



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF P/R # 3312

DATE FILMED 7-10-92 CAMERA NO. 4

CAMERA MAN E.E.S.

92040905200

0661247

Philip S. Pepe, Jr.  
Westwater Commons • 380 North Broadway  
Yonkers, New York 10701  
(914) 968-6303 • Fax (914) 376-7118

MUR 3312

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

MAILED CERTIFIED - R.R.R. # P 710 691 887.

May 15, 1991

TO: THE FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

RE: FEC I.D. #COO239137 - Dan Daly For U.S. Senate Committee

I have recently been made aware that an outstanding debt currently due me by the above referenced Committee has been noted by the Committee in their January 8, 1991 F.E.C. filing as compromised or waived.

I am writing at this time to contest that inaccurate information and to clarify the information filed with you.

Under DEBTS AND OBLIGATIONS - Page 4 of 6: The filing notes

Philip S. Pepe, Jr. - shows \$15,277.00 - under Outstanding Balance Beginning This Period - and in the next column, the Committee recorded \$5,735.50 as "an agreed upon reduction."

There is not now, nor has there ever been an agreement or any understanding to reduce, waive or diminish that body of debt. That amount is still outstanding to me as of this date.

Extensive efforts have been made to collect these funds from the Daly Committee. Formal notification, in the form of bills and correspondence have been made to the Daly Committee on a number of occasions directly within the time frame of the subject filing - September-December, 1990. Additional notifications and statements have been filed throughout 1991.

Please amend your records to reflect the entire amount of \$5,735.50 as clearly outstanding at the time of the filing and if there have been subsequent filings by the Daly Committee, as currently outstanding as of this writing.

You may feel free to contact me if there is further information required in this matter.

Notarized and Sworn to as per:

*Latreicia A. Cline*

LATREICIA A. CLINE  
NOTARY PUBLIC, State of New York  
No. 4237883  
Qualified in Westchester County  
Commission Expires February 28, 1993

Sincerely,  
*Philip S. Pepe Jr.*

Philip S. Pepe, Jr.  
(Former Campaign Manager  
Daly for U.S. Senate.)

9204090520  
RECEIVED  
FEDERAL ELECTION COMMISSION  
MAY 15 1991  
91 MAY 22 PM 3:54

91 MAY 22 PM 3:54  
RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 28, 1991

Philip S. Pepe, Jr.  
Westwater Commons  
380 North Broadway  
Yonkers, New York 10701

RE: MUR 3312

Dear Mr. Pepe:

This letter acknowledges receipt on May 22, 1991, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Dan Daly for US Senate Committee and Martha Allen Havn, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3312. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Procedures

92040905202



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

May 28, 1991

**Martha Allen Havn, Treasurer  
Dan Daly for US Senate Committee  
500 Boylston Street  
Boston, MA 02116**

**RE: MUR 3312**

**Dear Ms. Havn:**

The Federal Election Commission received a complaint which alleges that Dan Daly for US Senate Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3312. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you as treasurer in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

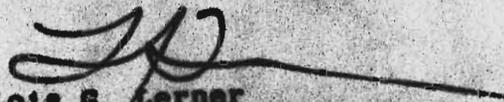
92040905203

If you have any questions, please contact Noriega James, the staff member assigned to this matter, at (202) 376-6200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:

  
Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Daniel W. Daly  
27 Mast Mill Road  
Hingham, MA 02043

92040905204

66-1583  
RECEIVED  
FEDERAL ELECTION COMMISSION  
MAIL ROOM

**Dan Daly** 91 JUN 17 AM 9:38

U.S. SENATE

June 14, 1991

VIA FEDERAL EXPRESS

Mr. Noriega James  
Federal Election Commission  
999 E Street, N.W.  
Room 657  
Washington, DC 20463

RE: MUR 3312

Dear Mr. James:

This letter is in response to your correspondence dated May 28, 1991, reference #MUR3312. Simply stated, the issue is whether or not living expenses are owed to Philip Pepe during the time he was Operations Manager for The Dan Daly for U.S. Senate Committee. Our stand is, and has always been, that no living expenses were owed during his verbal contract prior to the 1990 primary. There is no contract, nor was there ever any contract, written or verbal, which included or implied such a commitment.

This has been made clear to Philip Pepe in numerous telephone conversations and in written correspondence.

Any report to your office that indicates that reimbursement was due for this matter is incorrect. Philip Pepe's invoice indicating this living expense reimbursement was owed was not reviewed by me and was posted as an accounts payable as a result of clerical error. It was removed from the accounts payable in the appropriate fashion on the subsequent FEC filing. This should not in any way be interpreted as a change in our position, which has been consistent. That position is that there was never any contract of any nature committing us to pay living expenses for Philip Pepe during his time as Operations Manager prior to the primary election.

You should be aware that substantial personal funds have been invested by the candidate to the campaign, many of which have gone to compensate and to reimburse, when appropriate, Mr. Pepe. We consider the claim a regretful one with no basis in fact.

Prior to the Massachusetts Republican State Convention, Mr. Pepe was retained from 2/13/90-3/11/90. The purpose for his hiring was one which the campaign considered to be important in completing our pre-convention plans. Since this hiring was unusual for the Committee, we did agree to pay for a certain amount of living expenses for this short, condensed time period.

THE DAN DALY FOR U.S. SENATE COMMITTEE  
500 BOYLSTON STREET, BOSTON, MASSACHUSETTS 02116 (617) 262-2800  
Paid for by The Dan Daly for U.S. Senate Committee

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
91 JUN 17 PM 3:45

92040905205

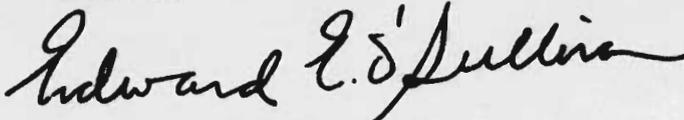
Mr. Pepe was reimbursed for \$1000, representing living expenses for that time without hesitation. However, after the convention and when appropriate primary planning could resume, Mr. Pepe moved back to New York.

The Committee was comfortable with Mr. Pepe being on our team and we chose to explore a longer-term (4 1/2-month) relationship. For his efforts as our Operations Manager, Mr. Pepe was paid \$1650 per week, plus normal reimbursable expenses, including moving expenses. In order to assist Mr. Pepe in his relocation to Boston, the Committee agreed to help defray living expenses by paying \$200 per month, in addition to his annualized salary. The reason for this was that Mr. Pepe claimed he could not secure housing for \$1000 per month and chose to rent at a \$1400 per month rate.

However, there was never any agreement to pay for all living expenses. If there is any clerical error in the Committee's FEC filing, it is as a result of Mr. Pepe submitting personal invoices without approval by me to a volunteer who served as the Committee clerk. Mr. Pepe has created a paper trail of invoices to the Committee, seeing them posted on the FEC reports and now attempting to collect more money based on his own unfounded claims.

The Committee maintains that our debt to Mr. Pepe has been settled. I am available to discuss and to correct any technical filing errors on any Committee FEC reports and can be reached at 617-523-3636.

Sincerely,



Edward E. O'Sullivan  
Chairman

92040905206

**Philip S. Pepe, Jr.**  
Westwater Commons • 380 North Broadway  
Yonkers, New York 10701  
(914) 968-6303 • Fax (914) 376-7118

06C 1558  
RECEIVED  
FEDERAL ELECTION COMMISSION  
MAIL ROOM

91 JUN 17 AM 11:31

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

Mailed Certified - RRR # P 710-692-783

June 12, 1991

Mr. Lawrence M. Noble  
General Counsel  
Federal Election Commission  
999 E. Street N.W.  
Washington, D.C. 20463

In Re: MUR 3312

Dear Mr. Noble;

I appreciate your letter of May 28, 1991 assigning an MUR, as above to the matter of my complaint against the Daly For U.S. Senate Committee.

I am now aware through your letter and subsequently through a conversation with Retha Dixon, that supplementing materials may and should be added to this case.

Those materials are attached for that purpose and are identified below. My signing and swearing on this face page indicates that I am swearing to the contents of each and every one of the materials attached and noted here.

Attached are:

- 1 - May 20, 1990 letter of agreement covering terms of contract and addressed to Campaign Chairman Edward O'Sullivan. Item # 3 clearly spells out terms for housing cost reimbursal. It references an earlier and separate agreement which endured for one month from Feb. 12-March 12, 1990, when I was hired for that time period. That agreement called for rent reimbursal for the full amount of rent - \$1,000. plus brokers fee. The contract ended after the Republican Convention, rent costs were reimbursed as per these terms and I returned to New York. After a hiatus, I was asked to return to manage the Campaign. This present agreement picks up at that time.
- 2 - Sept. 10, 1990 - Bill from me to Daly for U.S. Senate covering an early air fare plus all the on-site expenses - totals \$6,367.00
- 3 - Sept. 17, 1990 - Letter from me to Campaign Chair Ed O'Sullivan re-capping that final consulting fees and on-site expenses would be taken as a 60-day receiveable because the Campaign was in financial distress.
- 4 - Oct. 9, 1990 - bill for consulting services-totals \$8,910.00 and cites 60-day receiveable terms.
- 5 - Daly for U.S. Senate FEC filing of 10/12/90 notes that \$15,277.

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7

91 JUN 17 PM 3:39  
RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

Pepe to FEC 6/12/91 cont'd

is owed to me. This figure is the total of the Sept. 10 invoice for \$6,367.00 and the October 9, 90 bill for consulting fees of \$8,910. In my view, this is where Daly acknowledges the debt, which is consistent with my position regarding the terms of the agreement.

- 6 -December 10, 1990 - 2 page letter from me to Campaign Chair Ed O'Sullivan. In telephone conversation noted in the body of the letter, O'Sullivan had begun to intimate verbally that perhaps the Campaign Committee would take the position that the debt was not due. My letter was to remind him of the terms of the agreement.
- 7 -December 18, 1990 letter to Kelley Martin who worked for Daly and who seemed for a period of time to be filling in for former Treasurer Martha Hman who had either left or was about to leave and there was some transitioning in responsibilities regarding management of debts and the cutting of checks. Checks to me were signed by Kelley, in the main.

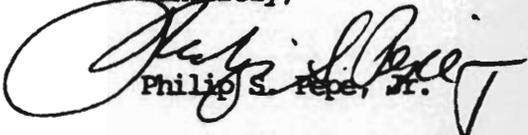
The above 7 items comprise the most important documentation in this matter prior to the January 8, 1991 FEC filing by the Daly Committee. I can offer no plausible or valid explanation for their filing at that time and noting that the contested \$5,735.50 was obviated through "an agreed upon reduction."

The documents submitted herein make it clear that the Committee was well aware of the continued existence of the debt. There was never any agreement to waive, diminish or reduce on my part. Nor, was there any such agreement proffered by them to me. The Daly Committee filing on January 8, 1991, with information that is inaccurate, or worse, falsely filed, can only be construed as part of a broader attempt to try to negate a due debt which they are either unwilling or unable, or both, to pay.

I should note that after the January 8, 1991 filing, which I became aware of around the beginning of May, there was continued correspondence with the Daly Committee, and invoices submitted, which support the original terms and the existence of the debt. Should the FEC require these documents, they would be made available to you, and again, in sworn to form.

Thank you for your attention in this matter.

Sincerely,

  
Philip S. Pepe, Jr.

Notarized and Sworn to, as per:

*before me this 12th  
day of June, 1991.  
Latreicia A. Cline*

LATREICIA A. CLINE  
NOTARY PUBLIC, State of New York  
No. 4757383  
Qualified in Westchester County  
Commission Expires February 28, 1993

92040905208

Philip S. Pepe, Jr.  
Westwater Commons @ 300 North Broadway  
Yonkers, New York 10701  
(914) 968-6383 • Fax (914) 476-1052

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

May 20, 1990

Edward O'Sullivan, Esq.  
The Choate Group  
Exchange Place  
Boston, Massachusetts

Dear Ed;

This can serve as a recapitulation of our conversation regarding my work on behalf of Daly for U.S. Senate. You may wish to work these elements into a letter of agreement in your own words.

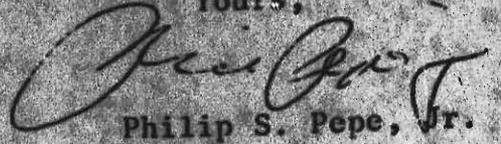
- 1.) This contract begins May 7, 1990
- 2.) I will work in the capacity of an independent consultant. Weekly compensation will be at \$1,650. per week. Portions of a week, if any, can be calculated on a per diem basis - based on a 5 day work week.
- 3.) Housing - Costs for same were set at last contract on the basis on an actual monthly rent of \$1,000. per month for rent and associated rental costs - real estate fees, etc. That accomodation was not available, and despite efforts to find comparable housing at or under that figure, it was not possible. In an effort to help, I agree to pay half of all such costs over the \$1,000. base; Daly for U.S. Senate to pay an equal half. It is expected that these portions will be in the \$200. per month range for each of us.
- 4.) I will pay all on-site costs - phone, travel, meals, etc. and all travel during the term of this contract to New York and back. Costs to arrive and depart will be borne by Daly for U.S. Senate.
- 5.) Win Bonus - Any figure you set, I will agree to. This is less a financial and more a symbolic incentive.
- 6.) Severance - Not knowing of this exists or not in other comparable contracts, but if it does, parity with those contracts will be satisfactory. If it does not exist, then the matter is moot.
- 7.) This contract endures until September 20. It may be extended at or prior to that time. It may be terminated by either side with proper notice.

92040905209

8.) Confidentiality - All matters pertaining to the  
Daly for U.S. Senate Campaign, the candidate, his staff  
associates or family are and will be treated as strictly  
confidential during the term of this contract and after.

I believe this covers everything. If I have omitted  
anything, please feel free to include.

Yours,



Philip S. Pepe, Jr.

92040905210

Philip S. Pepe, Jr.  
Westwater Commons • 380 North Broadway  
Yonkers, New York 10701  
(914) 938-0303 • Fax (914) 478-1052

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

September 10, 1990

TO: DALY FOR U.S. SENATE COMMITTEE

RE: EXPENSES INCURRED.

Travel to Boston - Round trip.  
April 30, 1990 - airfare \$216.00  
cab 12.00  
parking 4.50

\$232.50

\$232.50

May 6 - September 18  
(inclusive) - on site expenses  
in Boston.

Moving, fees - 375.00  
May - 1084.50  
June - 1200.00  
July - 1200.00  
August - 1200.00  
Sept. - 1075.00

\$6134.50

\$6134.50

TOTAL

\$6367.00

92040905211

Philip S. Pepe, Jr.  
Westwater Commons • 288 North Broadway  
Yonkers, New York 10701  
(914) 988-8303 • Fax (914) 476-1052

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

September 17, 1990

Edward O'Sullivan  
The Choate Group  
Exchange Place  
53 State Street  
Boston, Mass. 02109

Dear Ed,

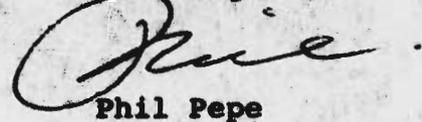
We both agree that there is not the need to have anything major and formal in writing, but this will serve to re-cap our conversation of this morning. I appreciate the opportunity to clarify our thinking on this.

Consulting fees due me will be considered a 60 day receiveable. The same should apply to expenses which I fronted and held in an effort to lighten the load during critical time periods over the past few months. In the main, those have now been filed, although there will be some relatively minor additions that are awaiting compilation.

In regard to other outstanding bills due others, you know that I am anxious that Gazette Press and Thomas Kiley, Esq. are paid off in a first round. In both cases they put out funds for services and in both my name has some involvement.

Thanks for all you have done to date.

Best Regards,



Phil Pepe

92040905212

Philip S. Pepe, Jr.  
Westwater Commons • 200 North Broadway  
Yonkers, New York 10701  
(914) 908-6303 • Fax (914) 476-1052

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

October 9, 1990

TO: DALY FOR U.S. SENATE COMMITTEE

For Professional Services Rendered:

2 Weeks ending 8/28/90	\$3,300.
2 Weeks ending 9/11/90	\$3,300.
* 2 Weeks ending 9/25/90	<u>\$2,310.</u>
Total -	\$8,910.

\*( Week ending 9/16/90 - \$1,650.; 9/17 & 9/18 at per diem - \$660.)

Above taken as a 60 receiveable commencing 9/18/90.

92040905213

# CONTRIBUTIONS AND DISBURSEMENTS

For Candidates for Federal Office  
(Reporting Party)

SECRETARY OF THE SENATE

OCT 15 AM 9:48

**NAME OF CANDIDATE OR PARTY**  
 The Day Daily for US Senate Committee

**ADDRESS (number and street)**  Check if different than previously reported.  
 500 Baylston Street

**CITY, STATE and ZIP CODE**      **STATE/DISTRICT**  
 Boston MA 02116

**3. FEC IDENTIFICATION NUMBER**  
 C00239137

**4. IS THIS REPORT AN AMENDMENT?**  
 YES     NO

### 4. TYPE OF REPORT

- April 15 Quarterly Report
  - July 15 Quarterly Report
  - October 15 Quarterly Report
  - January 31 Year End Report
  - July 31 Mid-Year Report (Pre-election Year Only)
  - Termination Report
- 10th day report preceding \_\_\_\_\_**  
 election on \_\_\_\_\_ in the State of \_\_\_\_\_
- 10th day report following the General Election on \_\_\_\_\_**  
 in the State of \_\_\_\_\_
- This report contains:  
 Primary Election     General Election     Special Election     Recall Election

### SUMMARY

	COLUMN A This Period	COLUMN B Prior Period
<b>6. Reporting Period</b> <u>8-30-90</u> through <u>9-30-90</u>		
<b>6. Net Contributions (other than loans)</b>		
(a) Total Contributions (other than loans) (from Line 11)(b)	\$ 4,907.00	\$ 151,742.00
(b) Total Contribution Refunds (from Line 20)(b)	\$ 2,175.00	\$ 2,175.00
(c) Net Contributions (other than loans) (subtract (b) from (a))	\$ 2,732.00	\$ 149,567.00
<b>7. Net Operating Expenditures</b>		
(a) Total Operating Expenditures (from Line 17)	\$ 52,212.46	\$ 599,784.10
(b) Total Offset to Operating Expenditures (from Line 14)	\$ 407.46	\$ 3,694.47
(c) Net Operating Expenditures (subtract Line 7(b) from 7(a))	\$ 51,805.00	\$ 596,089.63
<b>8. Cash on Hand at Close of Reporting Period (from Line 27)</b>	\$ 12,656.41	
<b>9. Debt and Obligations Owed TO the Committee</b> <small>(Report on on Schedule C and/or Schedule D)</small>	-	
<b>10. Debt and Obligations Owed BY the Committee</b> <small>(Report on on Schedule C and/or Schedule D)</small>	\$ 547,974.30	

For further information contact:  
 Federal Election Commission  
 900 E Street, NW  
 Washington, DC 20460  
 Toll Free 800-424-9530  
 Local 202-576-3100

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

**Type or Print Name of Treasurer**  
 Martha A. Hawn

**Signature of Treasurer**      **Date**  
 Martha A. Hawn      10/12/90

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. 9437g.

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90020161390



Philip S. Pepe, Jr.  
Westwater Commons • 200 North Broadway  
Yonkers, New York 10701  
(914) 968-6303 • Fax (914) 476-1652

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

December 10, 1990

Edward O'Sullivan  
The Choate Group  
Exchange Place  
53 State Street  
Boston, Mass. 02109

Dear Ed,

Thank you for the conversation of a week ago. As per your message of last week, consulting fee balance has been received. Please know that I appreciate your help in this matter and your position in it.

Referencing the matter of living expense reimbursement:

- \* My letter to you of May 20, 1990, setting forth the terms of our agreement refers, item #3, to housing and refers to the agreement of February-March, in which there was likewise a provision for same to be reimbursed by Daly for U.S. Senate. The rent then, was \$1,000. for the month and it was reimbursed to me. This present paragraph merely says that the overage, in excess of that figure will be split evenly by both parties. I note clearly, that "in an effort to help," I will cover half for my part. That suggests clearly that my help is in regard to a financial responsibility that is, in the main, not being borne by me. Any other meaning would make that statement nonsensical. It really says that the terms of the prior agreement stand in this instance and that I am helping to ease an increased cost.
- \* There was never any question in my mind what I felt the deal needed to contain. The basic elements of the letter of agreement are found in my notes to myself of our conversations of May 1 & 2 following my trip to Boston to meet with you and Dan on Monday, April 30.

I know the terms came up in conversation with Jim Murphy and also with Martha Hawn early on, when I gave her a copy of the May 20 letter of agreement. I had reason to believe there was clarity on everyone's part.

92040905216

I know that finances are in a delicate state at this time. I think you know that I would be glad to help in any way I could, but this present matter has to stand as agreed to. It simply is outside of the realms of reasonableness or affordability to do otherwise.

We have worked through tougher problems together, and your point of view and good sense of balance have always helped. Let's speak this week when you have a moment. I may be travelling part of the time, but I'm sure we will touch base with a couple of tries.

Best Regards,

A handwritten signature in cursive script, appearing to read "Paul", written in dark ink.

92040905217

Philip S. Pepe, Jr.  
Westwater Commons • 300 North Broadway  
Yonkers, New York 10701  
(914) 938-6303 • Fax (914) 478-1052

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

December 18, 1990

Kelley Martin  
Daley for U.S. Senate  
500 Boylston Street  
2nd Floor  
Boston, Mass 02116

Dear Kelley,

Feed any stray cats lately?

Referencing you check detail and checks of 11/30/90/  
First, thanks for the checks!

I know you inherited a lot of paperwork, so this may  
serve to clarify some historic stuff.

My fall billing showed "amounts over \$1,000." as  
per your detail. The amounts I showed, reflected the  
Daley for U.S. Senate share ( and an equal amount, not  
shown, was my share and paid by me ) over \$1,000 + the \$1,000.

For example, May '90 - \$1,048. The \$48. indicates  
that the overage was \$96. June -August '90 inclusive,  
shows \$1,250. indicating that the actual amount was \$1,500.  
and that \$250. was the share over.

This need not be addressed now, but I wanted to make  
you aware of the figures and how they were arrived at.  
I deposited your check of \$399. for the moment. Ed and  
I are speaking to clarify the major matter and should  
have resolution shortly. I phoned him today behind a  
memo of about ten days ago.

I know you are busy, I hope you and Bob, and the whole  
Daley gang are well. If I don't get around to getting our  
Christmas cards en masse, a Merry Christmas and best wishes  
for a Happy and Prosperous New Year for you and your baby!

Best Regards,



92040905218



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20543

August 16, 1991

Philip S. Pepe  
Westwater Commons  
380 North Broadway  
Yonkers, New York 10701

RE: MUR 3312

Dear Mr. Pepe:

This letter acknowledges receipt on June 17, 1991, of a supplement to the complaint you filed on May 24, 1991, against the Dan Daly for U.S. Senate Committee and Martha Allen Hawn, as treasurer. The respondents have been sent copies of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Lawrence N. Noble  
General Counsel

A handwritten signature in black ink, appearing to read "Lerner", written over a horizontal line.

BY: Lois G. Lerner  
Associate General Counsel

92040905219



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

August 16, 1991

Martha Allen Hawn, Treasurer  
Dan Daly for U.S. Senate Committee  
500 Boylston Street  
Boston, MA 02116

RE: MUR 3312

Dear Hawn:

On May 28, 1991, you were notified that the Federal Election Commission received a complaint from Philip S. Pepe alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 17, 1991, the Commission received additional information from the complainant pertaining to the allegations in the complaint. These materials were not previously forwarded to you due to administrative oversight. Enclosed is a copy of this additional information.

If you have any questions, please contact James Brown, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

A handwritten signature in black ink, appearing to read "Lois G. Lerner", written over a horizontal line.

BY: Lois G. Lerner  
Associate General Counsel

Enclosure

92040905220

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SECRETARIAT

91 OCT 21 AM 11:54

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR #3312  
DATE COMPLAINT RECEIVED  
BY OGC: 5/22/91  
DATE OF NOTIFICATION TO  
RESPONDENTS: 5/28/91  
STAFF MEMBER: J. Albert Brown

**COMPLAINANT:** Philip S. Pepe, Jr.

**RESPONDENTS:** Dan Daly for U.S. Senate Committee and  
Martha Allen Hawn, as treasurer

**RELEVANT STATUTES:** 2 U.S.C. § 434(b)(8)  
11 C.F.R. § 104.3(d)  
11 C.F.R. § 104.11  
11 C.F.R. § 104.14(d)  
11 C.F.R. § 116.10(a)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. GENERATION OF MATTER**

This matter was generated by a complaint filed by Philip S. Pepe, Jr. ("Complainant"), against the Dan Daly for U.S. Senate Committee and Martha Allen Hawn, as treasurer ("the Committee or Respondents").<sup>1</sup> Dan Daly was an unsuccessful candidate in the 1990 Massachusetts Senate Republican primary election. The Complainant alleges that Respondents' 1990 Year End Report failed to accurately reflect a Committee debt owed to him.

**II. FACTUAL AND LEGAL ANALYSIS**

Pursuant to 2 U.S.C. § 434(b)(8) of the Federal Election

1. A supplement to the original complaint was filed with the Commission on June 17, 1991. Attachment I.

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Campaign Act of 1971, as amended ("the Act"), committees are required to disclose continuously the amount and nature of all outstanding debts and obligations owed by or to the committee. See 11 C.F.R. §§ 104.3(d), 104.11 and AO 1988-44. The Commission has repeatedly concluded that disputed debts should be disclosed when the reporting entity has received goods or services, has been billed for such services but has not paid the full amount owed, and when the cost for such services is in dispute. See NUR 3027; AO 1976-85. In fact, the Commission codified its position by enacting 11 C.F.R. 116.10, which became effective on October 3, 1990. This provision explicitly requires political committees to report disputed debt in accordance with 11 C.F.R. §§ 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Section 116.10 goes on to delineate that until the dispute is resolved, the political committee shall disclose the following: any amounts paid to the creditor; any amount the political committee admits it owes; and the amount the creditor claims is owed. Finally, Section 116.10 provides that the political committee may also note on its reports that such disclosure does not constitute an admission of liability or a waiver of any claims.<sup>2</sup>

It is undisputed in this matter that Complainant was retained by the Committee before the 1990 Massachusetts

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2. The Commission has long held that state law governs whether an alleged debt in fact exists, what the amount of a debt is and which persons or entities are responsible for paying a debt. See AO 1989-2 (citing AO 1975-102).

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Republican State Convention and that he was employed as the Committee's "Operations Manager" after the convention. Complainant claims that the Committee has not accurately disclosed the amount of debt owed him on its 1990 Year End Report. Specifically, Complainant argues that he was to be paid certain housing costs during the post-convention period; that the Committee has failed to pay those costs; and, that although the Committee earlier reported the full amount owed him, it dropped a portion of the outstanding debt from its 1990 Year End Report. Complainant further contends that he never reached "an agreed upon reduction" of the debt owed him as was reported by the Committee. In support of his claim, Complainant attaches copies of invoices and letters submitted to the Committee and a copy of the Committee's October 1990 Quarterly Report, which purportedly disclosed the full debt owed to him in the amount of \$15,277.

In response to the complaint, the Committee asserts that the issue in this matter hinges on whether or not living expenses are owed to Philip Pepe during the post-convention period when he served as the Committee's Operations Manager. The Committee acknowledges that prior to the Massachusetts Republican State Convention the Committee retained Mr. Pepe's services for pre-convention planning and agreed to and did pay for certain living expenses during that period. After the State Convention, Mr. Pepe entered into a longer-term relationship with the Committee as Operations Manager. Respondents maintain that at that point the Committee agreed to pay Mr. Pepe a salary

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of \$1,650 per week, plus normal reimbursable expenses, including moving expenses. The Committee maintains that it only agreed to pay Mr. Pepe an additional \$200 a month for housing as Operations Manager, rather than to reimburse Mr. Pepe \$1,000 a month, plus one-half of the amount over \$1,000 for rent, as had been done prior to the State Convention. Finally, the Committee attributes the earlier reporting of the debt to a "clerical error." This "clerical error" allegedly resulted when Mr. Pepe submitted personal invoices to a volunteer serving as the Committee's clerk, who then posted them as outstanding Committee debts. Thus, the Committee alleges that Mr. Pepe "created a paper trail of invoices to the Committee, [and is] . . . now attempting to collect more money based on his own unfounded claims." Committee Response at Attachment II, pg. 2.

It is apparent from the materials submitted to date by Complainant and Respondents that this is a case of a disputed debt. Consistent with prior Commission determinations involving such matters, it appears that the Committee should have disclosed the full amount of debt claimed by Complainant on the Committee's 1990 Year End Report filed with the Commission, regardless of whether it disputed the amount of the debt. This Office therefore recommends that the Commission find reason to believe that the Dan Daly for U.S. Senate Committee and Martha Allen Hawn, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

**III. RECOMMENDATIONS**

1. Find reason to believe that the Dan Daly for U.S.

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Senate Committee and Martha Allen Hawn, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

2. Approve the attached Factual and Legal Analysis and the appropriate letter.

Lawrence M. Noble  
General Counsel

Date 10/18/91

BY:   
Lois G. Lerner  
Associate General Counsel

**Attachments**

- I. June 17, 1991 Supplement filed by Philip S. Pepe.
- II. Committee Response.
- III. Proposed Factual and Legal Analysis.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Dan Daly for U.S. Senate Committee ) NUR 3312  
and Martha Allen Hawn, as treasurer. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 23, 1991, the Commission decided by a vote of 5-0 to take the following actions in NUR 3312:

1. Find reason to believe that the Dan Daly for U.S. Senate Committee and Martha Allen Hawn, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.
2. Approve the Factual and Legal Analysis and the appropriate letter, as recommended in the General Counsel's Report dated October 18, 1991.

Commissioners Aikens, Elliott, Josefiak, McDonald, and Thomas voted affirmatively for the decision; Commissioner McGarry did not cast a vote.

Attest:

10-23-91  
Date

  
Marjorie W. Emmons  
Secretary of the Commission

Received in the Secretariat:	Mon., Oct. 21, 1991	11:54 a.m.
Circulated to the Commission:	Mon., Oct. 21, 1991	4:00 p.m.
Deadline for vote:	Wed., Oct. 23, 1991	4:00 p.m.

bjf

92040905226



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 30, 1991

Martha Allen Hawn, treasurer  
Dan Daly for U.S. Senate Committee  
500 Boylston Street  
Boston, MA 02116

RE: MUR 3312  
Dan Daly for U.S. Senate Committee  
and Martha Allen Hawn, as  
treasurer

Dear Ms. Hawn:

On May 28, 1991, the Federal Election Commission notified the Dan Daly for U.S. Senate Committee ("the Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time. Subsequently, the Commission also forwarded additional information received from the complainant.

Upon further review of the allegations contained in the complaint, the additional information submitted by complainant which you received and information submitted by a representative of the Committee, the Commission, on October 23, 1991, found that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. § 434(b)(8), a provision of the Act, and 11 C.F.R. § 104.11, a provision of the Commission regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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MUR 3312  
Martha Allen Hawn  
page 2

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

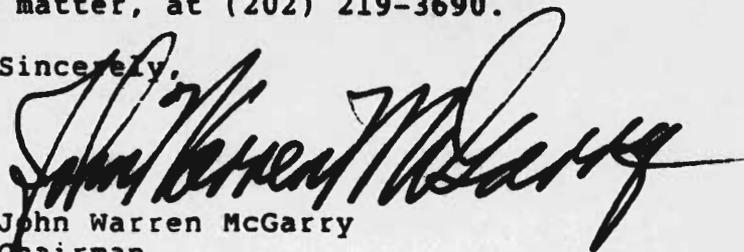
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact James Brown, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



John Warren McGarry  
Chairman

Enclosures  
Designation of Counsel Form  
Factual & Legal Analysis

92040905228

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Dan Daly for U.S. Senate Committee  
and Martha Allen Hawn, as treasurer

MUR 3312

Pursuant to 2 U.S.C. § 434(b)(8) of the Federal Election Campaign Act of 1971, as amended ("the Act"), committees are required to disclose continuously the amount and nature of all outstanding debts and obligations owed by or to the committee. See 11 C.F.R. §§ 104.3(d), 104.11 and AO 1988-44. The Commission has repeatedly concluded that disputed debts should be disclosed when the reporting entity has received goods or services, has been billed for such services but has not paid the full amount owed, and when the cost for such services is in dispute. See MUR 3027; AO 1976-85. In fact, the Commission codified its position on such matters by enacting 11 C.F.R. § 116.10, which became effective on October 3, 1990. This provision explicitly requires political committees to report disputed debt in accordance with 11 C.F.R. §§ 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Section 116.10 goes on to delineate that until the dispute is resolved, the political committee shall disclose the following: any amounts paid to the creditor; any amount the political committee admits it owes; and the amount the creditor claims is owed. Finally, Section 116.10 provides such disclosure does not constitute an admission if

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liability or a waiver of any claims.<sup>1</sup>

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It is undisputed in this matter that Complainant was retained by the Committee before the 1990 Massachusetts Republican State Convention and that he was employed as the Committee's "Operations Manager" after the convention. Complainant claims that the Committee has not accurately disclosed the amount of debt owed him on its 1990 Year End Report. Specifically, Complainant argues that he was to be paid certain housing costs during the post-convention period; that the Committee has failed to pay those costs; and, that although the Committee earlier reported the full amount owed him, it dropped a portion of the outstanding debt from its 1990 Year End Report. Complainant further contends that he never reached "an agreed upon reduction" of the debt owed him as was reported by the Committee. In support of his claim, Complainant attaches copies of invoices and letters submitted to the Committee and a copy of the Committee's October 1990 Quarterly Report, which purportedly disclosed the full debt owed to him in the amount of \$15,277.

In response to the complaint, the Committee asserts that the issue in this matter hinges on whether or not living expenses are owed to Philip Pepe during the post-convention period when he served as the Committee's Operations Manager. The Committee acknowledges that prior to the Massachusetts

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1. The Commission has long held that state law governs whether an alleged debt in fact exists, what the amount of a debt is and which persons or entities are responsible for paying a debt. See AO 1989-2 (citing AO 1975-102).

Republican State Convention the Committee retained Mr. Pepe's services for pre-convention planning and agreed to and did pay for certain living expenses during that period. After the State Convention, Mr. Pepe entered into a longer-term relationship with the Committee as Operations Manager. Respondents maintain that at that point the Committee agreed to pay Mr. Pepe a salary of \$1,650 per week, plus normal reimbursable expenses, including moving expenses. The Committee maintains that it only agreed to pay Mr. Pepe an additional \$200 a month for housing as Operations Manager, rather than to reimburse Mr. Pepe \$1,000 a month, plus one-half of the amount over \$1,000 for rent, as had been done prior to the State Convention. Finally, the Committee attributes the earlier reporting of the debt to a "clerical error." This "clerical error" allegedly resulted when Mr. Pepe submitted personal invoices to a volunteer serving as the Committee's clerk, who then posted them as outstanding Committee debts. Thus, the Committee alleges that Mr. Pepe "created a paper trail of invoices to the Committee, [and is] . . . now attempting to collect more money based on his own unfounded claims."

It is apparent from the materials submitted to date by Complainant and Respondents that this is a case of a disputed debt. Consistent with prior Commission determinations involving such matters, it appears that the Committee should have disclosed the full amount of debt claimed by Complainant on the Committee's 1990 Year End Report filed with the Commission, regardless of whether it disputed the amount of the debt.

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Therefore, there is reason to believe that the Dan Daly for U.S. Senate Committee and Martha Allen Hawn, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

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VETERANS FOR DALY

**Dan Daly**

U.S. SENATE

November 14, 1991

VIA FEDERAL EXPRESS

Mr. John Warren McGarry  
Chairman  
Federal Election Commission  
Washington, DC 20463

RE: NUR 3312

Dan Daly for US Senate Committee and Martha Allen Hawn, as  
Treasurer

Dear Mr. McGarry:

This letter is in response to your October 30, 1991, communication which was received by the Dan Daly for US Senate Committee (the Committee) on November 1, 1991.

On behalf of the Committee, I would like to answer the allegation and correct a factual inaccuracy in the record.

The Complainant, Mr. Philip Pepe, was paid for his services rendered at the rate of \$1,650 per week plus normal reimbursable expenses including moving expenses from May 7, 1990 to September 18, 1990. Mr. Pepe was paid a total of \$32,731.65 for this period (\$32,010 for his services and \$721.65 for reimbursable expenses incurred April 30, 1991 through August 31, 1991).

Prior to the Massachusetts Republican State Convention, Mr. Pepe was retained for four weeks up to the Convention. He was paid \$7000 for his services, \$1000 for his housing expense, \$225 for a rental agency fee, and \$400.06 for reimbursable expenses. In order to have the job needed to be done pre-Convention, the Committee thought it was reasonable to pay four weeks of living expenses.

However, post-Convention, with some six months before the State Primary, this type of campaign expense was not considered reasonable and would not be part of a compensation package with any campaign staff member. This is important to point out because your "legal analysis" incorrectly states or infers that the arrangement with Mr. Pepe pre-Convention was the same post-Convention. It was not. As stated in the Committee's June 14, 1991 letter to Mr. Noreiga James, the Committee did agree to assist in defraying Mr. Pepe's housing costs by agreeing to pay an amount equal to one-half of rent over the first \$1,000 per month, but in no way did a contract exist which would require the Committee to pay Mr. Pepe's entire housing costs.

THE DAN DALY FOR U.S. SENATE COMMITTEE  
500 BOYLSTON STREET, BOSTON, MASSACHUSETTS 02116 (617) 262-2800  
Paid for and authorized by The Dan Daly for U.S. Senate Committee

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OFFICE OF GENERAL COUNSEL  
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Other than the personal loan of Mr. Dan Daly to the Committee, all debt but some \$8,977.29 of a \$600,000+ campaign has been paid. As stated earlier, Mr. Pepe has created a fictitious debt by his letters to the Committee. The Committee maintains and has always maintained that this fictitious debt does not exist.

However, the Committee recognizes that the Federal Election Commission exists to seek full financial disclosure in campaigns. The Committee respects this and the FEC's interpretation of statute. If it is determined that the Committee should have reported Mr. Pepe's bogus claim of debt to maintain full disclosure, the Committee will file an amended report to reflect this. Please let me know if this is appropriate.

Thank you.

Sincerely,



Edward O'Sullivan  
Chairman

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 6, 1992

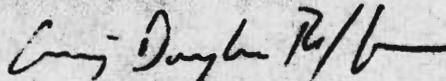
Edward O'Sullivan, Chairman  
Dan Daly for U.S. Senate Committee  
500 Boylston Street  
Boston, Massachusetts 02116

RE: NUR 3312  
Dan Daly for U.S. Senate Committee  
and Martha Allen Hawn, as treasurer

Dear Mr. O'Sullivan:

Pursuant to our conversation on January 3, 1992, it is my understanding that you would be submitting a request for pre-probable cause conciliation no later than the close of business, January 8, 1992.

Sincerely,

  
Craig Douglas Reffner

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Philip S. Pepe, Jr.  
Westwater Commons • 380 North Broadway  
Yonkers, New York 10701  
(914) 968-6303 • Fax (914) 376-7118

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Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

January 15, 1992

Lawrence Noble  
General Counsel  
Federal Election Commission  
999 E Street  
Washington, D.C. 20463

In Re: MUR 3312

Dear Mr. Noble;

I am writing in regard to the above referenced MUR which, to my best knowledge, is presently under review by your office, and has yet to be resolved.

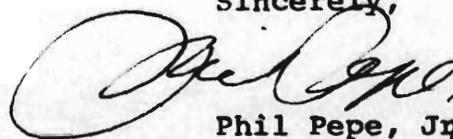
I am in receipt of the Daly for U.S. Senate FEC filing made July 29, 1991, and covering the period 1/1/91-6/30/91. There is no listing for fees still due me for expenses incurred by me during the Republican Primary Daly engaged in during 1990. My original letter to your office in May 1991, and follow up letter on June 12, 1991 note that not only was the debt not paid, but the Daly Committee, without my knowledge or consent, had filed with the FEC saying that I had consented to write off the debt. Clearly, I never did any such thing, and am currently billing them for the original debt and including a cost of money fee as well.

The original debt of \$5,735.50 still stands and is now at \$6,079.60 as of last billing in 1991.

I know of no reason why this debt should not be currently listed in the FEC filing as an open debt, and ask that this filing be reviewed to determine why there is such an omission.

I have appreciated your attention in this matter to date, and would be grateful for any current information on the disposition of MUR 3312 by your office.

Sincerely,



Phil Pepe, Jr.

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OFFICE OF LEGAL COUNSEL

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 27, 1992

Martha Allen Hawn, Treasurer  
Dan Daly for U.S. Senate Committee  
500 Boylston Street  
Boston, Massachusetts 02116

RE: MUR 3312  
Dan Daly for U.S. Senate Committee  
and Martha Allen Hawn, as treasurer

Dear Ms. Hawn:

On October 30, 1991, you were notified that based upon a complaint filed by Philip S. Pepe, Jr., the Federal Election Commission found reason to believe that the Dan Daly for U.S. Senate Committee and you, as treasurer, violated 2 U.S.C. § 434(b)(8) a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 104.11, a provision of the Commission's regulations.

On January 15, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Craig Douglas Reffner  
Attorney

Enclosure

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**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

January 27, 1992

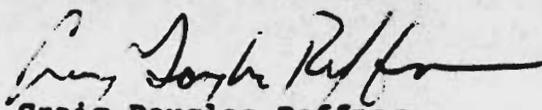
**Philip S. Pepe, Jr.  
Westwater Commons  
380 North Broadway  
Yonkers, New York 10701**

**RE: MUR 3312  
Dan Daly for U.S. Senate and  
Martha Allen Hawn, as treasurer**

**Dear Mr. Pepe:**

**This letter acknowledges receipt on January 22, 1992, of the supplement to the complaint you filed on May 15, 1991, against Dan Daly for U.S. Senate and Martha Allen Hawn, as treasurer. The respondents will be sent copies of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.**

**Sincerely,**

  
**Craig Douglas Reffner  
Attorney**

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of  
Dan Daly for U.S. Senate and  
Martha Allen Nawa, as treasurer

)  
)  
) MUR 3312  
)

**SENSITIVE**

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to all respondents, based on the assessment of the information presently available.

2/18/92  
Date

  
Lawrence H. Noble  
General Counsel

92040905239

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
 Dan Daly for U.S. Senate and ) HUR 3312  
 Martha Allen Hawn, as treasurer )

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 23, 1991, the Federal Election Commission found reason to believe that the Dan Daly for U.S. Senate Committee and Martha Allen Hawn, as treasurer (collectively referred to as the "Committee" or "Respondents"), violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11. The basis for the Commission's finding arose from a complaint filed by Philip S. Pepe, Jr. In his complaint, Mr. Pepe alleges that the Committee failed to disclose a debt of \$5,735.50 owed to him.<sup>1</sup> Respondents acknowledge receiving an invoice from Mr. Pepe in the amount of \$15,277, but assert that of that amount, Mr. Pepe was only entitled to receive \$9,541.50, as the Committee was under no obligation to pay the additional amount of \$5,735.50 claimed by him.

In response to the Commission's reason-to-believe finding, Respondents continue to assert that the Committee is not obligated to pay the \$5,735.50 claimed by Mr. Pepe, but that "[i]f it is determined that the Committee should have reported Mr. Pepe's bogus claim of debt to maintain full disclosure, the Committee will file an amended report to reflect this."

1. In a supplement to his complaint, dated January 15, 1992, the complainant states that the original debt of \$5,735.50 is "now at \$6,079.60 as of [the] last billing in 1991."

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Response of Committee, dated November 14, 1991, at 2. During a subsequent telephone conversation, in which staff of this Office explained that committees are required to disclose disputed debts if the creditor has provided something of value to the committee, Respondents' representative, Edward O'Sullivan, stated that the Committee would submit a request to conciliate this matter prior to a finding of probable cause to believe. Despite Mr. O'Sullivan's assertion, no such request has been submitted.

II. ANALYSIS

At issue in this matter is the Committee's failure to disclose a disputed debt. In disclosure reports filed with the Commission, the Committee initially showed a debt of \$15,277 owed to Mr. Pepe for his work as a consultant during the 1990 election. However, in subsequent disclosure reports, the Committee showed that the amount of this debt had been reduced by \$5,735.50 and that Mr. Pepe had been paid \$9,541.50, the difference between the amount of the original debt and the amount of the reduction. In response to the complaint, Respondents explained that the amount of the reduction represented Mr. Pepe's living expenses after the state convention and that the Committee was not contractually obligated to pay for this particular cost. To date, Respondents have not disclosed, as a disputed debt, the additional amount claimed by Mr. Pepe.

Under Section 434(b)(8) of the Federal Election Campaign Act of 1971, as amended (the "Act"), the amount and nature of

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all outstanding debts and obligations owed by or to a committee must be continuously reported until extinguished. See 11 C.F.R. §§ 104.3(d) and 104.11. See, e.g., AO 1988-44. Consistent with this provision, the Commission's regulations require committees to disclose disputed debts if the creditor has provided something of value to the committee. 11 C.F.R. § 116.10. The Commission's regulations define a disputed debt as an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee. 11 C.F.R. § 116.1(d). In disclosing disputed debts, committees must, until the dispute is resolved, disclose any amounts paid to the creditor, any amount the committee admits it owes and the amount the creditor claims is owed. 11 C.F.R. § 116.10. In addition, the Commission's Regulations explain that when reporting a disputed debt, the committee may note on the relevant disclosure report that the debt is disputed, and that the disclosure of a disputed debt does not constitute an admission of liability or a waiver of any claims that the committee may have against the creditor. Id.

Regardless of the basis of the dispute between Mr. Pepe and the Committee, Respondents should have disclosed the full amount of Mr. Pepe's claim as a debt. As noted above, when a committee receives something of value from a vendor, it must disclose the full amount claimed by that vendor as a debt, even if that

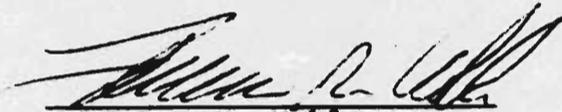
amount is disputed. In the matter at hand, the available information clearly shows that Mr. Pepe provided services to the Committee and submitted invoices totaling \$15,277 for those services. Under these circumstances, the Committee should have disclosed the full amount of Mr. Pepe's claim rather than that amount which was not in dispute. Moreover, since it appears that Mr. Pepe is still submitting invoices to the Committee for his services, see supra p.1, note 1, Respondents should continue disclosing his claim until the dispute between the parties has been resolved.

Accordingly, the General Counsel is prepared to recommend that the Commission find probable cause to believe that Dan Daly for U.S. Senate and Martha Allen Hawn, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

**III. GENERAL COUNSEL'S RECOMMENDATION**

Find probable cause to believe that Dan Daly for U.S. Senate and Martha Allen Hawn, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

2/12/92  
Date

  
Lawrence M. Noble  
General Counsel

92040905243



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 18, 1992

Martha Allen Hawn, Treasurer  
Dan Daly for U.S. Senate Committee  
500 Boylston Street  
Boston, Massachusetts 02116

RE: MUR 3312  
Dan Daly for U.S. Senate Committee  
and Martha Allen Hawn, as treasurer

Dear Ms. Hawn:

Based on a complaint filed with the Federal Election Commission on May 22, 1991, and information supplied on your behalf by Edward O'Sullivan, the Commission, on October 23, 1991, found that there was reason to believe Dan Daly for U.S. Senate ("Committee") and you, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

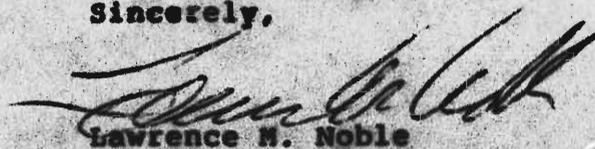
92040905244

Martha Allen Hawn, Treasurer  
Dan Daly for U.S. Senate  
Page 2

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble  
General Counsel

Enclosure  
Brief

92040905245

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Dan Daly for U.S. Senate and ) MUR 3312  
Dorothy Quincy Daly, as treasurer )

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 23, 1991, the Federal Election Commission found reason to believe that the Dan Daly for U.S. Senate Committee and its treasurer (collectively referred to as the "Committee" or "Respondents"), violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11. The basis for the Commission's finding arose from a complaint filed by Philip S. Pepe, Jr. In his complaint, Mr. Pepe alleges that the Committee failed to disclose a debt of \$5,735.50 owed to him.<sup>1</sup> Respondents acknowledge receiving an invoice from Mr. Pepe in the amount of \$15,277, but assert that of that amount, Mr. Pepe was only entitled to receive \$9,541.50, as the Committee was under no obligation to pay the additional amount of \$5,735.50 claimed by him.

In response to the Commission's reason-to-believe finding, Respondents continue to assert that the Committee is not obligated to pay the \$5,735.50 claimed by Mr. Pepe, but that "[i]f it is determined that the Committee should have reported Mr. Pepe's bogus claim of debt to maintain full disclosure, the Committee will file an amended report to reflect this." Response of Committee, dated November 14, 1991, at 2. During a

1. In a supplement to his complaint, dated January 15, 1992, the complainant states that the original debt of \$5,735.50 is "now at \$6,079.60 as of [the] last billing in 1991."

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subsequent telephone conversation, in which staff of this Office explained that committees are required to disclose disputed debts if the creditor has provided something of value to the committee, Respondents' representative, Edward O'Sullivan, stated that the Committee would submit a request to conciliate this matter prior to a finding of probable cause to believe. Despite Mr. O'Sullivan's assertion, no such request has been submitted.

II. ANALYSIS

At issue in this matter is the Committee's failure to disclose a disputed debt. In disclosure reports filed with the Commission, the Committee initially showed a debt of \$15,277 owed to Mr. Pepe for his work as a consultant during the 1990 election. However, in subsequent disclosure reports, the Committee showed that the amount of this debt had been reduced by \$5,735.50 and that Mr. Pepe had been paid \$9,541.50, the difference between the amount of the original debt and the amount of the reduction. In response to the complaint, Respondents explained that the amount of the reduction represented Mr. Pepe's living expenses after the state convention and that the Committee was not contractually obligated to pay for this particular cost. To date, Respondents have not disclosed, as a disputed debt, the additional amount claimed by Mr. Pepe.

Under Section 434(b)(8) of the Federal Election Campaign Act of 1971, as amended (the "Act"), the amount and nature of all outstanding debts and obligations owed by or to a committee

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must be continuously reported until extinguished. See 11 C.F.R. §§ 104.3(d) and 104.11. See, e.g., AO 1988-44. Consistent with this provision, the Commission's regulations require committees to disclose disputed debts if the creditor has provided something of value to the committee. 11 C.F.R. § 116.10. The Commission's regulations define a disputed debt as an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee. 11 C.F.R. § 116.1(d). In disclosing disputed debts, committees must, until the dispute is resolved, disclose any amounts paid to the creditor, any amount the committee admits it owes and the amount the creditor claims is owed. 11 C.F.R. § 116.10. In addition, the Commission's Regulations explain that when reporting a disputed debt, the committee may note on the relevant disclosure report that the debt is disputed, and that the disclosure of a disputed debt does not constitute an admission of liability or a waiver of any claims that the committee may have against the creditor. Id.

Regardless of the basis of the dispute between Mr. Pepe and the Committee, Respondents should have disclosed the full amount of Mr. Pepe's claim as a debt. As noted above, when a committee receives something of value from a vendor, it must disclose the full amount claimed by that vendor as a debt, even if that amount is disputed. In the matter at hand, the available

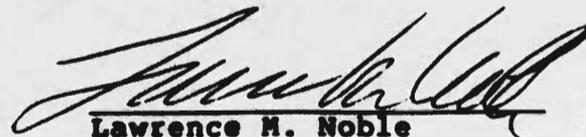
information clearly shows that Mr. Pepe provided services to the Committee and submitted invoices totaling \$15,277 for those services. Under these circumstances, the Committee should have disclosed the full amount of Mr. Pepe's claim rather than that amount which was not in dispute. Moreover, since it appears that Mr. Pepe is still submitting invoices to the Committee for his services, see supra p.1, note 1, Respondents should continue disclosing his claim until the dispute between the parties has been resolved.

Accordingly, the General Counsel is prepared to recommend that the Commission find probable cause to believe that Dan Daly for U.S. Senate and Dorothy Quincy Daly, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

**III. GENERAL COUNSEL'S RECOMMENDATION**

Find probable cause to believe that Dan Daly for U.S. Senate and Dorothy Quincy Daly, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

4/2/92  
Date

  
Lawrence M. Noble  
General Counsel

92040905249



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

RECEIVED  
F.E.C.  
SECRETARIAT

92 APR -6 PM 12:54

April 6, 1992

Dorothy Quincy Daly, Treasurer  
Dan Daly for U.S. Senate  
27 Mast Hill Road  
Hingham, Massachusetts 02043

**SENSITIVE**

RE: MUR 3312  
Dan Daly for U.S. Senate and  
Dorothy Quincy Daly, as treasurer

Dear Ms. Daly:

Based on a complaint filed with the Federal Election Commission on May 22, 1990, and information supplied on your behalf by Edward O'Sullivan, the Commission, on October 23, 1991, found that there was reason to believe that Dan Daly for U.S. Senate (the "Committee") and its treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred. Previously, this Office notified Martha Allen Hawn of the recommendation that the General Counsel's Office was prepared to make in this matter. However, it has since come to our attention that Ms. Hawn no longer serves as the Committee's treasurer. Rather, in an amendment to the Committee's statement of organization, you have been identified as the current treasurer of the Committee. Accordingly, this Office is notifying you that the General Counsel's Office is prepared to recommend that the Commission find probable cause to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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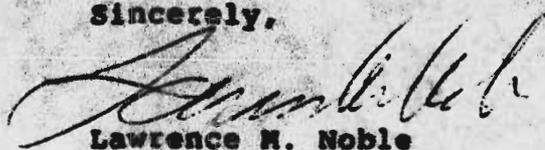
Dorothy Quincy Daly, Treasurer  
Dan Daly for U.S. Senate  
Page 2

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble  
General Counsel

Enclosure  
Brief

92040905251



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 15, 1992

VIA FACSIMILE

Dorothy Quincy Daly, Treasurer  
Dan Daly for U.S. Senate  
27 Mast Hill Road  
Hingham, Massachusetts 02043

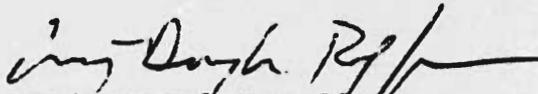
RE: MUR 3312  
Dan Daly for U.S. Senate and  
Dorothy Quincy Daly, as treasurer

Dear Ms. Daly:

Pursuant to our telephone conversation on April 13, 1992, it is my understanding that you have not received the General Counsel's Brief which this Office mailed to you on April 6, 1992. At your request, I am enclosing a copy of the General Counsel's Brief in the above-referenced matter.

Should you have any questions, please do not hesitate to contact me at (202) 219-3690.

Sincerely,

  
Craig Douglas Reffner  
Attorney

92040905252



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 17, 1992

VIA FACSIMILE

Dorothy Quincy Daly, Treasurer  
Dan Daly for U.S. Senate  
27 Mast Hill Road  
Hingham, Massachusetts 02043

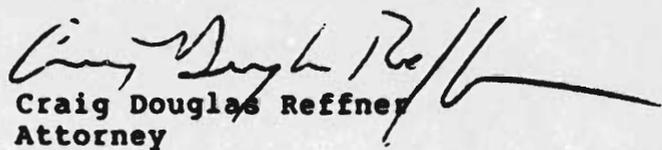
RE: MUR 3312  
Dan Daly for U.S. Senate and  
Dorothy Quincy Daly, as treasurer

Dear Ms. Daly:

Pursuant to my telephone conversation with Edward E. O'Sullivan on April 16, 1992, it is my understanding that the Dan Daly for U.S. Senate Committee and you, as treasurer, are contemplating legal representation in connection with the above-referenced matter (MUR 3312). At Mr. O'Sullivan's request, I have enclosed a Statement of Designation of Counsel. If you intend to be represented by counsel in this matter, this Statement should be completed and returned to this Office.

Should you have any questions, please do not hesitate to contact me at (202) 219-3690.

Sincerely,

  
Craig Douglas Reffner  
Attorney

Enclosure

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VETERANS FOR DALY

**Dan Daly**

U.S. SENATE

RECEIVED  
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April 16, 1992

Mr. Craig Douglas Reffner  
Federal Election Commission  
999 E Street NW  
Washington DC 20463

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
92 APR 21 PM 2:24

RE: MUR 3312

Dear Craig:

This letter is a follow-up to our telephone conversation on Thursday, April 16.

The Dan Daly for US Senate Committee hereby requests an extension until June 1, 1992 to respond and comment on the General Counsel's brief.

A copy of this brief was received via fax at the Committee from you on April 15, 1992. In addition, we reserve the right to retain separate outside counsel at some future date for both the Committee and the Treasurer.

Thank you for your cooperation.

Sincerely,

Edward E. O'Sullivan  
Chairman

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 22, 1992

VIA FACSIMILE

Dorothy Quincy Daly, Treasurer  
Dan Daly for U.S. Senate  
27 Mast Hill Road  
Hingham, Massachusetts 02043

RE: NUR 3312  
Dan Daly for U.S. Senate and  
Dorothy Quincy Daly, as treasurer

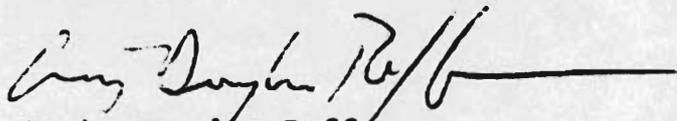
Dear Ms. Daly:

This is in response to Edward E. O'Sullivan's letter dated April 16, 1992, requesting an extension on behalf of the Dan Daly for U.S. Senate Committee and you, as treasurer, until June 1, 1992, to respond to the General Counsel's Brief.

Considering the Federal Election Commission's responsibilities to act expeditiously in the conduct of investigations and in light of the fact that you have provided no basis for granting an extension, I cannot grant your request. Accordingly, the response is due by close of business on May 1, 1992.

If you have any questions, please contact me at (202) 219-3690

Sincerely,

  
Craig Douglas Reffner  
Attorney

92040905255

MUR 3/31/92 OGC 4641

LAW OFFICES  
**MALONEY & BURGH**

1100 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036-4101

(202) 293-1414  
FAX (202) 293-1708

April 28, 1992

92 APR 28 PM 5:00

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

Via Facsimile

Craig Roffner, Esq.  
Federal Election Commission  
999 E St., N.W.  
Washington, DC 20463

Re: MUR 3313, Daly for Senate

Dear Mr. Roffner:

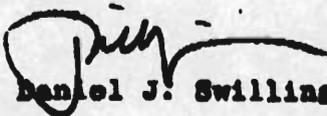
As I explained on the telephone earlier today, I have been asked today by the respondents in this matter to prepare a reply to the Council's Probable Cause brief.

Such a response is due this Friday, May 1. In order to prepare the reply, I will require sufficient time to educate myself about the facts, and to review the original complaint and Commission's various papers.

In order to accommodate my current workload and to prepare the reply, I request a two week delay for the due date of the reply, until OOB May 18, 1992.

Please let me know by telephone if there is a problem with the granting of this request.

Sincerely,

  
Daniel J. Swillinger

cc: Mr. Dan Daly

92040905256



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 30, 1992

Daniel J. Swillinger, Esq.  
Maloney & Burch  
1100 Connecticut Avenue, N.W.  
Washington, D.C. 20036

RE: MUR 3312  
Dan Daly for U.S. Senate and  
Dorothy Quincy Daly, as treasurer

Dear Mr. Swillinger:

This is in response to your letter dated April 28, 1992, requesting an extension of two weeks to respond to the General Counsel's Brief in the above-referenced matter. As an initial matter, you should be aware that prior to your representation in this matter, your clients requested an extension until June 1, 1992, to respond to the General Counsel's Brief. However, in light of the fact that your clients provided no basis for granting an extension, this Office denied their request.

In any event, with regard to your request, considering the Federal Election Commission's responsibilities to act expeditiously in the conduct of investigations, the Office of the General Counsel cannot grant your full request, but can only agree to a ten (10) day extension. Accordingly, the response to the General Counsel's Brief is due by close of business on May 11, 1992.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Craig Douglas Reffner  
Attorney

92040905257

OGC4643

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

LAW OFFICES  
**MALONEY & BURCH**  
1100 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036-4101

92 MAY 11 PM 2:47

(202) 293-1414  
FAX (202) 293-1702  
May 11, 1992

Craig D. Reffner, Esq.  
Federal Election Commission  
999 E St., N.W.  
Washington, DC 20463

Re: MUR 3312

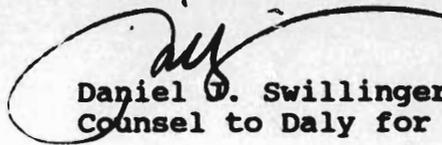
Dear Mr. Reffner:

Enclosed are three copies of a brief on behalf of the Daly for Senate Committee in opposition to the General Counsel's brief recommending a probable cause finding.

Ten copies have also been filed with the Commission Secretary.

Please call me if you have any questions.

Sincerely,



Daniel D. Swillinger  
Counsel to Daly for Senate

92040905258

**BEFORE THE FEDERAL ELECTION COMMISSION**

**WASHINGTON, DC 20463**

**RE: NUR 3312, DAN DALY FOR U.S. SENATE**

This brief, submitted by undersigned counsel, is on behalf of the Dan Daly for Senate Committee, and its Treasurer, Dorothy Daly. It is filed in response to the General Counsel' brief signed on February 18, 1992, which recommends that the Commission find probable cause to believe the Act was violated.

**I. Factual Background**

The Dan Daly for Senate Committee was established as Dan Daly's principal campaign committee for a 1990 U.S. Senate campaign in Massachusetts.

Philip Pepe, Jr. was hired by the committee to perform various services on two separate occasions, once from mid-February to mid-March, prior to the Republican nominating convention, and on a second, separate and longer engagement, from May until September. A dispute developed between the committee and Pepe regarding reimbursement for housing expenses for the second hiring period.

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Pepe has asserted his belief that the arrangement which obtained for the first period -- that the committee would reimburse him for housing -- carried over to the second hiring. The committee did not believe it did, and refused to pay the \$5735.50 Pepe claimed was owed to him. This amount was contained in an invoice dated September 10, 1990, showing a total due of \$15,277, including the \$5735.

The \$15,277 balance was listed in the committee's October 15, 1990 quarterly report as a debt owed. When the invoice was brought to the attention of the campaign's chairman, he communicated to Pepe the committee's position, and believed that Pepe understood the committee's view that it was not owed. Subsequently, the housing portion of the debt was dropped from the committee's 1990 year-end report.

Pepe has resumed sending invoices for the disputed amount, which the committee has refused to pay.

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**II. Legal Argument**

The committee was operating in good faith by not acknowledging a debt which it believed was not owed, and which position it believed had been communicated to the purported creditor.

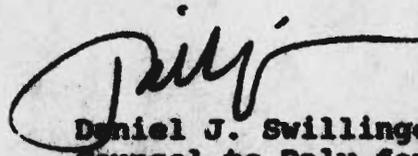
The committee was concerned that continuing to include the debt on its report would constitute an "acknowledgement" of the debt under applicable state law. Acknowledgement could occur regardless of any language which the committee might have appended to the report, noting that it was disputed, see 11 CFR Sec. 116.10(a). Acknowledgment of the debt would undercut the committee's strong legal position that the debt is not owed. For example, it is a tenant of contract interpretation that ambiguous language is construed against the party which drafted the language. Pepe's claim is based on a letter he sent to the committee setting forth his understanding of the agreement. The committee's view is that the letter supports the committee's position. However, at worst for the committee, any ambiguity would be resolved against the drafter, Pepe.

However, the committee does understand, after consulting with counsel, that under applicable Commission regulations, it was obliged to include the debt on its disclosure reports once Pepe reasserted it, regardless of the merit of the claim. The committee is in the process of amending the appropriate reports to show the amounts Pepe claims are owed.

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In light of the committee's good faith efforts to comply, and its legitimate legal concerns, the committee requests that the Commission not find probable cause to believe that the committee violated the Act and regulations, and dismiss this matter.

Respectfully submitted,



Daniel J. Swillinger  
Counsel to Daly for Senate

May 11, 1992

92040905262

In the Matter of )  
 )  
Dan Daly for U.S. Senate and )  
Dorothy Q. Daly, as treasurer )

NUR 3312

**SENSITIVE**

**GENERAL COUNSEL'S REPORT**

**I. BACKGROUND**

On October 23, 1991, the Commission found reason to believe that the Dan Daly for U.S. Senate Committee and its treasurer (collectively referred to as "Respondents" or the "Committee"), violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.<sup>1</sup> The basis for the Commission's finding arose from a complaint filed by Philip S. Pepe, Jr., who alleged that the Committee failed to disclose the full amount of a \$15,277 debt owed to him. Disclosure reports showed that Respondents initially disclosed \$15,277 as the total amount of debt owed to Mr. Pepe, but in subsequent disclosure reports this amount was reduced to \$9,541.50. Respondents acknowledged receiving invoices from Mr. Pepe in the amount of \$15,277, but contended that he had overstated the amount he was owed by approximately \$5,735.50. See First General Counsel's Report, signed October 18, 1990, at 4. See also Respondents' response to Commission's reason-to-believe finding. Attachment A.

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1. The Committee is the principal campaign committee for William D. Daly, a candidate in Massachusetts' 1990 Senatorial elections. The Committee's treasurer is Dorothy Q. Daly, the candidate's wife, who succeeded Martha Allen Hawn, the treasurer against whom the Commission's reason-to-believe finding was made.

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On February 19, 1992, this Office notified the Committee that the General Counsel was prepared to recommend that the Commission find probable cause to believe that violations of 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 had occurred. After granting an extension, counsel for Respondents submitted a response requesting that the Commission find no probable cause to believe that violations occurred. Attachment B. In support of his request, counsel asserts that Respondents acted in "good faith by not acknowledging" Mr. Pepe's claims, explaining that "[a]cknowledgement of the debt would undercut the committee's strong legal position that the debt is not owed." Id. at 3. Counsel also states that Respondents are "in the process of amending the appropriate reports to show the amounts [Mr.] Pepe claims are owed" as a debt. Id. A review of the public record shows that on May 8, 1992, Respondents submitted amended disclosure reports to reflect the full amount claimed by Mr. Pepe as a debt owed to him.<sup>2</sup>

## II. ANALYSIS

As set forth more fully in the General Counsel's Brief, incorporated herein by reference, when a political committee

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2. Respondents initially disclosed \$15,277 as the amount owed to Mr. Pepe in the 1990 October Quarterly Report. In the 1990 Year-End Report, Respondents disclosed that there had been an "agreed upon reduction" of \$5,785.50 and that the remaining amount owed to Mr. Pepe, \$9,541.50, had been satisfied. Thereafter, in the 1991 Mid-Year and Year-End Reports, Respondents disclosed no additional debt owed to Mr. Pepe, although he continued to invoice the Committee. In amendments to these disclosure reports, Respondents have disclosed the amounts claimed by Mr. Pepe, \$5,735.50 in the 1990 Year-End and 1991 Mid-Year Reports and \$5,964 in the 1991 Year-End Report, as a disputed debt.

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receives something of value from a vendor, it must disclose the full amount claimed by that vendor as a debt, even if that amount is disputed. 2 U.S.C. § 434(b)(8). 11 C.F.R. §§ 104.3(d), 104.11 and 116.10. Although Respondents initially failed to disclose the full amount claimed by Mr. Pepe, they eventually submitted amended disclosure reports which accurately reflect the full amount of Mr. Pepe's claims as a debt owed to him, albeit a disputed debt. In addressing similar situations, the Commission has considered a committee's efforts at rectifying the public record as basis for taking no further action. Most recently, in MUR 3081 (closed February 25, 1992), which similarly involved the failure to report a disputed debt, the Commission took no further action after an authorized campaign committee and its creditor resolved their dispute and the agreed upon amount of debt was then disclosed on the public record. MUR 3081 General Counsel's Report, signed February 12, 1992. See also 1899 and 1620.

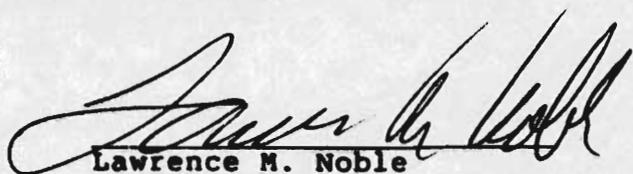
In the matter at hand, however, counsel has requested that the Commission find no probable cause to believe that a violation has occurred. Attachment B. Although this Office believes that Respondents' efforts to satisfy the requirements of the Act through amendments to disclosure reports warrants a finding of no further action, such efforts do not provide a basis for a finding of no probable cause to believe. First, Respondents corrective action does not vitiate their violations of 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11, but rather establishes a basis for acknowledging that their violations have

been mitigated. Second, although Respondents stated in response to the Commission's reason-to-believe finding that they would address their violations through amended disclosure reports, they failed to do so until after being notified of the General Counsel's intent to recommend that the Commission find probable cause to believe. See Attachment A at 2. Accordingly, this Office recommends that the Commission reject Respondents' request to find no probable cause to believe that violations occurred and instead find probable cause to believe that Dan Daly for U.S. Senate and Dorothy Q. Daly, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11, but take no further action.

**III. RECOMMENDATIONS**

1. Reject Respondents' request to find no probable cause to believe that a violation occurred.
2. Find probable cause to believe that Dan Daly for U.S. Senate and Dorothy Q. Daly, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11, but take no further action.
3. Close the file.
4. Approve the appropriate letters.

Date 6/8/92

  
Lawrence M. Noble  
General Counsel

**Attachments**

- A. Response to Commission's reason-to-believe finding
- B. Response to General Counsel's Brief

**Staff assigned: Craig Reffner**

92040905266

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Dan Daly for U.S. Senate and ) MUR 3312  
Dorothy Q. Daly, as treasurer. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 12, 1992, the Commission decided by a vote of 5-0 to take the following actions in MUR 3312:

1. Reject Respondents' request to find no probable cause to believe that a violation occurred.
2. Find probable cause to believe that Dan Daly for U.S. Senate and Dorothy Q. Daly, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11, but take no further action.
3. Close the file.

(continued)

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4. Approve the appropriate letters, as recommended in the General Counsel's Report dated June 8, 1992.

Commissioners Aikens, Elliott, McDonald, Potter, and Thomas voted affirmatively for the decision; Commissioner McGarry did not cast a vote.

Attest:



*Marjorie W. Emmons*  
Marjorie W. Emmons  
Secretary of the Commission

Received in the Secretariat: Mon., June 08, 1992 4:21 p.m.  
Circulated to the Commission: Tues., June 09, 1992 11:00 a.m.  
Deadline for vote: Fri., June 12, 1992 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 24, 1992

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Philip S. Pepe, Jr.  
Westwater Commons  
380 North Broadway  
Yonkers, New York 10701

RE: MUR 3312  
Dan Daly for U.S. Senate  
and Dorothy Q. Daly, as treasurer

Dear Mr. Pepe:

This is in reference to the complaint you filed with the Federal Election Commission on May 22, 1991, against Dan Daly for U.S. Senate and its treasurer (collectively referred to as the "Committee"). Based on the complaint, the Commission found that there was reason to believe that the Committee violated 2 U.S.C. § 434(b)(8), a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 104.11, a provision of the Commission's regulations, and instituted an investigation in the matter.

After an investigation was conducted and the General Counsel's and the Respondents' briefs were considered, on June 12, 1992, the Commission found that there was probable cause to believe the Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11. In consideration of the circumstances of the matter, however, the Commission also determined to take no further action against the Committee, and closed the file in this matter. This matter will become part of the public record within 30 days.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of certain actions taken by the Commission. See 2 U.S.C. § 437g(a)(8).

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Philip S. Pepe, Jr.  
Page 2

If you have any questions, please contact Craig D. Reffner,  
the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

*LM Noble (LPZ)*  
Lawrence M. Noble  
General Counsel

Enclosure  
General Counsel's Report

92040905270



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 24, 1992

**CLOSED**

Daniel J. Swillinger, Esq.  
Maloney & Burch  
1100 Connecticut Avenue, N.W.  
Washington D.C. 20036-4101

RE: MUR 3312  
Dan Daly for U.S. Senate  
and Dorothy Q. Daly, as treasurer

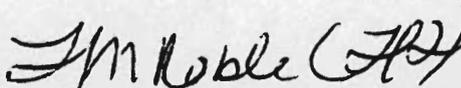
Dear Mr. Swillinger:

This is to advise you that on June 12, 1992, the Federal Election Commission rejected your request to find no probable cause to believe that your clients, Dan Daly for U.S. Senate and Dorothy Q. Daly, as treasurer, violated the Federal Election Campaign Act of 1971, as amended, and instead found that there is probable cause to believe your clients violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report the full amount of a disputed debt. After considering the circumstances of this matter, however, the Commission also determined to take no further action against your clients and closed its file in this matter.

The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

If you have any questions, please contact Craig D. Reffner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

  
Lawrence M. Noble  
General Counsel

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF RIR # 3312

DATE FILMED 7-10-92 CAMERA NO. 4

CAMERA MAN E.E.S.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Microfilm  
 Public Records  
 Press

THE FOLLOWING DOCUMENTATION IS ADDED TO  
THE PUBLIC RECORD IN CLOSED MUR 3312.

9/10/92

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**CLOSED**

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
MAIL ROOM

Jul 29 11 07 AM '92

Philip S. Pepe, Jr.  
Westwater Commons • 380 North Broadway  
Yonkers, New York 10701  
(914) 968-6303 • Fax (914) 376-7118

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

July 23, 1992

Craig D. Reffner, Esq.  
Federal Election Commission  
999 E. Street N.W.  
Washington, D.C. 20463

Dear Mr. Reffner;

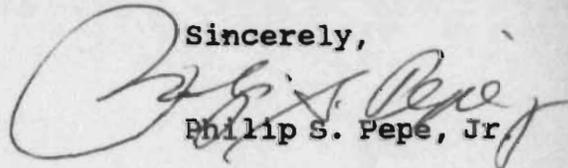
I am writing in regard to FEC MUR # 3312, and understand you be the attorney assigned to the case, as per General Counsel Lawrence Noble's letter of June 24, 1992.

I wish to acknowledge receipt of Mr. Noble's letter and attendant materials regarding the case based on a complaint filed by me against the Daly Committee in 1991. Due to business travel on my part, I have only recently begun to review the package and the disposition and recommendations of the Commission.

The materials sent me do not specifically invite comment on my part, however, I assume such is not out of the ordinary in these matters. I would ask that the Commission grant me a week or so to review the materials and to give my local counsel time to do the same before proffering any final comments to you.

I do wish to acknowledge the careful and meticulous review given by the Commission to my complaint. I will contact you within two weeks.

Sincerely,

  
Philip S. Pepe, Jr.

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FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

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FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20463

Microfilm  
 Public Records  
 Press

THE FOLLOWING DOCUMENTATION IS ADDED TO  
THE PUBLIC RECORD IN CLOSED MUR 3312.

9/29/92

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FEDERAL ELECTION  
COMMISSION  
MAIL ROOM

SEP 24 12 58 PM '92

**Philip S. Pepe, Jr.**  
Westwater Commons • 380 North Broadway  
Yonkers, New York 10701  
(914) 968-6303 • Fax (914) 376-7118

Public Relations  
Issues Management

Strategic Planning  
Project Development  
Media Relations

**CLOSED**

September 10, 1992

Craig D. Reffner, Esq.  
Federal Election Commission  
999 E. Street N.W.  
Washington, D.C. 20463

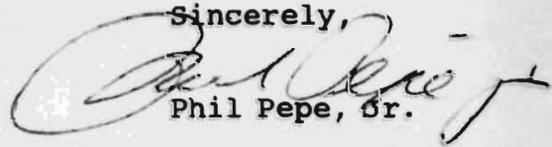
Dear Mr. Reffner;

Reference is made to MUR #3312, and to my letter to you of July 23, 1992, regarding the report of the Commission of that matter, which was sent to me in late June, 1992.

From my viewpoint, the matter is resolved, the disposition of the Commission in the subject matter is satisfactory, and I would offer no further comment.

I would like to offer a compliment, however. From the very first, when this matter was initiated, anyone with whom I had contact at the FEC showed themselves to be helpful, informed and informative, and overall displayed a very laudable degree of professionalism. My contact indicates that this is a staff, even at the clerical levels, that takes pride in what they do. I was pleased by the responses I received on a number of occasions and am appreciative for the helpfulness that was provided. Obviously this is one governmental agency that really works!

Sincerely,



Phil Pepe, Jr.

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
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