



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case PI 15-044	Case Name: David Custin financial disclosures	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s):	Subject(s): David Custin	Oct. 13, 2015	CASE CLOSED

Date: 12/11/2015

Allegation(s):

Information was received that political consultant/ lobbyist David Custin failed to disclose a financial relationship with City Commissioners Joy Malakoff and Jonah Wolfson in his lobbyist registration filings, as shown in a Youtube video retrieved from the following link: <https://www.facebook.com/MiamiBeachOutlook/videos/1169038596439478/>

The video also highlights Custin's representation of TC Miami Beach LLC and the alleged intent of this entity to "redevelop" Rebecca Towers. It claims Custin failed to disclose his relationships with Malakoff on seven occasions and 10 times with Wolfson.

It states: "Lying under oath is Custin's bad habit."

Relevant Ordinances:

Miami Beach City Code sec. 2-482(a)(4), which states that a lobbyist must disclose any paid or unpaid "contractual relationship" between the lobbyist and person or agency being lobbied for a period of twelve months prior to the time of the date of registration.

Investigation:

Interviews

On Nov. 4, an e-mail was sent to the subject requesting a response to the allegations he failed to disclose a contractual relationship with Miami Beach commissioners Joy Malakoff and Jonah Wolfson by failing to list their names on his lobbyist registration forms.

On Nov. 13, Custin responded to the e-mail with an e-mail sent on his behalf by attorney J.C. Planas, which read as follows:

"Sorry for the delay in the response but I am handling this for Mr. Custin.

You asked Mr. Custin for his reason for not listing Joy Malakoff and Jonah Wolfson on his lobbyist financial disclosure forms as individuals he has contracted with in the prior 12 months.

Mr. Custin did not perform any work for either of those 2 individuals in the prior year of filling out the form in question. This is axiomatic as it relates to Commissioner Wolfson as he could not run for re-election and thus had no reason to hire Mr. Custin to do anything. While other Commissioners hire Mr. Custin to do their newsletters (he did mine when I was in office), Commissioner Malakoff did not hire Mr. Custin for that work and thus she was not required to be listed either.

Please be aware that the You Tube Video that made these allegations came from Stephen Cody who also published untrue statements about Mayor Levine in past videos. Needless to say, his facts are highly suspect.

Hopefully this answers your questions. Please feel free to contact me directly if you require further information."

Mr. Planas responded to a follow up e-mail by COE on Nov. 16, with respect to any work Custin or his firm may have provided to the PAC Relentless for Progress. Planas noted that Custin/ DRC Consulting was not hired by Relentless for Progress, though he allowed that his client did perform services for Citizens for Ethical and Effective Leadership. He further advised that Custin did work for the Malakoff campaign in 2013.

On Nov. 13, COE spoke to Elaine DeValle, a political blogger and consultant, who advised that while she believed it may be true Custin had no previous contractual relationship with Comm. Malakoff during the previous 12 months, she did believe that Custin had such an arrangement with former Comm. Wolfson through one or more political action committees, including Relentless for Progress. She said Wolfson was the chairman of Relentless for Progress, and that this PAC paid \$80,000 to a PAC controlled by Custin. She said that she has reason to believe that Custin prepared a mailer for Wolfson aimed at enhancing his status in the community even though he was term-limited and was not running for office. She said she wrote about this in her July 24 blog posting, and that photos of the mailer were included.

Comm. Joy Malakoff, Group 3
City of Miami Beach, FL

On Nov. 16, at about 11:13 a.m., an e-mail was sent through the city's website to Comm. Joy Malakoff asking her to describe any contractual relationship she might have with David Custin, directly or through her political campaign. No response was received from Commissioner Malakoff.

Joey Galleno, registered agent
Citizens for Ethical and Effective Leadership PAC
Nov. 16, 2015

Mr. Galleno was contacted and asked whether David Custin had any involvement with Citizens for Ethical and Effective Leadership. He stated he did not feel comfortable responding to questions over the phone, and asked that an e-mail be sent to him. He said he would reply to the e-mail. An e-mail was sent at 10:39 a.m., requesting information about any relationship with David Custin.

A reply was received later that day from Ronald Meyer, a Tallahassee-based attorney, who advised that Daniel Cifuentes is the primary officer for Citizens for Ethical and Effective Leadership, a state-registered electioneering communications organization (ECO). He stated David Custin holds no official position with the ECO, but stated that the organization has contracted with Custin's firm over the years "as have other vendors."

Document/Audio/Video Review:

A copy of a political campaign video was retrieved and viewed from the following address: https://www.youtube.com/watch?v=o8c3V_GypkM (Note: The link has since been deactivated, but highlighted an alleged improper relationship between the subject and Miami Beach commissioners, forming the substances of the allegations.)

An active link to the video ("What's David Custin Hiding?") was retrieved from the following address: <https://www.facebook.com/MiamiBeachOutlook/videos/1169038596439478/> The video was published by Steve Cody.

On Nov. 16, 2015, documents were retrieved from the Division of Elections website regarding the political action committee Relentless for Progress, showing the PAC was created on or about March 3, 2015, and was closed or disbanded on Sept. 30, 2015. The documents show that Miami Beach Comm. Jonah Wolfson was its chairman, and that Jose Riesco served as treasurer. Additional records detailed contributions and expenditures.

These records showed that slightly more than \$1.4 million was raised between March and August 2015, and that an identical amount was expended before its closure. Among the expenditures were two transfers in the amounts of \$80,000 and \$83,000 – made on May 28 and September 2 respectively – to another group called Citizens for Ethical and Effective Leadership. This organization was researched on the DOE website, and records identified its treasurer and chairman as Daniel Cifuentes of Miami. The records further identified Jennifer Blohm of Tallahassee and Joey Galleno of Miami as registered agents.

On Nov. 17, COE reviewed contribution and expenditure records filed with the Division of Elections for the ECO Citizens for Ethical and Effective Leadership. The records showed that \$163,000 of the ECO's \$189,000 in contributions for 2015 originated with Relentless for Progress, the PAC led by former Miami Beach Comm. Wolfson, and that a majority of these funds – roughly two thirds – were paid out to Custin's firm, DRC Consulting Inc.

A review of previous years' expenditures for the ECO (2013, 2014) similarly showed a high percentage of expenditures made to DRC Consulting Inc., perhaps as much as 90 percent.

A review of 2014 lobbyist registration filings shows that Mr. Custin did properly disclose his relationship with Comm. Malakoff for this calendar year, which followed the 2013 political campaign season during which Custin's firm was retained by the Malakoff campaign.

Conclusion(s):

Based on the findings detailed above, it appears that David Custin did correctly fill out his lobbyist registration forms as it relates to Section 2-482(a)(4) requiring him to identify "any contractual relationship (paid or unpaid) with said city commissioners or personnel from 12 months preceding such person's commencement of service" – i.e., lobbying activity.

A review of the forms filed in 2015 shows that Mr. Custin disclosed relationships with Mayor Levine and Comm. Grieco, with respect to work performed by Custin and/or his firm, DRC Consulting. A review of forms filed in 2014 shows that Mr. Custin also reported a financial relationship with Comm. Joy Malakoff since he worked on her 2013 campaign. It should be noted that he would not be required to make any such disclosure in 2015.

With respect to the alleged contractual relationship with Comm. Wolfson, it was alleged Mr. Custin has ties to Comm. Wolfson's political action committee Relentless for Progress. Records show Comm. Wolfson is the chairman of this PAC. Public records also show that Relentless for Progress did not contract directly with Mr. Custin in 2015.

What the records do show is that Relentless for Progress made two expenditures totaling \$163,000 between June and September of 2015 to Citizens for Ethical and Effective Leadership (Citizens), a state-registered electioneering communications organization (ECO). This ECO is headed by Daniel Cifuentes, who serves as chairman and treasurer.

An attorney for Citizens for Ethical and Effective Government advised that there are “no other principal officers,” but that David Custin “has throughout the years provided political consulting and related services ... as have other vendors.”

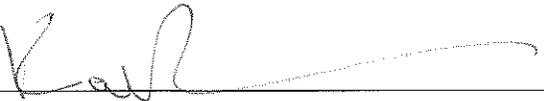
A review of the ECO’s spending records filed with the state Division of Elections shows that, for 2015, Relentless for Progress accounted for \$163,000 of Citizens’ \$189,000 in reported contributions, and that payments by Citizens to Custin’s firm, DRC Consulting, accounted for roughly two-thirds of all expenditures made in 2015 – or \$118,524.92.

While the above review shows that Comm. Wolfson’s PAC made sizeable contributions to another political entity, Citizens, and that Citizens subsequently engaged Mr. Custin’s services through DRC Consulting, it is, at best, debatable as to whether Mr. Custin would be required to disclose this relationship, given the plain language on the lobbyist registration form. He did provide services for Citizens, but Jonah Wolfson is not an officer in that entity.

The overall review of the registration forms shows that Mr. Custin was responsive with respect to his relationships with Mayor Levine and commissioners Malakoff and Grieco.

Given this, it does not appear Mr. Custin would have had any reason to hide any similar such relationship with Comm. Wolfson, if indeed he felt that such a relationship existed.

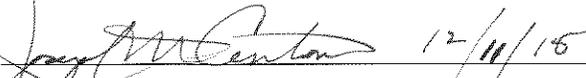
After discussion with the COE Advocate, it was determined that there is no basis to file an ethics complaint against Custin, accordingly, this matter is closed with no further action.



Karl Ross, COE Investigator



Michael Murawski, Advocate

 12/11/15

Joseph Centorino, Executive Director