by any appellate court in this state was rejected.[xiii]

Conclusion

We are compelled to acknowledge at this time that we, along with our police partners, have exhausted all active criminal investigative avenues as to the allegations investigated. As part of this inquiry we have been confronted with the fact that an elected official over a period of many years may essentially live off of a combination of contributions made in support of public office candidacies, contributions made in support of internal political party position candidacies, and indirect payments made as consideration for efforts as a political strategist while avoiding penal sanction.

There are still certain minor violations of Chapter 106 that, within the statute of limitations provided for under that section, may be viable for a short period of time. We

are actively engaged with the subject's counsel at this time and will continue to actively seek some type of resolution in this inquiry that may require the subject to agree to a public acknowledgement or admission to participating in some of these transactions. Towards this end, we will partner with state election and ethics entities. Finally, it has been publicly reported that federal authorities may be reviewing the subject's "income" during the periods reviewed as potential violations of federal law. We cannot offer any insight into that matter.

At this time, this criminal investigation is closed.

Endnotes

[i] The Florida Department of Law Enforcement and the case lead investigator and criminal analyst are to be lauded for their efforts in this investigation. Both the volume and quality of their work product have been exceptional.

[ii] This investigation revealed that the subject raised hundreds of thousands of dollars in support of his various committeeman candidacies. We have been unable to find any legal restriction limiting the amount of any individual contribution in support of a committeeman candidacy. Likewise, we have been unable to find any restriction on the expenditures of contribution funds.

[iii] Florida Statute §102.021 requires a candidate for elected office in Florida to designate a primary campaign depository prior to qualifying for office and prior to accepting any contribution or making an expenditure. At the same time, the candidate must designate a campaign Treasurer. At all times herein, the subject was his own campaign Treasurer.

[iv] Chapter 106 allows candidates to use credit cards to pay for campaign related expenses and thereafter be reimbursed from campaign funds on account in designated campaign depositories. The subject used the same four credit card accounts referenced herein for many years for personal, official state business, and campaign related transactions. In doing so, he comingled expenses from these various use categories and carried balances over time. This practice made it almost impossible to isolate exactly which expense in a balance owed was being paid for when the subject wrote a check from either his personal account or his campaign account to make a payment towards a credit card balance.

[v] In reviewing the various papers described above, we discovered that some of the travel expenditures were attributed to persons other than the subject. Further inquiry revealed that during the periods of time during which the subject maintained funds on account in his campaign depositories, he was romantically involved with at least two women whose relationships became relevant to this investigation. Both women provided voluntary sworn statements to prosecutors and investigators. These interviews revealed that on numerous occasions over a period of several years, the subject paid for the women's travel related expenses, including airline travel costs and car rentals using his various personal credit cards. The travel destinations for the subject and either of his two girlfriends included New York City, New York; Washington, D.C.; Chicago, Illinois; Minneapolis, Minnesota; Las Vegas, Nevada; and Tallahassee, Florida. Nothing in this memorandum should be interpreted to suggest that either of the women engaged in any illegal or inappropriate conduct as they were simply romantically involved with the subject during certain time periods when each was a single woman and the subject was likewise unmarried.

[vi] There is no legal prohibition on an elected member of the state legislature working as a campaign strategist on behalf of an industry wide initiative of this nature even though the payment is made by a single entity member of the industry.

[vii] Fred Havenick passed away and his sons and in-house business employees took over the running of the various family gaming and real estate interests. Principal amongst this group was his son, Attorney Alexander Havenick. Several members of the Havenick family were interviewed as part of this inquiry. They were represented by counsel and cooperated with prosecutors and investigators.

[viii] Initial negotiations involved representatives not only from the Havenick family but also those representing the Calder facility in northeastern Miami-Dade.

[ix] It has been reported in the media that federal authorities are investigating these payments to Millennium for work performed by the subject as part of a tax evasion or fraud investigation. We do not address these reports, as potential violations of federal rule or statute are beyond the scope of our review jurisdiction.

[x] In the course of this investigation, the subject voluntarily submitted himself to questioning by prosecutors and investigators. In this interview he was represented by counsel. He also submitted papers and spread sheets for our review.

[xi] We do not address whether the use of state campaign donations for a trip that has been described as in support of a federal candidacy violates any federal rule or statute, as this is beyond the scope of our review jurisdiction.

[xii] The subject designated himself as his own campaign Treasurer for all of his campaigns for public office, and he also repeatedly made written affirmations that he understood all of the requirements of Florida Statutes, Chapter 106, Florida's Campaign Financing statute.

[xiii] We are also faced with an application of the rule from *State v. Maloy*, 823 So.2d 815 (Fla. 1st DCA 2002) and the likelihood that our appellate court would likely find that in enacting Chapter 106 the legislature designated the various proscriptions contained therein as the exclusive criminal offenses that could be charged for crimes relating to campaign finance violations to the exclusion of other offenses identified in the general laws of this state like grand theft.