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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

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DATE COMPLAINT FILED: April 18, 2003

DATE OF NOTIFICATION: April 24, 2003

DATE ACTIVATED: August 6, 2003

EXPIRATION OF STATUTE OF LIMITATIONS:
October 16, 2007

COMPLAINANT:

Kenneth F. Boehm, Chairman
National Legal and Policy Center

RESPONDENTS:

Alfred C. Sharpton
Rev. Al Sharpton Presidential Exploratory
Committee (a/k/a Sharpton 2004) and
Luis A. Miranda, Jr., as treasurer¹

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(2)(A)
2 U.S.C. § 431(2)(B)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 433(a)
2 U.S.C. § 434(a)(3)
11 C.F.R. § 100.72
11 C.F.R. § 100.131
11 C.F.R. § 101.1(a)
11 C.F.R. § 104.3(a)
11 C.F.R. § 104.3(b)

INTERNAL REPORTS CHECKED:

Federal Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ The complaint named and the Commission notified the Rev. Al Sharpton Presidential Exploratory Committee as the respondent committee in this matter. According to the response, the respondent committee later "was transformed to a campaign committee, re-named, Sharpton 2004." Because Sharpton 2004 appears to be the same committee that was notified, this Report, unless otherwise specified, hereinafter will refer to the respondent committee as "Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004) ('Sharpton Committee')." Luis A. Miranda, Jr. has continuously served as treasurer of the Sharpton Committee.

1
2 **I. INTRODUCTION**

3
4 The complaint in this matter alleged that the Rev. Al Sharpton Presidential Exploratory
5 Committee, identified therein as the “designated fund raising committee for Sharpton’s presidential
6 campaign,” violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing
7 to file timely a 2003 April Quarterly Report even though, according to the complaint, Alfred C.
8 Sharpton was a candidate for President.² The respondents maintained that, until April 29, 2003,
9 when Sharpton purportedly decided to become a candidate for President, they had no obligation to
10 file with the Commission. Based on the available information, it appears that Sharpton became a
11 presidential candidate no later than October 2002, creating obligations for Sharpton and his
12 principal campaign committee to register with the Commission and begin reporting thereafter.

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 **A. Law**

15 Under the Act, an individual becomes a candidate for federal office (and thus triggers
16 registration and reporting obligations under the Act) when his or her campaign exceeds \$5,000 in
17 either contributions or expenditures. 2 U.S.C. § 431(2). There is, however, an exception to these
18 thresholds for amounts raised and spent while an individual is “testing the waters” in order to decide
19 whether to become a candidate. In such cases, the Commission’s regulations provide that the terms
20 “contribution” and “expenditure” do not include funds received or payments made solely to
21 determine whether an individual should become a candidate. 11 C.F.R. §§ 100.72(a) and
22 100.131(a). Thus, an individual may raise or spend more than \$5,000 without becoming a candidate
23 if his or her activities are permissible “testing the waters” activities, which include, but are not

² The complaint referred to the respondents’ “quarterly report”; from the context, this Office infers that the report in question is the 2003 April Quarterly Report that, if required to be filed, was due on April 15, 2003. See 2 U.S.C. § 434(a)(3)(B).

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1 limited to, conducting polls, making telephone calls, and travel.³ *Id.* Only funds permissible under
2 the Act may be used for such activities. *Id.*

3 However, when an individual raises or spends more than \$5,000 and engages in activities
4 indicating that he or she has decided to run for a particular office, or in activities relevant to
5 conducting a campaign, the individual is deemed to have crossed the line from "testing the waters"
6 to "candidate" status under the Act. These activities include, but are not limited to: using general
7 public political advertising to publicize the individual's intention to campaign for Federal office;
8 raising funds in excess of what could reasonably be expected to be used for exploratory activities or
9 activities designed to amass funds to be spent after becoming a candidate; making or authorizing
10 written or oral statements that refer to the individual as a candidate for a particular office; or
11 conducting activities in close proximity to the election or over a protracted period of time.
12 11 C.F.R. §§ 100.72(b) and 100.131(b).

13 Achieving "candidate" status triggers registration and reporting requirements for the
14 candidate and for his or her principal campaign committee. Within 15 days of becoming a
15 candidate, the individual must file a statement of candidacy with the Commission that designates
16 the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a).
17 The principal campaign committee must file a statement of organization no later than ten days after
18 it has been designated by the candidate, 2 U.S.C. § 433(a), and must also, in the case of a principal
19 campaign committee for a presidential candidate, file timely financial disclosure reports as required
20 by 2 U.S.C. § 434(a)(3). All reportable amounts from the beginning of the "testing the waters"
21 period must be filed with the first financial disclosure report filed by such committee, even if the

³ The Commission has emphasized the narrow scope of this exemption to the Act's disclosure requirements. *See* Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (1985) ("The Commission has, therefore, amended the rules to ensure that the 'testing the waters' exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act . . .").

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1 amounts were received or expended prior to the current reporting period. *See* 11 C.F.R.
2 §§. 104.3(a) and (b).

3 **B. Analysis**

4 **1. Facts**

5 Sharpton reportedly announced at a press conference on August 20, 2001 that by November
6 2001 he would establish a presidential exploratory committee. *See* CNN.COM, *Sharpton*
7 *Announces Presidential Bid Committee*, (Aug. 20, 2001), at [www.cnn.com/2001/](http://www.cnn.com/2001/ALLPOLITICS/08/20/sharpton)
8 [ALLPOLITICS/08/20/sharpton](http://www.cnn.com/2001/ALLPOLITICS/08/20/sharpton); *see also* *Sharpton Explores Run for Presidency in 2004*,
9 *NEWSDAY*, Aug. 21, 2001; *Sharpton Eyes Presidency [sic] Exploratory Committee in the Works*,
10 *CHICAGO SUN-TIMES*, Aug. 21, 2001.⁴

11 In December 2001, Sharpton reportedly appeared at a conference in Atlanta entitled "The
12 State of the Black World," during which he reportedly discussed his presidential aspirations and
13 the formation of an exploratory committee for a possible campaign. *See* Simon Crittle, *President*
14 *Sharpton' [sic] Has Ring for Al*, *NEW YORK POST*, Dec. 2, 2001; C-SPAN.ORG, *Forum: Sharpton*
15 *Campaign Event, State of the Black World Conference* (Dec. 1, 2001) at [http://www.c-](http://www.c-spanstore.com)
16 [spanstore.com](http://www.c-spanstore.com). In February 2002, Sharpton reportedly commenced a "Getting to Know You
17 Tour," and traveled to New Hampshire and Iowa. *See* *The White House 2004 Sharpton: Taking*
18 *Stump Preach to NH and IA*, *THE HOTLINE*, Feb. 8, 2002; *see also* Evan Osnos, *NYC's Sharpton*
19 *Tests Iowa Clime: Activist Looks Carefully at Bid for Presidency*, *CHICAGO TRIBUNE*, Feb. 27,
20 2002. During his Iowa visit, Sharpton reportedly stated that he had not "officially" begun his race
21 for the Presidency, but he noted "I'm not trying to tell you that it's not on my mind. I'm very much

⁴ At this time, no exploratory committee was registered with the Commission. *See* 11 C.F.R. § 104.1(b) (an individual seeking federal office who has not yet attained candidate status, or the committee of such individual, may voluntarily register with the Commission). The reference by various media in 2001 to an "exploratory committee" apparently referred to a group of individuals who would advise Sharpton on whether to run.

1 considering it and certainly leaning that way. I was in New Hampshire last week, now Iowa.
2 These are important states.” Rob Borsellino, *Al Sharpton to Pay Political Visit*, DES MOINES
3 REGISTER, Feb. 25, 2002.

4 Disclosure reports filed with the Commission by Sharpton's Committee on April 29, 2003
5 include a 2002 Year End Report, which shows that the Committee had received in excess of
6 \$5,000 in contributions by August 2002. In September 2002, Sharpton's Committee held a
7 fundraiser in Washington, D.C. at the National Museum of Women in the Arts, and, according to
8 the Year End Report and the respondents' response to the complaint, spent approximately \$24,000
9 for the event.

10 In October 2002, *Al on America*, a book written by Sharpton “with Karen Hunter,” was
11 published. See Reverend Al Sharpton, *Al on America* (Kensington Publishing Corp. ed.).
12 Sharpton's book contains statements that unequivocally refer to himself as a candidate for President.
13 The title of Chapter One is “Mr. President.” On page 4, after listing his various roles in life and his
14 beliefs, Sharpton states: “It is on those qualities that I am seeking the Presidency of the United
15 States in 2004.”⁵ On page 7, Sharpton states: “I am running for president to finally put the issues
16 concerning most Americans onto the front burner.” On pages 17 and 18, Sharpton sets forth a
17 number of reasons that “I am running.” See also page 20 (“At least with me, for progressives and
18 liberals, I'm the only one in the race who, if you support me, will win you something I am
19 running to bring the liberal wing back to the Democratic Party”), page 23 (“I'm running to build the
20 Democratic Party, to strengthen it”) and page 24 (“I've gone all over this country over the last two

21 _____
⁵ All page citations are to the trade paperback edition of *Al on America*. A copy of the book is available in the Secretary's Office for the Commission's review.

1 years . . . people are hurting. I'm running for them. I represent them.")⁶

2 The Associated Press reported that, on January 3, 2003, Sharpton announced that he would
3 form an exploratory committee and file papers with the Commission on January 21, 2003. The
4 article quoted Sharpton as again declaring "I am running for president to finally put the issues
5 concerning most Americans on the front burner." Will Lester, *Outgoing House Democratic Leader*
6 *Gephardt, Civil Rights Leader Sharpton Take Step Toward Presidential Run*, ASSOCIATED PRESS,
7 Jan. 4, 2003. On January 21, 2003, Sharpton filed papers with the Commission registering the Rev.
8 Al Sharpton Presidential Exploratory Committee.⁷ Sharpton did not file a statement of candidacy at
9 that time.

10 During that month and the next, Sharpton reportedly appeared at events that were billed as
11 candidate forums. Sharpton reportedly attended a dinner sponsored by NARAL Pro-Choice
12 America, appearing with five Democratic presidential candidates. See *White House 2004 The Field:*
13 *Start Your Over-Analysis Now!*, THE HOTLINE, Jan. 22, 2003. In February 2003, Sharpton was
14 quoted as reportedly asserting that he didn't "intend to sit out anything in any way. I think if you're
15 going to run, you run everywhere If you cannot do that, I don't think you're seriously running
16 for the president [*sic*] of the United States." Kathie Obradovich, *Sharpton Will Campaign All Over*,
17 QUAD CITY TIMES NEWSPAPER ONLINE, Feb. 10, 2003, at <http://qctimes.com>. Also in February,
18 Sharpton reportedly attended the Democratic National Committee's winter meeting, at which he was

⁶ In some statements and appearances following his book's publication, Sharpton continued to characterize his efforts as exploratory. For example, when interviewed about his book, he reiterated that he was "seeking" the presidency, but also suggested that he had not yet made a firm decision to run. Sharpton reportedly stated, "I am not officially declared as a candidate . . . I am saying that I clearly want to run if we can put the campaign together . . ." Clarence Page, *Is Sharpton Running? Well, Sort of, Maybe*, NEWSDAY, Oct. 18, 2002. Further, during an appearance on Fox News, Sharpton reportedly referred to being "in the race" but cautioned that he had "not decided finally" whether to run. *Presidential Hopeful Al Sharpton Comments on Gore Decision Not to Run*, FOX NEWS: YOUR WORLD, Dec. 16, 2002. On NBC's *Meet the Press* on January 13, 2003, Sharpton reportedly stated that "on January 21, 2003, [he] would be filing the exploratory committee" but that he intended to make his formal declaration later, in the early spring. *Interview: Reverend Al Sharpton Discusses 2004 Presidential Race*, NBC NEWS: MEET THE PRESS, January 12, 2003.

⁷ In the filing, the word "campaign" is crossed out in the phrase "principal campaign committee" and replaced with the word "exploratory."

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1 invited to speak, along with six Democratic presidential candidates (*see White House 2004 The*
2 *Field: The Winter Meeting Of Dems' Discontent*, THE HOTLINE, Feb. 19, 2003), and in early April
3 2003, he reportedly attended a Children's Defense Fund event to which the "nine FEC recognized"
4 Democratic presidential candidates (including Sharpton) were invited. *White House 2004 CDF*
5 *Forum: Candidates Trying Hard Not to Make News?*, THE HOTLINE, April 10, 2003.

6 The due date for filing an April Quarterly Report is April 15, 2003. According to the news
7 article attached to the complaint, during an appearance at George Washington University on April
8 17, 2003, Sharpton reportedly stated that he would not file a quarterly financial report with the
9 Commission until he made an official announcement of his intent to run later in the spring. *See*
10 *Steve Miller, Sharpton Won't File With FEC*, WASHINGTON TIMES, April 18, 2003. The article
11 quotes Sharpton as reportedly saying "we are in the late stages of the exploratory phase. We will do
12 whatever is required when we make an official announcement . . . next we will get together our
13 campaign staff." *Id.* The article also states that Sharpton's aides reportedly said that because the
14 campaign was only exploratory, a quarterly report did not have to be filed, citing the advice of
15 Sharpton's lawyers. *Id.*

16 The press reports of Sharpton's comments on April 17, 2003 apparently spurred the
17 complaint in this matter. The complaint, filed April 18, 2003, alleged that Sharpton was already a
18 candidate and that his failure to file an April Quarterly Report was therefore illegal. On April 29,
19 2003, the Sharpton campaign electronically filed a 2002 Year End Report, a 2003 April Quarterly
20 Report, and Sharpton's statement of candidacy, which designated "Sharpton 2004" as his principal
21 campaign committee.⁸ By the end of the last quarter of 2002, according to the Sharpton
22 Committee's Year End Report, Sharpton had raised \$24,800 and spent \$24,076.35. The 2003

⁸ The exploratory committee did not file an amended statement of organization renaming itself "Sharpton 2004" until July 10, 2003.

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1 referring to himself as a presidential candidate in his book, Sharpton became a candidate for
2 purposes of the Act when his book was published. Accordingly, Sharpton should have filed his
3 statement of candidacy designating his principal campaign committee no later than 15 days after
4 the publication of his book, and Sharpton's Committee should have filed timely a statement of
5 organization, as well as filed timely its 2002 Year End and 2003 April Quarterly Reports.⁹

6 Therefore, for the reasons stated above, this Office recommends that the Commission find
7 reason to believe that Alfred C. Sharpton violated 2 U.S.C. § 432(e)(1) and 11 C.F.R.
8 § 101.1(a) and that Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004)
9 and Luis A. Miranda, Jr., as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(3).¹⁰

10 **III. CONCILIATION AND CIVIL PENALTIES**

11

12

⁹ In April 2003, in response to questions from the Sharpton Committee, an analyst in the Reports Analysis Division ("RAD") advised the Committee to file separate 2002 Year End and 2003 April Quarterly Reports because it was not clear whether Sharpton had made statements that triggered candidate status and, if so, when he had done so. The Committee filed both reports on April 29, 2003. Even though 11 C.F.R. §§ 104.3(a) and (b) require funds received and spent during the exploratory period to be reported in the first report filed by a candidate's principal campaign committee, this Office does not believe that the filing of two reports, instead of one, raises any additional concerns because these reports were filed on the same day.

¹⁰ The facts recounted in this Report raise two additional questions. First, did Sharpton cross the line from "testing the waters" to active candidacy at any time prior to publication of his book in October 2002? One report indicated that Sharpton's appearance at the "State of the Black World" conference in Atlanta in December 2001 was billed as the "Sharpton for President Campaign 2004: Which Way Black America?" <http://www.gwu.edu/~action/2004/sharpton/sharp.org.html>. Another indicated that by mid-June 2002, Sharpton's campaign had established a finance committee, chosen operatives in 30 states, and started an Internet web site. *Id.* These reports, if true, might indicate that Sharpton crossed the line into active candidacy well before October 2002. However, these accounts appeared not in mainstream news media but on what appears to be an individual's personal website about the presidential campaign; the site does not provide sources for these accounts and this Office could not locate any similar news reports.

Second, even if Sharpton remained in a "testing the waters" mode until October 2002, did his 2002 Year End Report accurately reflect all of his "testing the waters" expenses, and all contributions for those expenses? The February 2002 reports in the *Hotline*, the *Chicago Tribune*, and the *Des Moines Register*—which describe Sharpton as all but admitting that he was already "testing the waters"—indicate that the 2002 Year End Report, which reports no disbursements earlier than August 2002, may not be complete. See also Joel Siegel, *Rev. Al's On the Road and Off the books*, NEW YORK DAILY NEWS, MAY 25, 2003 at www.nydailynews.com/front/story/86703p-78922.html (reporting that the Sharpton Committee might not have properly reported campaign-related travel and other expenses); see also Michael Slackman, *Religion and Politics Blur with Sharpton in Pulpit*, NEW YORK TIMES, Oct. 5, 2003 (raising questions about reported "lack of boundaries" between Sharpton's candidate status and his receipt of gifts and funds in his capacity as a religious leader).

In the interest of quick resolution of this relatively straightforward complaint, this Office makes no recommendations concerning this issue. This does not preclude further consideration of the issue, if appropriate, in (continued from previous page) response to another complaint, at the Commission's direction, or in an audit context should Sharpton apply for and receive public financing for his campaign.

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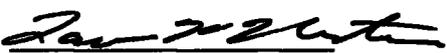
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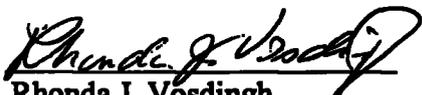
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IV. RECOMMENDATIONS

1. Find reason to believe that Alfred C. Sharpton violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a).
2. Find reason to believe that Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004) and Luis A. Miranda, Jr., as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(3).
3. Enter into conciliation with Alfred C. Sharpton and Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004) and Luis A. Miranda, Jr., as treasurer, prior to a finding of probable cause to believe.
4. Approve the attached Factual and Legal Analysis.
5. Approved the attached joint Conciliation Agreement.
6. Approve the appropriate letter.

10/30/03
Date

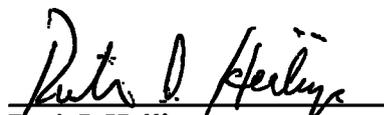

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Susan L. Lebeaux
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Ruth I. Heilizer
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Attachments:

1. Factual and Legal Analysis
2. Conciliation Agreement

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