

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

ROBINSON COMMITTEE, LLC and)	
and JACK E. ROBINSON,)	
)	
Petitioners,)	
)	
v.)	Case No. 1:10-CV-11335-GAO
)	
FEDERAL ELECTION COMMISSION,)	
)	
Respondent.)	

PETITIONERS’ OPPOSITION TO RESPONDENT’S MOTION TO DISMISS

Petitioners Robinson Committee, LLC and Jack E. Robinson (collectively, “Robinson”) hereby oppose the Motion to Dismiss the Petition (“Motion”) filed by respondent Federal Election Commission (“FEC”) on the simple ground that the FEC’s counsel failed to consult with Robinson’s counsel before filing the Motion in clear violation of Local Rule 7.1(A)(2). See Dkt. No. 5 (Motion lacks required certification).

Because the FEC violated an important rule of this court, Robinson requests that the court deny the Motion *without* prejudice and either (1) refer this matter to the FEC’s own Alternative Dispute Resolution (“ADR”) Program and stay the case for 180 days to allow the ADR process to occur; or (2) impose a monetary sanction against the FEC of \$6,400 – which is the amount of the fine assessed by the FEC (\$6,050) plus the filing fee in this case (\$350).¹

¹ Robinson reserves the right to oppose the Motion on substantive grounds if the Motion is filed in compliance with the Local Rules in the future.

In further support hereof, Robinson states as follows:

1. Robinson was the unsuccessful Republican U.S. Senate candidate in the December 2009 Republican primary special election, having lost the primary to the eventual general election winner Sen. Scott Brown.

2. Robinson was assessed a civil money penalty of \$6,050 by the FEC because, notwithstanding his best efforts, Robinson filed a campaign finance report 81 days late that was due after the *general* election.

3. On August 9, 2010, after exhausting his administrative remedies challenging the fine, Robinson filed this action seeking review of the FEC's decision.

4. On Friday, October 8, 2010 (the beginning of the Columbus Day holiday weekend), and without first conferring with Robinson's counsel and without certifying that it had done so, the FEC filed the Motion. (Dkt. No. 5). Even worse, the FEC filed the Motion on the Friday before a holiday weekend in an effort to "blind-side" Robinson. The FEC's actions provide sufficient reason for the Court to deny the Motion without prejudice and to sanction the FEC for its misconduct.

5. "The purpose of Rule 7.1 is to conserve judicial resources by encouraging parties to narrow the contours of disagreement before bringing their dispute to the court. Rule 7.1 does not have a 'no harm, no foul' escape clause." Converse, Inc. v. Reebok Int'l Ltd., 328 F. Supp. 2d 166, 170 (D. Mass. 2004).

6. In Converse, the court imposed a \$15,000 sanction for a movant's violation of Rule 7.1(A)(2) because the movant, as in this case, ambushed the other party with a motion on the Friday of a holiday weekend. "A sanction in the amount of \$15,000 will send the appropriate message that Rule 7.1 is no trifle, and that the court expects compliance with both the letter and spirit of its requirements." Id. at 171. See also Steele v. Turner Broadcasting System, Inc., No. 08-11727-NMG, 2010 WL 3810850, *6 (D. Mass. Sep. 27, 2010) ("Failure to [comply with the Rule] may result in sanctions.").

7. The failure of the FEC's counsel to confer with Robinson's counsel is particularly egregious in this case because this entire dispute, over a \$6,050 fine, is tailor-made for ADR using the FEC's own ADR Program. *See FEC's Alternative Dispute Resolution Program* (rev. Feb. 2010) (available at www.fec.gov/em/adr.shtml) (last visited Oct. 9, 2010). The court should stay the case for 180 days to allow the ADR process to occur.

8. Alternatively, the court should impose a monetary sanction against the FEC in the amount of \$6,400, consisting of the fine at issue in this case (\$6,050) plus the filing fee incurred by Robinson to commence this action (\$350). Robinson would then immediately pay over to the FEC the \$6,050 — thereby ending this dispute and resulting in Robinson voluntarily dismissing this action *with prejudice* pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).²

² One of the attorneys appearing for the FEC in this action, Assistant General Counsel Kevin Deeley, is a member of the bar of the Commonwealth who presumably is acquainted with this court's Local Rules and their importance. *See* Dkt. No. 4 at 2 (FEC Notice of Appearance).

Respectfully submitted,
**ROBINSON COMMITTEE, LLC and
JACK E. ROBINSON,**

By their attorney,

/s/ Jack E. Robinson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on the date hereof.

/s/ Jack E. Robinson

Jack E. Robinson