FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4437

DATE FILMED 6-5-97 CAMERA NO. 4

CAMERAMAN JMN

9704381544 5

National Republican Congressional Committee
Bill Paxon, M.C.
Chairman

Maria Cino
Executive Director

ORIGINAL

August 6, 1996

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 9 2 36 PM '96

BEFORE THE FEDERAL ELECTION COMMISSION

Ron DiNicola for Congress	)	MUR # 4437
	)	
William H. Binnie	)	

COMPLAINT

I. SUMMARY

Congressional candidate Ronald DiNicola accepted illegal and excessive contributions in the form of personal loans from multimillionaire William H. Binnie. Mr. DiNicola has neither returned nor reported these unlawful contributions, moneys which (1) facilitated Mr. DiNicola's own subsequent and prior contributions and loans to his campaign and (2) permitted his campaign committee to ignore its 1994 debts and obligations. Such blatant subsidization of a congressional campaign violates the most basic federal election laws.

II. JURISDICTION

The National Republican Congressional Committee ("N.R.C.C."), by and through its Executive Director, Maria Cino, and the Erie County Republican Committee, by and through its Chairman, John F. Mizner, jointly bring this complaint pursuant to 2 U.S.C. § 437g(a)(1) (1994). The N.R.C.C. is located at 320 First Street, S.E., Washington, D.C. 20003. The Erie County Republican Committee is located at 26 West 8th Street, Erie, PA, 16501.

III. FACTS

Ronald DiNicola ran for U.S. Congress in 1994 and lost in the May 10 primary. Having spent more money that it ever raised, DiNicola's campaign committee ended that election in significant debt, owing over $70,000. *See DiNicola 1994 Mid-Year Report*. Mr. DiNicola continued pouring his own money into his campaign committee following the primary defeat, loaning his Committee $4,000 in mid-May and June and contributing $608.41

320 First Street, S.E.
Washington, D.C. 20003
(202) 479-7020

Paid for by the National Republican Congressional Committee. Not printed at Government Expense.

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more in the first six months of 1995. *See DiNicola FEC Report on Loans Made By The Candidate (Exh. 4).*

Throughout 1994, DiNicola for Congress Committee ("the Committee") continued to hold fund-raisers and to solicit funds, collecting over $27,000 following DiNicola's primary defeat. *See DiNicola 1994 Year-End Report Summary (Exh. 5).* However, almost none of the funds collected by the Committee in 1994 went to repay the campaign's outstanding debts. Nor did the Committee use its 1995 or 1996 receipts to repay debts, and as of July 13, 1996, the Committee still owed significant unpaid 1994 bills including $63,372.54 in loans and $12,259.75 in debt all to Mr. DiNicola himself. *See DiNicola 7/13/96 Filing Schedules C & D.*

By February of 1996, it became quite clear that the Committee's 1995 fundraising had in fact been designed to promote yet another candidacy by the criminal defense lawyer and not to pay what it owed. DiNicola filed a new Statement of Candidacy with the FEC on February 21, 1996. *See DiNicola 2/21/96 FEC Form 2 (Exh. 3).* While Mr. DiNicola's decision not to repay the Committee's bills and loans from himself greatly aided his 1996 candidacy, it was clear that Mr. DiNicola had personally extended himself beyond his means back in 1994.

To make ends meet shortly following the 1994 campaign, Mr. DiNicola obtained a $20,000 personal loan from one William H. Binnie. *See DiNicola 1996 Personal Financial Disclosure Statement (Exh. 2); see also Harry Stoffer, "DiNicola Borrows from Campaign Contributor," The Meadville Tribune, July 27, 1996 at A1 (Exh. 1).* The terms and conditions of Mr. DiNicola's obligation to Mr. Binnie remain undisclosed, and it is unclear whether the Binnie loan preceded DiNicola's June 7 and June 21 loans to his own Committee. The Binnie loan absolutely preceded DiNicola's 1995 in-kind contributions of $608.41 to the Committee.

William H. Binnie attended college with Mr. DiNicola and has proved to be one of DiNicola's biggest campaign contributors in 1994, contributing the maximum amount allowed by law. Binnie and his wife have again contributed $1,000 to DiNicola's 1996 campaign effort. Binnie is declared on DiNicola's reports as owner of Carlisle Plastics Corp. based in Boston, Massachusetts.

IV. DISCUSSION

A loan other than a bank loan is considered a contribution to the extent of the outstanding balance of the loan. *2 U.S.C. § 431(8)(A)(1); see also FEC Advisory Opinion 1985-33 (FEC regulations "specifically provide that when a candidate receives a loan for use in connection with her campaign, the candidate receives such a loan as an agent of her authorized committee).* Loans to pay living expenses while a person decides whether or not to become a candidate *become contributions* if the person does become a candidate. *FEC Advisory Opinion 1978-40 [¶5341].*

9 7 0 4 3 8 1 5 4 4 7

Ronald DiNicola accepted a personal loan of $20,000 from his controversial multimillionaire friend in 1994, shortly following the candidate's first failed bid for U.S. Congress. *See Stoffer, "DiNicola Borrows from Campaign Contributor," (Exh. 1); see also DiNicola Personal Finance Disclosure Statement (Exh. 2).* This loan clearly facilitated Ronald DiNicola's subsequent and prior loans and contributions to the Committee and the Committee's decision to ignore its bills and obligations from the 1994 campaign. Binnie's loan constituted a contribution under 2 U.S.C. § 431(8)(A)(1) because without such assistance, (1) Mr. DiNicola could not have continued giving to his own campaign and (2) DiNicola would have had to use funds raised by his Committee following the election and throughout 1995 to pay off the Committee's debts and not to finance his current congressional bid.

There should be no question that Mr. Binnie's loan constituted a contribution when made, just after the 1994 Congressional campaign, since these funds effectively underwrote DiNicola's own prior and subsequent contributions into the campaign. Binnie's largess absolutely became a contribution once DiNicola became a candidate for the 1996 race (when he had raised or spent $5,000 for his next bid). *See FEC Advisory Opinion 1978-40 [¶5341].* Mr. DiNicola never reported Binnie's contribution to the FEC as required by law, neither as a loan under 11 C.F.R. § 104.3(d) nor as a contribution under 11 C.F.R. § 104.3(c). Perhaps the DiNicola Committee opted not to disclose this contribution because it was twenty times the legal limit. *2 U.S.C. § 441a(a)(1)(A) (1996).* Perhaps Mr. DiNicola feared that his intimate associations with Mr. Binnie would cost him the support of local labor organizations. Either way, Mr. Binnie's massive and undisclosed contribution to the DiNicola for Congress Committee was unlawful.

Mr. DiNicola's campaign activities raise two other questions as well. First, the fact that none of the DiNicola Committee's 1995 fundraising went to pay off debts of the 1994 campaign *ipso facto* reveals Mr. DiNicola's intention to run in 1996. Mr. DiNicola should have filed his Statement of Candidacy much earlier, since his campaign committee had raised over $5,000 (all of which is now being used for his 1996 campaign) in the first quarter of 1995. *See 2 U.S.C. §§ 431(2)(A) and 432(e)(1) (1996).*

Finally, Mr. DiNicola's apparent use of Mr. Binnie's excessive contribution for personal expenses violates FEC personal expense guidelines. *2 U.S.C. §439a (1996).*

97043815448

V. *PRAYER FOR RELIEF*

The N.R.C.C. and Erie County Republican Committee respectfully request that the Commission fully investigate the campaign activities of the Ron DiNicola for Congress Campaign with particular emphasis upon the unreported, excessive and unlawful personal loan extended by Mr. Binnie. Schemes such as Mr. DiNicola's must be rejected and discouraged. The Commission should take immediate and appropriate action under 2 U.S.C. § 437g(d)(1) to deter future violations of the law.

Respectfully Submitted,

Maria Cino
Executive Director
National Republican
Congressional Committee

John F. Mizner
Chairman
Erie County
Republican Committee

District of Columbia
Signed and sworn to
before me this 30th th
day of July, 1996.

NOTARY PUBLIC
My commission expires: _____

M. D. Acton
Notary Public, District of Columbia
My Commission Expires July 14, 1999

State of Pennsylvania
Signed and sworn to
before me this 8 th
day of August, 1996.

Kristine M. Shomper
NOTARY PUBLIC
My commission expires: 2/1/99

Notarial Seal
Kristine M. Shomper, Notary Public
Harrisburg, Dauphin County
My Commission Expires Feb. 1, 1999
Member, Pennsylvania Association of Notaries

9704381549

The Meadville Tribune

Serving Crawford County for 111 years

AY, July 27, 1996 MEADVILLE, PA. © COPYRIGHT 1996, THE MEADVILLE TRIBU

DiNicola borrows from campaign contributor

By HARRY STOFFER
TRIBUNE WASHINGTON BUREAU

WASHINGTON — Congressional hopeful Ron DiNicola, who has loaned his campaign committee more than $75,000 since 1993, has disclosed borrowing money for personal use from William Binnie, a New Hampshire businessman and campaign contributor.

Federal Election Commission regulations prohibit loans, even for personal use, to congressional candidates in excess of the legal limit on contributions, which for an individual is $1,000 per election — or, for example, $2,000 for a primary and general election in the same year.

DiNicola's financial disclosure statement filed in March listed the loan from Binnie at between $15,000 and $50,000.

Bob Bauer, a lawyer specializing in election law, who has advised DiNicola, said the loan amount was about $20,000. He said it was intended exclusively for personal use and was made in mid-1994, when DiNicola was not a candidate.

DiNicola did run for Congress in 1994, but lost in the May primary and subsequently decided to enter the 1996 race.

Kelly Huff, an FEC spokeswoman, said it is true congressional candidates are not permitted to accept personal loans in excess of the contribution limit, but each case's circumstances are different. The commission would likely rule on the DiNicola transaction only if it were asked for an advisory opinion or if a complaint were filed.

Rick Rossi, campaign manager for incumbent Rep. Phil English, R-Erie, contended Thursday this is a cut-and-dried case. "Mr. DiNicola should apologize and return this illegal donation. Anything less is unacceptable," he said.

J.J. Balaban, who became manager of the DiNicola campaign last month when the candidate overhauled operations, not only defended the Democrat's finances but came out firing against English.

He pointed out that an audit of English's 1994 campaign found evidence of excess contributions, improper corporate contributions and missing information about contributors.

Balaban also pointed out that English's congressional chief of staff is Robert Holste, who testified under a grant of immunity to the federal grand jury that inves-

Please see DINICOLA, *Page* A-15

Halfway Country Store and Tea Room. Open 11 a.m. - 8 p.m., Monday - Saturday.

EXHIBIT 2

9 7 0 4 3 8 1 5 4 5 1

DiNicola

Continued from Page **A-1**

tigated former Pennsylvania Attorney General Ernie Preate's collection of illegal campaign funds from video poker operators. Holste was a longtime top aide to Preate, who in 1995 pleaded guilty to mail fraud and was sent to federal prison.

Holste said Thursday that the FEC audit of the 1994 English campaign found technical errors that were corrected, and no penalty was imposed. He also said his past with Preate has been thoroughly aired in the congressional district and that he'll sue anyone who says he participated in illegal activity.

In other words, another bruising battle is in the offing for the 21st Congressional District, which English won by about 2 percentage points in 1994 after now-Gov. Tom Ridge held the seat for 12 years.

Meanwhile, Gary Ruskin, executive director of the Ralph Nader-founded Congressional Accountability Project, said the rule against loans to candidates, while fleshed out by pages and pages of regulatory language and advisory opinions, is pretty straightforward: It's a way to prevent backdoor contributions to congressional office seekers.

While FEC enforcement actions tend to lag behind elections, Ruskin said it is important nonetheless to have the matter dealt with in "the court of public opinion."

Binnie, reached in New Hampshire, said he has been a friend of DiNicola's since they went to Harvard University together. He said the loan, which he declined to describe in detail, was an effort to "support a friend."

EXHIBIT 1

EXHIBIT 2

FINANCIAL DISCLOSURE STATEMENT

Period Covered: January 1, 199 5 - March 22, 1995

For use by candidates for the office of Member and new employees

95 MAR 29 PM 12:03

Ronald A. DiNicola
(Full Name)

3820 Liberty St., Erie, Pennsylvania 16509
(Mailing Address)

(814) 868-0556 & 868-8541
Daytime Telephone:

Filer Status				Check if Amendment
	[X] Candidate for the House of Representatives	State: Pennsylvania District: 21st	Date of Election: April 23, 1996	[ ]
	[ ] New officer or employee	Employing Office:		

MAR 25 1996
(Office Use Only)

In all sections, please type or print clearly in black ink.

PRELIMINARY INFORMATION — ANSWER EACH OF THESE QUESTIONS

Did you or your spouse have "earned" income (e.g., salaries or fees) of more than $200 from any source in the reporting period? **If yes, Complete and Attach Schedule I.**	Yes [X]	No [ ]	Did you hold any reportable positions on or before the date of filing in the current calendar year? **If yes, Complete and Attach Schedule IV.**	Yes [X]	No [ ]
Did you, your spouse, or a dependent child receive "unearned" income of more than $200 in the reporting period or hold any reportable asset worth more than $1,000 at the end of the period? **If yes, Complete and Attach Schedule II.**	Yes [X]	No [ ]	Did you have any reportable agreement or arrangement with an outside entity? (New employees only; not candidates.) **If yes, Complete and Attach Schedule V.** N/A	Yes [ ]	No [ ] N/A
Did you, your spouse, or a dependent child have any reportable liability (more than $10,000) during the reporting period? **If yes, Complete and Attach Schedule III.**	Yes [X]	No [ ]	Did you receive compensation of more than $5,000 from a single source in the two prior years? **If yes, Complete and Attach Schedule VI.**	Yes [X]	No [ ]
Each question in this part must be answered.			Attach the appropriate schedule for each "Yes" response.		

EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION — ANSWER EACH OF THESE QUESTIONS

TRUSTS—Details regarding "Qualified Blind Trusts" approved by the Committee on Standards of Official Conduct and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or a dependent child? (See Instructions, page 10.)	Yes [ ]	No [X]
EXEMPTION—Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption? (See Instructions, page 11.)	Yes [ ]	No [X]

CERTIFICATION — THIS DOCUMENT MUST BE SIGNED BY THE REPORTING INDIVIDUAL AND DATED

This Financial Disclosure Statement is required by the Ethics in Government Act of 1978, as amended (5 U.S.C. app. 6, § 101 et seq.). The Statement will be available to any requesting person upon written application and will be reviewed by the Committee on Standards of Official Conduct. Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil and criminal sanctions (See 5 U.S.C. app. 6, § 104 and 18 U.S.C. § 1001).

SIGNATURE OF REPORTING INDIVIDUAL: [signature]

DATE (Month, Day, Year): March 22, 1996

EXHIBIT 2

Ronald A. DiNicola

SCHEDULE III—LIABILITIES

Report liabilities of over $10,000 owed to any one creditor *at any time* during the reporting period by you, your spouse, or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence (unless it is rented out); loans secured by automobiles, household furniture, or appliances; and liabilities owed to a spouse, child, parent, or sibling of the reporting individual or the reporting individual's spouse. For further information, see Instructions, page 21.

S, DC, JT	Creditor	Type of Liability	Category of Amount or Value (X)						
			B $10,001–$15,000	C $15,001–$50,000	D $50,001–$100,000	E $100,001–$250,000	F $250,001–$500,000	G $500,001–$1,000,000	H Over $1,000,000
	Example: First Bank of Wilmington, Delaware	Mortgage on 182 Main Street, Dover, Del.				X			
	PNC Bank, N.A., Erie, PA	Mortgage on 229 Maryland Ave.			X				
	Prudential Home Mortgage, Pasadena, CA	Mortgage on 2522 Veteran Ave.					X		
*	William Binnie	Personal Loan		X					
	PNC Bank, N.A., Erie, PA	Campaign Loan		X					

SCHEDULE IV—POSITIONS

Report all positions, compensated or uncompensated, held on or before the date of filing during the current calendar year and in the two prior years as an officer, director, trustee of an organization, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. For further information, see Instructions, page 25.

EXCLUSIONS: Positions held in any religious, social, fraternal, or political entities, and positions solely of an honorary nature need not be shown.

Position	Name of Organization
Equity Partner	Mitchell, Silberberg & Knupp
Officer, Sole Shareholder	Ronald A. DiNicola, a Professional Corporation
Chairman of the Board	Western Pennsylvania Policy Forum (non-profit)
Member of the Board	Boys and Girls Club of Erie, Inc.

Use additional sheets if more space is required.

MH/21

EXHIBIT 3

STATEMENT OF CANDIDACY

(See reverse side for instructions)

RECEIVED
FEDERAL ELECTION
COMMISSION
PUBLIC DISCLOSURE
DIVISION

FEB 26 12 50 PM '96

1 a. Name of Candidate (in full)
Ronald A. DiNicola

b. Address (number and street) ☒ Check if address changed
3820 Liberty Street

c. City, State and ZIP Code
Erie, Pennsylvania 16509

2. Identification Number
25-1719525

3. Party Affiliation
Democrat

4. Office Sought
U.S. House

5. State & District of Candidate
Pennsylvania/21st District

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

6. I hereby designate the following named political committee as my Principal Campaign Committee for the 1996 election(s)
(year of election)

NOTE: This designation should be filed with the appropriate office listed below.

a. Name of Committee (in full)
RON DiNICOLA FOR CONGRESS

b. Address (number and street)
3820 Liberty Street

c. City, State and ZIP Code
Erie, Pennsylvania 16509

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

(Including Joint Fundraising Representatives)

7. I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy. N/A

NOTE: This designation should be filed with the principal campaign committee.

a. Name of Committee (in full)

b. Address (number and street)

c. City, State and ZIP Code

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

Signature of Candidate

Date
2-21-96

A person who knowingly and willfully gives false information may subject the person signing this Statement to the penalties of 18 U.S.C. 641.

CANDIDATES FOR THE OFFICE OF:

President mail to:
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

U.S. Senate mail to:
Secretary of the Senate
Office of Public Records
232 Hart Senate Office Bldg
Washington, DC 20510-7116

U.S. House of Representatives mail to:
Clerk of the House of Representatives
Office of Records and Registration
1036 Longworth Office Bldg
Washington, DC 20515-6612

For further information contact:
Federal Election Commission
Toll-free 800 424-9530
Local 202 219-3420

FEC FORM 2
(Revised 4/95)

2 5 1 0 1 4 1 9 9 6 0 2 1 5 3 5 1 4 5 4

ATTACHMENT 1
LOANS MADE BY RON DiNICOLA
TO RON DiNICOLA FOR CONGRESS COMMITTEE
(Previously Reported)

DATE	AMOUNT
11/23/93	$ 2,000
12/12/93	$ 1,000
12/30/95	$ 10,062.05
12/30/93	$ 5,000
1/13/94	$ 1,000
3/31/94	$ 4,832.27
4/29/94	$ 25,000
5/5/94	$ 4,478.22
5/5/94	$ 6,000
5/17/94	$ 300
6/7/94	$ 1,700
6/21/94	$ 2,000
TOTAL	$ 63,372.54

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96011091215

EXHIBIT 5

REPORT OF RECEIPTS AND DISBURSEMENTS

For An Authorized Committee
(Summary Page)

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
FEB 4 3 42 PM '96

USE FEC MAILING LABEL OR TYPE OR PRINT

1. NAME OF COMMITTEE (in full): Ron DeFilicato for Congress

ADDRESS (number and street): P.O Box 3538 — ☐ Check if different than previously reported

CITY, STATE and ZIP CODE: Erie PA 16508 — STATE/DISTRICT: PA/21st

2. FEC IDENTIFICATION NUMBER: C 00171555

3. 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 (Non-election Year Only)
- ☐ Twelfth day report preceding _____ (Type of Election) election on _____ in the State of _____
- ☐ Thirtieth day report following the General Election on _____ in the State of _____
- ☐ Termination Report

This report contains activity for: ☒ Primary Election ☐ General Election ☐ Special Election ☐ Runoff Election

SUMMARY

		COLUMN A This Period	COLUMN B Calendar Year-to-Date
5	Covering Period July 1, 1995 through Dec 31, 1995		
6	Net Contributions (other than loans)		
	(a) Total Contributions (other than loans) (from Line 11(e))	27,529.50	34,267.91
	(b) Total Contribution Refunds (from Line 20(d))	0	0
	(c) Net Contributions (other than loans) (subtract Line 6(b) from 6(a))	27,529.50	34,267.91
7	Net Operating Expenditures		
	(a) Total Operating Expenditures (from Line 17)	9,299.61	11,834.27
	(b) Total Offsets to Operating Expenditures (from Line 14)	0	0
	(c) Net Operating Expenditures (subtract Line 7(b) from 7(a))	9,299.61	11,534.27
8	Cash on Hand at Close of Reporting Period (from Line 27)	22,2115	
9	Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	0	
10	Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	57,432.27	

For further information contact:
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Toll Free 800-424-9530
Local 202-219-3420

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: Phil Friedman

Signature of Treasurer: Phil Fried

Date: 1/30/96

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g

FEC FORM 3
(revised 4/87)

9704381545612

FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1996

Maria Cino, Executive Director
National Republican Congressional Committee
320 First Street, SE
Washington, DC 20003

John F. Mizner, Chairman
Erie County Republican Committee
26 West 8th Street
Erie, PA 16501

RE: MUR 4437

Dear Ms. Cino and Mr. Mizner:

This letter acknowledges receipt on August 8, 1996, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) 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 4437. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

97043815457

FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1996

Philip B. Friedman, Treasurer
Ron DiNicola for Congress
821 State Street
Erie, PA 16501

RE: MUR 4437

Dear Mr. Friedman:

The Federal Election Commission received a complaint which indicates that Ron DiNicola for Congress ("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 4437. 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.

97043815458

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

9704381545 9

FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1996

Ronald A. DiNicola
3820 Liberty Street
Erie, PA 16509

RE: MUR 4437

Dear Mr. DiNicola:

The Federal Election Commission received a complaint which indicates that you 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 4437. 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 you 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.

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9704381546C

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

97043815461

FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1996

William H. Binnie
35 Wentworth Road
Rye, NH 03870

RE: MUR 4437

Dear Mr. Binnie:

The Federal Election Commission received a complaint which indicates that you 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 4437. 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 you 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.

9704381546 2

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

9704381546 3

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SEP 3 12 43 PM '96

BRAND, LOWELL & RYAN
A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

August 29, 1996

BY FACSIMILE AND
UNITED STATES MAIL

Colleen E. Sealander, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4437

Dear Ms. Sealander:

We have recently been retained by Mr. William Binnie to represent him in the above-captioned matter under review. You should have received (or should be receiving soon by facsimile) his designation of counsel form.

The Commission's letter to Mr. Binnie transmitting the complaint in this MUR is dated August 15, 1996. Mr. Binnie received the complaint on August 22, so we calculate that his response to the complaint is due on September 6, 1996. We hereby seek a brief extension of two weeks, until September 20, 1996, to file a response to the complaint on Mr. Binnie's behalf.

We are seeking the extension so that we can better assist the Commission to resolve this matter. The complaint, importuning the Commission to extend its jurisdiction to private transactions with **former** candidates, raises factual and legal issues that require more detailed review and reflection than the limited time available permits. The brief extension sought will allow for this additional consideration and result in a more informed and helpful response.

Thank you very much in advance for your consideration of our request. Please do not hesitate to contact me if you require additional information.

Sincerely,

David E. Frulla

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WILLIAM H. BINNIE
ONE HARBOUR PLACE
PORTSMOUTH, NH 03801
603-431-0000

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 30 11 30 AM '96

August 29, 1996

Colleen T. Sealander, Attorney
Central Enforcement Docket
Federal Election Commission
Washington, DC 20463

VIA FACSIMILE 202-219-3923

Dear Attorney Sealander:

Enclosed for your information please find an executed copy of the "Statement Of Designation Of Counsel" regarding my case reference number MUR4437 with the Federal Election Commission.

If you have any questions, please call.

Sincerely

Will H. Binnie

Enclosure

cc: David Frulla
Brand, Lowell & Ryan

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STATEMENT OF DESIGNATION OF COUNSEL

MUR4437

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 30 11 31 AM '96

NAME Of COUNSEL: Stanley Brand & David Frulla

FIRM: Brand, Lowell & Ryan

ADDRESS: 923 15th Street, NW
Washington, DC 20005

TELEPHONE: (202)662-9700

FAX: (202)737-7565

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

8/29/96
Date

Signature

RESPONDENT'S NAME: William H. Binnie

ADDRESS: 35 Wentworth Road
Rye, New Hampshire 03870

TELEPHONE: HOME (603)431-7835

BUSINESS (603)431-0000

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 30, 1996

Stanley Brand, Esq.
David E. Frulla, Esq.
Brand, Lowell & Ryan
923 Fifteenth Street, N.W.
Washington, DC 20005

RE MUR 4437
William H. Binnie

Dear Messrs. Brand and Frulla:

This is in response to your letter by facsimile dated and received August 29, 1996, requesting an extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on September 20, 1996.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Colleen T. Sealander by MAB

Colleen T. Sealander, Attorney
Central Enforcement Docket

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. · WASHINGTON, D.C. 20005-2011
TELEPHONE: 202 628-6600 · FACSIMILE: 202 434-1690

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SEP 5 9 59 AM '96

ROBERT F. BAUER
(202) 434-1602

September 3, 1996

Colleen T. Sealander, Attorney
Central Enforcement Docket
6th Floor
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4437

Dear Ms. Sealander:

This firm represents Ronald A. DiNicola in this matter. We received the complaint immediately before out-of-town travel, upon the eve of the Democratic National Convention in Chicago and the pending Labor Day weekend.

For this reason, we would request an additional twenty (20) days within which to prepare a response. The extension we have requested would bring the date for our reply to September 23, 1996.

We respectfully request your favorable consideration of this request.

Very truly yours,

Robert F. Bauer

RFB:jic

[09901-0001/DA962470.025]

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert F. Bauer, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

September 6, 1996

RE: MUR 4437
Robert A. DiNicola

Dear Mr. Bauer:

This is in response to your facsimile dated September 3, 1996, which we received on the same day requesting an extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on September 23, 1996.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Erik Morrison

Erik Morrison, Paralegal
Central Enforcement Docket

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RECEIVED
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COMMISSION
SEP 20 11 59 AM '96

BEFORE THE UNITED STATES FEDERAL ELECTION COMMISSION

In the Matter of: RON DiNICOLA FOR CONGRESS, and WILLIAM H. BINNIE.	Matter Under Review 4437

MR. WILLIAM H. BINNIE'S NO "REASON TO BELIEVE" SUBMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 20 4 35 PM '96

By letter dated August 15, 1996, the Commission forwarded the complaint in the above-captioned matter under review to Mr. William H. Binnie. The complaint, filed by the National Republican Congressional Committee ("Complainant"), inappropriately importunes the Commission to assume jurisdiction over a personal loan that Mr. Binnie reportedly made to Mr. Ronald DiNicola (Binnie's college housemate and personal friend ever since) *weeks after* Mr. DiNicola lost the 1994 Democratic Party primary for Pennsylvania's 21st District House race.

Mr. Binnie respectfully provides the following submission demonstrating there is no "reason to believe" that he violated the federal campaign finance law or regulations. The loan was unrelated to Mr. DiNicola's campaign. Accordingly, the Commission should expeditiously dismiss the complaint pursuant to 11 C.F.R. § 111.9(b).

I. FEDERAL CAMPAIGN FINANCE LAW REQUIRES A DEMONSTRABLE NEXUS BETWEEN A LOAN AND A CAMPAIGN FOR FEDERAL OFFICE BEFORE FECA (AND HENCE COMMISSION) JURISDICTION ATTACHES TO THE LOAN

The FECA defines the term "contribution" to include a "loan . . . made by any person *for the purpose of influencing* an election for Federal office." 2 U.S.C. § 431(8)(A)(i)(emphasis

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added). The law also provides that "[a]ny candidate [for Federal office] . . . who receives . . . any loan for use *in connection with the campaign* of such candidate for election . . . shall be considered, for purposes of the Act, as having received the . . . loan . . . as an agent of the authorized committee . . . of such candidate." 2 U.S.C. § 432(e)(2)(emphasis added). The Commission must dismiss the Complaint because the Complainant has not demonstrated the required nexus between the loan and any campaign by Mr. DiNicola.

II. COMPLAINANT HAS NOT DEMONSTRATED THAT MR. BINNIE MAKE A LOAN TO MR. DiNICOLA IN CONNECTION WITH ANY CAMPAIGN OF MR. DiNICOLA

Mr. Binnie did, indeed, make a loan in the amount of $20,000 to Mr. DiNicola on May 26, 1996. *See* Declaration of William H. Binnie, ¶ 3 (attached hereto as Exhibit 1). Mr. DiNicola, had however, already lost the 21st District primary on May 10, 1994. The personal loan in question was not a "contribution" made to a candidate as an agent of his campaign because Mr. DiNicola was not a candidate when the loan was made.

Complainant has, moreover, adduced no factual basis to argue that Mr. DiNicola's subsequent decision to run for the same seat in 1996 converted him into a perpetual candidate or tester-of-the-waters. Nor would any Commission presumption to that effect be appropriate or constitutional.

Finally, Complainant has not shown that the loan corresponded in any non-fanciful way or amount to Mr. DiNicola's efforts to retire his 1994 campaign debt.

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III. MR. BINNIE DID NOT MAKE THE LOAN TO MR. DiNICOLA FOR THE PURPOSE OF INFLUENCING AN ELECTION FOR FEDERAL OFFICE

Messrs. Binnie and DiNicola have been personal friends since college, where they were housemates. They have known each other for over twenty years. *See* Binnie Declaration, ¶ 2. As a result of this long-standing personal friendship, Mr. Binnie knew that Mr. DiNicola had a close family member who had been having on-going legal difficulties since the 1970's, well before Mr. DiNicola was a candidate for federal office. *Ibid.*, at ¶ 5.

Mr. Binnie avers that Mr. DiNicola asked him for the loan in question to help defray on-going legal expenses that this family member was incurring. *Ibid.*, at ¶ 4. Mr. Binnie provided the loan to Mr. DiNicola for that purpose, and not for the purpose of influencing any campaign for federal office. *Ibid.* The loan is thus outside the Commission's purview.

IV. CONCLUSION

For the foregoing reasons, no "reason to believe" exists that Mr. Binnie violated the federal campaign finance law or regulations. The Complaint represents nothing more than an election-year effort to manufacture negative publicity regarding Mr. DiNicola. The Commission should, therefore, dismiss this Complaint *before* the 1996 election and put this manufactured campaign issue to rest.

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Respectfully submitted this 20th day of September, 1996

BRAND, LOWELL & RYAN, P.C.
(A Professional Corporation)

Stanley M. Brand
D.C. Bar No. 213082
David E. Frulla
D.C. Bar No. 414170
923 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 662-9700

Counsel for Mr. William H. Binnie

9704381547 3

BEFORE THE UNITED STATES FEDERAL ELECTION COMMISSION

In the Matter of: RON DiNICOLA FOR CONGRESS, and WILLIAM H. BINNIE.	Matter Under Review 4437

DECLARATION OF WILLIAM H. BINNIE

I, William H. Binnie, declare as follows:

1. I make this declaration based on my personal knowledge.

2. I have been a personal friend of Mr. Ron DiNicola since college, where we were housemates. I have known Mr. DiNicola for over twenty years.

3. On May 26, 1994, I loaned Mr. DiNicola $20,000.

4. Mr. DiNicola had asked for the loan to help defray a family member's ongoing legal expenses, and I made the loan on that basis.

5. Based on my longstanding personal friendship with Mr. DiNicola, I knew of his family member's ongoing legal difficulties and knew that these difficulties had begun in the 1970's, well before Mr. DiNicola was a candidate for federal office.

FURTHER DECLARANT SAYETH NOT.

I declare under the penalty of perjury that the foregoing is true and correct.

William H. Binnie

Executed on: September, 18th 1996

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PERKINS COIE
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. · WASHINGTON, D.C. 20005-2011
TELEPHONE: 202 628-6600 · FACSIMILE: 202 434-1690

RECEIVED
FEDERAL ELECTION
COMMISSION MAIL ROOM
SEP 23 4 57 PM '96

ROBERT F. BAUER
(202) 434-1602

September 23, 1996

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 24 9 40 AM '96

Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 4437

Dear Mr. Noble:

We have today filed a response to the Complaint filed in this matter. In addition to the response, we will be filing within the week a supporting affidavit from Mr. DiNicola. Because of his campaign schedule, including travel, he has been unable to complete the execution of the affidavit but we have made arrangements for him to do so and return it to this office within the next 48 hours.

If you have any questions, please do not hesitate to let me know.

Very truly yours,

Robert F. Bauer
Counsel to Respondents

RFB:smb

[24477-0001/LETTER.01]

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. · WASHINGTON, D.C. 20005-2011
TELEPHONE: 202 628-6600 · FACSIMILE: 202 434-1690

ROBERT F. BAUER
(202) 434-1602

September 23, 1996

Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 4437

Dear Mr. Noble:

Introduction

This is a reply by Ron DiNicola and DiNicola for Congress to the Complaint filed by Maria Cino and John Mizner, alleging that a personal loan in the amount of $20,000 made to Mr. DiNicola for personal purposes by a personal friend constituted an illegal campaign contribution.

The Complainants have formulated the theory that though Mr. DiNicola was not a candidate at the time, nor for some years later, the loan became a contribution when Mr. DiNicola subsequently decided to run again for the House of Representatives in 1996. To this extraordinary claim, the Complainants add some other argument intended to show that the loan was somehow campaign-related, but as will be shown, the "support" they provide directly refutes their own claim.

Along the way Complainants make various errors in describing Mr. DiNicola's campaign finances as reflected in the reports filed by his principal campaign

[24477-0001/DA962640.013]

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committee with the Commission. These errors pale in comparison to the errors in their overall legal analysis. So even accepting for purposes of this response the representations of the Complainants, their allegations fail to sustain a claim recognized under the Act.

Facts

Mr. DiNicola was a candidate for the Democratic nomination to the House in 1994. Over the same period of his primary candidacy, Mr. DiNicola remained a practicing attorney and remained also attentive to important personal matters involving a family member with personal legal problems. He could not commit full attention to either his regular vocation or family matters while campaigning for the House.

The circumstances changed with his loss in the Democratic primary on May 10, 1994. Mr. DiNicola found himself in the wake of that primary still confronted with these family legal problems. In fact, the trial involving this family member, requiring Mr. DiNicola's active participation and presence, began on May 9 -- the day before the primary -- and continued for two weeks thereafter. Mr. DiNicola was therefore unable to resume his law practice over this period, while also required to maintain (along with other family members, such as his sister) financial responsibility to assist with the payment of mounting legal bills.

Mr. DiNicola turned to a former college roommate and long-time friend William Binnie for help with the pressures on his family finances caused by these legal difficulties. Mr. Binnie, well familiar with these legal problems, agreed to loan Mr. DiNicola $20,000 for these personal purposes. The loan was made on May 26, 1994, more than two weeks after Mr. DiNicola's candidacy ended and when he was focussed now on the problems in his personal life and not on the campaign. He and Mr. DiNicola agreed that the loan should be repaid, if possible, within a year, but each understood, as friends, that if Mr. DiNicola was unable to pay it within or at that time, the repayment could be extended as required, indefinitely. The loan from Mr. Binnie made the payment of these legal expenses possible, and Mr. DiNicola proceeded to pay those expenses. Since that time, Mr. DiNicola has made modest payments on this loan, but it remains substantially unpaid.

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The Complainants' Arguments

The Complainants concede that Mr. DiNicola was not a candidate at the time the loan was requested or received, and that he did not become a candidate again until February of 1996. Ms. Cino and Mr. Mizner proceed to claim that in the month of June, following the loan, Mr. DiNicola made limited payments on campaign debts, in amounts of $3,000 and $1,700, and that the only other payments made directly by the candidate until he became a candidate in February of 1996 occurred in 1995 in the form of an "in-kind" contribution of $608.31. The Complainants accept also that these payments on the debt are consistent with a course of direct financial support for his campaign by Mr. DiNicola throughout the 1994 cycle.

The Complainants do not even pretend that Mr. DiNicola applied the Binnie personal loan to the payment of outstanding campaign debt. The loan in any event was in the amount of $20,000, and Complainants only express concern over some $5,000 in payments by Mr. DiNicola to retire campaign debts in a full year and a half after the loan was made. They argue instead that the loan made it possible for Mr. DiNicola to "ignore" his campaign debts. What this might mean, or how it states a claim under the Act, is unstated. Indeed their argument undercuts itself. If Mr. Binnie had made the loan for campaign-related purposes, Mr. DiNicola would have no cause to "ignore" the remaining 1994 debt. He would, by any conventional logic, have paid it. Mr. DiNicola did not do so, because the loan was for personal, not for campaign, purposes.

So the Complainants offer still another "theory." In their view, the Binnie loan must be a contribution because, almost two years later, Mr. DiNicola became a candidate in the 1996 election cycle, also for a seat in the House. "Binnie's largess," they write, "absolutely became a contribution once DiNicola became a candidate for the 1996 race." Compl. at 3. This theory is even more bizarre than its predecessor, seeking Commission endorsement of the proposition that a candidate who accepts a personal loan from a personal friend between elections may treat it as "personal" if he never runs again, but a "contribution" after-the-fact if he ever chooses to seek another federal office. The authority cited by the Complainants is not worth the name, relating only to the acceptance of personal funds for living expenses during active candidacy or "testing the waters" activities. In this matter, of course, Mr. DiNicola did not begin "testing the waters" for any race as soon as the May 1994 primary ended. In fact, Commission regulations would not permit a "testing the waters"

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period of almost two years. 11 C.F.R. § 100.7(b)(1)(i)(D).* Mr. DiNicola's candidacy in 1996 did not develop until late 1995 and it was reflected formally in a Statement of Organization filed with the Commission in February of 1996 and his candidacy for 1996 was not formal and reflected in a Statement of Candidacy filed with the Commission until February of 1996.

The Law

Under the Commission's regulations, the question of whether a loan is a contribution, made in support of candidacy, or an unrestricted "personal" loan, depends on the facts and circumstances surrounding the loan. Among factors considered in determining whether a loan is a contribution, or an unrestricted personal loan, are whether the individual was a candidate at the time that the loan was received, see 11 C.F.R. § 110.10(b)(1), and whether the manner in which the loan was made suggests a campaign-related purpose. See Fed. Election Camp. Fin. Guide (CCH), Advisory Op. 1981-22 [¶ 5608] 10,759 (May 29, 1991). See also Federal Election Commission v. Ted Haley Congressional Committee, 852 F.2d 1111, 1112 (9th Cir. 1988).

The Complainants also make no mention of the Commission's "personal use" regulations which bear also on the question of when the payment of personal expenses of a candidate would constitute a "contribution," rather than a "personal" payment or loan outside the restrictions of the FECA. The rule focuses on whether the payment would have been made "irrespective of candidacy." 11 C.F.R. § 113.1(g)(6); see also FEC Explanation and Justification, 60 Fed. Reg. 7871 (February 9, 1995) ("If [a] payment would have been made even in the absence of a candidacy, the payment should not be treated as a contribution.")

---

* The Complainants also make various other claims about Mr. DiNicola's fundraising in 1994 and 1995 which are inaccurate and which Complainants do not trouble themelves to substantiate. These allegations also do not connect in any way to a claim under the Act or to the central objection they speciously raise against the Binnie loan.

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Conclusion

In this case, the candidate whose campaign ended borrowed funds to address the financial pressure experience as a result of personal difficulties of a family member for whom he had accepted significant financial responsibility. This loan was made when he was no longer a candidate for any cycle, and it would have been made had there been no prior candidacy at all. The law cannot apply on these facts to accomplish the result Complainants seek -- retroactive treatment of the loan as a contribution in the event that the former candidate runs again, however much later, in the future.

The Complaint should be dismissed forthwith.

Very truly yours,

Robert F. Bauer
Counsel to Respondents

RFB:jic

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OCT -3 1996
OGC

AFFIDAVIT OF RONALD DINICOLA

MUR 4437

I, Ronald DiNicola, being duly sworn, do depose and say:

1. In May of 1996, after my failure to win the nomination of my party for the House of Representatives, I requested a personal loan from my former college roommate and long-time friend, William Binnie, to assist me with the payment of legal expenses incurred by a family member.

2. The day before my primary, the trial involving this family member had begun, and I was unable to resume my law practice while also still obliged to assist with the trial and with the payment of my relative's legal expenses.

3. These personal circumstances faced by this family member and my involvement in those circumstances were already known to Mr. Binnie. He agreed on that basis to make the loan.

4. The payment of these expenses at the time would not have been possible on my own assets and income. With Mr. Binnie's loan, I was able to proceed with the payment of those expenses. I have been able to make small payments on this

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loan, but it remains substantially unpaid. Mr. Binnie and I have agreed that the loan may be repaid over time as my personal financial position permits.

Ronald A. DiNicola

STATE OF PENNSYLVANIA)

County of ERIE)

SUBSCRIBED AND SWORN to before me this 30th day of September 1996.

Joanne A. Chiota
Notary Public

My Commission Expires:

October 13, 1998

Notarial Seal
Joanne A. Chiota, Notary Public
Erie, Erie County
My Commission Expires Oct. 13, 1998

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
MAY 2 '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) ENFORCEMENT PRIORITY

GENERAL COUNSEL'S REPORT **SENSITIVE**

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

A. Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission

EPS was created to identify pending cases which, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating of each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 28 cases which do

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not warrant further action relative to other pending matters.[1] Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

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[1] These cases are: MUR 4419 (*Weinzapfel for Congress*); MUR 4423 (*Davis for Congress*); MUR 4424 (*Nevadans for "Spike" Wilson*); MUR 4429 (*Delahunt for Congress*); MUR 4430 (*Jean Leising for Congress*); MUR 4431 (*Engel for Congress*); MUR 4433 (*Delahunt for Congress*); MUR 4437 (*DiNicola for Congress Committee*); MUR 4440 (*Sue Kelly for Congress*); MUR 4450 (*National Treasury Employees*); MUR 4452 (*Mid-Suffolk N.O.W.*); MUR 4455 (*City of Milwaukee*); MUR 4456 (*Jackson Mint Ltd.*); MUR 4457 (*U.S. Department of Health and Human Services*); MUR 4458 (*KMA-AM Radio*); MUR 4461 (*Americans For Freedom Of Choice PAC*); MUR 4462 (*Ellen O. Tauscher*); MUR 4464 (*Norwood for Congress*); MUR 4465 (*Lincoln for Congress*); MUR 4469 (*Moseley-Braun for Senate*); MUR 4475 (*Manpower Temporary Services, Inc.*); MUR 4479 (*Owens for Congress Committee*); MUR 4482 (*Mike McCormack for Congress*); MUR 4487 (*Citizens for A Strong America*); MUR 4488 (*Ortiz for Congress*); MUR 4489 (*Gill for Congress*); MUR Pre-MUR 338 (*Richard Chrysler Inc.*); and Pre-MUR 339 (*Mammel & Associates, Inc.*).

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective May 19, 1997. Closing these cases as of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

9 7 0 4 3 8 1 5 4 8 5

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

1. Pre-MUR 338
2. Pre-MUR 339

B. Take no action, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

1. MUR 4419	10. MUR 4450	19. MUR 4465
2. MUR 4423	11. MUR 4452	20. MUR 4469
3. MUR 4424	12. MUR 4455	21. MUR 4475
4. MUR 4429	13. MUR 4456	22. MUR 4479
5. MUR 4430	14. MUR 4457	23. MUR 4482
6. MUR 4431	15. MUR 4458	24. MUR 4487
7. MUR 4433	16. MUR 4461	25. MUR 4488
8. MUR 4437	17. MUR 4462	26. MUR 4489
9. MUR 4440	18. MUR 4464	

5/6/97
Date

Lawrence M. Noble
General Counsel

97043815486

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Enforcement Priority.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that the Commission decided by a vote of 5-0 on May 12, 1997, to take the following actions with respect to the General Counsel's May 6, 1997 report on enforcement priority:

A. Decline to open a MUR, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

1. Pre-MUR 338
2. Pre-MUR 339

B. Take no action, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

1. MUR 4419	10. MUR 4450	19. MUR 4465
2. MUR 4423	11. MUR 4452	20. MUR 4469
3. MUR 4424	12. MUR 4455	21. MUR 4475
4. MUR 4429	13. MUR 4456	22. MUR 4479
5. MUR 4430	14. MUR 4457	23. MUR 4482
6. MUR 4431	15. MUR 4458	24. MUR 4487
7. MUR 4433	16. MUR 4461	25. MUR 4488
8. MUR 4437	17. MUR 4462	26. MUR 4489
9. MUR 4440	18. MUR 4464	

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

5-13-97
Date

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

Received in the Secretariat: Tues., May 06, 1997 2:45 p.m.
Circulated to the Commission: Wed., May 07, 1997 11:00 a.m.
Deadline for vote: Mon., May 12, 1997 4:00 p.m.

bjr

97043815487

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 19, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sam Dawson, Executive Director
National Republican Congressional Committee
320 First Street, SE
Washington, DC 20003

John F. Mizner, Chairman
Erie County Repblican Committee
26 West 8th Street
Erie, PA 16501

RE: MUR 4437

Dear Mr. Dawson and Mr. Mizner:

On August 8, 1996, the Federal Election Commission received Maria Cino and John Mizner's complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on May 19, 1997. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

97043815488

MUR 4437
DINICOLA FOR CONGRESS COMMITTEE

Maria Cino, Executive Director of the National Republican Congressional Committee, and John Mizner, Chairman of the Erie County Republican Committee, allege that Mr. DiNicola received a $20,000 personal loan after his participation in an unsuccessful primary election in 1994 from Mr. William H. Binnie, a personal friend. Complainants assert that this loan constituted an excessive contribution to DiNicola's 1996 campaign for Congress because it gave the former candidate the financial wherewithal to disregard the repayment of approximately $70,000 in loans and debts owed to him by the 1994 campaign, and allegedly permitted DiNicola to contribute more personal funds to his 1996 campaign than would otherwise have been possible. They also allege that the Committee raised $27,000 during 1995 and did not use any of this money to retire the 1994 debts as of January 1996; they assert this constituted fundraising in anticipation of the 1996 campaign. Mr. DiNicola submitted a Statement of Candidacy for the 1996 election on February 21, 1996. Review of FEC reports indicates that the candidate still has outstanding debts from the 1994 election cycle.

Respondents DiNicola and the Committee respond together that Mr. DiNicola was not a candidate at the time he received the $20,000 loan. Mr. DiNicola, an attorney, states that he sought and accepted this personal loan from Mr. Binnie, a close friend and former college roommate, immediately after his primary loss. He claims that he had not re-established his law practice at that point in time, and that the loan was intended to cover some short-term living expenses while he joined in the representation of a family member in court proceedings right after the primary election and which continued for approximately two weeks. He relates that a portion of the loan was also used to defray some related legal expenses undertaken on behalf of the relative. He denies any relationship between this loan and his campaigns for Congress in either 1994 or 1996.

Respondent William Binnie essentially confirms his personal friendship with Mr. DiNicola, and states that the $20,000 loan was purely personal and completely unrelated to any election campaign or the retirement of any campaign debts.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 19, 1997

Robert F. Bauer, Esq.
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 4437
Ronald A. DiNicola
Ron DiNicola for Congress, Philip B. Friedman, Treasurer

Dear Mr. Bauer:

On August 15, 1996, the Federal Election Commission notified you clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your clients. See attached narrative. Accordingly, the Commission closed its file in this matter on May 19, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Jennifer Henry at (202) 219-3400.

Sincerely

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

9704381549C

MUR 4437
DINICOLA FOR CONGRESS COMMITTEE

Maria Cino, Executive Director of the National Republican Congressional Committee, and John Mizner, Chairman of the Erie County Republican Committee, allege that Mr. DiNicola received a $20,000 personal loan after his participation in an unsuccessful primary election in 1994 from Mr. William H. Binnie, a personal friend. Complainants assert that this loan constituted an excessive contribution to DiNicola's 1996 campaign for Congress because it gave the former candidate the financial wherewithal to disregard the repayment of approximately $70,000 in loans and debts owed to him by the 1994 campaign, and allegedly permitted DiNicola to contribute more personal funds to his 1996 campaign than would otherwise have been possible. They also allege that the Committee raised $27,000 during 1995 and did not use any of this money to retire the 1994 debts as of January 1996; they assert this constituted fundraising in anticipation of the 1996 campaign. Mr. DiNicola submitted a Statement of Candidacy for the 1996 election on February 21, 1996. Review of FEC reports indicates that the candidate still has outstanding debts from the 1994 election cycle.

Respondents DiNicola and the Committee respond together that Mr. DiNicola was not a candidate at the time he received the $20,000 loan. Mr. DiNicola, an attorney, states that he sought and accepted this personal loan from Mr. Binnie, a close friend and former college roommate, immediately after his primary loss. He claims that he had not re-established his law practice at that point in time, and that the loan was intended to cover some short-term living expenses while he joined in the representation of a family member in court proceedings right after the primary election and which continued for approximately two weeks. He relates that a portion of the loan was also used to defray some related legal expenses undertaken on behalf of the relative. He denies any relationship between this loan and his campaigns for Congress in either 1994 or 1996.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 19, 1997

Stanley Brand, Esq.
David E. Frulla, Esq.
Brand, Lowell & Ryan
923 15th Street, NW
Washington, DC 20005

RE: MUR 4437
William H. Binnie

Dear Messrs. Brand and Frulla:

On August 15, 1996, the Federal Election Commission notified your client of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your client. See attached narrative. Accordingly, the Commission closed its file in this matter on May 19, 1997.

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Sincerely

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

97043815492

MUR 4437
DINICOLA FOR CONGRESS COMMITTEE

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4437

DATE FILMED 6-9-97 CAMERA NO. 4

CAMERAMAN JMH

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