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Enforcement Manual

This manual is intended only as internal guidance to OGC staff, does not contain any legally binding Commission rulings, and is not intended to, and does not, create any substantive or procedural rights.

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
1998

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Introduction

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Introduction

I. PURPOSE OF THE MANUAL

The purpose of this manual is to aid enforcement staff in the Office of the General Counsel of the Federal Election Commission in the consistent and efficient performance of their important public responsibilities under the Federal Election Campaign Act of 1971, as amended ("the Act") and Chapters 95 and 96 of Title 26 of the United States Code and Chapter 11 of the Code of Federal Regulations.

It is designed to be a reliable resource of information pertaining to all aspects of the enforcement process. These materials, along with the compilation of Enforcement Procedures Memoranda, are a necessary and valuable guide to the enforcement procedures and policies and should be regularly consulted and followed in the handling of all enforcement matters.

The manual is intended only as an internal guide to the enforcement process. Thus, its contents should remain confidential. The manual is not intended to, and does not, create any substantive or procedural rights that are enforceable by any party involved in an enforcement matter. Those rights are, instead, set forth in the provisions of the Act and Commission regulations, in Advisory Opinions, and in other public policies approved by the Commission.

The manual seeks to achieve consistency and fairness in the treatment of enforcement matters and to achieve greater efficiency in the processing of them. With the aid of this manual, staff should be able to deal with most of the recurring procedural questions and issues that arise during the enforcement process.

The Commission's enforcement practice is "organic" in that it undergoes continual refinement and modification. The manual is prepared in loose-leaf so that it may be revised and updated as necessary. In using this manual, staff may identify places where revisions or additions seem warranted. In such cases, staff should forward a memorandum or electronic message describing the recommended change or addition to

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the Special Assistant to the Associate General Counsel for Enforcement and to the Enforcement Manual Staff computer account.

II. ROLE OF ENFORCEMENT

The Act places several major responsibilities on the Federal Election Commission: (1) disclosing campaign finance information, (2) administering public funding programs, (3) encouraging compliance with the law, (4) monitoring compliance with the law, (5) enforcing and defending the law, and (6) serving as a clearinghouse of election administration. The Act also encompasses the legal requirements for the organization and operation of political committees, the timely disclosure of relevant campaign finance information, prohibitions and limitations on the sources of campaign funds, and the use of campaign funds. These requirements are comprehensive and apply to all candidates seeking nomination or election to federal office, to all political committees and individuals receiving contributions or making expenditures with respect to federal elections, subject to certain minimum threshold amounts of financial activity.[1] Within this context, the enforcement process performs a critical function.

The Act provides that the Federal Election Commission "shall have exclusive jurisdiction with respect to the civil enforcement" of the provisions of the Act and Chapters 95 and 96 of Title 26. 2 U.S.C. § 437c(b)(1). Jurisdiction for criminal enforcement of the Act and Chapter 95 and 96 of Title 26 resides in the Department of Justice. In recognition of this dichotomy, the Commission and the Department of Justice entered into a Memorandum of Understanding regarding enforcement. See 1 Fed. Election Camp. Fin. Guide ¶ 2042 (1989).

In some instances, the Commission's jurisdiction may coincide with the jurisdiction of another federal agency as it relates to a specific activity. Both the Act and the Communications Act have provisions that relate to television campaign advertising. The Federal Election Campaign Act provisions apply to persons paying for such advertising, while the Communications Act provisions apply to stations broadcasting such advertising. The Federal Election Commission and the Federal Communications Commission have cooperated in formulating language for the disclaimer or sponsorship statement that meets the requirements of both acts. Also, the U.S. Court of Appeals for the District of Columbia has ruled that the Postal Service may not rely on representations covered by the Federal Election Campaign Act of 1971, as amended, in determining whether a mailing violates the postal fraud provisions of 39 U.S.C. § 3005. Galliano v. United States Postal Service, 836 F.2d 3 (D.C. Cir. 1988).

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1 The Act also applies to national banks and foreign nationals with respect to state and local elections by prohibiting them from making contributions or expenditures with respect to all elections.

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The Act also provides that its provisions and the rules prescribed under the Act supersede and pre-empt provisions of state law. 2 U.S.C. § 453; 11 C.F.R. § 108.7. For instance, in one case brought in U.S. District Court by an authorized committee against an independent expenditure committee, the court ruled that the Act's "administrative enforcement scheme compels the conclusion that where requirements imposed by state law and by the Act overlap, the Act pre-empts a cause of action based on state law." Friends of Phil Gramm v. Americans for Phil Gramm in '84, 587 F. Supp. 769, 772 (E.D. Va. 1984). See Weber v. Heaney, 995 F.2d 872 (8th Cir. 1993)(FECA pre-empts the Minnesota Congressional Campaign Reform Act which established campaign expenditure limits in exchange for state funding). The Act, however, does not supersede most state law with respect to elections for state and local office. See 11 C.F.R. § 108.7.

These examples illustrate and underscore the importance of the Commission's jurisdiction and responsibilities regarding enforcement of the Act and regulations, while remaining sensitive to the jurisdiction of other federal and state agencies.

A. Compliance Activities

The Commission discharges its responsibility of insuring compliance with the Act and regulations through a wide range of programs. These include:

(1) publishing forms, instructions, Campaign Guides, monthly newsletters, and brochures to inform and update political committees and others on the requirements of the Act and regulations and how to comply with them;

(2) making copies of reports filed by political committee available for public inspection and compiling financial data into computer indices;

(3) conducting seminars and workshops for candidates and political committees;

(4) issuing advisory opinions on proposed activities to insure their compliance with the Act and regulations;

(5) maintaining a toll free "hot line" for telephone inquiries;

(6) notifying political committees of reporting periods and filing deadlines and publishing certain nonfilers pursuant to 2 U.S.C. § 437g(b);

(7) reviewing reports, designations, and notices for compliance with the Act and regulations and seeking clarification and correction, where necessary, of such documents;

(8) authorizing audits of political committees pursuant to 2 U.S.C. § 438(b);

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(9) initiating investigations into potential violations of the Act and regulations based on complaints filed with the Commission or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities;

(10) conciliating with parties in enforcement matters where there is evidence of a violation in order to correct or remedy the violation;

(11) filing civil suit in U.S. District Court based on evidence of violations of the Act or regulations where conciliation cannot be achieved; and

(12) referring knowing and willful violations of the Act to the Department of Justice and reporting violations of other statutes to the appropriate agencies.

This manual deals with the last four items listed above (# 9 through # 12) that fall within the responsibility of the Office of the General Counsel. Staff should be aware, however, that the enforcement responsibilities of the Office of the General Counsel are only part, although a critical part, of the Commission's total efforts to insure compliance with the Act and regulations.

B. OGC Staff

The Office of the General Counsel is divided into four functional sections: enforcement, litigation, policy, and public financing, ethics and special projects (PFESP). An Associate General Counsel heads up each of these sections. The enforcement section is the largest in the Office and handles most of the non-presidential enforcement matters.

III. ORGANIZATION OF ENFORCEMENT

A. DESCRIPTION OF FUNCTIONS

Commissioners

The six Commissioners, appointed by the President and confirmed by the Senate, constitute the governing body for the Federal Election Commission. Under the Act and regulations, only the Commissioners can (1) dismiss a complaint; (2) make a reason to believe finding and thus initiate an investigation in a matter; (3) authorize subpoenas and rule on motions to quash; (4) make a probable cause finding; (5) accept a conciliation agreement; (6) institute a civil action; and (7) refer a matter to the Department of Justice or report a potential violation to another government agency. The affirmative vote of at least four Commissioners is required to take such actions. Each Commissioner has an Executive Assistant and an Executive Secretary to assist them in carrying out their responsibilities. The Executive Assistants routinely field staff inquiries regarding the basis for a Commissioner's objection to the recommendations in a report on circulation.

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Commission Secretary

The Commission Secretary handles the circulation of all materials (reports, memoranda, etc.) directed to the Commission, tabulates the voting sheets, forwards objections to OGC, prepares the agenda, attends and takes notes at Commission meetings, prepares the minutes for Commission meetings, and prepares the certifications of Commission action.

Staff Director

The Staff Directory is one of two statutory officers of the Commission and attends each Commission meeting. The Staff Director supervises Commission staff outside OGC. Formal requests to other divisions, branches, and offices of the Commission will usually be routed from OGC through the Staff Director.

General Counsel

The General Counsel is also one of two statutory officers of the Commission and is the head of the Office of the General Counsel. Under the Act and regulations, the General Counsel is assigned the authority for (1) reviewing complaints for compliance with the technical requirements of the Act and regulations; (2) making recommendations to the Commission whether or not to find reason to believe a violation as occurred and initiating an investigation; (3) preparing a brief with recommendations on whether or not there is probable cause to believe a violation occurred; (4) signing conciliation agreements on behalf of the Commission; and (5) recommending that the Commission authorize the filing of a civil suit. The General Counsel has chosen to delegate some of these responsibilities to others, while retaining others.

Associate General Counsel for Enforcement

The Associate General Counsel for Enforcement is the head of enforcement in the Office of the General Counsel and reports directly to the General Counsel. The Associate General Counsel is responsible for the overall management and policy for enforcement and reviewing reports, memoranda, letters, and conciliation agreements. The General Counsel has delegated sign off authority to the Associate General Counsel in many areas of enforcement. The Associate General Counsel assigns personnel and enforcement matters to the teams and supervises the overall operation of the enforcement process.

Special Assistant to the Associate General Counsel

The Special Assistant to the Associate General Counsel reviews all incoming complaints for jurisdiction and technical compliance with the Act, and regulations as well as reviewing referrals and other correspondence that may ripen into an enforcement matter. The Special Assistant distributes and updates Enforcement Procedures Memoranda and Enforcement Forms. The Special Assistant compiles tracking reports,

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maintains and distributes the Recidivist Index and the Conciliation Agreement Index. The Special Assistant also handles other projects assigned by the Associate General Counsel.

Central Enforcement Docket

Central Enforcement Docket (CED) is the entry point for all Enforcement matters. Staffed by the CED Supervisory Attorney, two paralegals and a Case Tracking Coordinator, CED processes all incoming complaints and referrals. CED rates cases under the Enforcement Priority System (EPS), drafts reports with closure recommendations under EPS and maintains all cases pending activation or closure. See Chapter 1.

General Docket

The Docket Section of the Office of the General Counsel serves as the main distribution center for enforcement materials. All incoming enforcement correspondence and materials are received in the Docket Section, copied and distributed to appropriate staff, and filed into the permanent file. All reports, memoranda, etc., directed to the Commission are routed through the Docket Section to the Commission Secretary. All objection notices, certifications, etc., from the Commission Secretary are received in the Docket Section, and then copied and distributed to appropriate personnel. All out-going enforcement correspondence and notifications are routed through the Docket Section prior to mailing.

Assistant General Counsels

Each enforcement team is supervised by an Assistant General Counsel. Presently, there are four enforcement teams. Each Assistant General Counsel: makes assignments and reassignments of enforcement matters among the team members; reviews reports, memoranda, letters, and other materials produced by team members; provides guidance and direction to team members regarding their enforcement matters; handles personnel and other administrative matters relating to the team and team members; and has responsibility for the overall management and handling of enforcement matters assigned to team members.

Staff Attorneys

Each enforcement team consists of several staff attorneys, in grades GS-11 through GS-14. Enforcement matters are assigned to individual staff attorneys, who have primary responsibility for the management and handling of those matters. Some cases may be jointly assigned to more than one staff attorney, depending on the scope and nature of the case. Staff attorneys review and analyze all materials in their enforcement matters and initiate appropriate and necessary action such as reports, discovery, letters, etc. They appear before the Commission with regard to their matters to present and defend the

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recommendations. They also conduct investigations into the allegations in their enforcement matters and negotiate conciliation agreements with the respective parties.

Paralegal Specialists

Each enforcement team also consists of one or more paralegal specialists, in grades GS-7 through GS-11. Paralegal Specialists assist the Staff Attorneys and the Assistant General Counsels in the management and handling of enforcement matters in a wide variety of ways. In some instances, a Paralegal Specialist may be assigned primary responsibility for an enforcement matter to be worked on under the supervision of a Staff Attorney. Paralegal Specialists also assist in researching factual and legal issues using in-house, electronic or other resources and will run indices and proof reports. Paralegal Specialists often handle requests for extensions of time and other administrative duties, the preparation of notification packages, the closing of enforcement matters, and the collection of civil penalties.

Secretaries

Each enforcement team also has one secretary to assist the Paralegal Specialists, the Staff Attorneys, and the Assistant General Counsels in the administrative aspects of enforcement matters, such as preparing final reports, notification letters, factual and legal analyses, conciliation agreements. They also proofread documents, mark attachments, and assemble report packages. Secretaries also perform a number of other personnel and administrative tasks, such as travel and deposition arrangements, time keeping, leave status, filing, photocopying, shredding, and distributing information to the team members.

IV. ENFORCEMENT AND OTHER DIVISIONS, BRANCHES, AND OFFICES OF THE COMMISSION

A. Reports Analysis Division

The Reports Analysis Division ("RAD") monitors the filing of reports by federal political committees and reviews their contents for compliance with the Act and regulations. It has established procedures for such monitoring and review that include the sending of Informational Notices ("IN") and Requests for Additional Information ("RFAI") when questions or discrepancies arise from the reports. Its procedures also establish "referral thresholds" for referring committees to the Office of the General Counsel for possible enforcement action. For each referral RAD prepares a memorandum with relevant attachments and forwards them directly to the Office of the General Counsel. RAD also makes recommendations to the Commission to authorize the audit of certain committees pursuant to 2 U.S.C. § 438(b).

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B. Audit Division

The Audit Division conducts the audits of all presidential candidates who qualify for matching public financing, all audits authorized by the Commission under the thresholds pursuant to 2 U.S.C. § 438(b), and all audits conducted as part of an enforcement investigation. Audits of the presidential campaigns and Section 438(b) audits may result in the Commission's voting to refer certain matters to the Office of the General Counsel for enforcement purposes. These matters are handled by the Public Financing, Ethics and Special Projects Section.

C. Public Disclosure Division

The Public Disclosure Division maintains the public files of reports filed by candidates and political committees. The reports for Presidential, Senate, and House candidates as well as the major political action committees (PACs) are maintained in hard copy in the file drawers as well as on microfilm. The Division also maintains all records ever filed with the Commission on microfilm. It also has copies of the summary files in closed enforcement matters. It prepares the annual Combined Federal/State Disclosure Directory, giving the names and address of federal and state offices related to elections, campaign finance, corporate registration, lobbying, and ethics. It also has a Director of State Relations, who serves as the Commission's primary liaison with the various state offices.

D. Information Division

The Information Division publishes the Campaign Guides, subject brochures, forms, the monthly Record, and Annual Report related to the Commission's work as well as serving as the repository for copies of the Act, regulations, explanation and justification for the regulations, and similar publications. It conducts the numerous "outreach" seminars and workshops for candidates and committees that are held throughout the continental United States. The Information Division also maintains the "hot line" for telephone inquiries concerning the Act and regulations and sends out notices regarding filing periods and deadlines.

E. Administrative Division

The Administrative Division assists the enforcement personnel regarding travel advances and reimbursements, reimbursements for other miscellaneous expenses, court reporter and witness fees, and other fees, such as copying fees for state campaign finance records or incorporation records. It is also responsible for the handling of mail and internal distribution of materials and obtaining needed supplies for Commission personnel.

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F. Data Systems

The Data Systems Development Division provides computers and related services to the Office of the General Counsel. It also develops and maintains the Commission's extensive database of campaign finance information taken from reports filed by federal political committees and maintains the Commission's home web page. In addition, Data Systems can perform special runs for enforcement personnel. In conjunction with the Press Office and other Divisions, Data Systems also prepares periodic reports regarding the aggregate figures of campaign finance activity for the current election cycle.

G. Library

The Library is part of the Office of the General Counsel, but serves the entire Commission, as well as members of the general public. It has a collection of case reporters, statutes, digests, books, publications, and other materials commonly associated with a law library as well as a large collection of books and publications relating to election and campaigns. In addition, it has an extensive and indispensable collection of references works, particularly its many directories and telephone books. The Library also may order books through the Interlibrary Loan program. The Library collection and staff are good resources for enforcement staff seeking to locate addresses and telephone numbers for respondents and witnesses.

H. Press Office

The Press Office serves as the Commission's chief spokesman and liaison with the press. All press inquiries regarding enforcement matters should be directed to the Press Office. It prepares the daily News & Views, clippings of news articles relating to campaigns and elections. The Press Office also maintains a summary file of closed enforcement matters and issues a summary press release on each closed matter.

I. Congressional Affairs

The Congressional Affairs Officer handles all inquiries from congressional offices, including those related to enforcement matters. Correspondence from a Member of Congress inquiring about an enforcement matter, in which the Member is neither the complainant nor Respondent, should be referred to the Congressional Affairs Officer.

J. National Clearinghouse

The National Clearinghouse on Election Administration serves as a repository for information relating to election administration and conducts studies regarding election administration. It publishes the Campaign Finance Law compilation that covers the key provisions of campaign finance law in each state. It also has a collection of state election codes.

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Chapter 1

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CHAPTER 1
Initial Processing of Complaints and Referrals

I. INTRODUCTION

Central Enforcement Docket (CED) is the entry point for all Enforcement matters. Staffed by the CED Supervisory Attorney, two paralegals, and a Case Tracking Coordinator, this office processes and manages all incoming complaints, referrals from the Reports Analysis Division (RAD), and referrals from other government agencies. CED is also responsible for rating each case under the Enforcement Priority System (EPS). Once a case has been rated, it is held in CED pending activation or closed in accordance with the standards established for action under EPS.

II. MATTERS UNDER REVIEW

A. Complaints

Any person who believes a violation of the Federal Election Campaign Act (FECA) has occurred may file a complaint with the Commission in accordance with 2 U.S.C. § 437g(a)(1). Complaints must be in writing, signed and sworn to by the complainant, notarized, and made under penalty of perjury and subject to the provisions of 18 U.S.C. § 1001. Additionally, 11 C.F.R. Part 111 mandates that complainants provide their full names and addresses, and strongly encourages the identification of each alleged respondent; identification of the source for any information not made of the complainant's personal knowledge; the inclusion of a clear and concise statement of the facts describing the alleged violation; and the attachment of any available documentation supporting the facts alleged.[1]

i. Initial Receipt. Complaints are initially received and reviewed by Docket and the Special Assistant to the Associate General Counsel for Enforcement for compliance with the mandatory statutory requirements. If a complaint is improper on its face, Docket returns it with an explanation of the impropriety. The complainant may then cure the defect and resubmit the complaint, should he or she desire to do so. One of the more

[1] 11 C.F.R. § 111.4.

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common reasons for return of a complaint is that it was not signed and sworn to by the complainant, or lacks a notary seal.

ii. Complaint Review and Notification. Once a complaint is determined to be in proper form, Docket assigns it a Matter Under Review (MUR) number and forwards copies of the file to the CED Supervisory Attorney and CED Staff. The CED paralegal reviews the file and identifies legal issues and potential respondents, in consultation with the CED Supervisory Attorney. The paralegal then prepares a letter to the complainant confirming the receipt of the complaint, and letters to each of the respondents notifying them of the complaint and providing them with the opportunity to demonstrate in writing why no action should be taken against them with respect to the complaint. Complete copies of the complaint are included with the notification letters to respondents. In accordance with the statute, complaint confirmation and notification letters are sent within five days of their receipt.[2] Copies of all complaints are also circulated to the Commission. The CED paralegals create a brief summary of the case, which is entered into the Enforcement Priority System database.

iii. Responses to Complaints. Most respondents provide written responses to the complaints. Many respondents request and receive an extension of time in which to reply. CED is authorized to grant extensions up to 30 days; extension requests for longer than 30 days require a vote of the Commission. Respondents have considerable latitude in the scope of their responses, which are accorded appropriate weight in the evaluation and rating of cases. CED paralegals work very closely with complainants, respondents, and their counsel throughout the initial phases of a case. When all responses are received, or when the time for response has expired, the case is rated under EPS by the CED Supervisory Attorney or staff. Based upon this rating, each case is assigned to one of four tiers. CED then holds the case for activation or other disposition, such as summary dismissal.

B. Referrals

Cases may be referred to Enforcement for action in four ways. Our primary sources for referrals are RAD and other government agencies. Individuals or committees also may refer matters to us concerning their own violations under our *sua sponte* process. Finally, anyone within the Commission may refer matters under Directive 6. Referrals are not given MUR numbers unless and until Reason To Believe is found.

i. RAD Referrals. RAD refers matters, which meet certain threshold requirements as outlined in the *RAD Review and Referral Procedures*, for enforcement action. These cases most often involve late-filers and non-filers. Some RAD referrals may be made for other offenses uncovered in their review of required reports filed with the Commission. Before activation, RAD referrals are numbered with the last two digits of the year of initiation, followed by a designation of either "NF" for non-filers or "L" for

[2] 2 U.S.C. § 437g(a)(1).

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late filers or other offenses, and a sequential unique case number: for example, 97NF-01 was the first non-filer case referred in calendar year 1997; 97L-04 was the fourth late filer referred by RAD to Enforcement for action.

ii. Referrals From Other Agencies. Other federal, state, or local government agencies may also refer cases to the Commission for enforcement action. The Office of the Comptroller of the Currency, for example, may uncover evidence of violations of the Act during the course of its usual regulatory and oversight activities. The Department of Justice regularly refers cases that either appear to lack evidence of criminal intent or are not sufficiently serious to warrant criminal prosecution. Referrals from other government agencies are known as "Pre-MURs" and, like MURs, are numbered sequentially upon receipt in Docket.

iii. *Sua Sponte* And Directive 6 Matters. *Sua sponte* matters are those in which an entity, such as a committee or candidate, voluntarily discloses facts and circumstances that describe a violation of the Act it has committed. Directive 6 matters are those that may be generated by anyone within the Commission. For Directive 6 matters, the person raising the issue forwards a memorandum to the General Counsel. Then, Enforcement Staff generate a memorandum to the Commission recommending whether a Pre-MUR should be opened for the particular matter. Both *sua sponte* submissions and approved Directive 6 matters are held as internally-generated Pre-MURs.

iv. Processing Referrals. Unlike complaints, referrals are not sent to respondents for comment prior to case rating, evaluation, and activation, though acknowledgment letters are sent to agencies who refer matters to us for consideration. A Referral is evaluated and rated by CED paralegals under EPS upon receipt, based upon the contents of the referral itself, then held in CED for activation or other disposition in the usual course.

III. CASE RATINGS UNDER EPS

A. The Rating Process

Once all responses are received or the response period has expired, the CED Supervisory Attorney or CED paralegal evaluates each case using a rating sheet. Cases are given a numerical rating according to specific objective criteria approved by the Commission. All cases are rated according to carefully defined rating elements and countervailing factors. Non-filers and later filers are Tier 4s, and are rated using a separate, more narrowly-tailored rating sheet. For non-Tier 4 matters, the culmination of the rating process is the assignment of a numerical score to the case and classification into one of the "tiers" described below.

After a case is rated, CED circulates the rating sheet and copies of all responses received to the Commissioners for their review. For RAD referrals and PRE-MURs, CED circulates the rating sheet and a copy of the referral.

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B. The Tier System

i. Tier 1 Cases. Cases receiving the highest scores are classified as Tier 1 cases. Tier 1 cases represent the more significant and usually more complex violations of the Act. If a case is not activated within 18 months of its date of receipt, it is dismissed without action as stale, though exceptional circumstances may exist which warrant retention of a Tier 1 case in CED for longer than 18 months.

ii. Tier 2 Cases. The next level of cases are classified as Tier 2 cases. Though usually less significant than Tier 1 cases, they still represent serious violations of one or more provisions of the Act. If a Tier 2 case is not activated within 12 months of its date of receipt, it is ordinarily dismissed as stale.

iii. Tier 3 Cases. Cases with the lowest scores are classified as Tier 3 cases. Because of their low rating, Tier 3 cases do not warrant the Commission resources necessary to activate and investigate the allegations. Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Accordingly, Tier 3 cases are dismissed as soon as possible following the rating and classification process. To maximize the efficient disposition of these low-priority matters, CED's usual practice is to accumulate a number of Tier 3 cases and periodically recommend their closure as a group to the Commission.

iv. Tier 4 Cases. All cases involving late filers, non-filers, or those who violate the 48-hour notice provision, are treated as Tier 4 cases. These cases are almost entirely made up of RAD referrals. Because they are rated on a more narrow scale than MURs or Pre-MURs, the numerical rating assigned to Tier 4 cases is substantially lower than for cases in other tiers. Since Tier 4 cases are only compared against others in the same category for activation purposes, the relative score of these cases is very important. Tier 4 cases become stale and are dismissed after remaining in CED for 12 months.

IV. CASE ACTIVATION

Case activation is the process by which cases are assigned to staff members. This is accomplished at the monthly CED Meeting, chaired by the Associate General Counsel for Enforcement and attended by the Enforcement Team Leaders, CED Supervisory Attorney, and CED staff. The meeting serves the very important purpose of assessing each Team's caseload on a continuing basis and assigning new cases for investigation as resources become available. Once specific MURs, Pre-MURs, or RAD referrals are identified for activation, the CED paralegals indicate the activation in the Enforcement Priority System, reconcile the Staff and Leader files to the original file in Docket to ensure that all contain identical documents, and physically transfer the activated case to the attorney to whom the case was assigned and his or her Team Leader. Docket assigns MUR numbers to Pre-MURs and RAD referrals upon activation or a finding of Reason To Believe. Activation effectively ends CED involvement with the MUR.

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V. CASE DEACTIVATION

In relatively rare circumstances, a case may be deactivated and returned to CED. This action usually results from a significant change in available resources to work on the case or external matters such as criminal indictment of one or more respondents for the same offenses alleged in the complaint or referral. CED holds deactivated cases and either re-activates them upon request or dismisses them as stale if the requisite period of time has passed.

VI. CASE CLOSURE

CED periodically recommends closure of Tier 3 and stale cases. This is accomplished through a General Counsel's Report circulated to the Commission, in which cases are accumulated and recommended for closure as a group.

A. Tier 3 Cases

Cases that receive the lowest scores constitute Tier 3 cases. Tier 3 cases are summarily closed due to their low priority relative to other matters then pending before the Commission. The CED paralegals prepare detailed summaries of the Tier 3 cases recommended for closure. These are appended to the General Counsel's Report which is circulated for the Commission's consideration.

B. Stale Cases

Under the Enforcement Priority System, a case may earn a Tier 1, 2, or 4 rating when received, but remain unassigned due to a lack of resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources. Generally, Tier 1 cases become stale after 18 months. Tier 2 and Tier 4 cases become stale after 12 months. Stale cases are recommended for closing purely because of the length of time without action. Case summaries are not prepared for stale cases because their closure is effected without regard to the merits of the cases themselves.

VII. THE ENFORCEMENT PRIORITY COMPUTER SYSTEM

CED activities are in large part supported by the EPS computer system, which provides a central database for the entry and control of basic case information, ratings, and activation actions. CED staff handle all of the data entry in EPS prior to case activation. Following activation, Team staff members are responsible for entry of other data in the system. Accurate and timely EPS entries are critical to the accumulation of accurate case data.

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Chapter 2

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CHAPTER 2

Pre-Reason to Believe Actions

I. PURPOSE

Commission regulations provide for this Office to review a complaint and any response to a compliant, or other information ascertained by the Commission in carrying out its responsibilities, and to recommend whether or not the Commission should find reason to believe a violation of the Act or regulations has occurred. This chapter first examines initial considerations for newly activated cases and the information gathering and research sources available before a finding of reason-to-believe. Then, after a discussion of injunctive relief and how supplements and amendments to complaints are handled, the chapter concludes with an overview of how a statute of limitations affects our work.

II. INITIAL CONSIDERATIONS FOR NEWLY ACTIVATED CASE

When a case is activated and, hence, assigned out of Central Enforcement Docket ("CED") to a staff person, there are several details that the staff person should consider in preparing the case file for the next procedural step, a reason-to-believe-finding, and any ensuing investigation. For your reference, page three of this chapter contains an initial actions check list.

A. Review Notification Issues

When a complaint is filed with the Commission, it is given a Matter Under Review (MUR) number by Docket, then routed to CED where respondents are identified and notification letters prepared. Upon activation, the staff person should review the file to ensure that all respondents have been properly notified. In some cases, entities and persons not explicitly identified by the complainant may be considered as respondents, including the complainant her/himself. See discussion in Chapter One. A thorough review by the staff person upon activation may enable notification errors if any, to be taken care of promptly and with minimal disruption to the investigation.[1]

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[1] In examining the complaint for notification issues, staff should also confirm that the file contains all documents, attachments , video tapes or other items referenced in the complaint. If any are missing from Docket, you may need to call complainant to request the omitted items.

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B. Designation of Counsel

The complaint notification package sent to respondents includes a Designation of Counsel form which enables the respondent to identify for the Commission whomever the respondent has retained as his or her representative for the respective MUR. The form must be signed by the respondent, not his or her designated counsel. Once a respondent has designated counsel, the staff person should only discuss the ongoing matter with the designated representative. Staff are not to discuss a pending case with anyone not designated by a respondent to be his or her representative. Recognizing that the candidate of a respondent committee may sometimes be a separate respondent, in most cases the staff person can discuss with the candidate the case against his committee without requiring a designation by the committee. These rules may appear arbitrary but they 1) preserve the confidentiality of the ongoing matter and 2) conform with governing rules of professional responsibility. During your initial review of the file, check to ensure that necessary designations of counsel have been received and that the name and address of counsel are entered into the Enforcement Tracking System (ETS), which is discussed in the following segment.

C. Enforcement Tracking System

The Enforcement Tracking System was designed to assist the staff person in managing case activity and tracking Commission action in enforcement cases. It was designed to enable this Office to track complex cases with multiple respondents and can serve as a case management tool in any investigation. Access the system by entering All-in-I and typing "PS ET." Consult team paralegals for more information on entering and retrieving case information through ETS.

By entering pertinent information into the system, the ETS database maintains the record of correspondence such as amendments and supplements to complaints as well as respondent identification information. Since the handling of all future notifications and other correspondence is the staff person's responsibility, it is a good idea to keep the database current to avoid discrepancies at the closing stages of the enforcement process.

Information that will enable you to organize the case should be entered into the Enforcement Tracking System. For example, First General Counsel Reports contain the names of all respondents, dates, violations, and other information that when entered into the ETS will help you track respondents through the case. Information derived from General Counsel's Briefs, Commission certifications, letters, and Conciliation Agreements should also be entered into the ETS.

D. Request for Additional Information ("RFAI") Notices

The file you receive when a case is activated may also contain Request for Additional Information ("RFAI") Notices. These are notices sent by the Reports Analysis Division ("RAD") to registered committees when RAD's review of their reports

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reveals possible errors or a need for clarification. If the committee is named in an open MUR, RAD will send a copy of the RFAI to OGC, asking whether the Notice should be sent. In evaluating whether the RFAI should be sent, you should consider what, if any, impact it would have on the ongoing MUR. In particular, if the RFAI involves issues pending in the MUR, the request should not be sent. By having all communication on pending MUR issues come from OGC, confusion and redundancy are eliminated. If in doubt, consult with your supervisor. Remember, however, that the time for informing RAD not to send the RFAI is limited, so these notices will require your prompt attention.

The Reports Analysis Division will also forward to OGC draft letters granting a committee's request to terminate as a reporting entity. If the committee is a respondent in an ongoing MUR, it is critical that you communicate to RAD ***not*** to send such a letter. The staff person should prepare and send a letter denying the request for termination. (See Enforcement Form Library Form 103 and 103A). OGC sends the letter denying the request for termination because all RAD correspondence is microfilmed and promptly place on the public record and thus would disclose the confidential enforcement proceeding.

E. Reviewing Responses

Staff should ensure that the file contains responses from all respondents who were notified of the complaint.[2] Respondents have the opportunity to demonstrate in writing why no action should be taken against them before the Commission proceeds to a reason-to-believe-finding. 2 U.S.C. § 437 g(a)(1). If there are respondents who have not responded to the complaint, staff should confirm that the notification letters have been addressed properly and sent, but further action generally is unwarranted.

In reviewing responses, staff should note whether the respondent has responded fully to all allegations raised by the complaint, whether the respondent has submitted supporting documentation, and whether the respondent has answered under oath, subject to penalty of perjury, etc. These are factors that may be taken into consideration in deciding whether to recommend RTB and may help shape the initial discovery requests.

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2 If the case is an internally-generated referral, ensure that the referral is complete. Read it fully. Note that charts created for a referral by RAD may be available for electronic-mail transmission to your computer account for inclusion in your reports. Contact a RAD secretary to arrange a transfer, but do so as soon as possible after the case is activated.

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F. Initial Actions Check List

Use the following check list when performing the necessary tasks in a new case.

Initial Actions Check List

____ Complaint/Referral proper, complete and reviewed
____ If referral, electronic transfer of RAD charts
____ Complainant and correct respondent(s) properly notified
____ Designation(s) of Counsel received
____ RFAI(s) reviewed and answered
____ Extension of Time request(s) answered and noted
____ Case and documents entered into Enforcement Tracking System
____ All responses received and reviewed
____ Case outline/supervisor consultation

III. PRE-RTB INFORMATION GATHERING AND RESEARCH

A. Scope

At this phase in the process, information gathering and research is limited to information available to the general public, internally generated information, and information provided by respondents. It is not until after the Commission has found reason to believe that a violation of the Act has occurred, that information can be developed through formal or informal investigation techniques. 2 U.S.C. § 437g(a)(1).

Often, information that is available to the general public and internally generated information will provide a firm factual backdrop against which a RAD referral or complaint generated matter can be measured. For example, if a respondent is a corporation or a partnership, comprehensive information concerning the entity and its subsidiaries may provide important pieces of the puzzle. Likewise, information filed with the Commission on a conduit report or other committee filings with the Commission can be compared with information filed by a candidate and his or her authorized committee.

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B. Public Information Sources

The following is a list of sources available to the general public. This list is not comprehensive, and the FEC librarian may be consulted for additional information.

1. WESTLAW/LEXIS. Although these sources can be used to research issues which have been litigated by the Commission, the library has copies of all such cases, and stopping in to visit the librarian may prove to be a time saver. These services are helpful in resolving other types of legal issues which are raised by a respondent concerning, for example, privacy or confidentiality matters.

2. Dun & Bradstreet Dunsprint Service. This is a computerized service which provides comprehensive information on over 95% of all U.S. businesses. Due to the high cost involved in running the report, the service is available only through the FEC librarian.

3. Newspaper Articles. Newspaper articles may provide information concerning recent developments in a matter, and may provide background information that you may not find elsewhere. Articles can also provide fruitful avenues for inquiry. The FEC Press Office clips relevant articles from a variety of national newspapers, compiles them into News & Views, and distributes them daily throughout the agency. Staff may also request major newspaper searches via NEXIS, DIALOG or DATALINES through the FEC librarian.

4. FEC Press Office. In addition, the FEC Press Office is responsible for Press Releases on closed MURs. These press releases are informative as to agency priorities and policies. Check with the Press Office or in Public Records for releases that interest you.

5. Martindale Hubbell. Martindale Hubbell is an important source of information about opposing counsel. In addition to becoming familiar with counsel who regularly practice before the Commission, it is often interesting to note the type of law practiced by practitioners who are not regulars before the Commission. Those practitioners who are unfamiliar with election law will require more in-depth information concerning agency practices and procedures. The FEC librarian can also access West's Legal Directory, an on-line resource for attorney data. Information about respondents who are attorneys may also be available through both of these sources.

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6. State Corporate Divisions. Information concerning corporations and partnerships is also on record at the state level. A listing of the Corporate Division in the United States and pertinent telephone numbers is circulated in OGC.

7. State Ethics/Political Reporting Agencies. Information pertaining to state campaign reports and financial disclosure statements may be obtained from these entities.

8. Reference Material. Other Digests/References to be considered include the Almanac of Politics and Congressional Quarterly, which are publications available in our FEC library.

C. Internally Generated Information

In addition to information available to the general public, we have access to our own internally generated information. Attachments 2-1 through 2-4 are examples of the types of information which we generate internally, or that are available through other FEC divisions. The following is a listing of sources:

1. FEC Advisory Opinions (AOs). These opinions are available in the library and the INQY FEC computer system for searching and viewing. They sometimes clarify Commission regulations and often provide answers to unique factual scenarios. These are available by computer or in the CCH reported on Campaign Finance law.

2. FEC Closed MURs ("MURSYS"). It is also possible to research closed MURs for answers to resolving unique factual scenarios. This is particularly important in order that, to the extent possible, consistency is maintained with Commission decisions in previous and ongoing cases. With regard to open MURs, information in EPS might prove helpful for issues currently being handled in OGC.

3. FEC Information Services Division. The Information Services Division has many publications available to the general public, which provide both general and specific information on various aspects of campaign finance. A general overview of those publications can be found at Attachment 2-1. In addition, the Information Services Division compiles information on a variety of election law topics such as corporate facilitation and express advocacy, which is not published but which is available to staff members. This information can be obtained through a visit to the Information Division.

4. FEC Indices. Perhaps the least understood and most underutilized resource available at the pre-RTB stage are the nationwide statistics which the Commission maintains. The statistics are based on information

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provided by candidates and their authorized committees and others. Attachment 2-2, entitled Your Guide to Researching Public Records, is a good starting point. Attachment 2-3 describes various indices, what you can get from each and how to "run them." Attachment 2-4 describes the contributor search system.

- The contributor search system can be used to look for additional violations, e.g., when you have some evidence that a corporation is engaging in illegal corporate fundraising. For example, if you have some evidence of illegal corporate fundraising on one occasion during a certain election cycle, it is possible to determine how many corporate employees actually participated in the fundraiser. It is also possible to determine whether corporate employees seem to have participated, in unusual numbers, in any other fundraiser during that election cycle, or during previous election cycles.

- The Treasurer History Program, which was created to assist in researching Committee treasurers and to help confirm a Committee's current treasurer status, is also helpful: The program lists, by database, the names of all the treasurers of a Committee throughout the Committee's existence. Consult an OGC paralegal to receive an instruction book for the details of the program.

5. Regulations. The Explanation and Justification ("E and J") is an excellent reference tool for examining the "legislative history" of Commission regulations. It contains the agency's statements that accompany the promulgation of any regulation as required under 2 U.S.C. § 438(d) as well as other Federal Register notices.

6. Presidential Audit Tapes and Disks. These tapes, disks, and soon CD-ROMs can be of great benefit in searching for information in the voluminous reports and financial information filed by Presidential committees. Searches may be conducted by various transactional codes, e.g., fundraiser, vendor, contributor. The Audit Division may be requested to assist this Office, and requests should be made in consultation with a supervisor.

D. Other Law Enforcement Agencies

Sometimes, the fact that another agency is also involved with a particular respondent comes to our attention. For example, the Securities and Exchange Commission may be involved in an enforcement matter against a corporation, or a local District Attorney's Office or U.S. Attorney's Office may be investigating a corporation or

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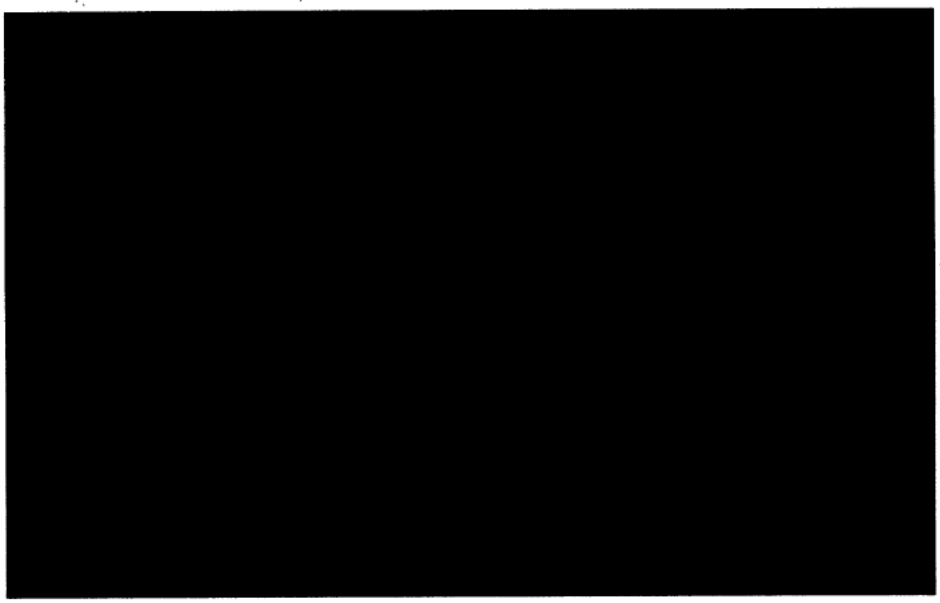
an individual respondent. It may be possible to get the agency to release their internal reports to us. Our investigators oftentimes may prove to be a natural liaison between the Commission and another agency, particularly if other investigators are involved. Due to the natural disinclination for an agency to release information, for many reasons, including privacy concerns and their own internal case strategy, requests to have information released to the Commission should only be made after consulting first with your supervisor.

E. Clarification of Response by Respondents

One final resource is the respondent him or herself. Sometimes the respondent's initial response to the allegations contained in the complainant may be vague, and you may wish to clarify the response. Requests for clarification are tricky due to the danger that any communication might cross the line and be interpreted as an interview. Interviews, are an investigative technique which is not permitted until after the Commission has found reason to believe that the Act has been violated. Therefore, it is advisable to check with your supervisor before stumbling into this area.

Section IV, V, and VI of Chapter 2 address the important issues of injunctive relief, supplements and amendments, and how a statute of limitations affects this Office. The sections provide detailed background information in addition to staff responsibilities in handling the procedures relevant to each area.



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A. Introduction

A recurring question in enforcement matters, particularly in the final days before an election, is whether the Commission should seek injunctive relief against a respondent. As the Commission noted in a legislative recommendation on this issue:

> Even when the evidence of a violation has been clear and the potential impact on a campaign has been substantial, without the authority to initiate a civil suit for injunctive relief, the Commission has been unable to act swiftly and effectively in order to prevent a violation. The Commission has felt restrained from seeking immediate judicial action by the requirement of the statute that conciliation be attempted before court action is initiated, and the courts have indicated that the Commission has little if any discretion to deviate from the administrative procedures of the statute.

FEC, 1993 Annual Report at 57. While the Act explicitly provides that the Commission may seek injunctions at the end of the enforcement process, 2 U.S.C. § 437g(a)(6), this remedy is cold comfort to a defeated candidate who lost an election several months or even years before.
The typical complainant in this situation will, in the body of the complaint, ask the Commission to obtain a preliminary injunction to preserve the status quo pending resolution of the administrative complaint.[4] Because the Commission is the exclusive civil enforcement mechanism for violations of the Act, 2 U.S.C. § 437c(b)(1), complainants may not go to court on their own to obtain a preliminary injunction against an alleged FECA violation. Cort v. Ash, 422 U.S. 66, 76 (1975).[5]

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4 Sometimes, particularly in complaints not filed by counsel or filed by counsel unfamiliar with FEC practice, the language may not specifically ask for a preliminary injunction but for a "cease and desist order" or something similar. While some other agencies can issue cease and desist orders without applying to a court for an injunction, the Commission has no such authority. This Office's long-standing policy has been to treat any similar request as a request that the Commission obtain a preliminary injunction.

5 For more detail on the treatment of requests for injunctive relief over the 20-year history of the Act, see Cort, 422 U.S. at 66 et seq.; MURs 1167, 1168 and 1169 ("the Nashua Telegraph MURs") (early case of expedited enforcement action); Durkin for U.S. Senate Comm. v. FEC, [1976-1990 Transfer Binder] Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9147, at 51,115 (D.N.H. 1980) (questioning, in dicta, legality of Commission's actions in Nashua Telegraph cases); former Enforcement Procedure 1993-2; and the First General Counsel's Report in MUR 3975 (example of recent practice under highly unusual, if not unique, circumstances). Please note that, as of this writing (May 1996) MUR 3975 remains open.

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B. Legal Provisions Relevant to Commission's Authority to Obtain Injunctions

1. 2 U.S.C. § 437g

Section 437g(a)(2) provides that the action mandated when a person is "about to commit" a violation of the Act is a finding of reason to believe and commencement of an investigation. Moreover, section 437g(a)(1) provides all respondents 15 days to respond to complaints, and the Commission's regulations, at 11 C.F.R. § 111.6, provide that the Commission shall take no vote, other than a vote to dismiss, on a complaint until a response is received or the 15-day period is past. One court has suggested that expedited review that ignores the 15-day period violates the statute. Durkin for U.S. Senate Comm. v. FEC, [1976-1990 Transfer Binder] Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9147, at 51,115 (D.N.H. 1990). Even after a finding of reason to believe, section 437g provides no authority to seek an injunction until the failure of post-probable cause conciliation. 2 U.S.C. § 437g(a)(6).

> ***SIDEBAR*: ABOUT INJUNCTIONS**
>
> An injunction is simply an order from a court telling a person either to do something or to stop doing it and/or not do it in the future. If the person disobeys the order, the person can be held in contempt of court.
>
> There are three different types of injunctions that courts can grant. Temporary restraining orders, or "TROs", are very short-term, emergency orders to a party to stop doing something until a judge can decide a motion for a preliminary injunction. TROs cannot last longer than ten days, and can be renewed once for an additional ten days. F. R. Civ. P. 65(b). Preliminary injunctions, the injunctions with which this Part of the Enforcement Manual is most concerned, are similar to TROs except that they last longer and cannot be issued without a hearing involving both parties. They preserve the status quo until the final disposition of a case. Permanent injunctions are final relief, based on a court's full-scale adjudication of a case. They require a party to permanently do, or refrain from doing, something (although they can be lifted or modified).
>
> Courts generally apply a four-part test to determine whether a preliminary injunction should be granted in a particular case. While the specifics vary by jurisdiction, the four parts of the test are usually along these lines: (1) Has the party seeking the injunction demonstrated a substantial likelihood that it will win on the merits of the case? (2) Is a preliminary injunction required to prevent irreparable harm to the plaintiff, or to someone else? (3) Would a preliminary injunction cause undue harm to the party to be enjoined? (4) Would the preliminary injunction serve the public interest? However, this test is not absolute. The U.S. Court of Appeals for the D.C. Circuit has noted that a preliminary injunction can be granted either when the plaintiff demonstrates some harm if the preliminary junction were denied and a high likelihood of success on the merits, or when it demonstrates a great deal of harm without one and some likelihood of success on the merits. Cuomo v. NRC, 772 F.2d. 972, 978 (D.C. Cir. 1985).

2. 2 U.S.C. § 437d(a)(6)

Reference to injunctive relief also appears at 2 U.S.C. § 437d, which lists the Commission's organic powers. These include the power to "initiate (through civil actions for injunctive . . . relief) . . . any civil action in the name of the Commission to enforce the provisions of this Act." The question is whether this provision constitutes an independent basis for obtaining an injunction, or whether it is merely in aid of section 437g(a)(6). An examination of other agencies' enabling statutes indicates that section 437d(a)(6) may not provide an independent basis for seeking a preliminary injunction.

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Generally, other agencies that seek preliminary injunctions in aid of their enforcement processes have specific statutory authority to do so. For some of these agencies, the authority is an integral part of their enforcement statute, for others, the authority is in a stand-alone statute that is in addition to their regular enforcement procedures. Moreover, cases indicate that where an agency has sought injunctive relief outside the context of a specific enforcement proceeding—just as the Commission might want to seek an injunction under 2 U.S.C. § 437d(a)(6) without beginning the 437g enforcement process—the agency has had stand-alone statutory authority to do so, separate and apart from either the agency's statutory enforcement provisions or its organic powers. By contrast, section 437d(a)(6) is neither part of the Commission's statutory enforcement provision, nor is it a freestanding section dealing only with injunctions.

Thus, it appears that section 437d(a)(6) is more appropriately viewed as part of an organic listing of the Commission's powers rather than as an independent statutory basis for injunctive relief.

3. The All Writs Act

The All Writs Act, 28 U.S.C. § 1651, provides that "the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." In a narrow range of emergencies, the Commission could invoke the All Writs Act to obtain an injunction preserving the jurisdiction of the Commission and of the U. S. District Court which would consider any subsequent enforcement litigation under 2 U.S.C. § 437g(a)(6). See FTC v. Dean Foods Co., 384 U.S. 597 (1966). But cf. Sampson v. Murray, 415 U.S. 61, 76-78 (1974) (narrowing Dean Foods). However, in almost all FECA enforcement proceedings, respondents remain subject to sanction for violating the Act, even if the sanction is not imposed until after the election. Therefore, while a preliminary injunction might prevent further harm from an illegal activity, it would not be necessary to preserve the Commission's jurisdiction over the matter. Situations in which it would be appropriate for the Commission to seek a preliminary injunction under the All Writs Act would be extremely rare and would require that a particular respondent be on the verge of effectively ceasing to exist because of an impending merger, a likely dispersal of assets in an attempt to hide them, or some other similar development.

4. First Amendment Considerations

Unlike restrictions on contributions, restrictions on expenditures "necessarily reduce[] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." Buckley v. Valeo, 424 U.S. 1, 19 (1976). Thus, the First Amendment concerns that so often impact the work of the Commission may be strongest when the question is whether to preliminarily enjoin expenditures—especially expenditures for communications, such as newspaper or broadcast advertisements. Not only are communications for political speech at the "core

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C. Current Enforcement Practice

1. Role of CED

Because virtually all requests that the Commission seek injunctive relief are contained in complaints, the Central Enforcement Docket now has primary responsibility for evaluating requests for injunctive relief. In the overwhelming majority of cases, CED staff, in conjunction with the CED Leader, will determine to use the optional injunction language in the notification letters, Enforcement Forms 8 and 9. In the event a potentially appropriate request for injunctive relief is received, the CED Leader will bring the complaint to the attention of the Associate General Counsel for further decision.

2. Role of Staff Member After Activation

It is more likely than not that by the time a matter is activated and transferred to staff, any circumstances that might have supported a preliminary injunction have come and gone. However, if you think a newly activated case may be a candidate for injunctive relief, take the following steps—

a. Consider whether an injunction is really warranted. Refer to the four-part test for an injunction discussed in the accompanying sidebar. Consider whether your facts meet this test.
b. Check the complaint and the notification letters. Did the complainant request injunctive relief? If not, the facts would have to be most extraordinary for the Commission to consider proceeding on its own to request an injunction. If so, check the notification letters and determine whether they referred to the request for injunctive relief.
c. Talk with CED. If the optional language regarding injunctions was included in the notification letters, the CED staff or CED Leader can tell you why they determined not to go further, or whether the matter was discussed with the Associate General Counsel. If the injunctive language was not included, they can tell you why not.
d. Talk with your supervisor. If you still believe injunctive relief might be warranted, discuss the matter with your supervisor for further consideration.

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e. Finally, if the General Counsel determines that the matter really does warrant seeking a preliminary injunction, you will need to prepare an expedited memorandum to the Commission explaining how the matter satisfies the four-part test, and under what authority the suit can be brought, with a recommendation that the Commission authorize this Office to sue for an injunction.

V. SUPPLEMENTS/AMENDMENTS

After filing a complaint, complainants sometimes discover additional information about the allegations, or believe that more parties are involved. This can occur while the case is in CED, or after the case has been activated. Because different action is required depending on whether the additional information is a "supplement" or an "amendment" to the complaint, it is important to distinguish between the two.

A. Definitions

A supplement provides additional information pertaining to the allegations in the original complaint but it does not add new violations or new respondents. By contrast, an amendment will involve additional violations or respondents to those raised or named in the original complaint.

- Example: Complainant's original complaint alleges that the Sue Z. Cue for Congress Committee accepted excessive contributions from the ByInfluence PAC. The complainant's second submission alleges that Sue Z. Cue for Congress Committee accepted excessive contributions from this same PAC during her earlier congressional campaign. This second submission would be a supplement to the original complaint because it relates to the same violation and to the same Respondents. If the second submission alleged that the candidate filed reports late, accepted excessive contributions from ten other contributors, including corporations, then the submission would be considered an amendment as it implicates other respondents and other violations (possible Section 434 and 441b violations).

B. Technical Requirements And Procedures

An amendment must meet the statutory requirements for a proper complaint. 2 U.S.C. § 437g(a)(1). An amendment shall be in writing, signed and sworn to by the person filing such amendment, shall be notarized, and shall be made under penalty of perjury. The notary must represent as part of the jurat that the swearing occurred. If the amendment received by OGC lacks any of the requirements, there is a defect in the amendment. Normally, because amendments and supplements are often received before case activation, Central Enforcement Docket performs the appropriate notifications. However, if you receive an amendment after a MUR has been assigned to you:

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- Check whether the amendment meets the requirements for a proper complaint;
- If applicable, notify the complainant of any defect (use Form 11A in the Enforcement Form Book) and notify respondents that a defective amendment was filed;
- If proper, prepare a letter to the complainant acknowledging receipt of the additional material (use Form 11 in the Enforcement Form Book).
- If there is no defect in the amendment or after the defect has been cured, copies of the amendment should be sent to all respondents implicated therein (use Form 12 in the Enforcement Form Book). If the amendment names respondents who were not named in the original complaint, mail copies of the amendment, and, if appropriate, copies of the original complaint to the new respondents. If the amendment, standing alone, is sufficient to give the new respondents adequate notice as to the allegations against them, it may not be necessary to include a copy of the original complaint.
- Notify Docket of the names of new respondents.[6]

A supplement, as noted, does not add new violations or respondents. Since it essentially embellishes or provides additional information pertaining to the allegations in the original complaint, it does not need to meet the statutory requirements for a proper complaint and respondents are not afforded additional time to respond to a supplement. As with amendments, if you receive a supplement in a case assigned to you, notification must be sent to the complainant and respondents. Staff should:

1. Send a letter to the complainant acknowledging receipt of the additional material. Use Form 11 in the Enforcement Form Book, deleting references to "amendments;" and
2. Send copies of the supplementary material to the existing respondents. Use Form 12 in the Enforcement Form Book but do not include that portion relating to "amendments" (e.g., additional time to respond).

C. CED Procedures

CED procedures for processing amendments and supplements prior to case activation are the same as described above. It is possible that a MUR may be activated after an amendment has been received, but before responses are due. Therefore, enforcement staff should:

---

[6] Docket circulates all amendments to the Commissioners for their information. When additional respondents are named in an amendment to a complaint, send an e-mail to Docket stating the MUR number and the names of the new respondents. Notify Docket of the changes as soon as practical. The information will be used to update the Enforcement Status Sheets as well as the MUR Tracking System ("MTS"), which eventually will replace the Status Sheets.

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1. Check the file to determine when additional responses are due.
2. Check with Docket to confirm that Docket is aware of all of the respondents in the case.

While it is generally CED's concern, Enforcement staff should know who needs to be notified when OGC receives a supplement or amendment. Attorneys and paralegals should consult with CED staff any time they notice in the file that an amendment or supplement has been received in order to verify that all parties have been properly notified. If you find that a complainant or respondent has not been notified, it is your responsibility to immediately notify the parties, giving them the required amount of time to respond, and to provide a copy of the documents to Docket (routed appropriately though the team leader).

D. Referring to New Information

Before new information officially becomes an amendment or supplement, it may be referred to in correspondence as "additional information pertaining to the allegations in" the complaint or the MUR. That is the phrase used in the form letters and should be used in other communications with the parties until a determination is made as to whether we consider the new information to be an amendment or a supplement. Thereafter, you should refer to the new submission as an "amendment" or "supplement," as the case may be.

VI. FIVE-YEAR STATUTE OF LIMITATIONS FOR COMMISSION ENFORCEMENT ACTIONS

A. Background

The FECA has a three year statute of limitations at 2 U.S.C. § 455, but that is only for criminal matters. See FEC v. Lance, 617 F.2d 365, 372 (5th Cir. 1980), later proceeding, 635 F.2d 1132, 1138 (5th Cir. 1981)(en banc), cert. denied, 453 U.S. 917 (1981). Until recently, the Commission argued that no statute of limitations applied to its civil enforcement actions. However, in FEC v. Williams, 104 F.3d 237 (9th Cir. 1996), the 9th Circuit held that the general five-year statute of limitations on enforcement of civil penalties, Section 2462 of Title 28, applies as a general matter to the FECA's section 437g enforcement litigation cases seeking the imposition of civil penalties.

Many significant questions remain about application of this statute of limitations. Therefore, be aware that this is a fluid area and is subject to ongoing litigation, so you must not rely solely on these materials. For a fuller explication of the numerous equitable tolling, accrual and scope issues, please consult the March 4, 1997 General Counsel's Report, *28 U.S.C. § 2462 Statute of Limitations;* the January 10, 1997 Memorandum to the Commission *Petition for Rehearing, and Suggestion for Rehearing En Banc, In Federal Election Commission v. Williams;* and the April 28, 1995 General Counsel's Report on *Statute of Limitations*. The sidebar describes the timeline of the caselaw in this

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area; the text below describes the provision at issue, the basic rule, and the issues that staff should keep in mind.

B. 28 U.S.C. § 2462

The federal statute of limitations at Section 2462 provides:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or other wise, shall not be entertained unless commenced within five years from the date when the claim first accrued.

As a general matter, accrual under this provision is the date the violations occurred. The EPS system contains a field for statute of limitations date and in most instances this will be 5 years from the date of the earliest violative activity in the matter. Most matters that address current activity will be concluded in advance of the five year statute of limitations but be aware of this limitation particularly for matters that may be 1-2 years old when activated, or that require a lengthy investigation, or involve protracted subpoena enforcement proceedings. Staff should pay careful attention to ensure that matters are brought to civil suit (if not settled) within this statute of limitations. While this statute of limitations does not bar administrative investigations and while it also would not preclude respondents from agreeing to pay a penalty in a conciliation agreement, in most instances the Commission will not wish to pursue matters where there is no prospect that a judicial remedy would be available if the matter proceeds that far.

Here is a list of possible issues relating to the scope of section 2462, accrual, and equitable tolling:

- Respondents can by agreement waive the statute or toll its running for specific periods, e.g. to engage in pre-probable cause conciliation, to extend time periods for response, etc. (see Attachment 2-5 for an example).

- Section 2462 may not preclude actions for declaratory and injunctive relief. FEC v. The Christian Coalition, ___ F. Supp. ___, 1997 WL 276048 (D.D.C. 1997); FEC v. NRSC, 877 F. Supp. 15, 20-21 (D.D.C. 1995). See also Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946); SEC v. Williams, 884 F. Supp. 28 (D. Mass. 1995) (Section 2462 does not apply to injunctive relief); United States v. Hobbs, 736 F. Supp. 1406 (E.D. Va. 1990) (same). But see FEC v. Williams, 104 F.3d 237, 240 (9th Cir. 1996); FEC v. National Right to Work Committee, 916 F. Supp. 10 (D.D.C. 1996); United States v. Winward Properties, Inc., 821 F. Supp. 690 (N.D. Ga. 1993).

- Ongoing or continuing violations can alter accrual date. Ongoing violations are ones that continue to recur, e.g. failure to include a debt on the debt schedule for each report (see section 434(b)(8)). In this example, each report is a separate violation that

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generates a new accrual date. The continuing violation theory is a harder concept to satisfy, e.g. that failure to itemize transactions on a particular FEC Report is a continuing violation until the information is properly disclosed.

- Equitable Tolling:
  - Equitable tolling for fraudulent concealment is applicable to Section 2462. FEC v. Williams, 104 F.3d 237, 240 (9th Cir. 1996), id. at 241 (2-1 majority refuses to apply in section 441f case), id. at 241-43 (Judge Fletcher dissenting).
  - Section 2462 may be tolled for some portions of the FEC's administrative proceedings, either for a set period or e.g. for the actual duration of subpoena enforcement proceedings. Id. at 243 (Judge Fletcher dissenting) ("statute is tolled during those periods in which FEC must follow mandatory notice and conciliation procedures. FECA provides a range of 65-125 days for such procedures," citing Sierra Club v. Chevron, U.S.A., Inc., 834 F.2d 1517, 1523 (9th Cir.1987)). But see FEC v. NRSC, 877 F. Supp. 15, 19 (D.D.C. 1995); FEC v. National Right to Work Committee, 916 F. Supp. 10, 14 (D.D.C. 1996).

Case Chronology

1. March 1994: The first broad construction of section 2462 (applied to EPA adjudication) came in *3M v. Browner*, 17 F.3d 1453 (D.C. Cir. 1994)
2. May 1994: Section 2462 does not apply to lawsuits initiated by the Commission under Section 437g. *FEC v. Williams*, NO. CV-93-6321-ER(BX) (C.D.Cal. May 17, 1994) (ruling at oral hearing, final decision January 31, 1995, see entry # 6 re appeal).
3. February 1995: Following *3M*, Section 2462 bars the Commission from seeking a civil penalty, "discovery rule" of accrual does not apply, administrative process does not toll statute, but statute does not apply to actions for declaratory and injunctive relief. *FEC v. NRSC*, 877 F. Supp. 15 (D.D.C. 1995) (Judge Pratt).
4. April 1995: GC Report to the Commission, dated April 28, 1995.
5. February 1996: Section 2462 applies to FEC suits, accrual date is date of violations, subpoena enforcement proceedings don't toll statute, and statute also precludes equitable relief. *FEC v. National Right to Work Committee*, 916 F. Supp. 10 (D.D.C. 1996) (Judge Jackson, ruling in FEC suit filed in March of 1990).
6. December 1996: 9th Circuit reverses District Court, Section 2462 applies to FEC enforcement suits under 2 U.S.C. § 437g(a)(6); accrual date is date of violations, fraudulent concealment doctrine applies to Section 2462 but not satisfied here; statute also precludes declaratory and injunctive relief. *FEC v. Williams*, 104 F.3d 237 (9th Cir. 1996), id. at 241-243 (Judge Fletcher dissenting), reh'g denied, June 5, 1997.
7. May 1997: Section does not apply to actions for declaratory and injunctive relief. *FEC v. The Christian Coalition*, ___ F. Supp. ___, 1997 WL 276048 (D.D.C. 1997) (Judge Joyce Green denying in part Christian Coalition's motion to dismiss re activities more than 5 years old).

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HELPFUL HINTS

A. Information Services Division

1. Functions

a) Publications: Inform and update political committees and others on the requirements of the Act and regulations and how to comply with them.

(1) forms/instructions
(2) Campaign Guides
(3) "The Record" (a monthly newsletter)
(4) Brochures

b) Training - seminars/workshops for candidates and political committees.

c) Telephone Queries - toll free "hot line"

d) Notifications - mailed to political committees (reporting periods and filing deadlines)

2. Resources for OGC Staff

a) Publications

(1) Campaign Guides - 4 guides: election law requirements as applied to candidates; corporations/unions; parties; and nonconnected PACs.

i) Organized by subject/examples
ii) Cites to regs/AOs
iii) More "readable" than Act/regs
iv) Corp./Labor Org. '94 Guide - new rules

(2) Brochures - (20) e.g., Free Publications, Filing a Complaint, and Committee Treasurers

(3) FEC Annual Report

i) Summarizes AOs/litigation
ii) New Developments - Law admin.
iii) Recommendations - Legislative changes
iv) Trends

(4) "The Record"

i) AOs (summaries/annual index)
ii) Background files avail. on each issue

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HELPFUL HINTS (cont.)

(5) Selected Court Case Abstracts (1976-1993)

i) FECA and Non-FECA cases
ii) Case overview

b) Outlines of Advisory Opinions

c) Assistance w/ Compliance Matters (e.g., info. sent to committees in NF/LF/48-hour cases)

d) Regulations

(1) Status of Regulations Projects (ongoing)
(2) Completed Regulations Projects
(3) Federal Register Notices
(4) 11 CFR - Indexes to Regulations

3. Upcoming

a) Brochures -- $25,000 cases/foreign nationals

b) Tracking of mailings to committees/candidates

B. Public Disclosure

1. Information: committee reports, computer indexes, AOs, closed MURs, other public Commission documents.

2. Handout -"Your Guide to Researching Public Records"

Attachment 2-1, Page 2 of 2

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Your Guide to Researching Public Records

What's available? How do I find it?

Office of Public Records
Federal Election Commission
999 E Street, N.W., Washington, DC 20463
202-219-4140 / 800-424-9530 / FAX 202-219-3880

Hours: 9:00 AM – 5:00 PM, Monday – Friday
Extended hours during reporting periods

Attachment 2-~~2. Page 1~~ of 2

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FEC Public Records Available to You on ...

Candidates

The Commission compiles nationwide statistics on federal campaigns to help researchers understand how particular candidates compare with national/state trends and rankings. For further research, indexes and computerized search systems are available.

Indexes Available To Research Candidates:

- Listing of names and addresses of Presidential, Senate and House candidates.
- Listing of names and address of candidates and their authorized committees.
- Listing of names and addresses of candidates running in the current election cycle.
- Listing of candidates with figures of their receipts, disbursements and cash on hand for the current election cycle.
- Listing of recent registrations of candidate committees.

☑ Checklist To Research A Specific Candidate:

- ☐ Listing of all documents filed by the campaign.
- ☐ Listing of all documents filed by the campaign and a cross reference to reports filed by other committees which disclose PAC or party contributions, independent expenditures (for or against) and communication costs.
- ☐ Summary financial figures on total receipts, disbursements, contributions (individuals, PAC, party), cash on hand, and debts owed to and by the campaign.
- ☐ Itemized list of individual contributions to the campaign.
- ☐ FEC compliance actions/litigation relating to the campaign.
- ☐ FEC audits of the campaign.
- ☐ FEC advisory opinions issued to the campaign.
- ☐ Campaign finance reports from 1972 to the present filed by the candidate and any authorized committees, itemizing receipts and disbursements.
- ☐ Personal Financial Reports filed by Presidential challengers, 1980 to present.
- ☐ Ask for a listing of the office in each state which should have a copy of a candidate's reports, or review our *Combined Federal/State Disclosure Directory* for other disclosures available in the states.

Pacs, Party and Other Committees

The Commission prepares summary financial figures on PACs, party committees and others, to provide a perspective on various groupings and rankings of the committees. Staff is also available to explain and assist in further researching a specific committee.

Indexes Available to Research Committees:

- Listing of all PACs and party committees, with addresses, treasurer names and ID numbers, arranged alphabetically or by state.
- Listing of PACs arranged alphabetically by sponsoring organization.
- Listing of PACRONYMS—the acronyms, abbreviations, initials and common names of PACs.
- Listing of PACs with figures of their receipts, disbursements and cash on hand for the current election cycle.
- Listing of PACs ranked by receipts.
- Listing of newly registered committees in the current election cycle.
- Listing of multicandidate committees with their date of qualification.
- Computer search capability for PAC names when only a key word in the title or treasurer's name is known.

☑ Checklist To Research A Specific Committee:

- ☐ Listing of all documents filed by the committee.
- ☐ Summary financial figures on total receipts, disbursements, contributions to federal committees, cash on hand and debts and obligations owed to and by the committee.
- ☐ Itemized list of individual contributions to the committee.
- ☐ Listing of contributions made to candidates by the committee, including independent expenditures for or against candidates.
- ☐ FEC compliance actions/litigation relating to the committee.
- ☐ FEC audits of the committee.
- ☐ FEC advisory opinions issued to the committee.
- ☐ Campaign finance reports from 1972 to the present filed by the committee, itemizing receipts and disbursements.
- ☐ Listing and computer search system of persons, corporations, labor organizations and others contributing to non-federal accounts of the political committees.

Individual Contributors

The Commission maintains a data base of individuals who have made contributions to political committees. For 1977 to 1988, contributions of $500 or more were entered. For 1989 to the present, contributions of $200 or more are being entered.

Individual Contributor Search Capability:

Data on individual contributors includes the following:

- Name
- Occupation or principal place of business
- City
- State
- Zip code
- Date of transaction
- Amount of contribution
- Name of committee disclosing the contribution

The following are examples of the various types of contributor searches that may be conducted:

- Search an individual contributor by their last and/or first name.
- Search an individual contributor by their principal place of business or occupation.
- Search an individual contributor by their city, and/or state and/or zip code.
- Searches may be performed by the date of the contribution or by the amount of the contribution.
- Search for a contribution by the committee receiving the contribution.
- Individual contributor searches may be performed one at a time or in multiple combinations to narrow the actual search. *Example:* All contributions to a particular committee on a specific date or all contributions to a candidate from contributors who list the same principal place of business.

Restrictions on the Use of FEC Disclosure Documents

Any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

2 U.S.C. 438(a)(4).

Attachment 2-2, Page 2 of 2

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TWO WAYS TO GET INFORMATION ABOUT A CANDIDATE OR COMMITTEE

1. Run an "O index."

O INDEX STRENGTHS AND WEAKNESSES

Strengths
-gives receipt date of report
-gives cash on hand for PARTICULAR COMMITTEE on index
-gives current debts for PARTICULAR COMMITTEE on index
-gives current address for committee

Weaknesses
-written in difficult to read langugage
-arrangement of reports difficult to read
-does not give easy to read information re: CoHand

2. First run a "short E index" then run an "L index" (CAN's)
OR First run a "C index" then run a "K index." (PACs)

E & C INDEX STRENGTHS AND WEAKNESSES

Strengths
-Easily readable, organized format

Weaknesses
-No listing of CoHand, receipt dates of reports, current debts

L & K INDEX STRENGTHS AND WEAKNESSES

Strengths
-Easiest to read
-Gives information on candidate loans (L)
-Gives total CoHand for ALL AUT. COMMITTEES of candidate (L)
-Gives total debt information
-Gives contributions to other committees (K)

Weaknesses
-Need candidate ID to run (L)
-Need committee ID to run (K)

Attachment 2 ~~3, Page 1~~ of 1

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CONTRIBUTOR SEARCH HINTS

1. When searching for an individual through the system, try typing in only the last name.

For example: Typing in **TYROL**, instead of **JOHN TYROL**, may bring up family member contributions that may prove useful in your overall goal. This will also allow you to pick up intials and nicknames. ie: **J. TYROL** or **JACK TYROL**.

2. Try limiting the search by using the state and city selections.

For example: Typing in a fairly common name like **JOHN SMITH** could bring up a host of unwanted individuals making the search unnecessarily cumbersome. However, if you know the state and/or city the individual lives in, you can narrow your field by selecting these options and then typing in **JOHN SMITH**. This way you won't be getting people from all over the country.

3. Use state searches only when limiting your field for other searches. Running a search for most states will tie up the system and take hours to print. If a state search is absolutely necessary, arrange to have DATA Systems run it on one of their high speed printers.

4. Be careful hitting the return key as you are entering searches into the system. The computer will always acknowledge a pressed key. A momentary loss of patience can result in the loss of a time consuming search.

5. Remember that place of business searches are not all inclusive. They will not, necessarily, pick up all contributions made by employees of a certain organization.

For example: By typing in **SMITH, JOHNSON, & PEABODY**, your search will bring up only individuals that listed their place of business as **SMITH, JOHNSON, & PEABODY**. Employees who listed their place of business as **ATTORNEY** or **LAWYER** will not be included in the search.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of [redacted]	)	
and [redacted], as Treasurer	)	MUR[redacted]
	)	
Congresswoman [redacted]	)	
	)	

CONSENT TO EXTEND THE TIME
TO INSTITUTE A CIVIL LAW ENFORCEMENT SUIT

Respondents, Friends of [redacted], as Treasurer, and Congresswoman [redacted], hereby consent to extend the time to institute a civil law enforcement suit for a period of five calendar days from the expiration date of the five-year statute of limitations found at 28 U.S.C. § 2462, or any other statute of limitations or repose that may be applicable, should the Commission institute a civil law enforcement action against the respondents in MUR 4160 pursuant to 2 U.S.C. § 437g(a)(6). There shall be no additional consent to extend the time to institute a civil law enforcement suit without the written consent of the respondents.

B. Holly Schadler, Esquire
For the Respondents

May 2, 1997
Date

Attachment 2-5
Page 1 of 1

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

January 10, 1997

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

Richard B. Bader
Associate General Counsel

Rita A. Reimer
Attorney

SENSITIVE

SUBJECT: Petition for Rehearing, and Suggestion for Rehearing *En Banc*, in Federal Election Commission v. Williams

On December 26, 1996, a three judge panel of the United States Court of Appeals for the Ninth Circuit issued a decision in Federal Election Commission v. Williams, No. 95-55320. That decision held, *inter alia*, that the five-year statute of limitations for filing suit to enforce a civil penalty established at 28 U.S.C. § 2462 applies not only to judicial proceedings to enforce civil penalties already imposed, but also to proceedings seeking the imposition of these penalties, including the Commission's law enforcement suits under 2 U.S.C. § 437g(a)(6). The court also held that § 2462 applies to actions for injunctive relief, and that equitable tolling did not apply to these facts. A petition for rehearing would have to be filed by February 7, 1997.

In reaching this conclusion, the Ninth Circuit relied heavily on the District of Columbia Circuit holding in 3M Co. (Minnesota Mining and Mfg.) v. Browner, 17 F.3d 1453 (D.C. Cir. 1994). The D.C. Circuit reached a similar result in Johnson v. SEC, 87 F.3d 484 (D.C. Cir. 1996). In each instance the Solicitor General declined to seek a writ of *certiorari* from the Supreme Court although, in Johnson, 18 federal departments and agencies wrote letters recommending that he do so.

In this case, the Commission found reason to believe that Larry Williams made excessive contributions and contributions in the name of another in connection with Jack Kemp's 1988 presidential campaign. The violations involved the sale and resale of 1988 Philadelphia Eagles Superbowl tickets.

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The Commission argued that § 2462 applies only to actions to enforce a pre-existing civil penalty, not to actions to impose one or to seek injunctive relief under the Act. The district court agreed, but the Ninth Circuit Court of Appeals reversed and held that § 2462 applies to the Commission's actions. Applying 3M v. Browner, the court held that the five year period began to run no later than the date of the last violation. The majority opinion held that the "FECA's campaign finance reporting requirements are, as a matter of law, sufficient to give FEC 'notice of facts that, if investigated, would indicate the elements of a cause of action[,]'" slip op. at 8-9 (citations omitted), ignoring the fact that the reports on their face showed only lawful contributions.

Dissenting Judge Fletcher noted that "the very nature of the offense at issue - making a political contribution in the name of another person in order to exceed the $1,000 limit on contributions - involves using deceptive methods to conceal violations of the campaign-finance laws." She reasoned that the five year period should run only from the time evidence of a violation becomes available, since "[i]t seems only logical that the discovery rule apply when the defendant's deception in the course of committing a violation prevents discovery of that violation." *Id.* at 11.

The Office of General Counsel has checked with a large number of government departments and agencies to learn their current stance on the 3M holding. While each faces somewhat different circumstances, the large majority feel these decisions were wrongly decided and have major concerns about how they will impact on their current or future operations. (The remainder either do not believe that the rulings apply to them, or have found that they are able to comply with the shorter deadline.) We found only one agency, however, that is actively seeking to overturn 3M Co. and Johnson.[1] Otherwise, as one contact stated, and others echoed, this is considered a "done deal" that they now must live with.

The Office of General Counsel believes that the Commission should also accept the court's core application of 28 U.S.C. § 2462 to its enforcement suits as the current state of the law. While we disagree with these decisions and would like to see them overturned, there appears little likelihood of this happening, given the Department of Justice's attitude and those of these other agencies. Accordingly, absent objection by the Commission, we do not intend to seek rehearing from the Ninth Circuit on that question, and we will not contest that basic proposition in other litigation in the future.[2] The Office of General Counsel will prepare a memorandum recommending action in pending MUR's based upon this conclusion.

[1] HUD has advised us that, while it is not currently party to any litigation addressing this issue, it will seek to overturn 3M and Johnson at the first opportunity.

[2] The Christian Coalition has filed a motion to dismiss two counts of the Commission's complaint against it, involving 1990 activity, on the basis of 28 U.S.C. § 2462. While we will not contest that § 2462 is applicable, we will argue that it should not be construed to require dismissal of other charges. Some of the reasons for this are set out *infra*.

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We believe, however, that the Williams majority's application of 28 U.S.C. § 2462 to the facts of this case should not be accepted at this time as it relates to the issues of equitable relief and equitable tolling. The panel majority's suggestion that the Commission could have begun an investigation based upon the disclosure reports filed by the Kemp Committee ignores the fact that those reports disclosed only what appeared to be individual contributions complying with the contribution limitations. Such a report, by itself, does not support a finding of "reason to believe" that a violation has been committed, and without such reason to believe the Commission is precluded by statute from investigating. Accordingly, we intend to ask the Ninth Circuit to reconsider this question *en banc*. In addition, we plan to seek reconsideration of the panel's conclusion that § 2462 bars equitable relief as well as civil penalties. *See* FEC v. NRSC, 877 F.Supp. 15, 21 (D.D.C. 1995).

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Turley

AGENDA DOCUMENT No. X97-15

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
MAR 4 3 19 PM '97

In the Matter of	)	28 U.S.C. § 2462
	)	Statute of Limitations
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	)	
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	)	

SENSITIVE

MAR 11 1997

GENERAL COUNSEL'S REPORT

EXECUTIVE SESSION

I. INTRODUCTION

On December 26, 1996, the United States Court of Appeals for the Ninth Circuit issued a decision in *Federal Election Commission v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996). That decision held, *inter alia*, that the five-year statute of limitations for filing suit to enforce a civil penalty established at 28 U.S.C. § 2462 applies not only to judicial proceedings to enforce civil penalties already imposed, but also to proceedings seeking the imposition of these penalties, including the Commission's law enforcement suits under 2 U.S.C. § 437g(a)(6).

As noted in the memorandum regarding the filing of a petition for rehearing, the Office of General Counsel believes that the Commission should accept the court's core application of 28 U.S.C. § 2462 to its enforcement suits as the current state of the law. *See* Memorandum to the Commission, *Petition for Rehearing, and Suggestion for Rehearing En Banc, In Federal Election Commission v. Williams*, dated January 10, 1997. As also noted, however, we have sought further review of the court's decision

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relating to issues of equitable relief and equitable tolling.[1] *Id. See also FEC v. NRSC*, 877 F. Supp. 15, 21 (D.D.C. 1995).

This General Counsel's Report discusses the impact of 28 U.S.C. § 2462 on the Office of General Counsel's enforcement caseload.[2] This Report describes the 45 active and inactive enforcement matters which are potentially affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462, and makes recommendations for each of the potentially affected matters. This Report addresses all cases where the statute of limitations potentially expires, or partially expires, by the end of calendar year 1997 (December 31, 1997).

The Office of General Counsel is recommending that of the 45 matters potentially affected by the statute of limitations, 18 matters be closed at this time. By doing so, this Office believes that it will be able to devote more resources toward more recent activity, particularly those matters that arose from the 1996 election cycle. To avoid potential statute of limitations problems in the future, this Office will track its cases against the relevant statute of limitations and will perform regular reviews of its caseload. In addition, this Office will be making periodic recommendations to the Commission with respect to matters that may be affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462.

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[1] Pending the court's decision, issues such as equitable relief, equitable tolling and ongoing violations, will remain open. In some instances, although issues such as equitable tolling and equitable relief may still be viable, this Office has cited other factors to support our recommendation to close the matter. *See, e.g.*, cases involving apparent violations of 2 U.S.C. § 441a(f).

[2] This Report addresses enforcement matters assigned to the Public Financing, Ethics & Special Projects ("PFESP") and Enforcement areas.

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II. CASE DISCUSSIONS

This section provides brief descriptions of the 45 pending enforcement matters assigned to the PFESP and Enforcement areas, including the PFESP Docket and the Central Enforcement Docket ("CED"). Sixteen matters are active PFESP enforcement matters; 12 are active Enforcement matters; 10 are assigned to the PFESP Docket as inactive matters; and 18 are assigned to CED. However, 6 of those cases assigned to CED for which the statute of limitations will expire in whole or in part by December 1997 are included in the cases recommended for closure in the pending Enforcement Priority Report.[3] Five other similarly-situated cases will be closed out under the Enforcement Priority System before the statute of limitations expires.[4]

In any event, this Office recommends closing 18 of the 45 potentially affected matters and pursuing the remaining 27 matters. The first section discusses the 18 matters this Office recommends for closing, and the second section discusses the 27 matters which this Office recommends remain open.

[3] These cases are: MUR 4258 (NRSC); MUR 4260 (Bob Packwood / Auto Dealers); MUR 4262 (Oregon Republican Party); MUR 4265 (NRSC / Phil Gramm); MUR 4332 (Bill Thomas Campaign Committee); and MUR 4371 (The Employment Group).

[4] These cases include: MUR 4274 (GOPAC); MUR 4404 (Friends of Steve Stockman); MUR 4462 (Ellen O. Tauscher); MUR 4272 (Bishop for Congress); and MUR 4485 (Perot 92 Committee).

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A. Cases this Office Recommends the Commission Close (18)

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1. **MUR 3351 (Americans for Free International Trade / Toyota)**
(complaint-generated)('92 cycle)
Enforcement Team 3
EPS #80/Tier 1

Representative Helen Delich Bentley filed this complaint in June 1991; the case was activated in June 1991. This matter principally involves the allegation that Toyota Motor Sales U.S.A., Inc. solicited, collected and forwarded dealer contributions through its regional distributors (both wholly and independently owned) to two non-connected PACs (Auto PAC from 1983 -1989 and AFITPAC from 1990-1991). The remaining respondents in this matter are Toyota, Auto PAC, AFITPAC and the two independent distributors – Southeast Toyota Distributors, Inc. and Gulf States Toyota, Inc. After an extensive investigation, on [redacted]
Based upon the facts and circumstances presented, we recommend that this case be closed.

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2. **MUR 3571 (Bush-Quayle '92 Primary, Bush-Quayle '92 General Committee)**
(complaint generated) ('92 cycle)
PFESP Team II
EPS II #75/Tier 1

This matter was generated by a complaint filed with the Commission on July 30, 1992, which alleged that the Bush-Quayle '92 Primary Committee used surplus campaign funds to influence the general election. This issue is inextricably linked to the Commission's audits of the Bush-Quayle '92 Committees and the resulting repayment determinations. This matter was transferred to CED on February 4, 1994. The case was transferred from CED to PFESP on December 31, 1994.

On August 17, 1995, the Commission made a final determination that the Primary Committee must repay $323,832 to the United States Treasury, including a *pro rata* repayment of $106,979 for non-qualified campaign expenses related to the general election and a repayment of $216,853 for matching funds that the Primary Committee received in excess of its entitlement. The Statement of Reasons approved by the Commission also contained a recommendation that the Compliance Committee reimburse the GEC $182,785 in order to eliminate the GEC's expenditures in excess of its overall expenditure limitations, which resulted from the payment of expenditures related to the general election campaign by the Primary Committee. The repayment and the recommended reimbursement arose from expenditures related to the general election which were paid for by the Primary Committee, including a newspaper advertisement addressed to Ross Perot supporters cited in the complaint. Thus, the repayments are based on the same expenditures that are the subject of the complaint.

On August 22, 1995, the Primary Committee, GEC, and Compliance Committee filed petitions for review of the Commission's final repayment determinations and a joint motion to consolidate with the United States Court of Appeals for the District of Columbia Circuit. On November 29, 1995, the Commission granted the Committee's request to stay the repayment pending appeal. On January 14, 1997, the D.C. Circuit remanded the case to the Commission to justify its departure from the approach taken in the audit of the Reagan-Bush '84 Committee, or to reconsider its repayment determination. *See Bush-Quayle '92 Primary Committee, Inc. et al. v. Federal Election Commission*, No. 95-1430 (D.C. Cir. January 14, 1997).

This Office recommends that the Commission exercise its prosecutorial discretion and take no further action, and close the file with respect to this matter. Based on the court's opinion on the prefunding issue in the repayment case, pursuit of this matter would be problematic. Since the expenditures at issue were incurred in July and early August 1992, this matter may be barred by the five-year statute of limitations before the Commission could litigate this matter. Moreover, pursuit of this matter would not be an efficient use of the Commission's resources.

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3. **MUR 3582 (Carol Moseley Braun for U.S. Senate)**
(complaint generated) ('92 cycle)
PFESP Team I
EPS II #36/Tier 2

On March 3, 1994, the Commission found reason to believe against the Committee for apparent reporting violations; acceptance of a loan; and failure to properly report contributions for primary. *See* 2 U.S.C. §§ 434(a)(2)(A)(iii), 434(b)(2), 434(b)(4), 434(b)(5), 434(b)(6), 441a(f), and 441b(a). The Commission also found reason to believe that Carol Moseley Braun, as an individual, violated 2 U.S.C. § 441a(f); and Citizens for Carol Moseley Braun and Carol Moseley Braun, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A), 441b(a), 433(a), and 434, concerning the loan transaction. On that same day, the Commission voted to hold this matter in abeyance pending the completion of the ongoing audit.

On December 31, 1994, this matter was transferred to PFESP. On February 23, 1995, this matter was deactivated in PFESP pending the outcome of the audit. On May 6, 1996, the Commission approved the Final Audit Report, and this matter was subsequently activated on June 25, 1996. This Office has received additional information from the audit that provides support for taking no further action on the issues raised in this matter. Specifically, two of the three alleged reporting violations now appear to have been materially corrected: the Committee filed amended disclosure reports that corrected the problem of misreporting addresses and purposes in connection with expenditures, and the misreporting of expenditures outside of the reporting period. *See* Final Audit Report on Carol Moseley Braun for U.S. Senate, Finding II. E. The other reporting violation -- failure to report payroll taxes -- appears to involve approximately $25,600 and only two individuals.

In addition, the audit reviewed whether primary election contributions were misreported as general election contributions as alleged in the complaint, but neither the Interim nor the Final Audit Report found this alleged violation to be significant enough to warrant an audit finding.[5] The auditors also could not locate the actual funds comprising the $10,000 loan made from Senator Braun's state committee for her personal use.

The dates of the misreporting occurred from March 1992, and the loan to Senator Braun occurred on February 4, 1992. Thus, the violations have occurred nearly or greater than five years ago. The amounts at issue are relatively small ($10,000 loan, and

[5] The auditors, however, made a finding that the Committee accepted contributions in excess of net primary debt. *See* MUR 4370 discussion.

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$25,600 misreporting of payroll taxes for two individuals), and because pre-probable cause to believe conciliation has not yet occurred, the likelihood of resolving this matter before the statute of limitations expires is slim. For these reasons, this Office recommends that the Commission exercise its prosecutorial discretion and take no further action in this matter and close the file. If the Commission adopts this recommendation, this Office will include admonishment language in the notification letter.

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4. **MUR 3586 (Democratic State Central Committee California)**
(complaint generated) ('92 cycle)
PFESP Docket (Inactive)
EPS II #45/Tier 2

This matter involves allegations that the California Democratic Party and its Democratic State Central Committee of California -- Federal accepted illegal extensions of credit from three sources and that the Committee circumvented the Commission's allocation regulations. On March 8, 1994, the Commission found reason to believe that the Committee violated 2 U.S.C. §§ 434(b)(8), 441a(f) and 441b(a), and approved the issuance of Subpoenas and Orders to Submit Written Answers.

Due to the ongoing audit of the Committee, however, this matter was transferred to PFESP on December 31, 1994. On February 23, 1995, this matter was deactivated and held in abeyance pending the outcome of the audit. This Office recommends that the Commission exercise its prosecutorial discretion and take no further action, and close the file with respect to this matter. The activities at issue occurred on July 1, 1991. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations. Moreover, this matter does not warrant further pursuit based on other matters pending in this Office.

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5. **MUR 3838 (Frank Riggs for Congress)**
(audit referral) ('90 cycle)
PFESP Docket (Inactive)
EPS II #39/Tier 2

On November 30, 1993, the Commission found reason to believe that Frank Riggs for Congress violated 2 U.S.C. §§ 434(b)(3)(a), 441a(f), and 441b(a). Based on further investigation, on May 16, 1995, the Commission found reason to believe that eight loans made by the candidate to the Committee were excessive contributions from three of the candidate's relatives in violation of 2 U.S.C. § 441(a)(1)(A). The Commission also found reason to believe that Frank Riggs accepted excessive contributions to the Committee in violation of 2 U.S.C. § 441a(f). In addition, the Commission found reason to believe that Frank Riggs diverted money from his corporation into his personal account in order to make loans to his Committee, thereby accepting prohibited corporate contributions in violation of 2 U.S.C. § 441a(f). [redacted]

In the General Counsel's Report circulated in response to the *FEC v. NRSC*, 877 F. Supp. 15 (D.D.C. 1995), decision, this Office recommended further pursuit of this matter. *See* General Counsel's Report, *28 U.S.C. § 2462 Statute of Limitations*, approved May 16, 1995. However, due to staff departures, the age of the activity and the need to devote more resources toward 1996 cycle cases, this Office now recommends that the Commission exercise its prosecutorial discretion and take no further action in this matter, and close the file. Most of the activity in this matter occurred prior to October 1990. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations. If the Commission adopts this recommendation, the notification letter will contain the appropriate admonishment language.

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6. **MUR 3841 (United Conservatives of America)**
(audit referral) ('90 cycle)
PFESP Docket (Inactive)
EPS II #35/Tier 2

On December 7, 1993, the Commission found reason to believe that United Conservatives violated 2 U.S.C. § 441b by accepting prohibited corporate contributions through extension of credit outside the ordinary course of business from three corporations: The Viguerie Company; American Mailing List Corporation and Webcraft Technologies, Inc. The Commission found reason to believe the corporations violated 2 U.S.C. § 441b as well. The Commission also found reason to believe that the Committee violated various reporting statutes and regulations (2 U.S.C. §§ 432(c), 432(d), 433(c), and 434(b); 11 C.F.R. §§ 104.11(a), and 104.14(b)(1)). The Office of General Counsel conducted discovery with subpoenas for documents and interrogatories issued to the respondents. Staff from this Office also met with counsel for the respondents on numerous occasions. This matter was deactivated on January 3, 1997.

In the General Counsel's Report circulated in response to the *FEC v. NRSC*, 877 F. Supp. 15 (D.D.C. 1995), decision, this Office recommended further pursuit of this matter. *See* General Counsel's Report, *28 U.S.C. § 2462 Statute of Limitations*, approved May 16, 1995. However, due to staff departures, the age of the activity and the need to devote more resources toward 1996 cycle cases, this Office now recommends that the Commission exercise its prosecutorial discretion and take no further action in this matter, and close the file. Most of the activity in this matter occurred prior to July 1, 1989. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations. If the Commission adopts this recommendation, the notification letter will contain the appropriate admonishment language.

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7. **MUR 3969 (Fulani for President)**
(audit referral) ('92 cycle)
PFESP Team I
EPS II #56/Tier 2

On May 24, 1996, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions through staff advances and that the staff members violated 2 U.S.C. § 441a(a)(1)(A) by making the contributions (totaling $105,114.82). The Commission also offered to enter into conciliation with the Committee prior to a finding of probable cause to believe. The Commission took no further action against the individual contributors. The Commission also took no action with respect to certain transactions between the Committee and one of its vendors, the International Peoples' Law Institution in light of the concurrent 11 C.F.R. § 9039.3 investigation of the Committee.

This Office recommends that the Commission exercise its prosecutorial discretion and take no further action, and close the file with respect to this matter. Most of the activity at issue occurred prior to September 1992. Thus, even though some of the activity is still not time-barred under 28 U.S.C. § 2462, this Office believes that pursuing those violations that occurred less than five years ago would, at this stage of the enforcement process, be an inefficient use of the agency's limited resources.

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8. MUR 4091 (Beth Cataldo)
(audit referral) ('92 cycle)
PFESP Team II
EPS II #46/Tier 2

On October 19, 1994, the Commission found reason to believe that Beth Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f by accepting excessive contributions in the form of money orders in the amount of $9,500 to the Tsongas Committee, Inc. and by permitting her name to be used to effect a contribution in the name of another, assisting and directing campaign staff members to use their names to effect a contribution in the name of another and accepting contributions in the name of another. On October 22, 1996, the Commission found probable cause to believe that Ms. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441(f). [redacted]

This Office recommends that the Commission exercise its prosecutorial discretion and take no further action, and close the file with respect to this matter. This Office believes that it would an inefficient use of the Commission limited resources to pursue this matter further. The activities at issue occurred on December 30, 1991. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations.

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9. MUR 4183 (Clinton for President/Goldman Sachs and Company)
(audit referral and directive 6) ('92 cycle)
PFESP Docket (Inactive)
EPS II #70/Tier 1

The Commission, using its Directive 6 procedures, opened this matter on April 28, 1992, based upon Goldman Sachs and Company's apparent facilitation of contributions on behalf of the Clinton for President Committee. On October 20, 1992, the Commission found reason to believe that various violations occurred and issued subpoenas for documents. After the responses to the Commission's subpoenas and findings were received, this case was deactivated in May 1993. Thereafter, this matter was reactivated in July 1994 and subsequently transferred to PFESP in January 31, 1995, at which time, it was merged with the Audit referral which was received January 11, 1995. That Audit referral concerned the Committee's use of Goldman Sachs' facilities during the 1992 election cycle. This matter was thereafter deactivated in PFESP on February 1, 1997.

This Office recommends that the Commission exercise its prosecutorial discretion and take no further action, and close the file with respect to this matter. The activities at issue in this matter occurred between October and December 1991. Thus, based upon the decision in *Williams*, the Commission may be precluded from collecting a civil penalty for these violations.

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10. MUR 4209 (Fund for California's Future)
(RAD referral)('92 cycle)
Enforcement Team 3
EPS #30/Tier 2

RAD referred this case to OGC in November 1993; the case was activated in April 1994. The evidence shows that the respondent received $26,000 in contributions from an unregistered committee on two occasions in 1992. These contributions were made from an account containing prohibited funds and were never remedied. Respondent then allowed its name to be used to make contributions totaling $26,000 to 13 federal committees. Extensive pre-probable cause conciliation negotiations failed; the case is now ready for briefs. $15,000 of the $26,000 in issue was transferred in February of 1992; the remaining $11,000 was transferred in October of 1992. Reason to believe was found against all respondents that they had knowingly and willfully violated the Act. Evaluation of the evidence presently available in the case tends to indicate that it may not be evidence to support a finding of probable cause for knowing and willful violations of the Act. In view of the fact that the amount of possible civil penalty has been reduced by over half the original amount because one transaction is beyond the statute of limitations and the weakness of the remainder of the case, we recommend that this case be closed.

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11. MUR 4267 (Democratic Executive Committee of Florida)
(audit referral) ('92 cycle)
PFESP Docket (Inactive)
EPS II #22/Tier 2

The Audit Division referred this matter on September 28, 1996. The referral involves two issues: (1) use of funds from a non-federal account totaling $820,269; and (2) expenditures in connection with federal elections funded by the non-federal account totaling $62,691. This Office recommends that the Commission exercise its prosecutorial discretion and take no action with respect to this matter, and close the file. The activities at issue occurred on July 1, 1991. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations. If the Commission adopts these recommendations, the notification letter will include the appropriate admonishment language.

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12. MUR 4370 (Carol Moseley Braun for U.S. Senate)
(audit referral) ('92 cycle)
PFESP Team I
EPS II #23/Tier 2

This matter was referred on May 22, 1996. The three issues referred to this Office involve: (1) $56,941 in contributions that were received in excess of net primary debt; (2) $88,192 in excessive contributions and a $2,700 in-kind contribution; and (3) $12,785 in anonymous cash contributions in excess of $50. The Committee received the $56,941 in excess of primary debt in March 1992; the excessive contributions from November 1991 through October 1992; and the $2,700 in-kind contribution occurred in September 1992. Further, the Committee received the $12,785 in anonymous cash contributions in excess of $50 in July 1992.

The Commission has not found reason to believe on any of these findings. In light of the age of the violations at issue and the *Williams* holding, it would be difficult to continue this matter in light of the impending expiration of the statute of limitations. Thus, we recommend that the Commission exercise its prosecutorial discretion and take no action on these apparent violations, and close the file in this matter. If the Commission adopts this recommendation, this Office will include appropriate admonishment language in the notification letters to the respondents.

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13. MUR 4392 (Services Group of America PAC)
(complaint-generated)('92, '94 cycles)
Central Enforcement Docket
EPS #49/Tier 2

Paul Berendt, Chair of the Washington State Democratic Party, filed this complaint in June 1996. He alleges that the Services Group of America PAC is sponsored by several corporations that are privately held by Thomas Stewart. He further alleges that employees of these corporations were given bonuses with the stipulation that the employees make a $1,000 contribution to the PAC. He also alleges that in 1992 employees of companies owned by Stewart were given bonuses and then made contributions to the Peter von Richbauer committee. In some cases, contributions were also made in the name of the employees' wives. The City of Seattle took action on related non-federal matters in mid-1996. Since all federally-related activity now appears to be beyond the statute of limitations, we recommend that this case be closed.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

14. MUR 4432 (Idaho Republican Party Federal Campaign Account)
(audit referral) ('94 cycle)
PFESP Docket (Inactive)
EPS II #34/Tier 2

The Audit Division referred this matter on August 6, 1996. The matter involves the receipt of prohibited contributions totaling $134,521. This Office recommends that the Commission exercise its prosecutorial discretion and take no action with respect to this matter, and close the file. The activities at issue occurred on October 21, 1992. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations in October 1997. Moreover, this matter does not warrant further pursuit in light of other matters pending in this Office. If the Commission adopts these recommendations, we include the appropriate admonishment language in the notification letters.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

15. MUR 4468 (Democratic State Central Committee California)
(audit referral) ('92 cycle)
PFESP Docket (Inactive)
EPS II #43/Tier 2

The Audit Division referred this matter on September 17, 1996. This matter involves four issues: (1) apparent prohibited contributions totaling $332,871; (2) allocation of generic voter registration and GOTV expenses totaling $551,130; (3) excessive contributions resulting from staff advances totaling $24,184; and (4) non-federal funds being deposited into federal accounts totaling $58,000. This Office recommends that the Commission exercise its prosecutorial discretion and take no action, and close the file with respect to this matter. *See also* MUR 3586 (Democratic State Central Committee California). The majority of the activities at issue occurred prior to August 2, 1991. Thus, litigation to recover a civil penalty for most of this case could be barred by the five-year statute of limitations. If the Commission adopts these recommendations, we will include the appropriate admonishment language in the notification letter.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

16. MUR 4591 (North Carolina Democratic Victory Fund)
(audit referral) ('92 cycle)
PFESP Docket (Inactive)
EPS II #60/Tier 1

This matter was referred to this Office on December 4, 1996. It involves five issues: (1) goods and services purchased apparently on behalf of Clinton/Gore '92 totaling $135,733; (2) direct mail program on behalf of Clinton/Gore '92 totaling $177,217; (3) phone bank program on behalf of Clinton/Gore '92 totaling $168,934; (4) disclosure of occupation and name of employer for 649 contributors totaling $383,297; and (5) apparent prohibited contributions totaling $64,000. This Office recommends that the Commission exercise its prosecutorial discretion and take no action, and close the file with respect to this matter. The activities at issue occurred prior to December 31, 1992. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations by the end of the year. Moreover, further pursuit of this matter would not be an efficient use of the Commission's resources. If the Commission adopts these recommendations, we will include the appropriate admonishment language in the notification letter.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

17. MUR 4614 (Ronald Reagan's 1984 Reelection Committee)
(complaint-generated)('84 cycle)
Central Enforcement Docket
EPS #62/Tier 2

Complainant Larry Brayboy filed this complaint in January 1997, in which he alleges that Ronald Reagan's 1984 reelection campaign received an illegal campaign contribution of $10 million from the late Ferdinand Marcos. Mr. Brayboy bases his allegation on a book by Ed Rollins, Reagan's 1984 campaign manager, entitled *Bare Knuckles and Back Rooms*. Based upon the age of the case and lack of underlying evidence, we recommend that this case be closed.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

18. PM-344 (Jay Khim)
(EPA Referral)(92 cycle)
Central Enforcement Docket
EPS #46/Tier 2

This is a referral from the US Environmental Protection Agency which was forwarded in December 1996. JWK International is a subchapter S corporation whose sole shareholder is Jay Khim, an unsuccessful candidate for Congress in Virginia's 11th District in 1992. EPA alleges that the corporation "loaned" over $335,000 to Khim's congressional campaign between February and June 1992, then "forgave" the loans to the campaign in July 1993. Since the statute of limitations on much of the principal activity has either already expired or will expire by June 1997, we recommend that this case be closed.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

B. Cases this Office Recommends Remain Open (27)

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

1. **MUR 3204R (Montana Republicans)**
(complaint-generated)('88 cycle)
Enforcement Team 1
EPS #--/Tier -- (unrated)

This case is in a unique posture. It arose out of the 1988 Senatorial campaign in Montana. The Commission split on the case and the complainant sued. The district court remanded certain issues back to the Commission. The Commission voted on a motion made at the table to appeal the case, which failed on a 2-2 vote. The remanded case was revived in June 1996. Complainants resisted Commission-issued subpoenas. [redacted] Based upon the facts and circumstances presented, and in light of the fact that the case was remanded to us by the court for further action, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

2. **MUR 3546 (Clinton for President Committee)**
(complaint-generated)('92 cycle)
Enforcement Team 1
EPS #31/Tier 2

The RNC filed this complaint in June 1992 concerning a town meeting paid for by the DNC which aired earlier that month. [redacted]. Based upon the facts and circumstances presented, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

3. **MUR 3585 (The Tsongas Committee, Inc./Nicholas Rizzo)**
(audit referral) ('92 cycle)
PFESP Team II
EPS II #125/Tier 1

4. **MUR 4176 (The Tsongas Committee, Inc.)**
(audit referral) ('92 cycle)
PFESP Team II
EPS II #60/Tier 1

These matters were initiated by Audit referrals arising out of the audit of the Tsongas Committee, Inc. Currently, MUR 3585 addresses activity by the Committee and its treasurer, as well as Nicholas Rizzo; MUR 4176 addresses activity only by the Committee and its treasurer. The Commission has previously made reason to believe findings and has completed its investigations. On February 25, 1997, this Office circulated a General Counsel's Report recommending that the Commission take no further action against the Tsongas Committee in MURs 3585 and 4176. This report also recommends the Commission make probable cause findings, but take no further action against Nicholas Rizzo in MUR 3585.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

5. MUR 3657 (Multimedia Cablevision)
(Representative Dan Glickman)('92 cycle)
Enforcement Team 2
EPS #44/Tier 2

Representative Dan Glickman filed this complaint in October 1992 regarding immediate pre-election activity then taking place. After investigation started in October 1993 following an RTB finding, and reissuance of the Subpoena and Order in June 1994, Multimedia refused to comply. The Commission authorized subpoena enforcement in August 1994; since then, the case has been tied up in subpoena enforcement litigation. On Multimedia's appeal (and the Commission's cross-appeal) from the District Court's enforcement in part of the Subpoena and Order, the case was argued before the Tenth Circuit at the end of November 1996. The court's decision is still pending. The delay attributable to the court action instigated by respondents provides us with a reasonable basis to argue that the statute of limitations should be tolled for the amount of time involved in judicial resolution of this dispute. Based upon the facts and circumstances presented, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

6. **MUR 3664 (Bush-Quayle '92 General Committee)**
(complaint generated) ('92 cycle)
PFESP Team II
EPS II #46/Tier 2

This MUR was generated by a complaint filed with the Commission on October 20, 1992, which alleged that the Bush-Quayle '92 General Committee (the "GEC") and J. Stanley Huckaby, as treasurer, failed to properly report debts and obligations for campaign-related travel on Air Force One and Air Force Two. On January 25, 1994, the Commission found reason to believe the GEC violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report estimated debts and obligations incurred for campaign-related travel and authorized further investigation to determine the amount of the apparent violation. The Committee submitted all of its responses by February 23, 1994. This matter was transferred to PFESP on December 31, 1995. The Commission denied the GEC's request to dismiss MUR 3664 on September 10, 1996. [redacted]

This Office anticipates that this matter will be resolved before the statute of limitations runs for the activity involved. *See also* MURs 4171 and 4289 (Bush-Quayle '92). The debts and obligations at issue were related to travel that occurred between August and November 1992 and that should have been reported beginning in September 1992 through January 1993. Moreover, the reporting violations were continuing in nature, and were not corrected until the GEC amended its reports in September 1994. Therefore, this Office recommends that the Commission continue to pursue this matter.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

7. MUR 3770 (UPS PAC)
(complaint-generated) ('90, '92, '94, '96 cycles)
Enforcement Team 3
EPS #44/Tier 3

Michael Kohr filed this complaint in April 1993. The case was activated in April 1994. It involves a pattern of allegedly improper solicitations by this PAC of company employees spanning a period from 1989 through and including 1995. Some of the earlier activity is most likely barred by the statute of limitations. A significant portion of the activity falls clearly within the statute; the most recent activity does not appear to be time-barred until 2000. Currently, staff is drafting a probable cause report for circulation to the Commission. Based upon the facts and circumstances presented, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

8. MUR 3774 (National Republican Senatorial Committee)
(complaint-generated)('92, '94 cycles)
Enforcement Team 3
EPS #75/Tier 1

The Democratic Senatorial Campaign Committee filed this complaint in May 1993; the case was activated in March 1995, following an amendment which added ten new respondents in February 1995. Complainant alleges that soft money contributions were funneled by the NRSC through four non-profit groups to finance GOTV activities in support of Senate candidates from 1992 - 1995, with the most recent activity occurring in the 1994 cycle. We are presently interviewing various witnesses and awaiting responses to Subpoenas and Orders before beginning depositions, and anticipate completion prior to expiration of the statute of limitations. Based upon the facts and circumstances presented, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

9. MUR 3796 (Jay Kim for Congress)
(complaint-generated)('92 cycle)
Central Enforcement Docket
EPS #90/Tier 1

The DCCC filed its complaint in July 1993 makes several allegations against Representative Jay C. Kim, the Kim for Congress Committee, Jay Kim Engineers, Inc., and others, based on articles appearing in the *Washington Post* and the *Los Angeles Times* stating that the corporation reimbursed its marketing director for a $500 contribution to Phil Gramm's campaign. Complainant further alleges that the corporation reimbursed Kim for his $5,000 contribution to the Dreier campaign; paid Kim salary and expenses while he was a candidate; and made payments valued at $400,000 for Kim's campaign for rent, supplies, staff time, airline tickets, travel expenses, and other costs. This remains part of an ongoing criminal investigation centered primarily in the Central District of California. Trial involving Mr. Kim's campaign manager began earlier this month. We recommend that this case not be closed pending conclusion of the corresponding criminal action.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

10. MUR 3798 (Jay Kim for Congress)
(complaint-generated)('92 cycle)
Central Enforcement Docket
EPS #85/Tier 1

Complainant James Lacy, Mr. Kim's defeated 1992 primary opponent, filed this complaint in July 1993. His allegations arose from the same facts and circumstances outlined in MUR 3796, and virtually parallel those by the DCCC in that case. We recommend that this case not be closed pending conclusion of the corresponding criminal action.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

11. MUR 3938 (Fulani for President)
(complaint generated matter) ('92 cycle)
PFESP Team I
EPS II #48/Tier 2

This matter was generated by a complaint filed on February 28, 1994, concerning an alleged embezzlement scheme, and was subsequently transferred to PFESP on December 31, 1994. On July 28, 1994, based on the information contained in the complaint and information from the Department of Justice, the Commission opened an investigation into the Committee's use of public funds pursuant to 11 C.F.R. § 9039.3 ("section 9039 investigation"). On August 19, 1994, the Commission determined to hold this matter in abeyance pending the outcome of the related Commission investigation into the Committee's use of public funds. The issues include the failure to properly report disbursements and submitting false and misleading Statements of Net Outstanding Campaign Obligations. The Statement of Reasons, based upon the outcome of the section 9039 Investigation, containing a final determination that the Committee must repay $117,269.54 to the United States Treasury, was circulated to the Commission on February 14, 1997. This matter will be discussed at the Commission's March 6, 1997 open session. This Office will forward a report to the Commission on this matter following the Commission's consideration of the final repayment determination. Thus, we recommend that this matter remain open.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

12. **MUR 3974 (Charles Rangel)**
(DOJ Referral)('90, '92 cycles)
Enforcement Team 2
EPS #23/Tier 2

This case is the last of four referrals from DOJ's House Bank Task Force, and involves activity occurring from approximately December 1989 to September 1992. The Department of Justice referred it to us in May 1993. The matter concerns the use of cash for "walking-around" money and related record-keeping and reporting omissions. [redacted] As this Office explained at the Commission Meeting, the statute of limitations may continue to expire at various times between now and mid-September 1997 for some of the violations and the disclosure omissions are continuing violations. [redacted]. Based upon the facts and circumstances presented, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

13. MUR 3986 (Wilder for President)
(audit referral) ('92 cycle)
PFESP Docket (Inactive)
EPS II #28/Tier 2

On May 1, 1995, the Commission found reason to believe the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions and 2 U.S.C. § 441b(a) by accepting prohibited contributions. This Office has completed the investigation in this matter and forwarded to the Committee the General Counsel's Brief. The Committee responded to the General Counsel's Brief on November 4, 1996. Subsequently, this matter was deactivated on February 1, 1997. This Office is preparing a General Counsel's Report recommending that the Commission find probable cause, but take no further action against the Committee and its treasurer, and close the file. Thus, we recommend that this matter remain open.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

14. MUR 3991 (Brown for President)
(audit referral) ('92 cycle)
PFESP Team I
EPS II #36/Tier 2

On February 11, 1997, the Commission found probable cause to believe that the Committee and Blaine Quick, as treasurer, accepted excessive contributions totaling $68,173 from four individuals who made staff advances; $101,121 in in-kind contributions from a vendor; and $18,198 from a union. In addition, the Commission found that there is probable cause to believe that the Committee and its treasurer failed to report the $18,198 debt during the time it was outstanding.

On February 19, 1997, the Office of General Counsel sent the probable-cause notification letter to the Committee. The statute of limitations for these violations expires on varying dates, from late March 1997 to December 1997. This Office believes that because probable cause has already been found, it is possible to resolve this matter or in the event that conciliations fail, to prepare the matter for litigation, before the statute of limitations expires. Thus, we recommend that the Commission keep this matter open.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

15. MUR 4160 (Friends of Corrine Brown)
(audit referral) ('92 cycle)
PFESP Team II
EPS II #24/Tier 2

The Commission found reason to believe on June 6, 1996, that the Committee violated 2 U.S.C. §§ 441a(f), 441b(a), and 441g with respect to corporate, excessive and cash contributions. The Commission also found reason to believe that the candidate, Corrine Brown, violated 2 U.S.C. §§ 441a(f) and 441g. With respect to recordkeeping and reporting issues, the Commission found reason to believe that the Committee violated 2 U.S.C. §§ 432(c)(5), 432(h)(1), 434(A)(6)(A), and 434(b)(5)(A).

At the time the Commission approved the reason to believe findings, the Commission also approved the issuance of two subpoenas for bank documents as well as authorization to depose Congresswoman Brown, if necessary, after a review of the documents. On July 29, 1996, Counsel responded to the reason to believe findings and requested pre-probable cause conciliation. On September 13, 1996, the Commission voted to decline Counsel's pre-probable cause conciliation offer. After reviewing the subpoenaed bank information, this Office determined that Congresswoman Brown needed to be deposed. On November 25, 1996, this Office deposed Congresswoman Brown.

This Office is currently preparing a General Counsel's Brief recommending the Commission find probable cause to believe the Committee and the Candidate violated the Act. Since the statute of limitations runs from May 1997 through January 1998 in this matter, we anticipate resolving this matter prior to the expiration of the relevant statute of limitations. Moreover, most of the reporting violations were continuing in nature, and were never corrected despite audit report recommendations suggesting amendments. Therefore, this Office recommends that the Commission continue to pursue this matter.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

16. **MUR 4171 (Bush-Quayle '92 Primary Committee)**
(audit referral) ('92 cycle)
PFESP Team II
EPS II #71/Tier 1

17. **MUR 4289 (Bush-Quayle '92 General Committee,**
Bush-Quayle '92 Compliance Committee)
(audit referral) ('92 cycle)
PFESP Team II
EPS II #45/Tier 2

MUR 4171 was referred by the Audit Division on January 11, 1995. On September 10, 1996, the Commission found reason to believe that the Bush-Quayle '92 Primary Committee (the "Primary Committee") and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions in the form of staff advances from an individual, Robert Holt.[6] The Commission further found reason to believe that the Primary Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report debts and obligations.

With respect to MUR 4289, the Audit Division referred this matter to the Office of General Counsel on December 15, 1995, based on the joint audit of the Bush-Quayle '92 General Committee (the "GEC") and J. Stanley Huckaby, as treasurer, and the Bush-Quayle '92 Compliance Committee (the "Compliance Committee") and J. Stanley Huckaby, as treasurer. On September 10, 1996, the Commission found reason to believe that the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report non-travel related debts and obligations, and that the Compliance Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report debts and obligations.

[redacted]

This Office anticipates that these matters will be resolved before the statute of limitations runs for the majority of the activity involved. In MUR 4171, the staff advances by Robert Holt occurred between October 1991 and June 1992. The $12,598 staff advance figure reflects the highest outstanding excessive contribution amount resulting from over 100 advances Mr. Holt made during a period of ten months, and was

[6] The Commission also found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by receiving excessive contribution checks, 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(c) by failing to reimburse corporations in advance for air travel, and 2 U.S.C. § 434(b)(3)(A) by failing to report occupation and name of employer information. However, after considering the circumstances of this matter, the Commission determined to take no further action with respect to these violations.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

outstanding in May 1992. However, Mr. Holt continued to make additional advances following that date. The debts and obligations were incurred by the Primary Committee between November 1991 and July 1992, and should have been reported between January 1992 and August 1992. The reporting violations were continuing in nature and were not corrected until the Primary Committee amended its reports in September 1994.

In MUR 4289, the debts and obligations of the Compliance Committee were incurred during the period from February 1992 through the end of 1992 and should have been reported between March 1992 and January 1993. The debts and obligations of the GEC were incurred from July 1992 through the end of 1992 and should have been reported between August 1992 and January 1993. The reporting violations were continuing in nature and were not corrected until the Committees amended their reports in September 1994. Therefore, this Office recommends that the Commission continue to pursue these matters.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

18. MUR 4172 (Clinton for President)
(audit referral) ('92 cycle)
PFESP Team I
EPS II #73/Tier 1

The issues addressed by this matter include excessive contributions from individuals as a result of staff advances and contributions (excessive and prohibited) from entities through extensions of credit. On August 15, 1995, the Commission found reason to believe and authorized document subpoenas. The Committee has responded to the reason to believe findings and discovery is complete. On February 26, 1997, this Office submitted a report to the Commission recommending that it approve a proposed conciliation agreement with the Committee and close the file.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

19. MUR 4173 (Clinton/Gore '92)
(audit referral) ('92 cycle)
PFESP Team I
EPS II #65/Tier 1

On August 15, 1995, the Commission found reason to believe that the Committees failed to report the name, occupation and employer of contributors (GELAC) and failed to report debts (general election committee). The Committees responded to the reason to believe findings, and requested that the Commission take no further action on this matter, [redacted] On February 26, 1997, this Office submitted a report to the Commission recommending that it reject the request for no further action and advised the Commission that this Office will move on the next stage of the enforcement process.

This Office anticipates that this matter will be resolved before the statute of limitations runs for the activity involved. The debts and obligations in MUR 4173 were incurred between July and November 1992 and should have been reported beginning in August 1992 through January 1993. Moreover, the reporting violations were continuing in nature, and were never corrected despite audit report recommendations suggesting amendments. Therefore, this Office recommends that the Commission continue to pursue this matter.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

20. MUR 4208 (Friends of Bob Bennett Senatorial Campaign Committee)
(audit referral) ('92 cycle)
PFESP Team I
EPS II #71/Tier 1

On June 25, 1996, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(a)(6)(A) by failing to submit timely 48-hour reports. [redacted]

As a result, we recommend that this matter remain open.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

21. MUR 4235 (Don Young / Frank Murkowski)
(complaint-generated)('92 cycle)
Enforcement Team 3
EPS #30/Tier 2

Mr. Robert A. Gigler filed this complaint in July 1995; the case was activated in March 1996. Complainant alleges that Sen. Frank Murkowski and Rep. Don Young, both from Alaska, accepted excessive contributions from John Ellsworth and others in amounts totaling $9,500.00 for Young and $7,000.00 for Murkowski. Complainant also believes these payments may have involved Ellsworth's company, Alaska Interstate Construction. [redacted]. Based upon the facts and circumstances presented, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

22. MUR 4275 (Jay Kim for Congress)
(complaint-generated)('92 cycle)
Central Enforcement Docket
EPS #85/Tier 1

Complainant Bob Baker, respondent's 1992 general election opponent, filed this complaint in October 1995. He alleges that Jay Kim, illegally used as much as $400,000 from Jay Kim Engineering, Inc., to promote his congressional campaign. Complainant also alleges that Mr. Kim accepted contributions from Korean Airlines, a foreign owned company. This remains part of an ongoing criminal investigation centered primarily in the Central District of California. Trial involving Mr. Kim's campaign manager began earlier this month. We recommend that this case not be closed pending conclusion of the corresponding criminal action.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

23. MUR 4295 (National Medical PAC)
(RAD referral)('92, '94 cycles)
Enforcement Team 3
EPS #16/Tier 4

RAD referred this case to OGC in June 1995; it was activated in August 1995. The National Medical Political Action Committee failed to file in a timely manner its 1991 Year End and its 1992 April Quarterly, July Quarterly, October Quarterly, 12 Day Pre-General, 30 Day Post-General and Year-End Reports. The PAC also failed to timely file its 1993 Mid-Year and Year End Reports and its 1994 April Quarterly, July Quarterly, October Quarterly, 30 Day Post-General and Year End Reports. Respondents have unfortunately resisted resolution so far, though extensive efforts were undertaken to resolve this matter at the pre-probable cause stage. At this time, this Office is moving to briefs and fully anticipate that the case will be resolved prior to expiration of the statute of limitations. Based upon the facts and circumstances presented, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

24. MUR 4387 (The Friends of Conrad Burns)
(audit referral) ('94 cycle)
PFESP Docket (Inactive)
EPS II #33/Tier 2

The Audit Division referred this matter on June 13, 1996. This matter involves apparent excessive contributions totaling $70,528 and contributions subject to 48 hour disclosure notification (77 contributions totaling $119,000). Some of the contributions at issue were made as early as 1990; thus, a small portion of the excessive contributions may be time-barred under 28 U.S.C. § 2462. However, since the vast majority of the activity in this matter is not affected, we recommend that this matter remain open. If this matter is eventually activated and a report is prepared for Commission consideration, this Office will note which activity is potentially time-barred.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

25. MUR 4413 (New York Republicans)
(RAD referral)('90, '92, '94 cycles)
Enforcement Team 3
EPS #39/Tier 2

RAD referred this case to OGC in October 1993; it was activated in August 1995. The case involves allegations that the Committee's non-federal account paid $196,041 in itemized administrative and allocable expenses of the federal account for the years 1991 and 1992. Also, the Committee's federal account used an improper "debt offset" to reimburse the non-federal account during 1992, and its non-federal account transferred $186,659 in non-federal funds to the allocation account in 1993 and 1994 to pay for non-federal activity. [redacted]. Based upon the facts and circumstances presented, we recommend that processing continue on this case.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

26. MUR 4594 (Frank Fasi)
(Hawaii State Comm. Referral)('88, '90, '92, '96, '96 cycles)
Enforcement Team 3
EPS #50/Tier 2

The Campaign Spending Commission of the State of Hawaii referred this matter to us in June 1996; the case was activated later that same month. Complainant alleges that the Fasi campaign, which ran various federal and state electoral campaigns for Mr. Fasi, obtained office space from a foreign-owned corporation at lower than market rates on a continuing basis. Reason to believe was found in December 1996. Active investigation is continuing. The continuing violations here provide a solid basis to move forward to conclusion on this case. We recommend that processing continue on this case.

This document does not bind the Commission,
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27. **PM-312 (Joseph Demio)**
(*sua sponte*)('92 cycle)
Central Enforcement Docket
EPS #85/Tier 1

In a *sua sponte* submission, Joseph DeMio states he allowed the names of himself and his wife to be placed on money orders for contributions payable to Mary Rose Oakar's unsuccessful 1992 congressional campaign in Ohio's 10th congressional district. DeMio also asserts that, at the direction of the campaign manager of the Oakar campaign, he assisted in the publication and distribution of a local community newspaper that was funded by the Oakar campaign manager. Mr. DeMio and Mrs. Oakar were indicted in the U.S. District Court for the District of Columbia in March 1996 and are currently awaiting trial on a number of criminal charges which arose from these facts and circumstances. We recommend that this case not be closed pending conclusion of the corresponding criminal action.

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III. RECOMMENDATIONS

close as 3/11

The Office of General Counsel recommends that the Commission:

A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.

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

1. MUR 4267
2. MUR 4370
3. MUR 4392
4. MUR 4432
5. MUR 4468
6. MUR 4591
7. MUR 4614

C. Take no further action, close the file and approve the appropriate letters in the following matters:

1. MUR 3351
2. MUR 3571
3. MUR 3582
4. MUR 3586
5. MUR 3838
6. MUR 3841
7. MUR 3969
8. MUR 4091
9. MUR 4183
10. MUR 4209

D. Continue to pursue the following active enforcement matters, or otherwise hold them open for the reasons noted above:

1. MUR 3204R
2. MUR 3546
3. MUR 3585
4. MUR 4176
5. MUR 3657
6. MUR 3664
7. MUR 3770
8. MUR 3774
9. MUR 3796
10. MUR 3798

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11. MUR 3938
12. MUR 3974
13. MUR 3986
14. MUR 3991
15. MUR 4160
16. MUR 4171
17. MUR 4289
18. MUR 4172
19. MUR 4173
20. MUR 4208
21. MUR 4235
22. MUR 4275
23. MUR 4295
24. MUR 4387
25. MUR 4413
26. MUR 4594
27. PM-312

3/4/97
Date

Lawrence M. Noble
General Counsel

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Stat of Limits

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document #X97-15
28 U.S.C. § 2462,	)	
Statute of Limitations	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 11, 1997, do hereby certify that the Commission took the following actions with respect to Agenda Document #X97-15:

1. Decided by a vote of 5-0 to -

   A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.

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

      1. MUR 4267;
      2. MUR 4370;
      3. MUR 4392;
      4. MUR 4432;
      5. MUR 4468;
      6. MUR 4591;
      7. MUR 4614.

(continued)

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C. Take no further action, close the file, and approve the appropriate letters in the following matters:

1. MUR 3351;
2. MUR 3571;
3. MUR 3582;
4. MUR 3586;
5. MUR 3838;
6. MUR 3841;
7. MUR 3969;
8. MUR 4091;
9. MUR 4183;
10. MUR 4209.

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

2. Decided by a vote of 5-0 to continue to pursue the following active enforcement matters, or otherwise hold them open for the reasons noted in Agenda Document #X97-15:

1. MUR 3204R;
2. MUR 3546;
3. MUR 3657;
4. MUR 3664;
5. MUR 3770;
6. MUR 3774;
7. MUR 3796;
8. MUR 3798;
9. MUR 3938;
10. MUR 3974;

(continued)

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11. MUR 3986;
12. MUR 3991;
13. MUR 4160;
14. MUR 4171;
15. MUR 4289;
16. MUR 4172;
17. MUR 4173;
18. MUR 4208;
19. MUR 4235;
20. MUR 4275;
21. MUR 4295;
22. MUR 4387;
23. MUR 4413;
24. MUR 4594;
25. PM-312.

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

Attest:

3-12-97
Date

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

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AGENDA DOCUMENT NO. X95-~~38~~ 39

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
APR 28 4 02 PM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) 28 U.S.C. § 2462
) Statute of Limitations
)

GENERAL COUNSEL'S REPORT

SENSITIVE
MAY 16 1995
EXECUTIVE SESSION

I. INTRODUCTION[1]

As the Commission is aware, on February 24, 1995, the U.S. District Court for the District of Columbia decided in Federal Election Commission v. National Republican Senatorial Committee, 877 F. Supp. 15 (D.D.C. 19 1995 WL 83006 (D.D.C. 1995) ("NRSC"), that the statute of limitations set forth at 28 U.S.C. § 2462 ("Section 2462") applied to Commission enforcement suits seeking civil penalties, relying upon the D.C. Circuit's opinion in 3M Co. v. Browner, 17 F.3d 1453 (D.C. Cir. 1994). This Report discusses the statute of limitations generally, describes forty-five (45) active and inactive enforcement matters potentially affected by the NRSC court's conclusion and makes recommendations for each of the potentially affected matters.[2]

1. This is a combined General Counsel's Report from the Enforcement and Public Financing, Ethics and Special Projects ("PFESP") areas of the Office of the General Counsel.

2. In four of these matters, this Office has made specific recommendations related to the statute of limitations issue, such as recommending the Commission deny respondents' statute of limitations-based motions to dismiss in MUR 3485 (Americans for Robertson, et al.). There are, however, some other matters for which this Office has recommendations for the Commission that do not lend themselves to the brief analysis provided here. For these, OGC has put forward separate General Counsel's Reports, e.g., MUR 3191 (Friends of Bill Zeliff, et al.). This Office has, nonetheless, referenced these latter cases in this Report in order to present the Commission with a complete overview of the

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In NRSC, Judge Pratt held that the Commission could not seek a civil penalty in conjunction with its civil enforcement action against the defendant for violations of 2 U.S.C. §§ 441a(h) and 434(b) because the 5-year federal catch-all statute of limitations found at 28 U.S.C. § 2462 applied to Commission-initiated enforcement suits seeking civil penalties. The court, however, allowed the Commission's suit to go forward notwithstanding this conclusion, ruling that Section 2462 did not apply to the declaratory and equitable relief also sought by the Commission. Therefore, the court so far has issued no final appealable decision.

On May 17, 1994, in FEC v. Williams, the U.S. District Court for the Central District of California reached the opposite conclusion about the applicability of 28 U.S.C. § 2462 to the Commission's enforcement actions. Mr. Williams' contributions in the name of another took place more than 5 years before the Commission filed its complaint and counsel raised 28 U.S.C. § 2462 as an affirmative defense. However, the court ruled at an oral hearing that the statute of limitations did not apply. Instead, the court awarded the Commission a $10,000 civil penalty against Mr. Williams for violations of 2 U.S.C. § 441f. FEC v. Williams, No. 93-6321 (C.D. Cal. Jan. 31, 1995), appeal docketed, No. 95-55320 (9th Cir. 1995) ("Williams"). Mr. Williams has filed a notice of appeal regarding, inter alia, the district court's

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(Footnote 2 continued from previous page)
enforcement caseload potentially affected by a statute of limitations at some point this year.

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statute of limitations decision. Thus, whether and to what extent the statute of limitations at 28 U.S.C. § 2462 will apply to Commission enforcement cases will be before the 9th Circuit shortly, and could also be the subject of a later appeal before the D.C. Circuit in NRSC.[3]

In light of this conflict between the courts and the pendency of the appeal, this Office believes a decision to close enforcement cases based solely on a conclusion that the 5 year statute of limitations would apply to any potential enforcement suits would be unwarranted. This is especially true since neither 28 U.S.C. § 2462 nor the NRSC decision limits the Commission's authority to complete administrative investigations or seek civil penalties in voluntary conciliation prior to filing suit. Nonetheless, the Office of the General Counsel recognizes that until the stautue of limitations is finally resolved by the courts, respondents are likely to raise it as a defense, making settlement more complicated. Thus, even though the Commission is not bound by the NRSC decision in other cases, the Office of the General Counsel believes the Commission should take this issue into consideration on a case-by-case basis when looking at its active and inactive enforcement cases -- particularly those with older activity -- and, in an exercise of its prosecutorial discretion, attempt to bring the matters most vulnerable to

3. Should the court rule in the Commission's favor on the remaining merits, defendants would likely appeal, and if so, this Office would likely recommend the Commission cross appeal on the statute of limitations ruling barring civil penalties in the case.

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statute of limitations difficulties to an early administrative disposition.[4]

In order to give the Commission the broadest picture of the possible effect of a statute of limitations on its caseload, this Office has analyzed all enforcement cases where there is FECA-violative activity that will be 5 years old at some point during this year. Section II of this Report gives an overview of principles involved in analyzing the statute of limitations issue, with particular attention to determining when a Commission cause of action might accrue, and when the running of the statute may be tolled by equitable principles. Section III describes how this Office applied these principles to its active and inactive enforcement caseload and the approach used in making its recommendations for Commission action. Section IV includes descriptions of each of the potentially affected enforcement matters, outlines the statute of limitations difficulties this Office foresees for each, and recommends specific Commission action for each potentially affected matter.

II. THE LAW

This section discusses 28 U.S.C. § 2462, the federal catch-all statute of limitations, and issues relating to when the statute begins to run, under what circumstances it may be tolled

4. Indeed, even before the statute of limitations issue arose, the Commission directed this Office to attempt to resolve all remaining 1988 Presidential Audit Referrals as expeditiously as possible. Since then, MUR 2884 (Babbitt) has been settled, and this Report discusses all the remaining 1988 presidential matters -- MUR 2667 (Bush); MUR 3342 (Gephardt); MURs 3367, 2717 and 2903 (Haig); MUR 3485 (Robertson); MUR 3492 (Jackson); and MURs 3562, 3449, 3089, and 2715 (Dukakis).

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and declaratory and equitable relief available to the Commission even if the statute of limitations has run completely.

A. Accrual

Section 2462 requires commencement of a suit for civil penalties within five years from the date when the claim first accrued.[5] Thus, as a threshold matter, in considering the potential effect of the limitations period on a particular case, one must determine the complex issue of when the claim first accrued.

1. General Principles

A cause of action normally accrues when the factual and legal prerequisites for filing suit are in place, i.e., at the precise moment when the violation occurred.[6] However, federal courts have generally applied the discovery rule of accrual, an equitable doctrine under which a claim is considered to have accrued at the time that a potential claimant knew, or through the exercise of reasonable diligence should have known, of the facts underlying the cause of action.[7]

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5. 28 U.S.C. § 2462 provides:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . .

6. United States v. Lindsay, 346 U.S. 568, 569 (1954).

7. See, e.g., Delaware State College v. Ricks, 449 U.S. 250, 259 (1980) (Court implicitly applied discovery rule to Title VII discrimination suit); United States v. Kubrick, 444 U.S. 111, 122-25 (1979) (court implicitly endorsed discovery rule of accrual, but limited it to discovery of facts underlying a claim,

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The substantial harm theory of accrual can be considered analytically as a particular application of the discovery rule. It is usually advanced in personal injury actions involving latent injuries or injuries difficult to detect, especially in cases of "creeping disease" such as asbestosis. The rule rests on the idea that plaintiffs cannot have a tenable claim for the recovery of damages unless and until they have been harmed. Under the substantial harm theory, therefore, damage claims in cases involving latent injuries or illnesses do not accrue until substantial harm matures or, in other words, until the harm becomes apparent.

The Supreme Court has cautioned against "attempting to define for all purposes when a cause of action first accrues. Such words are to be interpreted in light of the general purposes of the statute and of its other provisions, and with due regard to those practical ends which are to be served by any limitation of the time within which an action must be brought."[8] Thus, in determining the time of accrual in cases arising under the FECA,

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(Footnote 7 continued from previous page)
rather than extending the rule to discovery of legal cause of action); see also Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1386 (3d Cir. 1994); Dixon v. Anderson, 928 F.2d 212, 215 (6th Cir. 1991); Cada v. Baxter Healthcare Corp., 920 F.2d 446, 450 (7th Cir. 1990); Corn v. City of Lauderdale Lakes, 904 F.2d 585, 588 (11th Cir. 1990); Alcorn v. Burlington Northern Railroad Co., 878 F.2d 1105, 1108 (8th Cir. 1989); Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980); Cullen v. Margiotta, 811 F.2d 698, 725 (2d Cir. 1987); Cline v. Brusett, 661 F.2d 108, 110 (9th Cir. 1981); Bireline v. Seagondollar, 567 F.2d 260, 263 (4th Cir. 1977).

8. Crown Coat Front Co., Inc. v. United States, 386 U.S. 503, 517 (1967) (quoting Reading Co. v. Koons, 271 U.S. 58, 62 (1926)).

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courts will look to the nature and goals of the FECA versus the interests underlying the five-year limitations period.

2. Accrual in the Context of the FECA

While the discovery rule has been applied in a wide range of cases, originating in the tort context and extending to, inter alia, contract, Title VII, and RICO actions, to date, it appears that only the United States District Court for the District of Columbia has held that the Section 2462 statute of limitations is applicable to the FECA. The court also addressed the precise question of when a cause of action accrues under the FECA. Inasmuch as the district court in NRSC relied on the decision of the Court of Appeals for the District of Columbia in 3M Co. v. Browner, 17 F.3d 1453 (D.C. Cir. 1994) ("3M"), the latter case will be summarized first.

3M was an action brought by the Environmental Protection Agency ("EPA") to impose civil penalties against a company for violations of the Toxic Substances Control Act, wherein the EPA argued that in the exercise of due diligence it could not have discovered the violations earlier. In 3M, the defendant misstated and failed to include information on notices required by the EPA. The court acknowledged that the District of Columbia Circuit has adopted the discovery rule, under which, as discussed above, a claim is considered to have accrued at the time that a claimant knew or should have known of the facts underlying the cause of action. However, the 3M court found that the discovery rule had only been applied in limited circumstances -- those involving remedial, civil claims -- and specifically rejected the discovery

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rule under the circumstances presented, stating that the rule proposed by the EPA in that case was a "discovery of violation" rule. The court concluded that in civil penalty actions the running of the limitations period of Section 2462 is measured from the date of the violation.[9]

In NRSC, a suit arising from violations of the FECA involving excessive contributions and failure to report such contributions to the FEC, the court repeated the options for defining the time of accrual set forth in 3M, stating that a claim accrues "when the defendant commits his wrong or when substantial harm matures." Then, without pinpointing the exact time of accrual, and without specifically attempting to define accrual in the FECA context, the court held that the FECA claim accrued "considerably before the end of the [FEC's] administrative process." While the district court's accrual finding was imprecise, Judge Pratt's construction of 3M suggests that the discovery rule of accrual may be rejected in FECA claims brought in that Circuit.

On the other hand, the Court of Appeals for the Third Circuit, in considering a citizens' suit brought under the Clean

9. In 3M, the court cited the Supreme Court's decision in Unexcelled Chemical Corp. v. United States, 345 U.S. 59 (1953), which was a suit for liquidated damages against a government contractor for unlawfully employing child labor. As the 3M decision noted, in that case, the Supreme Court held that "a cause of action is created when there is a breach of duty owed the plaintiff. It is that breach of duty, not its discovery, that normally is controlling." However, the Supreme Court's focus was the question of whether the claim accrued at the time of the violation versus after it had been administratively determined that the contractor was liable. The Court was not concerned specifically with the question of whether the claim accrued at the time of the violation versus when the plaintiff knew or should have known of the facts underlying the claim.

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Water Act, which has statutory self-reporting requirements comparable to the FECA, held the Section 2462 statute of limitations applicable and embraced the discovery rule. There, the Third Circuit held that since the defendant was responsible for filing reports under the Act and the public could not reasonably be deemed to have known about any violation until the defendant filed the report, the cause of action did not accrue until the reports listing the violations were filed.[10] A district court in Virginia[11] has also embraced this discovery rule for determining accrual under the Clean Water Act.[12]

B. EQUITABLE TOLLING

There are instances in which a court may determine that equitable considerations require the statute of limitations to be tolled. Such a determination is made on a case-by-case basis and

10. Public Interest Research Group v. Powell Duffryn Terminals, Inc., 913 F.2d 64, 75 (3d Cir. 1990), cert. denied, 498 U.S. 1109 (1991).

11. United States v. Hobbs, 736 F. Supp. 1406 (E.D. Va. 1990).

12. Various other circuit courts have grappled with the question of when the federal five-year statute of limitations of Section 2462 begins to run, but these cases, which have produced conflicting rulings, have all involved actions to recover civil penalties rather than actions to impose them. Compare United States Dept. of Labor v. Old Ben Coal Co., 676 F.2d 259 (7th Cir. 1982) (in action to recover civil penalty, claim accrues only after administrative proceeding has ended, penalty has been assessed, and violator failed to pay) and United States v. Meyer, 808 F.2d 912 (1st Cir. 1987) (in civil penalty enforcement action limitations period is triggered on date civil penalty is administratively imposed) with United States v. Core Laboratories Inc., 759 F.2d 480 (5th Cir. 1985) (in suit to recover civil penalty limitations period begins to run on date of underlying violation).

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is referred to as equitable tolling.[13] Equitable tolling presumes claim accrual and steps in to toll, or stop, the running of the statute of limitations in light of established equitable considerations.[14] The most fundamental rule of equity is that a party should not be permitted to profit from its own wrongdoing.

There are three principal situations in which equitable tolling may be appropriate: (1) where the defendant has actively misled the plaintiff regarding the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; and (3) where the

13. Some courts have pointed out that, in instances where the defendant has taken active steps to prevent the plaintiff from suing, e.g., in cases involving fraudulent concealment, the tolling of the statute of limitations is more appropriately referred to as equitable estoppel. See Cada v. Baxter Healthcare Corp., 920 F.2d 446, 450-51 (7th Cir. 1990).

14. Courts have held that statutes of repose cannot be extended by federal tolling principles, see Baxter Healthcare, 920 F.2d at 451; First United Methodist Church of Hyattsville v. United States Gypsum Company, 882 F.2d 862 (4th Cir. 1989). While statutes of repose and statutes of limitations have sometimes been referred to interchangeably, a statute of repose is legally distinguishable from a statute of limitations. Whereas a statute of limitations is a procedural device motivated by considerations of fairness to the defendant, a statute of repose is a substantive grant of immunity after a legislatively determined period of time and is based on the economic interest of the public as a whole and a legislative balance of the respective rights of potential plaintiffs and defendants. See First United Methodist Church, supra. To date, this Office's research has revealed no instances in which a court has held that Section 2462 is a statute of repose in the legal sense and, therefore, held tolling principles to be inapplicable. Indeed, in 3M, the court noted the potential applicability of the doctrine of fraudulent concealment to Section 2462. See 3M, 17 F.3d at 1461, n.15.

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plaintiff has timely asserted his or her rights mistakenly in the wrong forum.[15]

1. Doctrine of Fraudulent Concealment

The Supreme Court has defined the doctrine of fraudulent concealment as the rule that "where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party." Holmberg v. Armbrecht, 327 U.S. 392, 397 (1946). The Court went on to state that this equitable doctrine is read into every federal statute of limitation. Id.

The doctrine, as applied by the circuit courts of appeal, requires the plaintiff to plead[16] and prove three elements:

15. School District of City of Allentown v. Marshall, 657 F.2d 16, 19-20 (3d Cir. 1981) (quoting Smith v. American President Lines, Ltd., 571 F.2d 102, 109 (2d Cir. 1978)). It should also be noted that statutes of limitations are subject to waiver and may be tolled by agreement of the parties. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982).

16. Pleading requirements for fraudulent concealment are very strict. Some courts invoke Fed. R. Civ. P. 9(b) and require a plaintiff to meet the pleading requirements for fraud. See Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 394 (6th Cir. 1975). Other courts, while not specifically invoking Rule 9, still require specificity and particularity in pleading. See Rutledge v. Boston Woven Hose & Rubber Co., 576 F.2d 248, 250 (9th Cir. 1978); Weinberger v. Retail Credit Co., 498 F.2d 552, 555 (4th Cir. 1974).

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(1) use of fraudulent means by the defendant;
(2) plaintiff's failure to discover the operative facts that are the basis of his cause of action within the limitations period; and
(3) plaintiff's due diligence until discovery of the facts.

State of Colorado v. Western Paving Construction, 833 F.2d 867, 874 (10th Cir. 1987).

The first prong of the plaintiff's burden under the doctrine - the use of fraudulent means by the defendant - warrants some elaboration. The courts have generally held that to establish this element of the doctrine one of two facts must be shown: 1) that fraud is an inherent part of the violation so that the violation conceals itself; or 2) that the defendant committed an affirmative act of concealment - a trick or contrivance intended to exclude suspicion or prevent inquiry.[17] These approaches to establishing the first element of the doctrine of fraudulent concealment have been referred to, respectively, as the self-concealing theory and the subsequently concealed theory. By contrast, the courts have pointed out that silence, without some fiduciary duty, never satisfies this element.[18]

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17. See Riddell v. Riddell Washington Corp., 866 F.2d 1480, 1491 (D.C. Cir. 1989); State of Colorado v. Western Paving Construction, 833 F.2d at 876-78.

18. See Rutledge v. Boston Woven Hose & Rubber Co., 576 F.2d 248, 250 (9th Cir. 1978); Dayco Corp. v. Firestone Tire & Rubber Co., 386 F. Supp. 546, 549 (N.D. Ohio 1974), aff'd sub. nom., Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389 (6th Cir. 1975). Some courts have also held that a denial of an accusation of wrongdoing does not constitute fraudulent concealment. See King & King Enters. v. Champlin Petroleum Co., 657 F.2d 1147, 1155 (10th Cir. 1981), cert. denied, 454 U.S. 1164 (1982); but see Rutledge, supra ("denying wrongdoing may constitute fraudulent concealment where the circumstances make the plaintiff's reliance upon the denial reasonable").

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Where the plaintiff establishes all three of the required elements, the doctrine provides the plaintiff with the full statutory limitations period, starting from the date the plaintiff discovers, or with due diligence could have discovered, the facts supporting the plaintiff's cause of action.

2. Inducement Due to Intentional or Unintentional Misrepresentation

In cases where the plaintiff has refrained from commencing suit during the period of limitation because of inducement by the defendant, the Supreme Court has found the statutory period tolled because of the conduct of the defendant. See Glus v. Brooklyn Eastern Terminal, 359 U.S. 231 (1973). Under the facts of Glus, supra, the plaintiff averred that the defendant had fraudulently or unintentionally misstated information upon which the plaintiff relied in withholding suit.

3. Subpoena Enforcement

Several district courts have tolled other statutes of limitations in circumstances where the plaintiff was forced to initiate subpoena enforcement proceedings to uncover facts underlying the cause of action.[19] While research to date has not revealed specific instances in which a court has tolled the Section 2462 statute of limitations because the plaintiff was

19. EEOC v. Gladieux Refinery, Inc., 631 F. Supp. 927, 935-36 (N.D. Ind. 1986) (Court held that the statute of limitations was tolled during the time between issuance of subpoena and enforcement because defendant did not have valid basis for not complying with subpoena); EEOC v. City of Memphis, 581 F. Supp. 179, 182 (W.D. Tenn. 1983) (Court held that the statute of limitations was tolled until documents sought in subpoena were made available to EEOC).

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forced to initiate subpoena enforcement proceedings, Section 2462 is sufficiently similar to those statutes which courts have tolled to suggest that the same result would be appropriate. Further, a good argument could be made for equitably tolling Section 2462 in such circumstances because defendants' refusal to comply with the Commission's subpoenas, whether that refusal is reasonable or otherwise, frustrates the Commission's ability to bring the action within the limitations period. Not tolling the statute of limitations in such circumstances while allowing defendants to plead the statute of limitations as an affirmative defense to actions brought by the Commission would allow defendants to profit from refusing to comply with subpoenas, and thus "offer a tempting method of defeating the basic purpose of [the Act]."[20]

4. Continuous Violation Theory

The continuous violation theory is another theory that operates to toll statutes of limitations. In the case of a continuing violation, the violation is not complete for purposes of the statute of limitations as long as the proscribed course of conduct continues, and the statute of limitations does not begin to run until the last day of the continuing offense.[21]

The Supreme Court has cautioned that continuing offenses are not to be too readily found, explaining in the criminal context that "such a result should not be reached unless the

20. See Hodgson v. International Printing Press, 440 F.2d 1113, 1119 (6th Cir. 1973).

21. See Fiswick v. United States, 329 U.S. 211, 216 (1946); United States v. Butler, 792 F.2d 1528, 1532-33 (11th Cir. 1986).

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explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one." Toussie v. United States, 397 U.S. 112, 115 (1970). Thus, the question of whether a violation is a continuing one is largely a matter of statutory interpretation involving the precise statutory definition of the violation.

Courts will generally not find that a violation is continuous absent clear language in the statute.[22]

C. Declaratory Relief and Equitable Remedies

The limitations period set forth in 28 U.S.C. § 2462 applies only to suits for civil penalties. Section 2462, by its own terms, has no bearing on suits in equity.[23] The following is a purely exemplary, non-exhaustive list of various forms of equitable relief that may be available. It should be noted that it is within the discretion of the courts to grant or withhold

22. Compare Toussie, 397 U.S. 112 (1970) (Court held that failure register for draft was not continuing violation where draft statute contained no language that clearly contemplated continuing offense, and regulation under Act referring to continuing duty to register was insufficient, of itself, to establish continuing offense) with United States v. Cores, 356 U.S. 405 (1958) (statute prohibiting alien crewmen from remaining in United States after permits expired contemplated continuing offense where conduct proscribed is the affirmative act of willfully remaining, and crucial word "remains" permits no connotation other than continuing presence). See also Keystone Insurance Company v. Houghton, 863 F.2d 1125 (3d Cir. 1988) (In RICO action, court held that language of the Act, which makes a pattern of conduct the essence of the crime, "clearly contemplates a prolonged course of conduct."); West v. Philadelphia Electric Co., 45 F.3d 744 (3d Cir. 1995) (Court applied continuing violation theory where cause of action required showing of intentional, pervasive, and regular racial discrimination).

23. See Hobbs, 736 F. Supp. at 1410; NRSC, 1995 WL 83006, at *4.

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equitable remedies and courts will exercise that discretion on a case-by-case basis in light of the particular circumstances of each case.

o Declaratory Judgment - A declaratory judgment is a court judgment which establishes the rights of parties or expresses the opinion of the court on a question of law without the court necessarily ordering anything to be done. While a declaratory judgment is similar in some respects to an advisory opinion, unlike the latter, a declaratory judgment is rendered in an adversarial proceeding and is legally binding on all the parties involved.

o Disgorgement - Disgorgement is aimed at preventing the unjust enrichment of a wrongdoer. The disgorgement remedy takes away "ill-gotten gains," thereby depriving a respondent of wrongfully obtained proceeds and returning the wrongdoer to the position the wrongdoer was in before the proceeds were wrongfully obtained.

o Injunction - A prohibitory injunction is a court order that requires a party to refrain from doing or continuing a particular act or activity. Prohibitory injunctions are generally considered preventative measures which guard against future acts rather than affording remedies for past wrongs.

By contrast, a mandatory injunction is a type of injunction that requires some positive action. A mandatory injunction (1) commands the respondent to do a particular thing; (2) prohibits the respondent from refusing (or persisting in refusing) to do or permit some act to which the plaintiff has a legal right; or (3) restrains the respondent from permitting his previous wrongful act to continue to take effect, thus virtually compelling him or her to undo it. A conciliation agreement provision that requires a committee to amend its reports in conformance with the Act is similar in effect to a mandatory injunction, albeit one entered into voluntarily and without court order. In addition, the creative forms of equitable relief listed below are examples of possible mandatory injunctions that the Commission might seek in court.

o Creative Forms of Equitable Relief

- require defendant(s) to notify the public that the defendant(s) violated the FECA, e.g., bulletin board posting.
- require additional reporting relevant to preventing future violations of the type committed.
- require defendant(s) to put different procedures in place to prevent future violations of the type committed.
- require defendant(s) to take courses to become familiar with the requirements of the FECA.

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III. ANALYSIS

This section outlines the underlying legal assumptions and other factors considered by this Office in evaluating and making recommendations for each of the potentially affected cases discussed in Section IV, infra. As a preliminary matter, this Office notes that it has reviewed all of the active and inactive enforcement matters where there appears to have been FECA-violative activity prior to January 1, 1991 that will thus be at least 5 years old by the end of this year. By selecting the cases in this manner, this Office has attempted to bring to the Commission's attention all of the matters where, were the NRSC decision applied, the statute of limitations might run this year.[24]

This Office reiterates that it does not recommend the Commission concede that the Section 2462 statute of limitations is applicable to the FECA as a matter of law. As discussed supra at

24. Inasmuch as a definitive ruling on whether the Section 2462 statute of limitations applies to the FECA is not likely soon, this Office will, in the future, take the age of a violation into consideration when making its recommendations.

Similarly, this Office may request the Commission enter into pre-probable cause conciliation in specific matters contingent upon respondents waiving the statute of limitations for the conciliation period so as to not jeopardize potential civil penalties as a result of attempting to settle a matter early in the process. In instances where the violations are nearing 5 years in age, OGC may recommend that the Commission limit probable cause conciliation to 30 days, or seek a waiver from respondents for any additional conciliation time. Moreover, in appropriate cases this Office may also recommend the Commission grant extensions of time contingent upon statute of limitations waivers in cases where the Commission might be adversely affected as a result of a respondent's delay.

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Section I, even the district courts have conflicting opinions on this issue, and as demonstrated in past Commission court filings, there are a number of arguments that can be made to distinguish the Commission and the FECA from other agencies and their implementing statutes. Nonetheless, in evaluating cases potentially affected by the imposition of a 5-year limitations period and making the recommendations herein, this Office has taken the cautious view.

This Office has assumed for purposes of these recommendations the possibility of a uniform application of the Section 2462 statute of limitations to the FECA in all circuits, even though only one judge of the U.S. District Court for the District of Columbia has made such a ruling. We have not focused attention on the particular federal district court in which the Commission might litigate a matter because of the uncertainty of the forum the Commission might choose and because, with the exception of two district court judges who have already ruled, it is difficult to predict with accuracy whether a specific court would decide that Section 2462 applied to the Commission's enforcement actions.

This Office has further assumed that it is possible courts will deem claims arising under the FECA to have accrued at the precise moment that the violation occurred. While, as discussed supra, there are good arguments to be made for applying the discovery rule to the Commission's actions, no court has yet done

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so.[25] Accordingly, the cautious approach dictates that we use the more strict accrual rule and count from the date of the alleged violation. Further, because of the discovery rule's potential application in most of the cases, the Office of the General Counsel has not generally referred to it in the individual case discussions, but does so here for the Commission's attention. Only where this Office otherwise recommends that the Commission continue to pursue a case do the case discussions explore other possible options for arguing that a claim accrued on a date later than the date of the violation itself, e.g., the doctrine of fraudulent concealment.

In setting forth the case summaries, this Office has divided its discussion into three sections. The first section analyzes thirty-one (31) MURs which this Office recommends the Commission continue to pursue. The second section discusses the seven (7) MURs for which OGC makes specific recommendations. The third

25. Application of the discovery rule to FECA actions might serve to extend considerably the period of time in which the Commission must file civil suit in order to obtain a civil penalty. For example, for cases involving a violation which appears on the face of a report, such as an excessive contribution prohibited by 2 U.S.C. 441a(a), the discovery rule might act to toll the accrual period until the time that the report is received by the Commission. For a complaint-generated matter involving activity that would not otherwise come to the Commission's attention, such as corporate facilitation, application of the discovery rule might toll accrual until the date the Commission received the complaint. While, as noted supra, the court's opinion in 3M seems to indicate that the discovery rule might be rejected in FECA claims brought in the D.C. Circuit, this Office's research has provided no indication that other circuits would come to the same conclusion. Indeed, as noted supra, the Third Circuit applied the discovery rule to a civil penalty action under the Clean Water Act that was governed by Section 2462. Public Interest Research Group v. Powell Duffryn Terminals, Inc., 913 F.2d 64 (3d Cir. 1990), cert. denied, 498 U.S. 1109 (1991).

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section analyzes the seven (7) matters which this Office recommends that the Commission not pursue.

In analyzing whether to pursue those cases wherein the Commission might be barred from obtaining court-imposed civil penalties for virtually all of the violative activity, this Office first assessed whether a case was worth pursuing even if Section 2462 limited the Commission to obtaining equitable and/or declaratory relief.[26] Factors considered in this regard included whether the respondent(s) is still involved in the political process, whether an equitable remedy would be meaningful in the context of the case, and whether the legal issues in question are significant. This Office also considered whether there were other active or inactive cases involving the same respondent, or a similar fact pattern, in determining its recommendations for cases.

While the Office of the General Counsel has recommended closing several matters where all or nearly all of the violations are 5 years old or older, in most instances this Office recommends

26. As a hypothetical example, were court-ordered civil penalties time-barred in MUR 3620 (Democratic Senatorial Campaign Committee et al.), this Office would have recommended the Commission continue to pursue the matter because of the importance of obtaining a declaratory judgment stating that tallied contributions are earmarked contributions and, therefore, must comply with the earmarking requirements found in the Commission's regulations.
Similarly, this Office recommends that the Commission continue to pursue MUR 3638 (Response Dynamics, Inc.) and MUR 3841 (United Conservatives of America), in part because they offer the Commission an opportunity to apply the regulations governing extensions of credit to the direct mail fundraising industry. Declaratory judgments in these cases thus would be valuable to the Commission and the regulated community.

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that the Commission continue to pursue the case despite its age. Where the recommendation is to continue to pursue, this Office also notes that the Commission may want to be more flexible with regard to the civil penalty than would otherwise be appropriate or that the Commission may want to accept a conciliation agreement that provides for admissions of the violations without payment of a civil penalty. This Office also may recommend the Commission seek creative forms of relief, as discussed in Section II, depending on the circumstances of the case.

There also are a number of cases where virtually all of the violations are at least five years old, but the Commission has already entered into conciliation with respondents. This Office recommends pursuing each of these matters because it appears that conciliation may prove successful. This Office notes that the NRSC decision, and the statute of limitations found at Section 2462, apply only to Commission enforcement actions that are at civil suit and that neither applies to the Commission's ability to administratively settle matters prior to litigation. As these negotiations proceed, this Office may similarly recommend the Commission agree to accept a lowered civil penalty, that it agree to a conciliation agreement with admissions only, or, if warranted, that the Commission seek some form of creative equitable relief.

With regard to cases in which most or all of the activity is less than 5 years old, this Office considered the factors listed above, and also attempted to assess realistically how much time would be required to take the case to the end of the

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administrative process, the statutory prerequisite for filing a civil suit on the violations. For two of these cases this Office recommends taking no further action because, in addition to the other considerations, it seems unlikely that the Commission could complete the required statutory steps in time to avoid a statute of limitations defense at court. In one, this Office has recommended authorizing civil suit at this time to enable the Commission to file suit before most of the transactions are 5 years old. For the remainder, this Office recommends continuing the investigation of the more recent violations.

IV. CASE DISCUSSIONS

This section provides brief descriptions of the forty-five (45) pending enforcement matters assigned to the Public Financing, Ethics and Special Projects and Enforcement areas, including the Central Enforcement Docket. Seven (7) matters are assigned to PFESP; thirty (30) are active Enforcement matters, and eight (8) are currently in CED. This Office recommends pursuing thirty-eight (38) and closing the remaining seven (7).

This section first discusses thirty-one (31) matters this Office recommends remain open, then discusses seven (7) matters for which OGC makes specific recommendations, and finally presents the seven (7) matters recommended for closing.

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Chapter 3

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CHAPTER 3
The Reason to Believe Stage

I. PURPOSE

The Commission's authority to conduct an investigation into alleged violations of the Act is preconditioned on a finding by an affirmative vote of four or more Commissioners that there is reason to believe a violation has been committed, and on notification to the respondents of this determination. 2 U.S.C. § 437g(a)(2).

The Commission's regulations provide for the General Counsel to review a complaint and any response to that complaint, or other information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, and to recommend whether or not the Commission should find reason to believe a violation has occurred. 11 C.F.R. §§ 111.7 and 111.8. Attachment 3-1. A "reason to believe" finding means that the Commission believes an investigation should be conducted in order to determine whether a violation has occurred or is about to occur.

A complaint may allege several violations, in which case the Commission may vote on each allegation separately. At any point during the enforcement process, the Commission has the discretion to take no further action.

The regulations also provide that respondents must be notified of any reason to believe or no reason to believe finding and that the complainant must be notified of any no reason to believe finding or other finding that terminates the proceeding. 11 C.F.R. § 111.9. If the Commission decides there is "no reason to believe" a violation has occurred or is about to occur, or if the Commission decides there is "reason to believe," but takes no further action,

Ready to Start a First General Counsel's Report?

This Office uses forms that can serve as a starting point for most reports, letters, and other documents. A formatted version of the First General Counsel's Report, for example, is available as Form 68 (for internally generated cases) and Form 70 (for externally generated cases). Attachment 3-3 describes how new staff must initialize their system configurations to access the forms library, contained in the Enforcement Forms Drawer of the Teamlinks Information Manager file cabinet. Consult Attachment 3-3 now to learn how to access the forms referenced throughout the Enforcement Manual.

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the case is closed and the parties involved are notified. If, on the other hand, the Commission finds that there is "reason to believe" the respondent has violated or is about to violate the law, the Commission sends a letter of notification to the respondent. This letter notifies the respondent that the Commission is beginning an investigation, or it may offer pre-probable cause conciliation. See Chapter 1 section III.

II. TIME GOALS

The First General Counsel's Report should be circulated to the Commission within two months of assignment to the enforcement staff member. The following schedule should be followed:

1. Circulate draft First GC for comment ..... 4 weeks
   - Note that a draft need not be circulated for comment in every case. See Section III below for more information.
2. Comment period ..... 2 weeks
3. Final 1st GC to Supervisor ..... \
4. Final 1st GC to Associate GC ..... \ 2 weeks
5. Final 1st GC to General Counsel ..... /
6. Final 1st GC to Commission ..... /

III. COMMENT DRAFT

A. Purpose

When appropriate, a comment draft is circulated to the senior staff in order to introduce senior staff members to a case and to provide an opportunity for feedback. In many instances, the comment draft stage is the senior staff's first introduction to the factual and legal content of the case. The comment draft should inform senior staff of all the facts of the case, all of the relevant law, and the legal position that this Office plans to recommend the Commission take in the case. The comment draft also serves to advise senior staff of the potential investigatory resources the case will require.

The comment draft need not be in the form of the First General Counsel's Report, but should include a comment sheet with its circulation to senior staff. See Attachment 3-4.

The comment draft allows senior staff to provide the staff member with reactions to the factual and legal issues presented in the case. It also allows senior staff to assist the staff member in identifying other cases that may be similar, or to provide additional information of which the staff member may not otherwise be aware.

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B. Types of Cases

Generally, a comment draft is not circulated for the following classes of cases: late filers, non-filers, 48 Hour Notices, and straightforward excessive contributions. The decision to forego circulating a comment draft in cases of types other than those previously listed is at the discretion of the team leader, who will inform the Associate General Counsel when a particular First General Counsel's Report has not been previously circulated for comment.

C. Compilation

The comment draft need not be printed in the final form of a First General Counsel's Report. Staff may reference the attachments in the body of the report or memorandum, as they would in the body of the First General Counsel's Report; however, the applicable attachments should not be included for circulation to senior staff unless the attachment would be especially helpful to the reader, e.g., the text of a political advertisement that is at issue in the case.

If staff plans to recommend pre-probable cause conciliation in a case, the method used to calculate the proposed civil penalty for each of the violation(s) should be discussed in the comment draft. Also, if staff plans to include language not ordinarily found in conciliation agreements because of unusual factual circumstances, then that language should be discussed. If staff plans to conduct discovery, a brief description of the course of action staff plans to take should be included.

D. Due Date

The comment draft, when appropriate, is due to be circulated to senior staff thirty (30) days after the case is assigned to the staff member. Senior staff's comments regarding the draft are due back to the staff member within two (2) weeks of its circulation. Copies of the comments will be distributed to the staff member and the team leader by the team secretary.[1]

E. Distribution

The original comment draft along with the comment sheet (Form 67) should be routed to the team secretary for copying and distribution to senior staff. The team secretary will make 14 copies of the original report for Docket to distribute.

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1 The Associate General Counsel for Enforcement assigns the track number of the case at this stage of the process. Be sure to use the appropriate routing card upon completing the actual First General Counsel's Report. See also, Introduction Chapter, Section V, OGC Enforcement Administration.

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F. Transforming the Comment Draft into the First General Counsel's Report

After receiving comments from senior staff, the staff member should feel free to approach them with any questions or thoughts regarding their comments.[2] After discussing and fully understanding senior staff's comments, staff should discuss their input with the team supervisor for consideration and/or incorporation into the First General Counsel's Report. The applicable supporting documents, e.g., RAD referral material and responses to the complaint (if the case opened prior to July 25, 1995), proposed factual and legal analyses, proposed conciliation agreement, proposed interrogatories, subpoenas and other relevant documents should be attached. The next section and the "Attachments and Final Package" portion of this chapter describe the steps towards circulation of your report to the Commission.

IV. FIRST GENERAL COUNSEL'S REPORT PREPARATION AND ORGANIZATION

The First General Counsel's Report (see Forms 68, 70 and 71) is the first report prepared in a matter for circulation to the Commission. In general, this report includes: (1) a discussion of how the matter was generated (complaint, internally, sua sponte or Directive 6); (2) the analysis (discussion of the law, facts, responses, and legal analysis); (3) a discussion of the proposed conciliation agreement and civil penalty, if applicable; and (4) recommendations for Commission action (open a MUR, reason to believe, no reason to believe, reason to believe but take no further action and close the file).

Based on the evidence available at the time, the recommendations in a First General Counsel's Report may range from declining to open a MUR to finding reason to believe a violation took place and offering to enter into conciliation. The purpose of this report is to present the evidence, or lack thereof, of a possible violation and to set forth an appropriate course of action for the Commission. It is important to note that the burden for showing that there is reason to believe a violation occurred is low and that reason to believe is a threshold finding. A finding of reason to believe is necessary before the Commission may institute an investigation into the alleged violations.

Violations Outside of FEC Jurisdiction

At any time during the enforcement process, the Commission may report apparent violations of other laws to the appropriate law enforcement authorities. 2 U.S.C. § 437d(a)(9). See MUR 2892 (Friends of Frank Fasi) (report to state campaign finance agency of apparent violation of state law analogous to 2 U.S.C. § 441f); MUR 3972 (Wilson Committee) (report to House Ethics Committee of member's apparent violations of matters within the committee's jurisdiction).

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2 Generally, a staff member will not receive comments from all of the senior staff members. However, staff should make sure that they receive a comment sheet from the Associate General Counsel for Enforcement. Also, it is imperative that the appropriate Public Financing, Ethics and Special Projects staff member responds in matters where Title 26 candidate issues are involved.

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The First General Counsel's Report includes the following sections and information:

A. Caption

The caption provides a quick overview of basic case information.

1. MUR, Pre-MUR or RAD Referral #
2. Staff assigned
3. Tier and Enforcement Priority System rating #
4. Complaint generated matters -
5. Date complaint filed and date of notification to respondents
   a) Date activated
   b) Name of complainant
6. Internally generated matters -
   a) Source
   b) Date activated
7. Respondents
8. Relevant Statutes and Regulations
9. Internal Reports Checked
10. Federal Agencies Checked

B. Generation of Matter

This section of the report introduces the parties involved, explains how the matter arose and sets out the allegations and other relevant background.

1. Identify the parties (complainant, referring agency, respondents, etc.).

2. Provide a brief description of the basic allegations in the complaint, RAD referral, Audit referral, etc.

3. Provide the relevant procedural history and dates for the matter (including extensions of time and other events affecting the processing of the matter).

4. If a federal candidate or a candidate's committee is involved, state the relevant election(s) in which the candidate participated and the outcome as well as the federal office sought. Do not put in the report the party affiliation of the candidate or candidate's committee unless factually relevant.

5. Provide any other background information that may be relevant to the issues raised in the matter.

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C. Analysis

This section is the substantive portion of the report. Generally, it includes a discussion of the law, facts and responses. It also includes a legal analysis and OGC's recommendations on how to proceed in the matter. There is no hard and fast rule as to how to organize a First General Counsel's Report, and it may vary by case and staff member.

1. Discuss the applicable law (statutes of the Act and/or Commission regulations). There are several other items to include when appropriate:

   a. Relevant closed or pending MURs
   b. Advisory opinions
   c. Legislative history
   d. Explanation and Justification ("E&J") for regulations
   e. Public records and computer indices
   f. Court decisions

2. In complaint generated matters, and in some internally generated matters, include a thorough discussion of the facts of the complaint, referral, etc., and of any responses or communications related thereto.

3. Analysis

   a. Apply the facts to the law.
   b. Discuss any relevant Advisory Opinions, court decisions, closed or pending MURs.
   c. Discuss possible violations.
   d. Summarize proposed reason to believe recommendations.

4. Non/Late Filer MURs

   a. In internally generated matters concerning non/late filer MURs, instead of providing a full analysis, refer the reader to the attachment and page number of the proposed factual and legal analysis to be sent to the respondent.
   b. These reports also contain boilerplate language and are consistent in form.

5. Useful techniques to consider and use:

   a. Provide brief overview or introduction stating major issues to be addressed.
   b. Summarize at the end of each section or sub-section.

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c. Provide headings and subheadings if multiple issues and/or respondents are involved.
d. Use footnotes for tangential issues or explanatory materials.

D. Discussion of Conciliation and Civil Penalty

If OGC is recommending an offer to enter into pre-probable cause conciliation, include summary of what should be included in the conciliation agreement. For a more thorough discussion of pre-probable cause conciliation, refer to Chapter 5.

1. Examples of cases in which the Commission generally offers to enter into pre-probable cause conciliation include:

a. Late and non-filer cases
b. 48 Hour Notice cases
c. Straightforward excessive contribution cases
d. Cases where it is determined that further investigation is not necessary.

2. Discuss the conciliation agreement, including all admissions clauses, requirements for refunds and/or disgorgements, and the basis for the proposed civil penalty/refund/disgorgement amount(s).

E. Discovery

If it appears that further investigation is warranted, the First General Counsel's Report will have a section discussing how OGC plans to proceed with discovery. This section sets forth what OGC is intending to prove, e.g., the presence of corporate facilitation, and how the Office intends to gather the relevant information, i.e., whether informally or formally. In order to expedite the investigation, this Office may attach Orders and Subpoenas for approval where appropriate.

F. Recommendations

The following list is a general overview of what should be included in the Recommendations section. For a more thorough discussion of Recommendations, refer to Chapter 3, Section V.

1. Include a recommendation to open a MUR in RAD Referrals and Pre-MURs.

2. Include a recommendation for all respondents and all violations, unless the report has specifically stated that OGC is making no recommendation "at this time" with respect to a particular respondent or a particular violation.

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3. If appropriate, include recommendations which are responsive to a respondent's request, e.g., that the Commission take no further action or reject a motion to dismiss a complaint.

4. If a recommendation terminates the proceeding with respect to a particular respondent only, that recommendation should also state "and close the file as it pertains to this respondent."

5. Include recommendations to "approve the appropriate letters," and if applicable, any factual and legal analyses, proposed conciliation agreements, Subpoenas to Produce Documents and Answers to Interrogatories.

6. If appropriate, include recommendations for merging two or more matters. See Chapter 3, Section VII.

7. Include a general recommendation to "close the file" only when the entire matter is being closed.

G. Signature Line

See Addenda H - Troubleshooting/Proofreading documents.

H. Attachments

See Chapter 3, Section VI.

I. CHECK LIST

1. Are the caption and MUR number correct?

2. Is the staff member identified?

3. Does the report contain the correct citations and spellings of respondents' names?

4. Has the current treasurer been named?

5. Have recommendations been made on all issues (including "open or decline to open a MUR" or "approve the appropriate letters")?

6. Do recommendations conform to the text of the report?

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7. Does the report have the proper signature line?

8. Are all necessary attachments listed at the end the report; are they marked properly and actually attached?

V. RECOMMENDATIONS

A. "RTB or no RTB, That is the Question" -- Is "no further action" the answer?

1. Introduction

This section reviews several of rules relevant to this Office's recommendations and presents additional issues and guidelines that staff should keep in mind while formulating recommendations at the reason to believe stage. For a full discussion of recommendations relating to the merging of MURs, see Section VII.

After reviewing the factual and legal allegations in a complaint or a referral from the Reports Analysis or Audit Divisions, OGC makes recommendations to the Commission. The Commission reviews these recommendations and, upon four affirmative votes, may find reason to believe that a person has violated the Federal Election Campaign Act of 1971, as amended, (the "Act"). 2 U.S.C. § 437g(a)(2) and 11 C.F.R. §§ 111.7, 111.9, and 111.10.

2. Naming Respondents

a. Treasurers

If a federal political committee is involved in a complaint or referral, the Commission's policy is for OGC to name the committee and its current treasurer as respondents in the matter. Staff must include the treasurer's name in the recommendation.

> **Example:** Find reason to believe that X PAC and Mary Smith, as treasurer, violated 2 U.S.C. § 441b(a).
> If the treasurer's name is not known, then the recommendation should read: Find reason to believe that X PAC and its treasurer violated 2 U.S.C. § 441b(a).

b. Committees

If a federal and non-federal account of the same organization are being named as respondents for the same violation, then the recommendation should read:

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Example: Find reason to believe that the Pennsylvania Democratic State Committee (federal/nonfederal accounts) and Frank McDonnell, as treasurer, violated 11 C.F.R. § 102.5. If the accounts have distinct names or treasurers, then they should be listed separately.

Committee staff may be named as respondents in some instances. 2 U.S.C. § 441b(a) ("other person") and 2 U.S.C. § 441a(f) ("no officer or employee of a committee may knowingly accept ...").

c. Corporations/officers

Corporations, labor organizations, and national banks are prohibited from making federal political contributions. 2 U.S.C. § 441b. If the evidence in a matter indicates that a prohibited contribution has been made, then OGC may recommend that the Commission find reason to believe that the corporation, etc. violated the Act. Further, if the evidence indicates that the officers of those organizations consented to the contribution, then they may be named as respondents as well. Id.

d. Individuals

There are various scenarios in which an individual may be named in a reason to believe recommendation. For example, if an individual makes an excessive contribution to a committee, then that individual could be named as a respondent. 2 U.S.C. § 441a(a).

The respondent's first and last name should be used. For married women, use the individual's own name, not the prefix Mrs. If a suffix such as Jr. or III is part of the individual's name, then the suffix should be included in the name appearing in the recommendation.

e. Candidates

Candidates are not automatically named as respondents just because the evidence indicates that the candidate's committee violated the Act. Candidates are named only if the evidence indicates that they had personal involvement in the activities or transactions giving rise to the violations.

3. Recommending Discovery

If the Commission finds reason to believe that respondents violated the Act, then an investigation may be conducted. 2 U.S.C. § 437g(a)(2). At the reason to believe stage, OGC may recommend that the Commission issue subpoenas and orders (formal discovery) or propose informal discovery. 2 U.S.C. §§ 437g(a)(2), 437d(a)(1), (3), and (4) and 11 C.F.R. §§ 111.11, 111.12, and 111.13. OGC often finds it necessary to pursue discovery in order to fill gaps in information between the complaint (or referral) and a respondent's response. Precise factual information will be necessary either to pursue

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conciliation or to enable the Commission to move to the probable cause stage of the enforcement process.

Generally, for formal discovery (e.g., interrogatories and depositions) OGC attaches the subpoena and order to the General Counsel's Report in which discovery is recommended. For informal discovery (informal questions), the General Counsel's Report may include a general description of the discovery to be conducted but will not have interrogatories or document requests attached and will not include a recommendation to approve discovery.

4. Recommendations in Internally Generated Matters To Open a MUR

Complaint generated matters are given a MUR number when filed so there is no need for a recommendation to "open a MUR." OGC simply makes reason to believe or no reason to believe recommendations. For internally generated matters, this Office must first recommend that the Commission "open a MUR."

5. Recommendations in Complaints Regarding ALL Respondents

In First General Counsel's Reports in complaint generated matters, OGC usually makes "reason to believe" or "no reason to believe" recommendations regarding ALL respondents, including candidates, who have been named in and notified of the complaint. Otherwise, the file may be closed without informing all notified parties of the outcome of the allegations. In some cases, this Office has recommended taking "no action at this time" with respect to certain respondents. See Number 9 below.

6. Knowing and Willful Recommendations

If the evidence indicates, OGC may include a "knowing and willful" recommendation in the First General Counsel's Report. 2 U.S.C. §§ 437g(a)(5)(B), (6)(C), and (d)(1); and Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F. Supp. 985 (D.N.J. 1986). The inclusion of knowing and willful language is appropriate if the evidence shows that the respondents acted with full knowledge of all the facts and a recognition that the action is prohibited by law. If the Commission makes a knowing and willful finding at this point, it notifies respondents at an early stage that the Commission considers the violations to be serious.

Even if the Commission does not make a knowing and willful finding at the reason to believe stage, it is not later precluded from making such a finding. For example, the knowing and willful aspect of a violation may not become apparent until after discovery is completed. At that point, the Commission could include knowing and willful violations in the conciliation admission clause(s). At the probable cause stage, the Commission also may make a knowing and willful finding.

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7. Non-specific recommendations

When making a non-specific recommendation that the Commission find no reason to believe that the respondents have violated any provisions of the Act, staff must add: "on the basis of the complaint filed in MUR _____." This avoids problems if, in another more specific complaint concerning the activity, we do wish to go forward on the allegations.

8. No Reason to Believe Notifications to Respondents in Internally Generated Matters

Both internally generated and complaint generated respondents should be notified regarding any reason to believe or no reason to believe finding.

9. Take No Action at this Time

"Take no action at this time" is not usually expressed as a formal recommendation to the Commission; instead, it appears within the body of the First General Counsel's Report. The issue arises when OGC recommends finding RTB against one respondent and there is some information about a second respondent suggesting a possible violation but there is insufficient evidence to make a RTB recommendation at this time. If OGC plans to conduct an investigation in the MUR, the first respondent's discovery could lead to information about the second respondent. We could then act on the information and make RTB recommendations. Including the phrase "take no action at this time" alerts the Commission to this possibility. Occasionally "take no action at this time" is included as a formal recommendation, requiring Commission ratification. See, e.g., MURs 4037, 3774, 3460, and 2981.

10. No Further Action -- Admonishing Respondents

An admonishment letter may be appropriate in either internally generated or complaint generated MURs where OGC is recommending "RTB but take no further action," or in internally generated matters where OGC is not recommending opening a MUR. This is another situation in which staff should consult with their supervisors on the proper course of action to take.

The Commission does not have to approve the actual letter, although sometimes the Commission wants to know the exact language to be used. The recommendation to the Commission to approve an admonishment letter should be made in the body of the report, not in the recommendation section. The recommendation section should read that OGC recommends the Commission approve the "appropriate letter." This is important in MURs involving controversial issues because it allows the Commission to determine whether an admonishment is appropriate.

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An admonishment letter might include the following language: "The Commission reminds you that the acceptance of excessive contributions is a violation of 2 U.S.C. § 441a(f). You should take steps to insure that this activity does not occur in the future." There are form letters in the Enforcement Forms book to help you create admonishment letters. See Forms 31, 32, 34 and 34A.

11. Recommending Audits or Assistance from the Audit Division

OGC may recommend that the Commission authorize a full-scale section 437g(a)(2) audit of a committee as part of its investigation. In other circumstances where OGC would like more limited assistance from the Audit Division, OGC has recommended that the Commission authorize an "audit analysis" of discovery responses obtained in a matter. For either type of assistance from the Audit Division, staff should try to coordinate with the Audit Division prior to sending the report to the Commission.

12. Recommending Conciliation

See, infra, general discussion of conciliation.

B. Conciliation

This section concerns recommendations to enter into conciliation negotiations. In certain circumstances, OGC's procedures or practice allow a recommendation of immediate conciliation upon a finding of reason to believe, without proceeding to the probable cause stage and without waiting for a request from the respondent. (See Chapter 5 for full discussion of pre-probable cause conciliation.) If conciliation is appropriate, OGC would make the following recommendations: "Enter into conciliation prior to a finding of probable cause to believe with XYZ Committee and John Smith, as treasurer, . . ." and "Approve the attached proposed agreement."

In this situation, a proposed conciliation agreement is attached to the First General Counsel's Report, proposing admission language and a civil penalty. If the conciliation agreement is approved by the Commission, OGC then attempts conciliation with the respondent. Although pre-probable cause conciliation ordinarily is limited to 30 days, this time period may be extended if it appears that there is a strong possibility of reaching a settlement.

OGC's procedure prescribes certain situations in which pre-probable cause conciliation should be recommended or may be pursued. For example, staff should recommend conciliation in all internally generated matters in which the facts appear to be fully developed or are "straightforward", i.e., late or non-filers; the only issue involved is the making or acceptance of an excessive or prohibited contribution. Further, in complaint generated matters involving only late or non-filers, staff should recommend pre-probable cause conciliation.

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C. Thresholds/Dymally Rule

OGC recommends pursuing enforcement actions against respondents only when certain thresholds have been exceeded. In some situations where a violation has occurred, but the violation is below certain thresholds, RAD will not refer the case to OGC for review. This serves to conserve OGC's resources for other cases. OGC staff should have a copy of the confidential RAD Review and Referral Procedures, which lists the thresholds for referral.

Additionally, OGC also has thresholds which it uses in determining which cases and respondents to pursue. For example, in internally generated matters involving corporate contributions [redacted] it is OGC's policy to recommend finding reason to believe and take no further action, or to take no action (meaning make no recommendation) unless special circumstances exist. Therefore, if Corporation X has donated [redacted] to Candidate Y's campaign, the Commission likely would send a letter of admonishment, but take no further action if the campaign refunded the corporation's money.

One threshold for internally generated cases is the Dymally Rule, which directs OGC to make no recommendations against contributors unless their excessive contributions are [redacted]. Therefore, if Contributor Y gives Congressman O [redacted] for a primary election, OGC will not make recommendations about the contributor for the making of the excessive contribution (unless there are additional aggravating circumstances). This rule also applies to PACs. Because of this rule, OGC would not, for example, pursue a multicandidate PAC for contributions which total [redacted] to a candidate committee for one election. This threshold does not apply to recipient committees, thus OGC could make recommendations against a recipient committee regardless of the amount of the excessive contribution.

If an individual has exceeded the annual $25,000 contribution limit by [redacted] (2 U.S.C. § 441a(a)(3)), OGC will recommend that the Commission make a finding of reason to believe and pursue the contributor. In contrast, if the contributor exceeded the limit by [redacted], OGC recommends a finding of reason to believe and take no further action. OGC will recommend that the Commission find reason to believe against a recipient political committee for the receipt of each excessive contribution(s). If, however, the amount of the excessive contribution(s) does not [redacted] OGC will recommend that the Commission find reason to believe and take no further action against the committee. Subsequent to the Commission's finding, the committee will be sent a letter notifying it of the Commission's finding; this letter will contain admonishment language, and, if appropriate, request that the Committee refund the amount it received in excess of the limitations.

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VI. ATTACHMENTS AND THE FINAL PACKAGE

After preparing the final version of the First General Counsel's Report, staff may need to include a number of attachments. Each attachment should be referenced somewhere in the body of the report. All attachments are labeled on each page with attachment number and page number (for example, "Attachment 2, Page 3 of 8"). Secretaries have special attachment stamps which are used for this purpose. The following types of attachments may be included with the First General Counsel's Report:

- Factual and Legal Analyses
- Conciliation Agreements
- Subpoenas and/or Orders

Specific attachments depend on whether the case was internally generated or complaint generated, and on the nature of the recommendations made in the report. Some of the attachments are form-generated. For a specific reference to forms, see Chapter 3, Section VI.

A. Attachments

1. Referral Materials

Internally generated cases arise in a number of different contexts. For example, RAD might generate a referral because a report was filed late or not filed at all. A referral might originate from the Audit Division or from a federal or state agency. The Commissioners could determine to open an investigation pursuant to "Directive 6," or a candidate or political committee sua sponte could notify the Commission about a suspected wrongdoing.

For internally generated matters, staff should attach the referred materials. Reports from Audit or an external agency, or a Directive 6 memo, all constitute different types of referred material. Each should appear as Attachment 1 and should be referenced in the Generation of Matter section of the First General Counsel's Report. An exception to the above rule as to internally generated matters involves RAD Referrals received on or after July 15, 1995. These do not have to be attached as they will already have been circulated to the Commission by CED.[3]

In complaint generated matters, the Commissioners receive copies of complaints on an informational basis when the complaints are filed. Accordingly, the complaint need not be included as an attachment if the report does not include a specific reference to some portion of the complaint or to an exhibit included with the complaint. However, if the report quotes extensively from the complaint or to an exhibit attached to the

3 The Commissioners maintain their own case files.

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complaint, the complaint may be included as Attachment 1 in the First General Counsel's Report.

2. Responses in Complaint Generated Matters

CED staff solicits responses from all potential respondents after a complaint is filed. For cases opened prior to July 15, 1995, staff should include these responses as successive attachments, after being referenced in the body of the Report. In more recent matters, the responses will already have been circulated to the Commission by CED.

3. Factual and Legal Analyses

The next type of attachment included with the First General Counsel's Report is a Factual and Legal Analysis which sets out the factual and legal bases for Commission action. If the Commission determines that there is reason to believe that a violation occurred, a Factual and Legal Analysis approved by the Commission, not the First General Counsel's Report, is mailed to respondents as an explanation of the basis of the Commission's determinations. The easiest way to see how a Factual and Legal Analysis should appear in final form is to ask others in the Office how they draft these documents.

For a late filer or non-filer internally generated case, staff should use Form 69 in the Forms library as the basic form for the Factual and Legal Analysis. In these types of matters, the Factual and Legal Analysis is prepared for use by both the Commission and the respondent. The Report simply makes reference to the attached Analysis. See Chapter 3, Section II, C, 4. The Analysis contains the law relevant to the MUR and states how the respondent has violated it. The analysis concludes with a statement that the Commission has found reason to believe that the respondent has violated the law.

Unlike the Factual and Legal Analysis prepared in a late filer or non-filer case, a Factual and Legal Analysis in a complaint generated case or other type of internally generated matter[4] appears both as an integral part of the First General Counsel's Report and as a separate attachment. The attached Analysis is often extensive and generally follows the analysis included in the Report. It documents the nature of the allegations and the response, and how the respondent did or did not violate FECA. When preparing this separate Factual and Legal Analysis to be sent to the respondent, staff should be sure to redact the analysis in the Report in order to delete references to open compliance matters or to internal procedures or policy, any discussion of investigative plans, and any mention of findings against other respondents in the same matter.

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4 Note that for a Factual and Legal Analysis resulting from a referral from the Department of Justice or other state or Federal agency, staff should not indicate anywhere within the analysis where the referral originated.

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If OGC's recommendation is that there is no reason to believe that the respondent violated the Act, staff should not prepare or separate Factual and Legal Analysis. If the Commission agrees with this latter recommendation, a redacted First General Counsel's Report (in the event the whole case is closed) is sent to the respondent(s).

4. Conciliation Agreements

If the staff's recommendation is that the Commission find reason to believe and offer pre-probable cause conciliation, the proposed conciliation agreement is referenced in the body of the report and appears as an attachment to the First General Counsel's Report. Form 76 in the forms library has an appropriate agreement. Staff should personalize the information, filling in the facts, the violation, and the proposed civil penalty. No conciliation agreement is attached if the recommendation is to find no reason to believe or to find reason to believe with no offer of conciliation at that time. See Chapter 3, Section IV, B.

5. Other Attachments

Depending on the nature of the case, attachments other than those discussed above might be included. For instance, where investigation is appropriate, proposed subpoenas or orders for written answers may be included. (See Forms 78 through 82). While writing the report, staff may come across some information that is already on the public record, e.g., a report filed with the Commission or with a state election agency or a newspaper article. These could appear as attachments to the report.

B. Proofreading

Proofreading to remove errors is an important part of the final stage of the First General Counsel Report production process. Here is a list of 10 points to consider to avoid problems.

1. Are any pages missing from the report or any of its attachments?
2. Are the attachments in order?
3. Are the separate portions of the report and the recommendations correctly numbered?
4. Has the treasurer been checked to make sure he or she is the current treasurer?
5. There should be no mention of a lawyer or law firm by name.
6. Are there recommendations relating to all respondents?
7. Are the numbers used to calculate the civil penalty correct, or have any been transposed?
8. Do the margins, pagination, and use of quotations conform to office procedure?
9. A line of text should not end with a "§" or a with person's middle initial, or split dates between the month and the day.

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10. Secretaries and staff should carefully proofread each document forwarded to the Assistant General Counsels.

For further hints, see Addendum H, Troubleshooting and Proofreading Document.

C. Other Documents

Two other documents should be included with the final product. The first is a routing card directing that the report needs to be approved and signed by the Associate General Counsel, or by the General Counsel in the case of Track 3 matters,[5] and the second is a Sunshine Recommendation Form. Staff should check the appropriate category on the form and turn in the report package to the team supervisor. See Addendum J, Sunshine Act.

VII. MERGER

A. Introduction

This Office may recommend that the Commission merge two or more matters. The key reason for a merger is to save Commission resources. A second reason is to ensure that cases are uniformly resolved. Nevertheless, the general rule is not to merge, but rather to handle the cases concurrently but separately.[6] Remember, the merger recommendation is a strategic, pragmatic question, and should be discussed with a supervisor.

B. Factors Weighing in Favor of Merging Cases

There are several types of matters where OGC could recommend that the Commission merge two or more matters. The following examples illustrate a few such instances.

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5 Routing cards are blue for Track 1 or 2 cases where the Associate General Counsel ultimately signs the reports or red for Track 3 cases which must be approved by the General Counsel. Each time staff submits a project to the supervisor, or the Associate General Counsel, or Docket (for mailing a letter) staff should initial the routing card, date it, and indicate to whom the report or other document is being submitted. The routing card stays with the work until it is finally completed. If additional cards are needed, staff should staple the new card on top of the original.

6 See, e.g., MUR 3325. In this $25,000 case initially there were ten named respondents who exceeded the annual limit. Some settled quickly, but other individuals that were implicated did not and the case took years to settle. It would have been better to have opened separate MURs for each respondent and to have placed closed MURs on the public record after each respondent had settled.

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A classic example involves two complaints filed by different complainants. If the complaints involve the same transactions, the same or similar allegations, and the same respondents, then OGC may recommend that the Commission merge the matters.[7] Another example involves one complainant filing back-to-back complaints, where the factual bases of the complaints overlap. Again, OGC may recommend merger. Similarly, merger may be considered where the investigation of one matter will be facilitated if combined with another matter. Another factor OGC should consider is whether the issues in two or more matters can be dealt with comprehensively in one conciliation agreement.

Respondents may also request merger. OGC will examine the similarity of the cases and determine whether a merger recommendation is appropriate. Merger issues are internal and the rationale behind the decision is confidential; therefore, no explanation to a respondent is required.

The following are examples of past merger recommendations:

1. Same Respondents/Same Issues

MURs 3428 and 3435: These matters were initiated by complaints filed by two different complainants. However, the matters involved the same respondents -- Richard L. Thornburgh, Thornburgh for Senate Committee, and Kirkpatrick & Lockhart. The matters further involved the same issues -- whether the law firm at which Thornburgh worked had made prohibited contributions to his campaign. Accordingly, OGC recommended a merger. See also, MURs 3617, 3658, and 4010, all of which were merged into MUR 3620 (the DSCC "tally" case).

2. Enlarging an Investigation

MUR 2984: In these matters, OGC recommended that an ongoing matter, MUR 2593, be merged into a new matter, Pre-MUR 220, which became MUR 2984. MUR 2593 involved direct mail solicitations on behalf of the George Bush for President Committee sent by officials of the National Association of Real Estate Appraisers, Inc. ("NAREA"). Subsequently, the Labor Department's Employment Standards Administration ("ESA") referred NAREA and another respondent for additional activity related to

7 Although strictly a guide, staff may consider Rule 20 of the Federal Rules of Civil Procedure. This rule provides for the permissive joinder of parties to civil actions if a claim against them arises out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

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fundraising for the Bush committee. The referral included many of the same respondents, and the alleged violations included a large number of direct mail solicitations. OGC recommended merger in order to expand the original case to include the referral from ESA. (The ESA referral also included new affiliated respondents and allegations.)

3. Complaints "Inexorably Intertwined"

MUR 3121: The complaints filed in each of these matters (MUR 2999, MUR 3068, and MUR 3121) at first appeared to involve numerous unrelated committees and candidates. However, the complaints raised issues concerning the same key respondents: Charles Keating, American Continental Corporation, and Lincoln Savings and Loan Association. These matters also involved similar activity -- prohibited contributions. To better manage these cases, OGC recommended that the Commission merge MUR 2999 and MUR 3068 with MUR 3121.

4. Uniform and Expeditious Resolution of Several Matters/Same Defenses Raised By Respondents/Same Issues in Subsequent Referral

MUR 3518: The National Albanian American Political Action Committee was referred to OGC for reporting and excessive contribution violations. These violations were dealt with in MUR 3453. [redacted]; the committee was referred for similar reporting violations in RAD Referral #92NF-04. The matters were merged because of the similar issues involved and the similar defenses raised by the committee, and to facilitate the uniform and expeditious resolution of the matters.

5. All Related Issues May Be Dealt With Comprehensively/Same Allegations/Related Issues

MUR 2633: In MUR 2263, the Commission was investigating possible 2 U.S.C. § 441b violations by the Wisconsin Action Coalition. During the pendency of the matter, the Commission received a second complaint -- MUR 2633 -- involving similar allegations. MUR 2633 also involved new information relevant to the inquiry in MUR 2263. Accordingly, OGC recommended that the matters be merged.

C. Factors Weighing Against Merger

There are also several factors that weigh against merger. (See, infra, discussion of severance.)

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OGC may not want to recommend merger if it would unduly delay the resolution of one matter. Delay may occur if one matter requires considerable investigation while the other matter is near completion. Similarly, in some instances, OGC may want to close a matter as it relates to one respondent (while pursuing other respondents), but merger could delay closing out that respondent.

If confusion would result, then OGC may not recommend merging two matters.

Case management is a factor. If merger would make the merged case unmanageable, then OGC may not recommend merger.

OGC may not recommend merger if we are recommending reason to believe in one matter, but recommending no reason to believe in the other matter.

OGC may also want to keep matters small in order to more quickly close them and put them on the public record.

If cases are similar but are at different stages of the enforcement process, merger may not be recommended. But cf. MUR 3518 (The Commission merged MUR 3453 with RAD Referral 92NF-04[redacted]

If the only connection between two matters is an issue, then this would cut against merging the matters.

As discussed, there are many factors that must be considered when determining whether matters should be merged. Examine your case(s) carefully to determine which factors are present. These factors then must be weighed and discussed with your supervisor to determine the best course of action.

D. The Merger Recommendation

The merger recommendation must be specific. As illustrated below, the recommendation must reflect the MUR number of the new, merged matter. Ordinarily, the lower numbered MUR should be merged into the higher numbered MUR, but circumstances, such as numerous respondents, may warrant merging the higher numbered MUR into the lower numbered MUR. Note that a new MUR is not opened in situations where RAD Referrals or Pre-MURs are merged into existing MURs. In addition, the reason to believe recommendation in the new matter should follow the merger recommendations.

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The following examples may be used as guides:

MERGING TWO MURS

1. Merge MUR 5000 into MUR 5005 and hereafter refer to this matter as MUR 5005.

2. Find reason to believe that X violated....

OPENING A MUR IN A RAD REFERRAL AND MERGER WITH AN EXISTING MUR

1. Merge RAD Referral 95L-1 into MUR 5025, and hereafter refer to this matter as MUR 5025.

2. Find reason to believe that X violated ....

E. Merger Notification

You must notify those respondents whose case number has changed of the new MUR number.

F. Related Case Management Strategies

1. Several MURs analyzed in one report

While not exactly merger, OGC recently has begun to analyze several matters in one report. The matters maintain their separate identity within that one report. This has been done with news media exemption, disclaimer, and presidential debt cases. (See MURs 3483, 3605, 3615, 3624, 3660, 3706, 3709, and 3710 for press exemption; MURs 3592, 3655, 3682, and 3689 for disclaimers; and MURs 3507, 3627, 3632, 3679, 3726, 3736, and 3741 for presidential debt.) Again, consult your supervisor to determine if you have matters that may be analyzed using this approach.

2. Severance

OGC may also recommend that the Commission sever matters in the interests of case management. In MURs 3145, 3175, and 3182, for example, three matters were merged. After some investigation, an aspect of the case relevant to one of the complaints was found suitable for severance. One MUR was severed, the Commission accepted a conciliation agreement in settlement of the matter, and the case was placed on the public record sooner than would have otherwise been possible.

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G. "A Quick Review"

- Merger is a matter of saving Commission resources, but one must keep in mind that the best way to save Commission resources may be to separately handle related matters. In some instances, cases may be severed.

- Analyze cases, then discuss merger or severance with your supervisor.

- Make the recommendation section clear as to the new MUR number.

Factors Weighing in Favor of Merger

- Same respondents and issues.
- Similar allegations.
- Used to enlarge an investigation.
- Complaints inexorably intertwined.
- Similar defenses by respondents.
- Expeditious resolution of matters.
- All related issues may be dealt with comprehensively in one conciliation agreement.

Factors Weighing Against Merger

- Undue delay would result.
- Confusion would result.
- Effective case management.
- RTB in one case, but not another.
- Maintain several small matters to close quickly and place on public record.
- Cases are similar, but at different stages of the enforcement process.
- Only similar aspect between two is the issue.

VIII. FORMS

A. Introduction

This section is a guide to the enforcement forms that are used during the reason to believe stage of the enforcement process. The forms have been approved by the Commission and are revised and updated as necessary. Use of the forms promotes uniformity and efficiency in the processing of enforcement matters. On the other hand, these forms are a "means to an end." Except for some boilerplate paragraphs and language, forms may be modified to fit each particular set of circumstances.

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An index to all the enforcement forms and copies of the forms are found in the enforcement "Form Book," a thick binder distributed to staff.

To retrieve copies of the forms as Microsoft Word for Windows documents, access the forms through Teamlinks Information Manager. Refer to Attachment 3-3 if the Enforcement Forms Drawer is not visible from your Teamlinks Information Manager window.

B. RTB/No RTB Stage Forms - For purposes of discussion, the applicable forms have been grouped into three categories:

1. Drafting the RTB Report - The staff member prepares the First General Counsel's Report and associated documents (e.g., the Factual and Legal Analysis and Conciliation Agreement), as appropriate, recommending that the Commission find either reason to believe or no reason to believe that a FECA violation has occurred, and recommending an investigation or closing of the matter.

a. First General Counsel's Reports
1. Internally generated matter (#68)
   - late/non-filers (#71)
   - (recommending RTB/Pre-PCTB conciliation)
2. Complaint generated matter (#70)

b. Factual and Legal Analysis (#69)

c. Conciliation Agreement (#76) (Pre-PCTB finding)

d. Report Packages (incl. 1st GC Report, F&L, CA)
1 48 Hour Contributions (#112)
2 48 Hour Candidate Loans (#113)

e. Comment Sheet (#67) (Used for Comment Draft, see Part IV)

2. After Circulation/Submission of the RTB Report - After the initial report has been submitted to the Commission, the staff member generates an objection memo if one or more Commissioners files an objection to a report or memorandum, thereby placing the report on the agenda of the Commission's next executive session. A memo for withdrawal/correction of a report may be generated to correct errors detected after a report has been forwarded to the Commission.

a. Objection Memo (#75) (see Addendum D, OGC Enforcement Manual)

b. Memo for withdrawal or correction of First General Counsel's Report (#99)

3. RTB Notification - After the Commission has voted in a matter, the staff member prepares letters for the chairman's signature notifying the respondents of the Commission's findings of reason to believe and of either its final disposition of the matter

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or instructions regarding the next stage of the enforcement process. In the event of findings of no reason to believe, or of no findings of reason to believe in complaint generated matters as a result of an equal division of votes, letters must be prepared informing respondents and any complainant of this fact.

a. No RTB letters to Respondent

1. Complaint generated MURs
   - entire case closed (#22)
   - Partial case closing confidentiality caution (#22A))
2. Internally generated MURs
   - entire case closed (#23)
   - partial case closing (confidentiality caution (#23A))

b. No RTB to Complainant (#24)

c. RTB Votes Divided/Insufficient (complaint generated MURs)

1. Letters to Respondent
   - entire file closed (#25)
   - part of file closed (#25A)
2. Letter to Complainant Closing File (#26)

d. RTB letters to Respondent

1. Internally generated MURs (#27)
   - conciliation agreement enclosed (#27A)
   - late filer/non filer MURs enclosing CA notifying re. merger of matter (#27B)
   - enclosing compulsory process (#29)
2. Complaint generated MURs (#28)
   - late filer/non filer MURs enclosing CA (#28A)
   - enclosing compulsory process (#30)

e. No Further Action/Closing Letters

1. Commission takes NFA/closes entire file (#31)
2. Commission takes NFA/closes part of file (#32)

f. Respondents' requests to reopen investigation/ "RTB" finding

1. Sample Memo (#100)
2. Letter denying Respondent's request (#33)

C. Statement of Reasons Forms

A Statement of Reasons is required when the Commission rejects OGC's recommendation to go forward, resulting in dismissal of an entire complaint, or of a respondent, or of a particular allegation in a complaint, and the reasons for such dismissal

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cannot be found in the General Counsel's Report. See Addendum O, OGC Enforcement Manual.

1. Proposed Statement of Reasons and Cover Memo to Commission (#102)
2. Letter to Complainant enclosing Statement of Reasons (#58)
3. Letter to Respondent enclosing Statement of Reasons (#58A)

D. Letters Denying Termination to Committee

1. Because of open MUR (#103)
2. Because of pending referral (#103A)

E. Completing Forms (Tips & Common Mistakes)

1. General Comments

a. Accessing/Setting Up Forms

The forms in the form library account have pre-set margins of one inch for the left, right, top, and bottom margins. If the margins are different or changed, the form will not be set up properly. Staff may also need to adjust the tab stops and spacing. Use co-workers' examples to replicate the style and formatting of your reports and letters. In addition, use the forms binder to determine tabs, spacing, and indentations. Of course, staff should always review the form for proper punctuation and grammar.

b. Modifying Forms

The bracketed fields in the forms indicate where to add specific information in the matter such as names, dates, violations, etc. In additions, staff should also review the contents of each form, especially form letters, to ensure that the wording is appropriate for the particular case. Form letters are not "set in stone" and may be modified. Any changes to the form letter should be highlighted for the team leader.

Note: Because the forms in the library account are sometimes revised or updated, it is not advisable to create a new document by retyping over documents from a previous matter. Call up the library forms instead through Teamlinks Information Manager.

2. Tips for selected forms (Staff should also consult Addendum H of the OGC Enforcement Manual)

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a. First General Counsel's Report

1. Caption

Staff should include the activation date. This is the date the case is assigned to the staff member.

2. Recommendations - (Consistency)

Staff should ensure that the recommendations in the "Recommendations" section of the report correspond with recommendations in the narrative portion of the report.

TIP: The recommendations section of the report should always include a recommendation to enter into preprobable cause conciliation if this was recommended in the narrative portion of the report. Also, staff should not forget to recommend approval of all factual and legal analyses, proposed conciliation agreements and appropriate letters.

b. Factual and Legal Analysis

A separate Factual and Legal Analysis is required for each respondent (unless there is a waiver of the confidentiality provisions or the Commission found no RTB).

The language in the Factual and Legal Analysis usually mirrors the language in the First General Counsel's Report; however, staff should also edit the Factual and Legal Analysis to delete references to open compliance matters, internal procedures or policy, referrals from other federal agencies, discussion of investigative plans, or mention of findings against other respondents in the same matter.

Never refer to "OGC" in a Factual and Legal Analysis; use "the Commission" instead. Finally, always conclude the Factual and Legal Analysis with "there is reason to believe that..."

TIP: The Factual and Legal Analysis should generally be drafted after the team leader has approved the Report.

c. Conciliation Agreement

The "boilerplate language" in conciliation agreements is found at Paragraphs I-III & VII-IX of the standard form agreements. This language should not be modified. There is, however, leeway in crafting the other parts of the agreement. As a general rule, each paragraph should contain a concise statement of the law or facts.

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1. Applicable Law & Facts - Part IV

There are different approaches to setting forth the law and facts. It may be more effective to first set forth the applicable law. Staff should draft a separate paragraph for each applicable code/regulatory provision, and a separate paragraph for each set of facts. The facts should be organized and set out to match the paragraphs containing statements of the law. Paragraphs containing "contention" language which may be submitted later by respondents are set forth in the "facts" section.

2. Admissions Clauses - Part V

Staff should draft a separate paragraph for each violation. Cited violations should correspond to the Commission's determinations with respect to the respondent from which the agreement is being drafted (check all certifications of Commission action).

3. Civil Penalty/Injunctive Language - Part VI

This section can be modified to include payment on an installment plan. Injunctive language, such as refunds of excessive or prohibited contributions, filing of missing reports or amendments to reports, etc., should be set out in separate paragraphs.

F. Forms Questions, Problems, etc.

Contact Maura Callaway, the Special Assistant to the Associate General Counsel, to address issues related to the forms in the library account.

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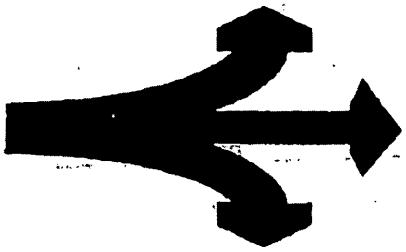

Basic Overview of
The Reason to Believe Stage

OGC makes RTB or NO RTB recommendation:
- Draft 1st GC, F&L, Conciliation Agreement (if applicable)
- Circulate for Comment

⇒

Commission Finds No RTB
- MUR Closed
- Notify parties
- MUR on public record

⇓

Commission Finds RTB
- RTB Notification
- Begin investigation

⇓

Respondent initiates pre-PCTB conciliation negotiations

⇒

⇓

No conciliation agreement
- Continued investigation
- Additional findings, etc.

OR

Pre-PCTB conciliation agreement
- MUR closed
- Notify parties
- MUR on public record

Attachment 3-1, Page 1 of 1

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Please return completed comments to Sylvia Parker

COMMENT SHEET

Assignment [redacted] DATE: 9-24-91

Staff Member: Kapper

Comments:

The excessive contribution sections raises several issues. Are you saying that the committee concentrated an artificial primary debt in order to collect contributions against it? Or are you saying the committee had $X in primary debt, raised against it, but did not pay primary debt? If the latter, it may not be a violation in my opinion. If it had $300,000 in debt, it could raise up to that amount after primary whether or not it actually used any of that money to pay primary debt. This is same problem as in [redacted] (Leffnirh) & I think the Commission decided they'd. Besides the resp + EFJ say primary cont. can be used to pay general expenses. I don't think this is one to recommend prepobable in.

Approve: _____

Object: AHR Conference date/time: _____

Initials: _____ TRACK: _____

Attachment 3-2, Page 1 of 1

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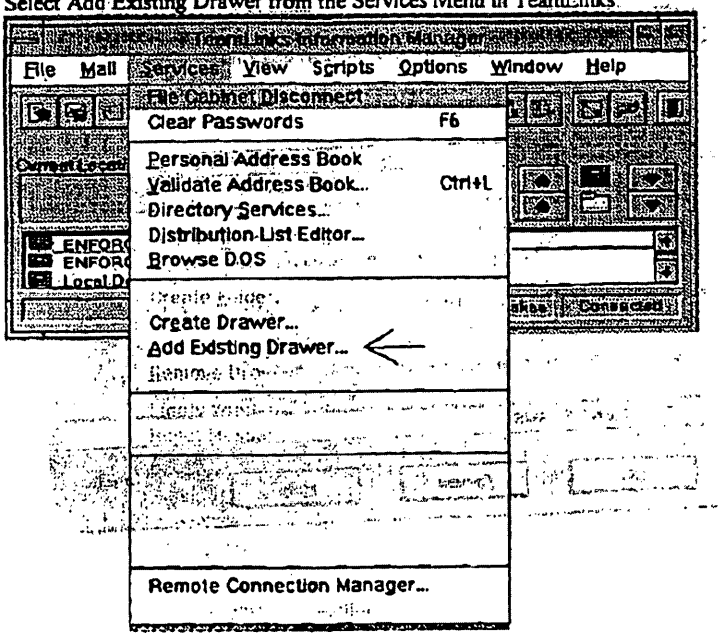
The Enforcement Forms are in a Shared Drawer. To be able to access the forms, an enforment staffer would have to been given access by one of the controllers of the Shared Drawer. After the staffer has been grant access the staffer will have to add the Shared Drawer to his or her account as follows:

Select Add Existing Drawer from the Services Menu in TeamLinks.



Attachment 3-3, Page 1 of 3

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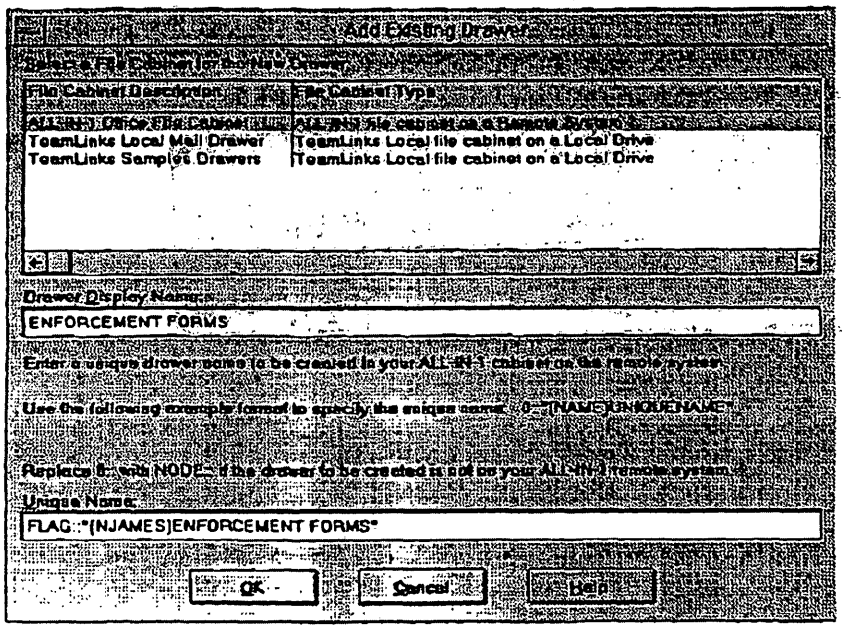
Fill out the Add Existing Drawer dialog box as follows and click the OK button:



Attachment 3-3, Page 2 of 3

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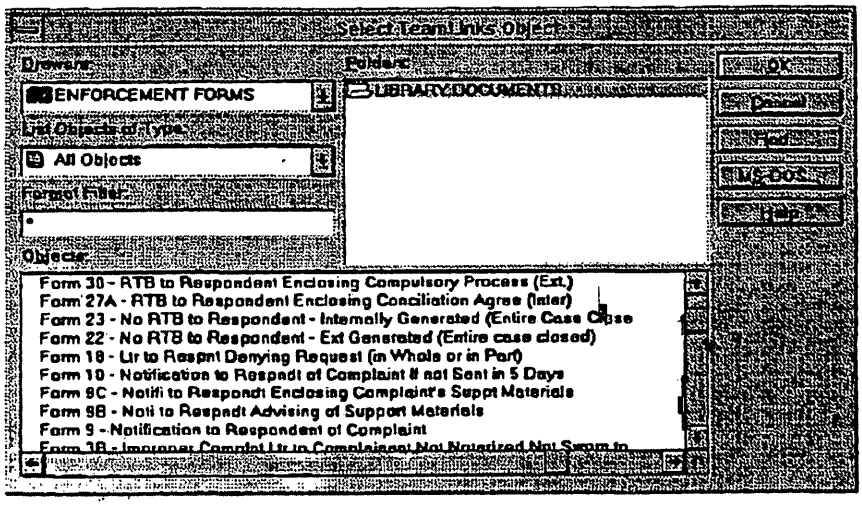
Create a New document by clicking the New button on the Standard Toolbar or by choose New from the File menu.

In the Select Teamlinks Object dialog box select *Drawers*:Enforcement Form, *Folder*: Library Documents and under *Objects*, select the name of the form that you want to insert within the new document and click OK.



Attachment 3-3, Page 3 of 3

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Chapter 4

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CHAPTER 4
Investigations

I. INTRODUCTION

Investigators

The Office of General Counsel is currently staffed with two full time investigators. The general duties of these investigators are as follows:

- To provide assistance to OGC enforcement teams in the preparation, planning and implementation of investigations and other related investigatory functions.
- To collect, recover and duly secure evidence pertinent to investigations conducted by OGC.
- To conduct field interviews and take sworn statements from respondents, witnesses and others.
- To assist OGC enforcement teams in locating and identifying respondents, witnesses and others when necessary.
- To provide a liaison between OGC and other law enforcement agencies (federal, state and local).
- To provide advice to enforcement staff in interview techniques and strategies.
- Other duties as assigned by the General Counsel and/or Associate General Counsel.

The investigators assigned to OGC are a valuable resource with many years of investigative experience. You are encouraged to utilize this resource in your investigations.

II. INVESTIGATION PLAN AND PURPOSE

For the purpose of this chapter, the term "investigation" refers to any activity devoted to the gathering of information in furtherance of the mission of the Office of the General Counsel.

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The purpose of all OGC investigations is to fairly and impartially collect information and evidence that is relevant to the laws the FEC is charged to enforce. Investigative authority and responsibility of the Commission are governed by the appropriate sections of the Federal Election Campaign Act of 1971, as amended ("the Act"), and the appropriate sections of Chapters 95 and 96 of Title 26 of the United States Code, and Chapter 11 of the Code of Federal Regulations.

A. Purpose

An investigation is extremely specific in intent and purpose. It is always related to a suspected violation of the Act. No investigation may be conducted by OGC until the Commission finds reason to believe that a violation of the Act has occurred. The objectives of an investigation are:

1. To establish whether any violations have occurred and, if so what violations and their scope.

2. To determine the identity of respondents and potential witnesses.

3. To discover, evaluate, maintain and provide in a timely manner, all of the pertinent facts to appropriate authority and to obtain and preserve potential evidence in a form which will render it admissible in any future administrative or court proceeding.

4. To accurately and concisely document the collection of all information/evidence during the investigation for future review.

B. Investigative Plans

Investigative plans are essential to the successful management of any investigation. Once prepared, they must be reviewed frequently, evaluated, and modified or revised as necessary to meet the requirements of evolving investigations. It is not necessary and not required that a formal plan be prepared for every investigation. They should however, be prepared for any major or complex investigation.

The exact contents of an investigative plan will vary according to the circumstances of a particular investigation, thus a single prescribed format will not suit the needs of all situations. Emphasis must be on flexibility and adaptability. As each individual element of the plan is accomplished, the date of completion should be entered beside that element. The following is a suggested format which may be modified as necessary to meet existing requirements. Elements which are not needed may be deleted; others, not listed, may be added to meet particular circumstances.

1. List alleged violations under investigation with elements of proof for each.

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2. Determine what evidence will establish each element of proof.
3. Identify persons to be interviewed (respondents, potential respondents, witnesses) and when in the overall investigation each should be interviewed.
4. Evaluate other law enforcement agencies which may be contacted as necessary.
5. Identify special investigative assistance which may be required and when each will be required.
6. Identify special logistics and administrative support required and when it will be needed.
7. Set date of preparation of investigative plan or date for most recent revision.

III. INFORMAL INVESTIGATION

A. Locating Respondents and Witnesses

One of the most common and basic of tasks assigned to an investigator is locating potential respondents and witnesses. This task can also become one of the most critical and frustrating parts of the investigation. There is however, a vast amount of information available to law enforcement agencies, and also within the public domain, that can be used to locate people. The key is to know of its existence and how to access it.

The following are but two examples of information available both publicly and through law enforcement sources:

1. Dun and Bradstreet - This is a reporting service on more than seven million U.S. and international companies and corporations. The Business Information Report (BIR) generated by Dun and Bradstreet includes information about a company/corporation's assets and liabilities, associates and officers, subsidiaries, company operations and history along with information from public records, i.e., public filings and legal actions. Dun and Bradstreet also produces a Government Activity Report (GAR) on companies doing business with DOD and non-DOD agencies. The GAR listing is beneficial when contract information is needed on contracts with a small monetary obligation. See Dun and Bradstreet User Handbook.

2. U.S. Customs Service - Obtaining information from the U.S. Customs Service on monetary transactions under the Bank Secrecy Act.

a. The U.S. Customs Service is the central repository for reports filed pursuant to the Financial Recordkeeping and Currency and Foreign Transactions Reporting Act of 1970. They maintain a database that contains IRS Form 4789, Currency Transaction Report, Customs Form 4790, Report of International Transportation's of Currency or Monetary Instrument Report, and Treasury Form 90-22.1, Foreign Bank Account Report.

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b. Requests for Bank Secrecy Act data should be made in writing from OGC to the local Customs Special Agent in Charge. Requests may be standard letter format, but must include the specific names to be checked, any available identifying data, the violations of the law that are being investigated, and a summary of the investigation.

More detailed examples of this type of information are described in the following section.[1] For additional sources of public/private information, the investigator's office may be consulted.

B. Internal and External Sources of Information

In most instances, the persons or entities with whom contact is required are readily identified in the written complaint and/or supporting documents. At other times however, respondents and witnesses are not adequately identified and must be located. In our modern interactive society, entities and persons in the conduct of their everyday lives are constantly leaving trails of identifying information. Searching for persons and entities is not a science. It requires imagination and creativity to discover and accumulate new information that builds on the bits of known information that eventually leads to the subject's location.

1. **Internal Sources of Information** - Complaint/ Referral materials - begin with the obvious. Do not read but <u>examine</u> the complaint or referral documents for the needed information. Many times the information needed to locate an individual is presented to us but in an unfamiliar form. For example, the address of the complainant may be omitted from the text of the complaint but may be affixed as the return address on the envelope. Look at each detail of information provided to avoid overlooking the obvious and to provide clues that may lead to other information. Thoroughness at this stage will save time and effort later.

a. FEC Databases - using the various indices available you may be able to search for addresses, professions and employers of subjects. You may wish to check the disbursement records for vendors. If you suspect the subject has been involved in previous FEC proceedings use the MUR and AO indices.

b. FEC Library - A wealth of reference material.

c. Telephone - Directory assistance.

d. PhoneDisc - Located in the investigators office. Search either by name, address, telephone number, or business name or type.

e. Internet - A valuable source of information.

[1] See Addendum F, "Banks as a Source of Information".

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2. External Sources of Information - External sources of information can be divided into two types: law enforcement sources and public/private sources. A review of other agencies' files may reveal important information pertaining to a specific subject or investigation.

a. External Public and Private Sources - External public and private sources vary from jurisdiction to jurisdiction. Attachment 4-1 presents external sources and types of information that will often make an investigative task less difficult. In addition to these sources of information, there may be other sources that are unique to the jurisdiction. For additional public/private information sources in addition to those listed in Attachment 4-1 consult with the investigators. It should be noted that subpoenas may be required to obtain information from this area.

b. External Law Enforcement - External law enforcement sources can provide information to the investigator that is not publicly available. A review of other agencies' files may reveal important information pertaining to a specific investigative target or investigation. The investigative office maintains a contact file for many federal, state and local law enforcement agencies. A staff member who needs to contact a particular law enforcement agency seeking information should first consult with an OGC investigator to determine if there is already a contact person at that agency.

C. Interviews

Interviewing is one form of communication used extensively by law enforcement. Whether used to elicit information from a witness or respondent, a good interview can have a significant impact on the outcome of the investigation. However, if conducted improperly or without the right planning, the interview can be rendered worthless and could result in serious negative consequences for all involved.

Note: The determination of the type of interview to be conducted, who conducts the interview, and the location of the interview rests with the lead attorney, the investigator and the team leader. Investigators are also available to assist any staff member in the preparation or conduct of an interview when an investigator interview is not required. As part of any interview conducted by OGC staff, the interviewee will be advised of the confidential aspect of the investigation and the confidentiality provisions of the Act.

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1. **General Guidelines for Interviews**

a. An interview of a potential witness does not require a warning of rights.

b. Because telephone interviews do not provide the investigator a sufficient opportunity to establish rapport, develop information, and evaluate credibility, investigators should generally conduct interviews in person, particularly where documents and physical evidence may be involved. There may, however, be situations in which a personal interview is impossible. The need to conduct the interview immediately may, for example, outweigh all other considerations; weather conditions or excessive distance may make a personal interview impossible or impractical; or the witness may simply refuse to talk with the investigator, except over the telephone. In such situations, a telephone interview is, of course, preferable to no interview at all. It is also appropriate for investigators to use the telephone simply to locate witnesses, schedule interviews, determine if records or documents exist, or conduct routine investigative business other than substantive interview.

c. In preparing for interviews, Commission personnel may be used to assist the investigator or staff member with technical issues of particularly complex subject matter. The investigator will discuss the case with the assigned attorney in advance to the extent necessary to ensure a clear understanding of the issues and the purpose of the interview.

d. If the interviewee wishes to consult a lawyer, the interview will be terminated and no further questions asked until the person has consulted with a lawyer. The interviewee will be requested to consult with a lawyer as soon as reasonably possible. No effort will be made to dissuade contact with a lawyer and no interview will be conducted as long as the person wants to consult with a lawyer.

e. When an investigator knows that an individual has retained a lawyer for advice relative to the matter under investigation, the investigator will not interview that person without affording the lawyer the opportunity to be present.

f. When an investigator knows that an individual has retained a lawyer for advice relative to the matter under investigation, but subsequently approaches an investigator and indicates a desire to talk about the matter, the investigator will, if appropriate, obtain a waiver from the individual which clearly indicates that the interviewee is aware of the right to have a lawyer present during the interview and that the interviewee does not want the lawyer present.

g. If a lawyer appears without prior knowledge of or request by the individual, and wants to represent the individual, the investigator will inform the individual of the lawyer's presence and offer the individual the opportunity to consult with the lawyer, or to decline to do so. Any interview in progress

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need not be interrupted to advise the individual of the arrival of the unsolicited lawyer.

h. If individuals do not wish to be questioned, they will not be questioned.

i. When members of the opposite sex are interviewed under circumstances which might lend themselves to later allegations of impropriety against the investigator, a witness should be present if reasonably available.

2. Written Statements

Written sworn statements will be obtained from individuals/witnesses under the circumstances listed below.

a. When the person is an eyewitness to a violation or otherwise has personal knowledge of information pertaining to a violation.

b. When the verbal account is improbable, inconsistent, or appears to involve exaggeration, prejudice or favoritism (e.g., the witness whose statement concerns a close friend or acknowledged enemy).

c. When the individual is uncooperative, in fear or may be coerced to change their statement or might spontaneously change their story because of professional or personal relationships.

d. When the information provided is complex or confusing and disputes may arise over what was said or intended.

e. When the individual provides significant information and it is likely that the individual will leave the local area.

f. The previous guidance on obtaining statements must be reasonably applied. Situations may arise in which it would be unnecessary to obtain statements, such as deposing an individual in lieu of obtaining a statement.

3. Verbal Statements

a. Special care must be taken to ensure that field notes are factual.

b. To further enhance the recording of interviews in a narrative, the following principles of style and content should be observed:

i) The content of the interview may be the investigator's paraphrasing of the significant information given by the interviewee, but must be easily understood.

ii) The exact words or expression of the interviewee will be used when significant and indicated by quotation marks.

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iii) Whenever two or more persons are interviewed during the same general time frame and provide essentially the same testimony, these interviews may be presented in one entry in the format of a single interview. If there are minor variances between multiple interviewees, these differences will be clearly stated.

iv) Narrative entries, describing results of interviews of persons will include the full name and address of the person interviewed. Other data felt to be pertinent may also be added.

D. Investigative Reports

The Report of Investigation (ROI) is the basic means of providing other OGC staff the results of investigative activity.

1. Contents

ROIs will contain all information relevant to the violation(s) investigated. Information tending to disprove that a violation occurred or to exonerate a respondent will be given equal weight with information tending to establish the violation(s) or the culpability of a respondent.

2. Preparation

Investigative reports are the investigator's primary "work product" and constitute the only enduring record of activities which may have a far reaching impact. Poorly written reports can largely nullify the productive results of hard work, perseverance, and initiative. It is important, therefore, that preparers and reviewers at all levels strive to improve the quality of written reports. Investigative reports in particular, however, should be written in accordance with several principles.

a. Pertinent. Only information pertaining to the violation or the investigation should be recorded in the investigative report. Housekeeping activities and activities which are purely investigative support (e.g., Inv. X flew to Chicago to Locate Y") should normally not be recorded in the ROI. Only in exceptional circumstances which could have an impact on the credibility of the investigation (e.g., significant delay in locating a critical eyewitness) should such matters be addressed in the ROI. In addition, redundancy should be avoided; the report should be concise. Judgment must be exercised to recognize what should be reported and where.

b. Accurate. Although it is a basic assumption that reports be accurate, it should be realized that even comparatively minor discrepancies may give the impression of unreliability. Inconsistent details such as times, descriptions, numbers, differing accounts by the same witness when interviewed by different investigators which are not resolved,

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etc., give the appearance of carelessness and cast doubt on the credibility of the entire report.

c. Clear. Not only should each sentence be understandable, but the report as a whole should be a coherent story with smooth logical transitions.

d. Comprehensive. An investigative report must answer all essential questions about a violation. The reader should be required to make no assumptions.

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External Sources for Investigations

External Source	Type of Information
Telephone Company	Full name, address, telephone number, length of service, records of toll calls, numbers of extensions in residence.
Bureau of Vital Statistics	State Bureaus of Vital Statistics have birth certificates on file and are an excellent source of information about people. Birth certificates can provide a child's name, sex, date of birth, and address or place of birth; the names of the attending physician, midwife, and/or other assistants; the mother's maiden name; and the number of siblings. In some states, birth certificates may be found at the local level, such as at the county health department.
Department of Motor Vehicles	State Departments of Motor Vehicles maintain information on driver's licenses, vehicle registration, titles, automobile transfers and sales, car dealers, car salespersons, emission inspection facilities, and, in some states, auto repair businesses. Of those states requiring that photographs of licensed drivers appear on their licenses, most maintain duplicates of the photographs. Many states are turning to digital photographs that may be computer generated.
Regulatory Agencies	Departments and agencies that regulate individual and business activities within a particular state can be valuable sources of information. Individuals obtain licenses for activities such as driving, hunting and fishing and for such professions as medical, legal and public accounting. Businesses are also often required to obtain licenses and permits to operate and file periodic reports such as for workers and unemployment compensation, sales tax, and state income tax. The following state regulatory departments and agencies maintain information valuable to investigators: • Bureau of Professional and Vocational Standards or Department of Licensing • Comptroller/Treasurer • Department of Agriculture • Department of Industrial Relations • Department of Natural Resources • Gambling Commission/Horse Racing Board • Secretary of State • Department of Corrections • Liquor Commission/Lottery Commission • Securities Commission • Utility Commission

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External Source	Type of Information
Banks	The relationship between banks and their customers is confidential and privileged. Generally, information from banks may be obtained only by subpoena. The release of information may be subject to the Right to Financial Privacy Act (12 U.S.C. 3401-3422). The Following types of records and information are available from banks: • Central master files of customers (depositors, debtors, safe deposit box holders) are maintained by the bank. The bank usually requires the customer's consent, a search warrant or a court order before an authorized bank official can open a safe deposit box. A record of entry to a safe-deposit box can be obtained by subpoena. • Bank account applications can provide handwriting samples and certain personal information about the customer, depending on the type of account. Bank account records reflect date of deposit, and amounts of withdrawals. • When currency in excess of $10,000 is deposited in a bank account, the customer is required to complete a Department of Treasury Form 4789, Currency Transaction Report (CTR). The CTR specifies the depositor's name, address, social security number, birth date, and records the total amount of the transaction and various other information. The bank is to retain CTRs and forward copies to the Department of the Treasury.

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Chapter 5

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CHAPTER 5
Pre-Probable Cause Conciliation

I. PRE-PROBABLE CAUSE CONCILIATION

In the event a violation of the Act has been committed, the Commission may decide to resolve such violation by informal methods of conciliation. After a reason to believe finding has been made, but prior to a finding of probable cause, the Commission and the respondent may elect to commence pre-probable cause conciliation. *See* 11 C.F.R. § 111.18(d).

Pre-probable cause conciliation is strictly voluntary; both the Commission and the respondent must be willing to participate. Many of the Commission's enforcement matters, however, are resolved at this juncture. The Commission will establish a time-frame within which pre-probable cause conciliation, if entered, must be completed. Generally, pre-probable cause conciliation is not intended to proceed longer than 30 days, although where circumstances warrant, it may be extended. Pre-probable cause conciliation can begin anytime after the reason to believe finding has been made, and before probable cause briefs have been mailed to the respondent. A conciliation agreement, signed by both the respondent and the General Counsel with the assent of at least four members of the Commission, "shall have the same force and effect as a conciliation agreement reached after a Commission finding of probable cause to believe." Id.

A. Determining Whether To Enter Pre-Probable Cause Conciliation

Pre-probable cause conciliation, although not statutorily mandated, is often considered appropriate and is commonly attempted by the Commission. In fact, pre-probable cause conciliation has become standard practice in most Tier 4 matters. Proposed conciliation agreements are routinely sent with reason to believe notifications in matters involving non-filers, late filers (see form 71), and 48-hour notices (see forms 112 and 113). Pre-probable cause conciliation also is routinely offered with reason to believe notifications in matters involving apparently straight-forward violations of the Act's contribution limitations and prohibitions where there are no factual disputes involving the contributors' identities, the amounts and dates of the contributions, and whether the contributions were made or received (see form 68 and 70).

If the Commission has not determined at the outset to offer to enter into pre-probable cause conciliation, it is often the chosen course of action where both the respondent and the Commission agree that a particular violation occurred, agree on the facts surrounding that violation, and agree on the amount in violation. Where there

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appears to be only limited disagreement on the underlying issues, and most of the dispute centers on the amount of the civil penalty, pre-probable cause conciliation will conserve resources for both sides. Pre-probable cause conciliation also will further the deterrence aspect of the enforcement process by allowing the Commission to make a matter public far faster than if it had to wait for the conclusion of probable cause conciliation.

In the past, the Commission did not enter into pre-probable cause conciliation negotiations absent a full understanding of the facts. More recently, in order to expedite matters and conserve resources, the Commission has approved agreements at the RTB stage where there is enough information to fashion an agreement and there is no expectation of finding more serious violations.

Pre-probable cause conciliation may be appropriate where a complete understanding of the facts would require a complex investigation, but the scope of the violation does not appear to be extensive. Pre-probable cause conciliation may sometimes be an option in cases in which a parallel state or federal criminal investigation is ongoing and appears likely to delay or deter the Commission's investigation. In such cases, if respondents are willing to settle, the benefits of conserving Commission resources and resolving the matter and making it public quickly may outweigh the potential for a higher civil penalty after a lengthy and difficult investigation.

In those matters in which reason to believe is found on alternate theories, the Commission may attempt pre-probable cause conciliation on one of those theories. If conciliation on that theory fails, the other theory is still available for conciliation. The Commission may instead offer to conciliate on both theories at the same time. In this situation, in the course of conciliation, the respondent can choose the theory under which it wishes to admit to a violation.

As a final note, pre-probable cause conciliation should be considered in all matters nearing the end of the possibly applicable five-year statute of limitations.[1]

B. Initiating Pre-Probable Cause Conciliation

Although a respondent may request pre-probable cause conciliation, the responsibility for putting forth the first settlement offer rests with the Commission. This Office prepares a proposed conciliation agreement for the Commission's consideration. Once an agreement is approved, this Office sends the proposed agreement to the respondent. The respondent may sign the conciliation agreement and return it to this Office, along with the civil penalty or, more often, the respondent makes a counter-offer, typically offering a lower civil penalty and requesting some changes in the language of the agreement. If the respondent and this Office can reach an agreement on the terms of settlement, then those terms are incorporated into a conciliation agreement, which is then

[1] Where the Commission deems appropriate, a respondent may be asked to waive the statute of limitations in exchange for attempting to resolve the matter in pre-probable cause conciliation. This is an issue which must be carefully considered on a case-by-case basis.

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attached to a General Counsel's Report that includes a recommendation that the Commission accept the attached conciliation agreement. If the respondent and the Office of the General Counsel cannot agree on a conciliation agreement, but the respondent wants the Commission to consider its offer anyway, then the respondent's proposed conciliation agreement should be attached to the General Counsel's Report, which recommends rejecting that proposed conciliation agreement. This Office may attach its own proposed counter-offer for the Commission to send to the respondent, or recommend that pre-probable cause conciliation be concluded.

Where a respondent requests to enter into pre-probable cause conciliation, that request must be in writing. That request, along with this Office's proposed agreement, are presented to the Commission attached to a General Counsel's Report along with a recommendation regarding the proposed agreement. If the Commission approves entering conciliation, the negotiation proceeds as described above. This Office and the respondent negotiate both the civil penalty and the details of the language that this Office would recommend to the Commission. See infra, Section IV. After this Office and the respondent have either agreed on a conciliation agreement, or determined that no agreement on respondent's proposal is possible, the staff attorney prepares a General Counsel's Report with the appropriate recommendation.

Where the Commission has not offered to enter into pre-probable cause conciliation along with the RTB notification because of a lack of factual information or the complexities of the factual and legal issues involved, and the respondent requests conciliation, this Office will recommend that the Commission enter into pre-probable cause conciliation only if the investigation undertaken up to that point has produced sufficient information to permit preparation of a proposed conciliation agreement. Otherwise, this Office will recommend that the Commission deny the request for pre-probable cause conciliation at that time. In matters in which this Office recommends declining to enter pre-probable cause conciliation, a General Counsel's Report is prepared containing that recommendation, and attaching any conciliation agreement submitted by respondent (see form 77).

C. Considerations When Preparing The General Counsel's Report

The principal purposes of the General Counsel's Report at this juncture are to recommend that the Commission either enter or decline to enter into pre-probable cause conciliation, and to present the proposed conciliation agreement. The reasons behind this Office's recommendations should be specifically discussed. For example, the report should specify whether more information is needed to determine the violation or to calculate the civil penalty, or whether the facts surrounding the violation necessary to calculate the civil penalty are readily apparent.

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II. REPORTS

This section discusses the contents of the various General Counsel's Reports that may be required during the pre-probable cause conciliation phase of an enforcement matter, or that may become necessary in response to a respondent's request for PPCC which this Office cannot recommend that the Commission approve.

A. Reports Recommending Pre-Probable Cause Conciliation

Reports to the Commission recommending that it enter into pre-probable cause conciliation will differ depending upon which one of three categories of matters applies to the particular matter being addressed. These three categories are: (1) MURs in which pre-probable cause conciliation is offered as a matter of course at the same time that RTB is found; (2) MURs in which pre-probable cause conciliation is offered at the same time that RTB is found because an investigation is unnecessary; and (3) MURs in which pre-probable cause conciliation is requested by a respondent and/or deemed appropriate by OGC sometime after RTB has been found and the respondent so notified.

The contents of General Counsel's Reports in the first two categories are discussed in Chapter 3. For General Counsel's Reports in the third category, the report should contain the following:

1. Background

Each report should begin with a history of the case up to the date of the report, including a summary of all RTB findings and a summary of all responses to those determinations. This history should also include a summary of all discovery steps taken, both informal and formal (requests for information made in writing and/or orally, subpoenas and orders issued, depositions taken, etc.) and a statement as to whether or not requested or required information has been received.

This background section is also the place to discuss any changes which have been noted in the identities of respondents, the most common example being a change in treasurer since the RTB finding or mis-identification of the treasurer at the RTB stage.

The report also should contain a summary of the respondent's request for PPCC, if any, including the identity of the requester, the date of the request and any information supplied in the request as to what the respondent would be willing to agree.

2. Analysis

Except in the most straightforward of matters, it is usually best to begin with a brief summary of the statutory and regulatory provisions applicable to the case in hand. This is especially applicable if the investigation has revealed additional violations of the Act or regulations involving provisions not addressed in earlier reports.

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Next comes a summary of the facts. This summary need not be a total recapitulation of the facts set out in the First General Counsel's Report, but should focus primarily on any new information obtained during the investigation. References can be made to the facts or analysis set forth in the First General Counsel's Report.

The third portion of the analysis should apply the relevant law to the facts and indicate whether the results of the investigation are consistent with the earlier RTB determinations. This portion should also identify any additional violations of law which have become apparent during the course of the investigation and set out recommendations for new findings of reason to believe, if relevant and appropriate.

Finally, the analysis should set out the reasons why OGC deems pre-probable cause conciliation to be appropriate. This section may include a statement as to whether the investigation, if any, should be deemed complete, or a statement as to why further investigation, while possible, would be an inappropriate use of Commission resources.

3. Discussion of Conciliation Provisions and Civil Penalty

This section of the report should summarize the proposed conciliation agreement, particularly the admissions clauses, the bases for the proposed civil penalty, and any other special requirements (e.g., the filing or amendment of reports, reimbursement of impermissible contributions, or disgorgement of impermissible receipts).

4. Recommendations

List all recommendations separately. Include in this listing a recommendation to agree to enter into conciliation prior to a finding of probable cause to believe, approval of the proposed conciliation agreement, and approval of the appropriate letter(s).

5. Conciliation Agreements

See infra, Section III.

B. Reports Recommending Rejection of PPCC Request

Situations arise in which a respondent requests PPCC, but OGC cannot recommend approval of such conciliation by the Commission, usually because of the need for further investigation. See supra, Section I.

If OGC decides to recommend that the Commission deny a request for PPCC, the report should be relatively short and use of form 77 is appropriate.

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1. Background

The report should begin with a brief summary of the history of the matter up to the date of the report, including RTB findings, responses received, and discovery undertaken. Next, it should provide information regarding the request for PPCC, including the name of the requester, and the date of the request.

2. Analysis

This section should contain a brief summary of the facts in hand and of the legal issues involved. It should conclude with a statement as to why PPCC would be premature or otherwise inappropriate (e.g., additional depositions or interrogatories necessary, necessary financial information not yet supplied) and state that OGC is therefore recommending that the Commission "decline to enter into conciliation prior to a finding of probable cause to believe at this time."

3. Recommendations

List all recommendations separately. Include recommendations to "decline at this time to enter into conciliation with _____ prior to a finding of probable cause to believe" and to approve the appropriate letter.

C. Reports Concluding Conciliation

1. Successful Conciliation

A conciliation agreement which OGC ultimately agrees to recommend for Commission approval should be forwarded to the Commission as an attachment to a report recommending approval of the negotiated agreement (see form 94). While it is preferable that the final agreement be signed by or on behalf of the respondent (e.g., by counsel) prior to its submission to the Commission, this is not an absolute requirement. Nor is it required that the respondent present a check for the civil penalty prior to the Commission's final approval of a negotiated agreement, although again this is the preferred course of action.

(a) Content

The report to the Commission recommending acceptance of such an agreement should include a statement as to whether the final, negotiated document contains any changes from the agreement(s) approved earlier by the Commission. If it does, these changes should be spelled out in detail and their acceptability explained. Otherwise, this report should be brief and summary in nature. The report should also state whether a check for the civil penalty has been received.

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(b) Recommendations

The recommendations should be numbered separately. Include a recommendation to accept the attached conciliation agreement. If the final agreement has been signed by or on behalf of the respondent, the report should include a recommendation to "close the file as to [the respondent involved]." If there are no remaining respondents, this latter recommendation should be to "close the file."

2. Counteroffer Deemed Wholly or Partially Unacceptable by OGC___

Where a respondent's counterproposal contains provisions which OGC will not recommend that the Commission accept, the respondent may request that OGC present the counterproposal to the Commission anyway. Respondent's counterproposal should be submitted to the Commission for its consideration even though OGC will recommend that it not be accepted.

(a) Background

The report accompanying such a submission should provide a brief history of the conciliation effort, including the date and a summary of the contents of the Commission's first proposal. It should also spell out those portions of the respondent's counterproposal which OGC may deem acceptable and those which OGC cannot recommend, and discuss each of these areas of agreement and disagreement.

If OGC is proposing a counteroffer, this counterproposal should be discussed in the report, with particular emphasis upon any new language or any change in the proposed civil penalty.

(b) Recommendations

The recommendations should be numbered separately. Include recommendations to reject the counteroffer of the respondent, to approve any attached counterproposal where appropriate, and to approve the appropriate letter.

3. Unsuccessful Conciliation

If PPCC negotiations appear to have reached an impasse, with no realistic possibility of a final agreement in sight, the report should be prepared to this effect.

(a) Background

Set out a brief history of the negotiations, the reasons for the breakdown, the fact that OGC believes that further efforts would be futile, and OGC's intention to go on to the

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next stage in the enforcement process, namely the preparation of a General Counsel's Brief.

III. DRAFTING A PRE-PROBABLE CAUSE CONCILIATION AGREEMENT

A. Introduction

The standard pre-probable cause conciliation agreement is designated form 76A in the Office of the General Counsel form book.[2] The agreement consists principally of the following sections:

- The Caption
- The Preamble
- The Agreement of the Parties
- The Admissions Clause
- The Payment Clause
- The Compliance Clauses
- The Signatures

B. The Caption

In the caption of the pre-probable cause conciliation agreement, the staff member should list only those respondents involved in the particular agreement,[3] which may be fewer than the total number of the respondents in the particular MUR. Also, in the caption, as well as throughout the agreement, the staff member should be sure to identify the respondents by their full name. For example, a woman should not be identified under the name of her husband (i.e., "Mrs. John Smith"). Instead, the staff member should use the woman's own full, proper name (i.e., "Mary Smith") to foster accurate and expedient tracking of the respondent later for purposes such as recidivism.

C. The Preamble

In the preamble, the staff member sets forth how the matter was generated, using the language of one of the alternative paragraphs contained on the standard form, the selection of which is based on whether the matter was complaint-generated or internally generated, filling in the missing information, as appropriate.

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[2] Please note that the shared folder named "Enforcement Forms" contains the computerized versions of two separate standard conciliation agreements, designated forms #112 and #113, to be used in 48-Hour Notice violation cases.

[3] If at any time during the pre-probable cause stage of the enforcement process, the treasurer changes in a matter involving a committee treasurer respondent, the name of the former treasurer should be replaced with that of the new treasurer in the caption and throughout the conciliation agreement. See Treasurer Policy, Addendum H.

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D. The Agreement of the Parties

The section encompassing the agreement of the parties contains the agreement's first Roman-numbered paragraphs, or clauses. Paragraphs I-III contain very important boilerplate language. The significance of these paragraphs has been borne out in Commission experience, and should not be altered or modified by the staff member without consultation with the team supervisor.

Under Paragraph IV, the staff member should set out the facts of the matter in as many separately numbered subsections as necessary, starting with the identifications of the respondents and other involved persons, then the relevant law, and proceeding to the particular facts of the matter. In the interests of adhering to the confidentiality requirements of the Act, the staff member generally should not identify any other respondent that is not a part of the conciliation agreement. There are some instances, however, when respondents who are not a part of the particular conciliation agreement are so inextricably tied to the violations of the respondents involved in the agreement that they must be identified in the agreement. One example of such an instance is the identification of a particular corporate respondent where the respondents' violations are based on their status as officers of the corporation.

Paragraph IV is also the section in the conciliation agreement where the staff member would include any contention language agreed to by all of the parties. (See infra, Section IV, for guidance on how and when an agreement containing contention language might be necessary.) Inasmuch as contention language is not something that the Commission has found to be factual, but instead merely reflects contentions made by the respondents, sentences containing contention language should begin "The respondent(s) contend(s)...."

***** TIPS AND COMMON OVERSIGHTS *****

In certain types of matters, there are a few commonly overlooked rules that the staff member should be sure to observe in setting forth the facts. The following is a quick checklist:

- **In Excessive Contribution Cases**

  o If the excessive contribution(s) has been refunded to the contributor(s), be sure to include such facts in the conciliation agreement. If the excessive contribution(s) have not been refunded to the contributor(s), include a refund requirement in the conciliation agreement.

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E. The Admissions Clause

Except in extremely rare circumstances, every conciliation agreement **must** contain an admissions clause wherein the respondent(s) admits that they committed certain act(s) "in violation of" the particular provision(s) of the Act.

In considering the contents of the admissions clause, there is one non-intuitive rule of which the staff member should be aware. In instances in which the respondent(s) violated a provision of the Act that prohibits one from knowingly doing something (i.e., Section 441a(f)), the Commission has decided that it will **not** include the word "knowingly" in the admission clauses of the conciliation agreement. Thus, in such instances, the staff member would not state, for example, that the respondent(s) "knowingly" accepted excessive contributions in violation of the Act. The staff member should, however, continue to include knowingly in the description of the statutory cite in the law section of the agreement. By contrast, in instances in which the respondents have been found to have knowingly and willfully violated a provision of the Act, the knowingly and willfully language should be included in the admissions clause. For discussion of civil penalties see Section V of this chapter and Addendum C for information on how to calculate civil penalties.

F. The Payment Clause

Typically, the payment clause simply sets forth that the respondents will pay a civil penalty in a certain amount which, in accordance with the compliance terms of the agreement, must be paid in full within thirty days from the effective date of the agreement. However, there are instances when the respondents will be allowed to pay the civil penalty in installments. In such event, the staff member should use the language for installment payments in the payment paragraph on form 76.

***** WHEN MODIFICATIONS ARE REQUIRED *****

Where the violations involve excessive or prohibited contributions, the Commission may want the respondents to do something in lieu of or in addition to paying a civil penalty. Among the options that the Commission may consider in this regard are disgorgements[4] and refunds. If one of these options is deemed appropriate the staff member would either replace the standard civil penalty payment clause with a clause containing language that the respondents will take the desired action, or the staff member would insert an additional clause containing the appropriate language following the civil penalty payment clause.

[4] Disgorgement is aimed at preventing the unjust enrichment of a wrongdoer. The disgorgement remedy takes away "ill-gotten gains," thereby depriving a respondent of wrongfully obtained proceeds and returning the wrongdoer to the position the wrongdoer was in before the proceeds were wrongfully obtained.

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In matters involving making an impermissible contribution, consider adding a clause in which the respondent waives any right to a refund of the contribution. In *Fireman v. United States* (1999), the government agreed to refund the plaintiff's illegal contribution that a campaign had previously disgorged to the U.S. Treasury.

***** TIPS AND COMMON OVERSIGHTS *****

In certain types of matters, there are a few commonly overlooked rules that the staff member should be sure to observe in preparing the payment section of the conciliation agreement. The following is a quick checklist:

- In Excessive and Prohibited Contribution Cases

o In our initial proposals, be sure to insert an additional clause requiring the respondents to refund the excessive contribution(s).

- In Non-Filer Cases

o Be sure to insert an additional clause requiring the respondents to file the missing reports. If the case involves a committee that has failed to register and report, the additional clause should require the respondents to register and file the missing reports.

G. The Compliance Clauses

Paragraphs VII through X on standard forms 76A and 76B should be included in every conciliation agreement. The significance of these paragraphs has been borne out in Commission experience, and should not be altered or modified by the staff member without consultation with the team supervisor.

H. The Signatures

The conciliation agreement becomes effective as of the date that all the parties have signed the agreement and the Commission has approved the entire agreement. If the respondents wish to accept the pre-probable cause conciliation agreement offered by the Commission,[5] staff should have them sign, date and return the agreement. Although the signature of each individual respondent is preferred, counsel for the respondents may sign

[5] Sometimes the respondents do not fully accept the Commission's out-the-door conciliation offer, but instead wish to make a counteroffer to the Commission. Occasionally, if the respondents counter with an offer that this Office is willing to recommend that the Commission accept, then staff may find it expedient to prepare the respondents' counteroffer. In such instances, when mailing the respondents' counteroffer to the respondents for signatures, the staff member should be sure to include a cover letter that clearly states that this Office will recommend that the Commission accept it, but that it has not been approved by the Commission.

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the agreement on the respondents' behalf. Also, the candidate may sign the agreement on behalf of the candidate's campaign committee and treasurer.

IV. CIVIL PENALTY SETTLEMENTS AND PAYMENTS

A. Why Civil Penalties?

The negotiated civil penalty in a conciliation agreement is the most noticed sanction brought to bear on respondents in FEC enforcement actions. The statute requires that a civil penalty be achieved in a process not merely of settlement, but of "conciliation." To that end, the Commission has historically taken the position that the respondent's public admission of illegal conduct is as important as the financial penalty. Unlike many other agencies that negotiate penalties, the Commission has not provided respondents the option of paying a higher penalty in return for no admission of wrongdoing. The requirement that penalties be arrived at through negotiated agreements also affects the terminology we use in discussing penalties:

- First of all, an FEC civil penalty is NOT a "fine." A fine is "a pecuniary punishment *imposed* by lawful tribunal upon person *convicted of crime or misdemeanor.*" *Black's Law Dictionary* 569 (4th ed. 1979) (emphasis added). The word "fine" thus implies association with a criminal conviction, and the power of the fining court to compel payment. Of course, prosecution of criminal violations of the Act is within the purview of the Justice Department. Moreover, with the exception of the Administrative Fine Program, the Commission does not have the power to compel anybody to pay a penalty; the respondent must agree to pay the penalty, and if he/she/it does not, the Commission is faced with the choice of filing an enforcement suit or taking no further action. **It is therefore most incorrect to call an FEC civil penalty a "fine" or to speak of the Commission "fining" a respondent.**

- Similarly, the Commission does not "assess" civil penalties against anyone in enforcement matters. While the words "assess" or "assessment" do not carry the same connotation of criminal activity as the word "fine", they do imply a unilateral power to compel somebody to pay.

B. Roles of the Commission and OGC

It is important to remember that conciliation is the part of the enforcement process in which the lawyer-client relationship between OGC and the Commission is most akin to that of private attorneys and their clients. While we make recommendations to the Commission, only the Commission can ultimately agree with the respondent on a penalty amount.

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C. "Out-the-Door" Offers

The term "out-the-door" is frequently used within OGC and the Commission to refer to the penalty amount in the Commission's opening conciliation offer to a respondent. There are two types of out-the-door penalty amounts: the *recommended* out-the-door amount, which is derived from the formulas described in Addendum C and which this Office recommends the Commission approve as part of a proposed conciliation agreement; and the *actual* out-the-door amount, which the Commission approves and presents to respondents as an opening offer. The Commission retains full authority to accept, reject or modify the recommended out-the-door amount in any case. Consequently, the actual out-the-door amount may be the same as, or greater or less than, OGC's recommended out-the-door amount.

The formulas in Addendum C are to be used ONLY for calculating the recommended out-the-door amount. The most frequently used of these formulas have been specifically approved by the Commission. Nevertheless, the Commission's prior approval of the formulas in no way affects its ability to depart from them in any particular case.

D. Mitigating Factors

As a general rule, in order to preserve flexibility in negotiating a final penalty amount, this Office does not consider mitigating factors (such as first offense, new or inexperienced player in the process, action to prevent future violations, etc.) in applying the formulas and deriving a recommended out-the-door amount. However, this rule is not written in concrete, and we may recommend mitigated out-the-door amounts in an appropriate case. Also, as just alluded to, the Commission will frequently mitigate actual out-the-door amounts.

Mitigation of the penalty amount is more appropriately accomplished through the negotiation process, which is addressed more completely in the chapters on pre-probable cause and post-probable cause conciliation. Indeed, any recommendation that the Commission approve a negotiated reduction from the actual out-the-door amount should be supported by the presence of some mitigating factor or factors not already considered by the Commission.

This section discusses aspects of how civil penalties are determined and negotiated, and the processing of civil penalty checks.

E. Matters to be Considered in Determining a Civil Penalty

The Office of General Counsel has developed several methods for computing civil penalties which take into account such factors as the violation involved, whether the violation was knowing and willful, and, if reimbursement is a factor, whether the amounts involved were reimbursed. See Addendum C, Calculating Civil Penalties. The amount

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thus determined, generally referred to as the "going out the door figure," is usually the starting point for negotiations and often is an amount higher than the negotiated civil penalty ultimately approved by the Commission.

F. Matters to be Considered in Negotiating a Civil Penalty

Once a "going out the door" amount has been approved by the Commission and negotiations begin with respondents, there are several factors to consider when negotiating a civil penalty on behalf of the Commission. At times, the case itself presents matters in extenuation and mitigation that are so compelling that the Commission will take them into account in determining its going out the door figure. Other times, respondents will submit matters in extenuation and mitigation with the hope that the Commission will reduce the amount of the civil penalty. The following are some of the factors in extenuation and mitigation that may persuade this Office to recommend a reduction in the civil penalty to the Commission:

(1) Only a small percentage of the overall activity was involved in the violation and, therefore, a smaller civil penalty would be appropriate.
(2) Subsequent refunds, reattributions or redesignations of excessive contributions were made by the parties.
(3) Respondent's lack of familiarity with the Act tends to indicate that the violation was not intentional.
(4) The timing of the violations relative to subject election indicates that the impermissible activity, although a violation, did not have a significant impact on the election results.
(5) Respondent's involvement in the violation is minor.
(6) The violation is a "first offense" for respondent.
(7) The candidate is willing to take personal responsibility for the debts of the committee.
(8) Respondent's inability to pay.

On the other hand, there are certain aggravating factors that, if present, may well justify little or no reduction in the "going out the door" amount of the civil penalty as proposed by the Commission. The following factors are matters in aggravation which tend to lessen this Office's willingness to recommend a reduction in the civil penalty to the Commission:

(1) The violation involved significant activity by the named respondents.
(2) Respondents failed to take any type of corrective action when advised of the violation.
(3) The activity giving rise to the violation had a significant impact on the outcome of the subject election.
(4) The respondent was a major player in the activity related to the violation.
(5) The violation involved knowing and willful activity on the part of respondent.

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(6) The violation involves recidivist activity.
(7) Respondent is also subject to criminal prosecution.
(8) As a matter of policy, the Commission may decide to consider a higher civil penalty for certain violations of the Act.

G. Payment Plans

The staff member handling the matter is responsible for monitoring performance of all provisions contained in the conciliation agreement, including the payment of the civil penalty. Generally, civil penalties are due within 30 days of the signing of the conciliation agreement by all parties, and are payable in full at that time. However, the Commission has occasionally entertained some respondents' request to pay the civil penalty in installment payments rather than as a lump sum payment. In the event that respondents request to pay the civil penalty in installment payments, this Office requires that they provide sufficient financial justification for this request in order for this Office to recommend that the Commission accept an agreement containing such a provision.

If you have a case where the respondents request an installment payment provision for the civil penalty then this Office generally prefers that it be set up whereby the initial payment is a significant portion of the civil penalty, and the payment plan should not exceed one year. The conciliation agreement must detail all the specifics of the payment schedule to include the amount of each payment and when it is due at our Office. Failure to make the required payment or payments constitutes a violation of the conciliation agreement. Violations of the agreement for failure to make required payments are subject to enforcement by the Commission in a civil suit. See Form 104. The decision to recommend the acceptance of an agreement containing an installment payment plan must first be discussed with your supervisor. Do not indicate to respondents that an agreement containing this type of provision is acceptable until you have first discussed it with your supervisor. The decision to recommend the acceptance of this type of agreement is done on a case-by-case basis.

H. Routing of the Civil Penalty Check Within the FEC

The payment of the civil penalty is generally made by check payable to the FEC but may also be made by money order or by any other negotiable instrument. If mailed. the check is received in the FEC mailroom where it is logged in and assigned a control number. The check also may be received by the OGC Receptionist. In any case, the check is forwarded directly to the FEC Administrative Division. A copy of the check and attached original correspondence pertaining to the check is sent to OGC Docket along with a two-way memo by Accounting. The top portion of the memo addressed to Docket provides the name, number and date of the check and requests that certain information be provided to the Accounting Section by Docket. Docket then completes the lower portion of the two-way memo by identifying the MUR number, and the respondent(s) name. Docket will then designate the account into which the check must be deposited. A copy of this memo is provided to the staff member assigned to the matter.

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Upon receiving the memo from Docket, the Accounting Section prepares the check for deposit into the account designated by Docket. The check may be deposited in the Budget Clearing Account. This is a holding/suspense account into which all checks are deposited until the entire amount of the civil penalty is paid and all parties have signed the conciliation agreement. Once the entire amount of the civil penalty is paid and all parties have signed the conciliation agreement, the amount of the civil penalty is deposited in the Civil Penalties Account or transferred from the Budget Clearing Account to the Civil Penalties Account.

In reviewing these accounting controls, it is important to be mindful that **no OGC staff member may hold onto a check for any reason** -- not at respondent's request, not when it is received during a negotiation session and not pending the outcome of pre-probable cause negotiations. Any check received is automatically deposited regardless of whether the Commission has accepted the agreement or a signed agreement is even in existence. Once received, checks must go directly to the Administrative Division for processing. Accordingly, there may be an interval of one or two days between the time the check comes to the FEC and when we receive a copy of the two-way memo from Docket notifying us. In light of such potential for delay, the responsibility is with the staff member to check with the Administrative Division, Docket and/or the Receptionist to determine if the anticipated civil penalty check is in house before calling respondent or opposing counsel to inquire whether the check has been forwarded to us.

Sometimes a check is returned to the Accounting Section by the bank because of insufficient funds -- the payer closed the account or issued a stop payment order on the check. When this happens, the Accounting Section will send a memo to Docket stating the reasons the check was returned along with a copy of the canceled check. It is the responsibility of the staff member handling the MUR to follow-up on this problem and insure that proper payment is made by respondents. Remember that checks returned for any of the reasons stated constitute a failure to pay the civil penalty and, thus, a violation of the conciliation agreement for which the Commission may bring a civil enforcement suit.

I. CMS Remedies Notebook

The Case Management System's Remedies Notebook tracks receipt of civil penalties. CED is responsible for entering and maintaining the payment history. CMS is a good resource for assisting staff in tracking payments; however, it is the staff's responsibility to follow-up on payments of civil penalties.

J. Refund of Payments to Respondent

Sometimes our Office must refund the entire amount or a portion of a civil penalty check forwarded on a particular MUR. A refund may be required when the respondent makes an excessive payment, when a check is received during unsuccessful pre-probable

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cause negotiations, or when a respondent sends a check for a civil penalty in an amount not approved by the Commission. The proper procedure to follow under these or similar circumstances is to forward a memo, using Form 1047, to the Administrative Division requesting the refund and providing a detailed explanation for the request.

K. Restrictive Endorsements

On occasion, respondents may include language on the check which has not been approved by the Commission in the conciliation agreement or which attempts to limit or restrict their liability in the matter. It is questionable whether the government is bound by this type of restrictive endorsement. The assigned staff member should be on the lookout for any type of restrictive endorsement on the check.

The accounting section within the Administrative Division is sensitive to the issue of restrictive endorsements and will bring these issues to our Office's attention. As a precaution, however, the accounting staff stamps the following information in the back of every check that it deposits:

> Negotiation of the check does not constitute acceptance by the Federal Election Commission of the proposed penalty. The proceeds of the check have been placed in a suspense account pending Commission consideration of the penalty.

V. PRE-PROBABLE CAUSE CONCILIATION FORMS

This section is a guide to the enforcement forms and their procedural use during the pre-probable cause conciliation stage. For purposes of this section, the period begins when the Commission makes a finding of reason to believe and ends when the Commission makes a finding of probable cause.

The forms are used to promote uniformity and efficiency in the enforcement process. The following forms are used when drafting General Counsel Reports and Conciliation Agreements, and when sending letters to respondents.

A. First General Counsel's Report

- Form 71 - Drafting a GC Report recommending RTB and Pre-PCTB conciliation with late or non-filers for internally generated matters.
- Form 74 - Drafting a GC Report recommending that the Commission enter into pre-probable cause conciliation with Respondent.
- Form 77 - Drafting a GC Report recommending that the Commission reject a request for pre-probable cause conciliation.

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- Form 112 - Drafting a GC Report for a 48 Hour Contribution recommending that the Commission enter into pre-probable cause conciliation with Respondent.

- Form 113 - Drafting a GC Report for a 48 Hour Candidate Loan recommending that the Commission enter into pre-probable cause conciliation with Respondent.

B. Letters to Respondents

- Form 27A - Reason to believe letter to Respondent enclosing pre-probable cause conciliation agreement for internally generated matters.

- Form 28 - Reason to believe letter to Respondent enclosing pre-probable cause conciliation agreement for externally generated matters.

- Form 36 - Letter to Respondent rejecting request for PPCC.

- Form 37 - Letter to Respondent approving request for PPCC.

- Form 38 - Letter to Respondent who has not responded to our PPCA offer.

- Form 39 - Letter to Respondent when the proposed PPCA counter-offer is unacceptable, but the Commission urges further negotiation.

C. Conciliation Agreement

- Form 76A - Conciliation Agreement prior to probable cause to believe finding for external and internal matters.

- Form 76B - Conciliation Agreement for late and non-filer matters.

D. General Counsel's Report

- Form 94 - Report recommending acceptance of signed conciliation agreement.

- Form 95 - Report recommending rejection of respondent's counteroffer in whole or part, while submitting counterproposal for Approval.

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E. Closing Letters

- Form 55 - Closing letter to Respondent with signed conciliation agreement closing the entire file.
- Form 55A - Closing letter to Respondent with signed conciliation agreement partially closing the file.
- Form 56 - Closing letter to Complainant with signed conciliation agreement. (Externally Generated Cases.)
- Form 59 - Letter to Referring Agency enclosing conciliation agreement.

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Chapter 6

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CHAPTER 6

The Probable Cause Stage

I. PURPOSE

This chapter is a guide to the probable cause stage of the enforcement process. For purposes of this chapter, the probable cause stage encompasses the General Counsel's Brief, the draft conciliation agreement, the probable cause report, probable cause conciliation, and concluding conciliation and suit authority. After the last of the substantive subchapters there is a list of applicable forms.

II. PROBABLE CAUSE BRIEF

A. Statutory and Regulatory Framework

If a matter is not resolved in pre-probable cause conciliation, the Office of the General Counsel ("OGC") may recommend that the Commission take no further action regarding one or all respondents, in which case a report with such recommendations is submitted to the Commission. (See Form 88). If OGC decides to continue the enforcement action, upon completion of its investigation, OGC may recommend that the Commission proceed to the probable cause stage.

OGC is required to notify a respondent of its intent to recommend that the Commission make a finding that there is probable cause to believe that a respondent violated, or is about to violate, the FECA. 2 U.S.C. § 437g(a)(3).

- NOTE: There is no requirement that there be a previous reason to believe determination on a specific issue prior to making a probable cause finding on the resulting violation. If a violation or apparent violation is evident at the reason-to-believe stage, however, it should be addressed at that stage. All that is required for a probable cause finding is that the probable cause recommendation be made against an individual or entity that is a respondent in the matter, that the activity giving rise to the violation is relevant information within the scope of a properly initiated investigation, and that the respondent be afforded notice of the potential violation during the briefing process. 2 U.S.C. § 437g(a)(3) (requiring only notification to the respondent

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"of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause"), and 11 C.F.R. § 111.16(a) and (b); see also FEC v. N.R.A. of America, 533 F. Supp. 1331 (D.D.C. 1983) (court dismissed FEC claims where FEC had not undertaken conciliation with respect to them), and MUR 3122 (GOPAC) (a violation that did not have a reason to believe finding was included in the brief) (portion of PCTB General Counsel's Report at Attachment 6-1), Consent Order and Partial Judgment Regarding Count III, FEC v. GOPAC, 917 F. Supp. 851 (D.D.C. 1996) (court dismissed FEC complaint).

Accordingly, OGC prepares a brief stating its position on the legal and factual issues of the case and containing recommendations as to whether or not the Commission should find probable cause to believe.[1] See sample brief at Attachment 6-2. When OGC recommends probable cause findings of knowing and willful violations and the matter merits criminal prosecution, the Commission can refer the matter to the Department of Justice. 2 U.S.C. § 437g(a)(5)(C). (See Form 62).

The brief is sent to the respondent(s) who then has 15 days after receipt of such brief to submit a reply. After reviewing the reply, OGC prepares a report to the Commission advising whether to proceed with the initial recommendation of probable cause or whether it has decided to withdraw that recommendation and, instead, recommend that the Commission find no probable cause or take no further action. 11 C.F.R. § 111.16(d). Respondents (and complainant, if the Commission votes to close the file) are notified of the Commission's decision by appropriate letter. 11 C.F.R. § 111.17.

The purpose of the probable cause brief is to present OGC's analysis of the facts of the case in relation to the applicable law. The brief form in the OGC form library provides guidance regarding the general information to be included in the brief. (Form 90). Briefs should not contain discussions of pre-probable cause conciliation efforts, and statements that pre-probable cause negotiations were conducted but were not fruitful should not be included. That is because pre-probable cause conciliation is not a

1 As noted infra in Chapter 6.IV.C.4 (Probable Cause Report), a current proposal to revise 11 C.F.R. § 111.16 would eliminate "no probable cause" briefs, a step which the Commission apparently can take because there is a reasonable interpretation that the Act only requires a brief where this Office recommends probable cause to believe. Section 437g(a)(3) states that "[t]he general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(i)" (probable cause vote and conciliation). Under this future scenario, if the intent is to find no probable cause, this Office would instead proceed directly to a General Counsel's Report that recommends no probable cause to believe.

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prerequisite to probable cause; neither the fact that pre-probable cause negotiations occurred nor the specifics of those negotiations are relevant to the issue of whether or not to recommend a finding of probable cause.[2] Additionally, briefs should not contain discussions of anticipated arguments by respondents. Those arguments may be addressed subsequently in the Probable Cause Report, discussed infra. Generally, when excerpts of deposition testimony are included in the brief, it is not necessary to attach the corresponding deposition transcript to the final brief.

B. Investigative Materials Referred to in Brief

Referring to investigative materials such as deposition testimony in the brief will generally prompt respondents to request a copy of the transcript or other materials. At this point in the enforcement process, this Office will make arrangements for respondent to buy a copy of his or her own deposition transcript from the court reporter. The Commission has discretion, however, whether to turn over other investigative materials, e.g., transcripts of third party depositions. This Office will recommend to do so in response to specific requests when it believes that such action would further the case, e.g., a deposition transcript directly impeaches respondent's credibility. Such requests should be discussed with your supervisor. See sample Memorandum to the Commission at Attachment 6-3. A related issue is whether briefs should identify third parties as sources of information. Generally, this Office does not protect the confidentiality of third parties. Staff may consider this issue in consultation with a supervisor when drafting briefs, however.

C. Comment Draft

As with circulation of First General Counsel's Reports (see RTB Section, supra Chapter 3), in more significant cases a draft of the brief (without attachments) should be circulated for comment among OGC senior staff. The draft should summarize the facts and the law in the matter so that it can be determined whether further investigation is needed. (See Forms 67 and 87). You may want to check with appropriate senior staff after about two weeks if you have not received any comments on the draft.

D. Treasurer

Before sending briefs out, make sure to check the respondent committee's Statement of Organization to see whether there has been a change in the treasurer. If there has been a change, the new treasurer should be named as a respondent in the brief.

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2 By discussing the negotiations in the brief, you open yourselves up to respondents who want to re-argue pre-probable cause conciliation in their response briefs. Additionally, references to conciliation negotiations in the brief creates unnecessary work for the FOIA team when it comes time to close the case.

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In addition, the change of treasurer should be explained in a footnote, including the date of the change, the former treasurer's name, and whether an amendment was made to the Statement of Organization. In the event that the treasurer changes after the Commission has found probable cause, a supplemental brief should be sent indicating that the Commission found probable cause against the Committee and the former treasurer, and that in accordance with Commission's policy, a probable cause recommendation is also being made against the new treasurer. The original brief should be incorporated by reference into the new brief and a copy of the original brief enclosed. See Addendum N, Treasurer Policy.

E. Contemporaneous No Further Action Recommendations

Where OGC is contemporaneously briefing some issues and recommending no further action on other issues, although there is no obligation to inform respondents of the latter in the probable cause brief, it is a good practice to do so. The subsequent Probable Cause Report would then include both the probable cause recommendations and the no further action recommendations. This practice can be applied to no probable cause recommendations as well. See supra footnote 1 in Chapter 6.II.A.

F. Signature and Distribution

Briefs are prepared for signature by the General Counsel. In the appropriate case, a draft conciliation agreement should be provided to the General Counsel along with the brief. It is not necessary to include a Sunshine Form with final briefs because they do not circulate for any type of Commission vote. Once the brief and cover letter to respondent(s) are signed Docket will send the documents to the Commission's Secretary with instructions to circulate on an informational basis. Before circulating the Secretary will add a cover sheet similar to the one used to circulate copies of complaints. See sample at Attachment 6-4; Addendum I, Voting Procedures - Informational circulation.

G. Mailing the Brief

It is important to make sure that each respondent has received the brief and thus has notice of OGC's recommendations. Therefore, the brief should be sent certified mail return receipt requested with an accompanying cover letter. (See Forms 45 and 45A). If you choose to send the brief by regular mail, it is a good idea to telephone the respondent within a few days afterwards to find out whether respondent received the brief. The letter instructs respondents to file ten copies with the Commission Secretary and three with OGC, unlike all other correspondence.

After the brief is mailed to a respondent OGC normally would not entertain further attempts at pre-probable cause conciliation.

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III. DRAFT CONCILIATION AGREEMENT

Upon a finding of probable cause to believe where there is no criminal referral, the Commission is required to attempt to conciliate a matter for a period of not less than 30, but not more than 90, days. 2 U.S.C. § 437g(a)(4)(i), (a)(5)(C). Thus, where a conciliation agreement may not have been required earlier in the case, staff will need to draft one at the probable cause stage. In non-Tier 4 cases, a draft conciliation agreement should be provided to the General Counsel along with the brief.

A. Probable Cause Conciliation After Unsuccessful Pre-Probable Cause Conciliation

Pre-probable cause conciliation is a function of the Commission's regulations, not of the Act. 11 C.F.R. § 111.18(d). As a result, language has been built into the pre-probable cause conciliation agreement to give it the full force and effect of a probable cause agreement. This language becomes superfluous at the probable cause stage.

While the Forms library contains a separate form for the probable cause agreement (Form 93), the simplest method of creating it is to edit the pre-probable cause agreement, if there is one, in three crucial respects:

1. a) If the matter is complaint-generated, language in the first paragraph of the preamble which reads "The Federal Election Commission ("Commission") found reason to believe" should be changed to "An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe."

b) If the matter is internally-generated, language in the first paragraph of the preamble which reads "the Commission found reason to believe" should be changed to read "the Commission found probable cause to believe."

2. In all cases, language in the second paragraph of the preamble which reads "having participated in informal methods of conciliation, prior to a finding of probable cause to believe" should be changed to read "having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i)."

3. Language in Paragraph I which reads "and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i)" should be eliminated.

These changes transform a pre-probable cause agreement into a probable cause agreement.

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B. Probable Cause Conciliation When Pre-Probable Cause Conciliation Has Not Been Attempted

In crafting a probable cause conciliation agreement where pre-probable cause has not been attempted, follow the basic steps outlined in Chapter 5, Part IV.

C. Potential Differences Between the Pre-Probable and Probable Cause Agreements

Certain changes can be made to the negotiable terms of the probable cause agreement to distinguish it from the pre-probable cause agreement. For example, it has been argued before the Commission in some cases that it is appropriate for the civil penalty to be higher at the probable cause stage than at the pre-probable cause stage. [redacted] The basis for this practice is that by agreeing to conciliate at the earlier stage, the Commission is discounting the civil penalty in exchange for resolving the matter early and conserving Commission resources. Once the probable cause stage is reached, the reason for the discount is eliminated, and the civil penalty should logically revert to the appropriate, higher level. Respondents may argue that they are being punished for exercising their right to have the Commission make probable cause to believe findings but, as is suggested above, this argument is without merit. See Chapter 6, Section V.C.3 for further discussion of this issue.

In practice, this Office considers this civil penalty issue on a case by case basis. [redacted] This Office should set up this type of arrangement at pre-probable cause conciliation. See Chapter 5.

IV. PROBABLE CAUSE REPORT

A. Introduction

The principal purposes of the Probable Cause Report are to set out the procedural posture of the matter, address any points not previously discussed in the General Counsel's Brief that are raised by the Reply Brief, to recommend Commission determinations on probable cause to believe, and to discuss post-probable cause conciliation where applicable.

B. Timing

The probable cause phase of the enforcement process, from the drafting of the General Counsel's Brief to the forwarding of the completed Probable Cause Report to the

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Commission, should not extend beyond five (5) months. There is no set time within which the Probable Cause Report is due after the briefing stage.

The Reply Brief is due within 15 days from respondent's receipt of the General Counsel's Brief. 2 U.S.C. § 437g(a)(3); 11 C.F.R. § 111.16(c). There is, however, no requirement that respondent submit a Reply Brief. In those instances where a Reply Brief does not appear to be forthcoming, it is proper form to contact the respondent or counsel to confirm that a brief will not be filed.

The report itself is circulated on a seventy-two (72) hour tally vote basis, and will only be placed on the Executive Session Agenda if objected to by the Commission. See Addenda D and I.

C. Content

The Probable Cause Report (Forms 91 and 92) is comprised of four main sections: Background; Legal Analysis; Post-Probable Cause Conciliation; and Recommendations. See sample report at Attachment 6-5.

1. Background

This section gives a short account of the procedural posture of the case. It is not necessary to detail all events proceeding from the reason to believe findings. Instead, this section should mention the reason to believe findings and dates, the date the General Counsel's Brief was mailed, and the date the Reply Brief was received. Unlike the General Counsel's Brief, this report may include a discussion of pre-probable cause conciliation efforts if such efforts impact on the post-probable cause conciliation discussion and recommendations in the report.

2. Legal Analysis

It is not necessary to rehash the analysis from the General Counsel's Brief. Instead, this section addresses those arguments raised by respondent in the Reply Brief. If the arguments are not novel and have already been addressed in the General Counsel's Brief, it is sufficient to simply reference our brief in responding to the arguments in the report.

3. Discussion of Conciliation and Civil Penalty

Upon finding Probable Cause to Believe a violation has occurred, the Commission is statutorily obligated to enter into conciliation negotiations with respondent. 2 U.S.C. § 437g(a)(4)(A)(i); 11 C.F.R. § 111.18(a). The Commission must engage in conciliation efforts for a minimum of thirty (30) days. Id. Under 2 U.S.C. § 437g(a)(4)(A)(i), these efforts may not extend beyond ninety (90) days, unless stayed by referral of knowing and willful violations to the Department of Justice for criminal

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prosecution as described at 2 U.S.C. § 437g(a)(5)(C). See Chapter 6.V.C.1. In practice, however, settlement negotiations often go beyond 90 days when negotiation positions are close and the prospects of settlement are promising.

Discussion of conciliation should address the language of the proposed conciliation agreement and contain an explanation of the proposed penalty. See Chapter 3.V.A and Addendum C. In most instances, the proposed conciliation agreement will be identical to the draft proposed conciliation agreement circulated to the General Counsel at the briefing stage. See Section III of this chapter. As noted, where previous pre-probable cause conciliation efforts impact on the conciliation recommendation, an explanation of those efforts is warranted.

4. Recommendations

There are three separate substantive recommendations that can be made: Probable Cause to Believe, No Probable Cause to Believe, and Probable Cause to Believe/No Further Action.

- Probable Cause to Believe - This recommendation is warranted where information discovered during the course of the investigation establishes that respondent violated the Act. A recommendation of Probable Cause to Believe a violation has occurred will be accompanied by a recommendation that the Commission approve the attached Post-Probable Cause conciliation agreement. (Because conciliation is required by the Act, there is no recommendation to enter into conciliation as there is in Pre-Probable Cause Conciliation.)

- No Probable Cause to Believe - This recommendation is warranted where either information discovered during the course of the investigation, or information provided in response to the General Counsel's Brief, evidences that respondent has not violated the Act. This recommendation comes closest to exonerating respondent. A current proposal to revise 11 C.F.R. § 111.16, however, would eliminate no probable cause briefs, which the Commission can apparently do because the Act only requires a brief where this Office recommends probable cause to believe. If the proposed regulation is adopted, in the future, this Office would proceed directly to a General Counsel's Report that recommends no probable cause to believe.

- Probable Cause to Believe/No Further Action - This recommendation is warranted where there is clear evidence respondent has violated the Act, but due to the surrounding circumstances it is proper not to pursue the matter further. See Chapter 3.V.

A probable cause to believe recommendation may include a recommendation that the violations are knowing and willful where the brief included such recommendations.

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See Chapter 3.V. This Office may recommend that the Commission refer knowing and willful violations to the Department of Justice for criminal prosecution. 2 U.S.C. § 437g(a)(5)(C). The Commission has made such referrals that have resulted in criminal prosecutions. See MUR 2984 (Real Estate Appraisers).

In addition, at any time during the enforcement process, the Commission may report apparent violations of other laws to the appropriate law enforcement authorities. 2 U.S.C. § 437d(a)(9). See MUR 2892 (Friends of Frank Fasi) (report to state campaign finance agency apparent violation of state law analog to 2 U.S.C. § 441f); MUR 3972 (Wilson Committee) (report to House Ethics Committee of member's apparent violations of matters within the Committee's jurisdiction).

D. Attachments to Report

Proposed Conciliation Agreement - This is the only document required as an attachment to the report.

Reply Brief - Although the Commission does receive a copy of the Reply Brief (Form 45, the cover letter to the brief, invites replies to the Secretary of the Commission), for convenience one may also attach a copy to the report.

V. PROBABLE CAUSE CONCILIATION

A. Introduction

Under 2 U.S.C. § 437g(a)(4)(A), the Commission is not empowered to file suit to enforce the Act's requirements immediately following a probable cause to believe vote. Instead, it is required by statute to "correct or prevent [violations] by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved."[3] Id. Only after such negotiations have failed may the Commission determine to seek judicial enforcement. This subsection describes the probable cause conciliation process, some ways in which it differs from pre-probable cause conciliation,

3 When the Commission finds probable cause to believe there was, or is about to occur, a knowing and willful violation of the Act, it may refer the matter to the Department of Justice ("DOJ"). 2 U.S.C. § 437g(a)(5)(A). In such an instance, the Act does not require the Commission to enter into probable cause conciliation prior to the referral. 2 U.S.C. § 437g(a)(5)(A). The Act requires DOJ to transmit periodic reports to the Commission regarding action taken. 2 U.S.C. § 437g(c).

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and the various procedures developed by the Commission in furtherance of its statutory duty.[4] See also Chapter 5, Pre-Probable Cause Conciliation.

B. Notification Letters

After the Commission has found probable cause (or has found no probable cause to believe), a staff member's first obligation is to notify the respondent of the Commission's determination. In the usual case, the staff member will prepare a form letter to the respondent notifying him/her of the Commission's action. With only one exception (a letter to a referring agency notifying it of the Commission's decision to find no probable cause), the General Counsel signs all probable cause notification correspondence. Therefore, the notification letters must be routed through the team leader and the Associate General Counsel for Enforcement before being sent on to the General Counsel for signature.

- NOTE: When preparing a letter for another's signature, you should always also forward an unsigned copy of the letter that you initial and date to indicate that the letter has been reviewed for errors.

In addition to using the standard form letters to notify respondents of the Commission's action, we have also sent notification letters with special language. [redacted] While this language was developed for a particular set of circumstances, there may be other situations for which you have a special need to inform the respondents in writing of the ground rules for probable cause conciliation. Please note also that we must gain the Commission's approval of such an approach (via description and a recommendation in the corresponding Probable Cause General Counsel's Report) before it may be sent.

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4 Please note that this subsection does not address negotiation techniques a staff member may wish to use in coming to an agreement with respondents. For a discussion of negotiation tactics, please see Chapter 5, Pre-Probable Cause Conciliation.

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C. Negotiation

Unlike pre-probable cause negotiations where "the carrot" for a respondent to settle a matter is a lowered civil penalty (and/or no investigation) and "the stick" is a probable cause finding by the Commission, from a respondent's perspective, post-probable cause conciliation's benefits are usually one -- no litigation. For some respondents, particularly those with legally complex or novel cases, litigation is the only acceptable option, and despite staff's best efforts, the case will not settle. Other respondents may just want to take full advantage of the administrative scheme, i.e., the brief requirement, set out in the Act. Moreover, as the Commission's civil penalties have increased over time, respondents will likely become more willing to litigate because the potential litigation costs no longer overwhelm the price of the proposed civil penalty. Nonetheless, as a practical matter, the negative publicity from a Commission enforcement action and/or the costs of litigating a matter propel(s) many respondents to resolve matters at this final stage of the administrative process.

While the notification letters all contain language instructing the respondent(s) to either sign the enclosed conciliation agreement or to contact the staff member to discuss the matter, some respondents are more timely than others in responding. Depending on the particulars of the case, a staff member may wish to telephone the respondent after a couple of weeks have elapsed. At minimum, Form 52, a reminder letter, should be sent to the respondent after 20 days have elapsed without response. Form 52 includes "drop dead" language indicating that a report recommending civil suit will be prepared in the event that no response is received by a certain time. It is up to the staff member and her supervisor to determine the deadline, subject to the statutory limitations discussed below.

Once you are in contact with a respondent, it is time to negotiate. While this subsection makes no claims regarding negotiation strategy, there are several points you should consider before engaging in probable cause conciliation.

1. Duration

First, unlike pre probable cause conciliation which has no legal limit on its duration (although we analogize to post-probable cause conciliation, see Chapter 5 supra), the Commission has a statutory duty to conciliate for a minimum of 30 and a maximum of 90 days following a finding of probable cause to believe that a violation has occurred, and you may be able to use the deadline to the Commission's advantage.[5] This Office makes a judgment during the first 30 days whether settlement is likely. If it is not, we should recommend that the Commission cut off conciliation after 30 days and

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5 The only exception involves probable cause votes that occur within 45 days of the election. With these matters, the Commission is required to attempt conciliation for only 15 days. 2 U.S.C. § 437g(a)(4)(A)(ii).

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authorize suit. [redacted] The Commission rarely extends the period beyond 90 days, and generally those are cases in which the respondent and this Office are already very close to coming to an agreement.

2. Negotiating for an OGC Recommendation

Another general consideration to keep in mind during the conciliation process is that the Commission is the final arbiter of conciliation efforts. In the past, the Commission voted on each and every conciliation counteroffer, greatly extending the time and increasing the effort put into post-probable cause conciliation. Our current practice is to not take up every offer, but instead to negotiate as best we can, and to take up either a proposal OGC can recommend or respondent's final counteroffer that we will not recommend.[6] Respondents should recognize that it is the Commission that decides whether to accept or reject a conciliation counteroffer. Staff of this Office negotiates fully, with the knowledge that they can make no promises about what the Commission will do ultimately. Staff members should feel free to negotiate with respondents for an agreement that OGC can recommend based on the staff person's experience and what the Commission is likely to accept.[7] Such an approach has the benefit of quicker turnaround

6 It is OGC's practice to take up to the Commission any offer at the direct request of the respondent, albeit at times with this Office's recommendation to reject. However, you should caution respondents who request this approach that the Commission may reject the offer and also may become more wedded to its own out-the-door figure. Moreover, in the event that the respondent's offer is significantly lower than the Commission's valuation of the case, respondents' direct appeal to the Commission may have the effect of alerting the Commission to the fact that the case is unlikely to settle and prompt the Commission to end conciliation efforts earlier than it otherwise would.

7 One practice in this regard involves recommending the Commission adopt a "floor figure" for a civil penalty. In such a case, the Commission approves a "minimum" civil penalty, below which it will not settle a matter. This approach has the benefit of giving staff clearer direction regarding the course of conciliation discussions and, in the event that a respondent makes an offer below the "floor figure," allows staff to go beyond the issue of an OGC recommendation and instead tell the respondent that the Commission will not accept her/his counteroffer. [redacted]

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time when counteroffers are received, and in the end, helps move the Commission's case load more effectively. See sample negotiation letter at Attachment 6-7.

3. Distinguishing Pre-Probable Cause Conciliation Efforts

The third thing that you might wish to make clear to respondents from the beginning of post-probable cause conciliation is that matters that were under discussion during pre-probable cause conciliation may no longer be viable. While some members of the informal "FEC Defense Bar" have complained that their clients are being "punished" for availing themselves of their full array of statutory rights in forcing the Commission to go to the probable cause level, it is true that we may offer incentives for early settlement, such as no investigation or a lowered civil penalty, that are usually not available after a finding of probable cause, e.g., MUR 3608 (Bush-Quayle '92) discussed supra at Chapter 6.III.C. See also Chapter 5, Pre-Probable Cause Conciliation.

Thus, discussing old legal and factual arguments with respondents after a finding of probable cause need not be the focus of conciliation. For example, in the appropriate circumstances, staff can explain to respondents that mitigating factors that were previously raised have already been incorporated into the Commission's out-the-door civil penalty offer. Similarly, although "arguing the merits" will usually play a role in post-probable cause conciliation, staff can relay that legal arguments that were raised in the respondents' reply brief, or at the pre-probable cause stage, have already been considered and decided by the Commission.

VI. CONCLUDING CONCILIATION/CLOSE THE FILE/SUIT AUTHORIZATION

A. When Respondents Make a Counteroffer

When respondents make a counteroffer to the proposed conciliation agreement, and the offer is one that OGC can recommend, or the respondent insists that the Commission see the offer, staff should prepare a report that discusses the offer and makes the appropriate recommendation. In some cases, the Commission will want to make a counterproposal involving a new civil penalty, language changes, or both. Form 95 is a template of such a report and can be easily modified to fit the circumstances of the case. See also Chapter 5 Pre-Probable Cause Conciliation. Form 53 is a letter to respondents informing them that the Commission rejected their counteroffer and urging further conciliation. This letter is frequently modified to address the particular negotiation approach, such as including information about any Commission counterproposal.

B. Final Offers

In the event that no acceptable counteroffer was received from the respondents during negotiations, staff should write a report that describes the course of the conciliation efforts, transmits the respondent's best offer, if applicable, and makes a

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recommendation to the Commission regarding litigation of the matter. Frequently this report will also recommend that the Commission make a "final offer" to respondents, which is good for a time certain (usually 10 days), and which is non-negotiable. In addition, in the event that respondents do not accept the "final offer," the report may recommend that the Commission grant this Office contingent suit authority to seek judicial enforcement of the Act against the respondents. See infra Chapter 6.VI.E.

When preparing a "final offer" civil penalty recommendation, a staff member should check with the supervisor and the Associate General Counsel for Enforcement for guidance. Frequently this "final offer" recommendation reflects this Office's view of an acceptable minimum penalty, and that amount varies from case to case. With a "final offer," there is no negotiation permitted as the respondents are expected either to take the offer or leave it. However, it is the practice of this Office formally to apprise the Commission of counteroffers to "final offers" where the terms of the counteroffer are very close to the elements of the "final offer."

When fashioning a "final offer" report, it is important to discuss the terms of the offer in the text of the report. Moreover, in the recommendation section, staff should prepare a specific "final offer" recommendation. One acceptable formulation is "Inform X and Y, as treasurer, that the Commission will conciliate this matter with a civil penalty of $Z, but in the event that Respondents fail to sign and return the proposed agreement within 10 days of receipt, the offer expires and the Commission will proceed to the next stage of the enforcement process." This language can be changed to include contingent suit authorization when appropriate.

After the Commission has voted to make a "final offer," the staff member must send a letter to respondents informing them of the offer and enclosing a copy of the conciliation agreement. Use Form 54; however, note that the letter is designed for "final offers" where the Commission also has granted contingent suit authority. If you have not received that authority, the form letter must be modified accordingly.

C. Receipt and Processing of Civil Penalty Checks

The procedure for receipt and processing of a civil penalty check at the probable cause stage does not differ from that which occurs at the pre-probable cause stage. See Chapter 5, Pre-Probable Cause Conciliation.

Briefly stated, in the event that the respondents agree with the Commission's proposed conciliation agreement, the staff member should have the respondents sign the conciliation agreement and send it along with a check made payable to the "Federal Election Commission." When the package comes in, the mail room staff automatically sends the check to the Administration Division of the FEC. The mail is not logged in as received in the OGC log book. Therefore, if time is of the essence, especially in "final offer" situations, staff should check with the Administrative Division directly to see whether the civil penalty check has been received.

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NOTE: If for some reason the check is not removed before the package is delivered to the staff member, the staff member should immediately give the check to the Docket Clerk who will take it to the Administrative Division.

If the staff member is unable to convince respondents to send the check before the Commission has agreed to the conciliation agreement, there is language in the standard conciliation agreement form that provides for payment to be made within 30 days of the effective date of the Commission's agreement.

D. Closing the MUR

After receipt of an acceptable signed agreement, the staff member must write a report recommending that the Commission accept the signed conciliation agreement (Form 94). A copy of the signed agreement (and the check) should be attached to the report. If the Commission accepts the agreement and also votes to close the file, staff should send close out letters to all respondents and the complainant (if any). Forms 55, 55A, 57, 59. For further tasks associated with closing the file, such as MUR coding and tracking civil penalty payments and compliance with other terms of the agreement, see Chapter 7, Closing the File.

E. Contingent Suit Authority

There are times in the negotiations when OGC recommends that the Commission make a final counteroffer and simultaneously authorize civil suit if the offer is not accepted within a specified time period. In those instances, staff should write a report recommending civil suit. Form 96. See sample report at Attachment 6-8. The report will be routed to Litigation after the Associate General Counsel for Enforcement signs off on it. In emergency situations, a copy of the report can be sent to Litigation at the same time as it is sent forward to the Associate General Counsel for Enforcement. A recommendation for civil suit is an automatic agenda item. See Addendum I, Commission Voting Procedures.

When the Commission votes contingent suit authorization, staff should send a letter to the respondents informing them of the Commission's vote. Form 54.

After the contingent suit authorization letter is sent, staff should contact the respondents one more time to clarify what the letter means and to see if an agreement can be reached. This does not mean that you must engage in further negotiations or call several times. What this does mean is that you need to talk to respondents or leave a message letting them know that the matter will go to Litigation after the time specified in the letter and asking if they want to conciliate before the time has expired. Be sure to prepare a memorandum of the conversation or the message for the file.

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CAVEAT: In certain instances when the Commission authorizes civil suit unless respondents respond to the Commission's offer (rather than fail to sign the conciliation agreement), the possibility of further negotiations necessarily remains open. Framing the issue as requiring a response is a tactical judgment and arises when something less than a non-negotiable offer is desirable, e.g., "This is a final offer unless respondents show an inability to pay." Although the trend in Enforcement cases is toward non-negotiable final offers, certain cases may call for some small additional room for negotiation.

Staff should monitor the expiration of the specified time. At the end of the specified time period, you must inform Litigation in writing either to file suit because a signed conciliation agreement has not been received or not to file suit because a signed conciliation agreement has been received.

All negotiations following the expiration of the time period specified in the suit authorization letter should be conducted by Litigation staff, not Enforcement staff.

F. Civil Suit

When the case does not settle during the conciliation period and the Commission has not previously given OGC contingent suit authority, the next step is to write a report recommending civil suit. Form 96. See sample report at Attachment 6-9. This report will be routed to Litigation after the Associate General Counsel for Enforcement signs off on it.

Staff should inform respondents that the Commission has authorized civil suit. Form 61. All negotiations are conducted henceforth by the Litigation staff, not the Enforcement staff.

G. Transferring a MUR to Litigation

When a case goes to Litigation, as a courtesy, inform Docket so that they can pull the file for Litigation. (Docket does receive a copy of the certification authorizing civil suit and independently keeps track of the 90 day period during which Litigation must initiate suit.)

Staff should also code the MUR file when it is sent to Litigation, adding the code for "LITIGATION" in the subject field and entering "LITIGATION" in the supervisor's name field. The closing date at the top of the form should be left blank. See Chapter 7, Closing the File.

After the case has been resolved through court order or settlement, and closed as an FEC case, staff should inform the complainant (if any) of the outcome. Form 66.

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VII. FORMS

Below is a list of the relevant forms for the probable cause stage, divided into the subsections.

Probable Cause Brief

Form 67	Comment sheet
Form 87	Pre-brief
Form 88	Close investigation report
Form 90	Brief
Form 45	Letter enclosing brief
Form 45A	Letter enclosing K&W brief
Form 62	Letter to DOJ referring K&W violation

Draft Conciliation Agreement

Form 93	Conciliation Agreement

Probable Cause Report

Form 91	No PCTB report
Form 92	PCTB report

Probable Cause Conciliation

Form 46	No PCTB letter to respondent
Form 47	No PCTB letter to complainant
Form 48	No PCTB letter to referring agency
Form 49	PCTB letter w/CA to respondent
Form 49A	K&W PCTB letter w/CA to respondent
Form 50	PCTB/NFA letter to respondent (file closed)
Form 50A	PCTB/NFA letter to respondent
Form 51	PCTB/NFA letter to complainant
Form 52	Reminder letter to respondent
Form 53	Letter to respondent re rejection of counter-proposal and urging further conciliation
Form 54	Letter w/final counteroffer and notifying of suit authorization
Form 94	Report recommending acceptance of signed CA
Form 95	Report recommending reject counteroffer & approve counterproposal

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Concluding Conciliation/Close the File/Suit Authorization

Form 53	Letter to respondent re rejection of counter-proposal and urging further conciliation
Form 54	Letter w/final counteroffer and notifying of suit authorization
Form 55	Letter to respondent w/signed CA (file closed)
Form 55A	Letter to respondent w/signed CA
Form 57	Letter to complainant w/signed CA
Form 59	Letter to referring agency w/signed CA
Form 61	Suit authorization letter to respondent
Form 66	Notification to complainant that MUR transferred to litigation [post-litigation]
Form 94	Report recommending acceptance of signed CA
Form 95.	Report recommending reject counteroffer & approve counterproposal
Form 96	Civil suit report

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extensive electioneering message which the Act was intended to regulate.

Indeed, GOPAC's contention about how it used the proceeds from the mailing points out an additional basis for triggering of the Act.[9] Section 431(4)(A) defines a political committee as any committee which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year (as that term is defined at 2 U.S.C. § 431(9)). Consequently, to establish an entity's status as a federal political committee it need only be demonstrated that the entity has either received contributions or made expenditures in excess of the proscribed amount. As previously noted GOPAC has made expenditures in excess of $280,000 in connection with its mailings. Moreover, the $275,710 raised from the mailings constitute "contributions" as they were made to influence federal elections (i.e., in direct response to the solicitation), separately triggering the Act. Clearly, GOPAC has both made expenditures and received contributions well in excess of the prescribed amount.

B. Disclaimer Violation

Addressing the disclaimer violation, GOPAC, offering no argument in support of its position, simply states that because the Commission has not found reason to believe on this violation,

9. This Office notes that the use of the funds generated by the solicitation has never been at issue. At the reason to believe stage the Commission focused the investigation on the number of letters sent out, the dollar amount solicited from the mailing, instances of similar mailings, and instances of other mailings which make mention of federal candidates.

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it is inappropriate for the Commission to proceed to a probable cause vote. GOPAC's position is erroneous. A reason to believe determination by the Commission serves only as a threshold for commencing an investigation into alleged or apparent violations of the Act. See 2 U.S.C. § 437g(a)(2); 11 C.F.R. § 111.10(a). Once commenced, the investigation is not limited to only those issues or violations specifically referenced in the threshold reason to believe finding, but rather may encompass all relevant information. See, e.g., United States v. Powell, 379 U.S. 48 (1964); United States v. Morton Salt Co., 338 U.S. 48 (1964). Consequently, it would be inconsistent with the scope of the Commission's investigatory authority, as well as redundant, to require additional threshold findings for violations arising from additional activity by the same respondent discovered during the course of a properly initiated investigation.

In fact, the governing provision of the Act nowhere requires the Commission to make a reason to believe determination on a specific issue prior to making a probable cause finding on the resulting violation. Section 437g(a)(3) requires only that the General Counsel "notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause." Similarly, the Commission's Regulations require only that upon completion of the investigation the General Counsel put forth in a brief the factual basis for the probable cause recommendations, notify respondents of the recommendations, and provide respondents with a copy of the brief. See 11 C.F.R. § 111.16(a) and (b). All that is required is that respondents be

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provide an opportunity to respond to the allegations during the administrative proceedings. The court in FEC v. N.R.A. of America, 533 F. Supp. 1331 (D.D.C. 1983), has upheld this standard. Underlying the court's reasoning in addressing respondent's jurisdictional challenge is a determination that the Act's procedural safeguards are adhered to if respondents are "provided a fair opportunity to review and respond to the FEC's findings and have notice of precisely what activities have been found to be violations of the Act."[10] Id. at 1338 (citing from a prior Memorandum and Order in the same case). See also Department of Educ. of State of Cal. v. Bennett, 864 F.2d 655, 65~~8~~4 (9th Cir. 1988) ("notice will be adequate for due process purposes 'if the party proceeded against understood the issue and was afforded full apportunity'" to respond (quoting Lara v. Secretary of Interior, 820 F.2d 1535, 1539 (9th Cir. 1986)).

Presently, GOPAC has been provided such opportunity in the briefing process but has decided not to respond to the substance of the allegations. Consequently, it is appropriate for the

10. Respondents specifically challenged that because the Commission failed to adhere to the Act's procedural requirements by filing suit without probable cause findings as to certain counts and failing to adequately engage in post-probable cause conciliation as to others, the court lacked subject matter jurisdiction to hear the case. The court found no jurisdiction as to the former counts and jurisdiction as to the latter counts (where prior notice had been given).

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Commission to consider this issue at the probable cause stage.[11] (The two communications at issue are at Attachment 1, pp. 7-16.)

C. Conclusion

As discussed, GOPAC does not raise any compelling arguments challenging this Office's recommendations. Accordingly, the Office of the General Counsel recommends that the Commission find probable cause to believe GOPAC and Jeffrey A. Eisenach, as treasurer, violated 2 U.S.C. §§ 433(a), 434(a), and 441d.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

[redacted]

11. The present approach is consistent with Commission practice. See, e.g., MUR 2615 (Wieder) (Commission found probable cause to believe respondent violated Section 434(b)(2)(G)) and MUR 2984 (National Association of Real Estate Appraisers) (Commission found probable cause to believe respondent violated Section 441d(a)).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Mississippi Democratic Party	)	
Political Action Committee and	)	MUR 2720
Ed Cole, as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 11, 1988, the Commission found reason to believe the Mississippi Democratic Party Political Action Committee ("the Committee") and Ed Cole, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) and (iv). Underlying the Commission's determination was information that the Committee failed to file timely its 1987 Year End and 1988 April and July Quarterly Reports.

II. ANALYSIS

Pursuant to 2 U.S.C. § 434(a)(4), unauthorized political committees must file either quarterly or monthly reports. Committees opting to file quarterly must file quarterly reports in a year in which a regularly scheduled general election is held. These reports are due no later than the 15th day after the last day of each calendar quarter, except the last report for the year is due January 31 of the following year. 2 U.S.C. § 434(a)(A)(i). Accordingly, the Committee's 1988 April and July Quarterly Reports were due on April 15 and July 15, respectively. In calendar years without a regularly scheduled general election, unauthorized committees are required to file twice annually at

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six month intervals. The first report is due no later than July 31 and the second report is due no later than January 31 of the following year. 2 U.S.C. § 434(a)(4)(A)(iv). Accordingly, the Committtee's 1987 Year End Report was due on January 31.

The Committee failed to satisfy the Act's reporting requirements. The Commission's Reports Analysis Division ("RAD") notified the Committee on December 18, 1987, that the 1987 Year End Report was due on January 31, 1988. Nevertheless, the Committee failed to file this report until February 20, 1988. RAD notified the Committee on March 22, 1988, that the 1988 April Quarterly Report was due on April 15, 1988. Nevertheless, the Committee failed to file this report until May 6, 1988.

On May 20, 1988, RAD sent the Committee a chronic late filer notice regarding the failure to file timely the 1987 Year End and 1988 April Quarterly Reports. The notice advised that any additional late filings could result in legal enforcement action. On June 21, 1988, RAD notified the Committee that the 1988 July Quarterly Report was due on July 15, 1988. Nevertheless, the Committee failed to file this report until August 15, 1988. Therefore, the Office of the General Counsel recommends that the Commission find probable cause to believe Mississippi Democratic Party Political Action Committee and Ed Cole, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) and (iv).

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III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Mississippi Democratic Party Political Action Committee and Ed Cole, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) and (iv).

3/28/89
Date

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

November 4, 1992

MEMORANDUM

To: The Commission

From: Lawrence M. Noble
General Counsel

Subject: MUR 2576 - J. Stanley Shaw
Request for documents

On August 7, 1992, this Office forwarded the General Counsel's Brief to counsel for J. Stanley Shaw, the last remaining Respondent in the above captioned matter. The Brief detailed the General Counsel's probable cause recommendation, relying on a number of sources to support its recommendation, including the depositions of two Respondent witnesses. Additionally, the Brief refers to other materials provided by previous Respondents in this matter.

During a August 20, 1992 meeting, Respondent's counsel[1] inquired as to whether he could obtain a copy of two of the deposition transcripts referred to in the Brief. Staff informed counsel that the Commission would entertain requests for such documents upon written request. On September 22, 1992,[2] this Office received the request for copies of the deposition transcripts of Edward G. Donnelly and Sherry Neuman. Counsel submitted a brief in support of his request.[3] Many of the arguments forwarded in counsel's supporting brief relate to the merits of the case rather than the request for documents.

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1. Mr. Herbert J. Tamres, of Mr. Shaw's own firm was designated as counsel, up until and including the time when the Probable Cause Brief was sent. A letter dated August 17, 1992, redesignated Arnold Burns of Proskauer, Rose, Goetz & Mendelsohn as new counsel for Respondent.

2. In the interim, counsel requested and was granted an extension of time until September 21, 1992, in order to submit a request for the deposition transcripts.

3. Because the attachments provided with counsel's request are voluminous, they are not included as attachments to this report. They are, however, available in this Office.

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Nevertheless, counsel also argues that

> in order to permit Shaw to have a full and meaningful opportunity to respond to these charges and, thereby, to permit the Commission to have a complete record upon which to base its decision, the Commission should permit Shaw to inspect and copy all transcripts of testimony and/or depositions given by Donnelly and Neuman.

Attachment 1, pp. 30-31.

It is clear that an agency is not required to produce investigatory materials to persons who are targets of its investigation. See, SEC v. O'Brien, 467 U.S. 735 (1984). However, the Commission is also not precluded from providing such materials to Respondents in an appropriate case. See e.g., MURs 2984, 2893, 2765, 2575, 2133, 1272. Generally, the Commission has provided such materials in instances where the Respondent's credibility was challenged in depositions or where materials were needed by Respondents to evaluate the basis of an alleged knowing and willful scheme.

MUR 2576 addresses possible knowing and willful violations, and the issue of the credibility of the Respondent. Further, it appears Respondent will build his argument on the credibility of individuals who have testified in this matter. The General Counsel's Brief relies on statements made by those individuals. Therefore, this Office recommends that the Commission grant counsel's request and provide counsel with copies of the deposition transcripts of Edward G. Donnelly and Sherry Neuman.

The Respondent has had the probable cause brief for a considerable time; thus, Respondent will be afforded 15 days from the receipt of the deposition transcripts in order to respond.

RECOMMENDATIONS

1. Grant counsel's request and provide counsel with copies of the deposition transcripts of Edward G. Donnelly and Sherry Neuman.

2. Approve the appropriate letter.

Attachment
Request for documents

Staff assigned: Tonda M. Mott

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allen

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

MEMORANDUM

TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/DEIDRE M. DANIEL

DATE: MAY 2, 1994

SUBJECT: MUR 3817 - GENERAL COUNSEL'S BRIEF

The attached document is being circulated for your information.

Attachment

Attachment 6-4, Page 1 of 1

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FEDERAL ELECTION COMMISSION
89 MAY 15 PM 3:07
SENSITIVE
EXECUTIVE SESSION
MAY 23 1989

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Mississippi Democratic Party Political Action Committee and Ed Cole, as treasurer	)	MUR 2720
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 11, 1988, the Commission found reason to believe the Mississippi Democratic Party Political Action Committee ("the Committee") and Ed Cole, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) and (iv). Underlying the Commission's determination was information that the Committee failed to file timely its 1987 Year End and 1988 April and July Quarterly Reports. [redacted] The Office of the General Counsel sent a Probable Cause Brief to the Committee on March 29, 1989. [redacted]

II. ANALYSIS

This Office's analysis of this matter is contained in the General Counsel's Brief dated March 29, 1989. The Committee has

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not submitted a responsive brief. Accordingly, this Office recommends that the Commission find probable cause to believe that the Mississippi Democratic Party Political Action Committee and Ed Cole, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) and (iv).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

2. Find probable cause to believe Mississippi Democratic Party Political Action Committee and Ed Cole, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) and (iv).

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[redacted]

Date 5/15/89

Lawrence M. Noble
General Counsel

Attachments
[redacted]
2. Proposed Letter
[redacted]

Staff Person: Tamara Kapper

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

Oct 13 1 16 PM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

[redacted]

I. BACKGROUND

On September 20, 1995, the Commission found probable cause to believe that [redacted] The Commission also approved proposed conciliation agreements directed to these respondents. Counsel for all of these respondents were notified of the Commission's findings and the proposed conciliation agreements by facsimile and certified mail the next day, September 21, 1995.

This report will provide an update on the status of post-probable cause conciliation with all respondents. [redacted]

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II. STATUS OF CONCILIATION

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III. RECOMMENDATIONS CONCERNING SUIT AUTHORITY

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IV. RECOMMENDATIONS

Date 12/13/95

Lawrence M. Noble
General Counsel

Attachments:

1. Letters from OGC staff to respondents' counsel, October 2, 1995

Staff assigned: Lawrence L. Calvert Jr.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA HAND DELIVERY

November 18, 1994

[redacted]

[redacted]

Dear [redacted]:

Since the Commission's probable cause findings, we have met on several occasions in an attempt to settle this matter. Initially, this Office met with you and [redacted] on [redacted]. Subsequent to this initial meeting, on [redacted], you submitted a written response to the Commission's proposed conciliation agreement. On [redacted], this Office provided you with an amended agreement. At your request, we again met on [redacted] to discuss this Office's [redacted] offer.

Based on our [redacted] discussion of the issues, it became apparent that your clients view the violations differently from the Commission. As it appeared that this matter was unlikely to settle at the probable cause stage, this Office informed you that we would be recommending that the Commission authorize civil suit. At that point, you mentioned that your clients may wish to make a submission for the Commission's consideration. As we are preparing our report to the Commission, any such submission must be received by this Office [redacted], in order to be considered by the Commission along with our recommendation.

Sincerely,

Jose M. Rodriguez
Attorney

Attachment 6-7, Page 1 of 1

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BEFORE THE FEDERAL ELECTION COMMISSION

JAN 29 199

In the Matter of)
[redacted])
[redacted])
)

[redacted]

EXECUTIVE SESSION
SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 23, 1990, the Commission found probable cause to believe that the [redacted], as treasurer, ("Respondents") violated 2 U.S.C. § 434(a)(6)(A) by failing to notify the Commission of the receipt of $156,000 in last minute contributions and by failing to identify contributors on 14 special notices which were filed. Co [redacted]

II. DISCUSSION OF COUNTERPROPOSAL

[redacted]

[redacted]

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[redacted]

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[redacted]

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-[redacted]-

[redacted]

III. FINAL COUNTEROFFER

[redacted]

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IV. RECOMMENDATIONS

1/10/91
Date

Lawrence M. Noble
General Counsel

Attachments
1. Counterproposal from Respondents.
2. Proposed counteroffer.

Staff assigned: Xavier K. McDonnell

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
OCT 2 4 36 PM '95

BEFORE THE FEDERAL ELECTION COMMISSION

[redacted])
[redacted])
[redacted])

SENSITIVE
OCT 17 1995
EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 27, 1995, the Federal Election Commission ("the Commission") found probable cause to believe that [redacted] ("Respondent") violated: (1) 2 U.S.C. § 441a(a)(3) with respect to his aggregate federal contributions for 1991, 1992, and 1993; (2) 2 U.S.C. § 441a(a)(1)(C) with respect to his contributions to American Citizens for Political Action in 1991; (3) 2 U.S.C. § 441a(a)(1)(B) with respect to his aggregate annual contributions to the National Republican Congressional Committee in 1992; and (4) 2 U.S.C. § 441a(a)(1)(B) with respect to his aggregate annual contributions to the National Republican Senatorial Committee ("NRSC") in 1992 and 1993. At the same time, the Commission determined to offer to enter into post-probable cause conciliation with the Respondent [redacted]

Attachment 6-9, Page 1 of 4

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not make such outrageous political contributions." Id. at 1. Counsel further added that he was "in the process of scheduling a psychiatric evaluation" of Respondent and would provide us with the report. Id.

On August 4, 1995, this Office advised counsel by telephone that the time period for post-probable cause conciliation was limited and that he would need to submit a proposal for conciliation and any other additional information, [redacted], as soon as possible. Counsel stated that he was going to check [redacted] and would call back in a few days. When counsel did not call as promised, this Office sent counsel a letter on [redacted], advising him that more than 30 days had passed since the probable cause findings were made and requesting that he submit a written proposal for conciliation by August 31, 1995. Attachment 2.

On August 31, 1995, counsel submitted a [redacted] Attachment 3. Counsel did not provide anything in support of this offer except to state that he had retained a [redacted] for an [redacted] of Respondent and that he was "confident" that the evaluation "will show" that the Commission should settle the matter for a [redacted] Id. Counsel further stated that the counteroffer was "sufficient [redacted] considering the nature of his [redacted]." Id. Counsel, however, did not specify what the [redacted] was, whether the [redacted] was completed, and when it would be submitted.

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II. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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III. RECOMMENDATIONS

3. Approve the appropriate letter.

Date 10/2/95

Lawrence M. Noble
General Counsel

Attachments

Staff Assigned: Dominique Dillenseger

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Chapter 7

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CHAPTER 7

Close-Out Procedures

I. PURPOSE

This chapter explains the final procedures necessary to close-out a case after the Commission closes the file. This chapter identifies each phase of the enforcement process at which a case may close, and lists the appropriate forms to use in the closing correspondence. It covers individual data coding, file preparation and review for placing closed cases on public record, and the significance of preserving the historical record of the case.

II. CLOSING STAGES AND CORRESPONDENCE

A. Case Close-Out Overview

At any stage of the enforcement process, the Commission may close the entire case or close it as to certain respondents. When the Commission votes to close the file regarding all respondents, the original case file and the closing Commission certification are transferred from the OGC Docket to the staff person within two working days. OGC Docket will attach a routing slip to the closed file, filling in the date the MUR was closed and the date the file was transmitted to staff. The staff person prepares closing letters, envelopes and attachments to respondents and/or counsel based on the Commission's findings. The staff person is then responsible for entering case data into the MURUPDATE system, thereby providing the basis for the computerized closed MUR index. The staff person initials the routing slip, then transfers the file to the Legal Review team. This team reviews and redacts the file pursuant to the Freedom of Information Act, and prepares a summary file for the Press Office. The entire paper file along with the redacted documents is maintained in OGC files for a period of time. See Section III, B, 3 herein. The team legal secretaries, who receive the team leader copies of Commission Certifications, are responsible for closing out the case on the Enforcement Priority System (EPS).

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B. The Closing Package

1. Notification to Respondents

The Commission may determine to close an entire file or to close the file regarding certain respondents, while pursuing the matter as it pertains to other respondents. Each respondent is notified, however, only of the Commission action specific to that respondent. An attorney of record (with respondent's Designation of Counsel form in the file) is notified of all Commission action concerning his or her clients in the matter. The Commission Secretary's certification of the Commission's decisions (provided by OGC Docket) triggers notification.

2. Preparing Closing Correspondence

The staff person is responsible for the closing "package" to respondents and/or counsel. This includes original letters and envelopes (using large orange flat envelopes with mailing labels for more than three or four pages), the green certified mail cards with the Receipt for Certified Mail form (if required), and all attachments (except conciliation agreements). **Be sure the MUR number and your initials or last name are typed in the green card margin for identification when it is returned.** See Attachment 7-1. **Do not date original letters,** as OGC Docket will date each letter as it is mailed. The staff person is not required to make a copy of the closing letters. When the certification specifies acceptance of a conciliation agreement, OGC Docket will route the original, respondent-signed conciliation agreement for signature in OGC, then attach a copy of the fully executed conciliation agreement with the letter. OGC Docket will copy the closing letters and the complete package, including the extra copy of the letter when a "cc:" is noted. Staff person is responsible for the attachments and envelopes, etc. for each "cc."

3. Form Letters

The appropriate closing form letter is largely determined by the closing recommendations certified by the Commission. Modifications to a form may be required to address particular circumstances of the case or to amend or combine closing recommendations that do not fit neatly into the form. The following section groups the closing letters by categories of possible Commission actions, noting circumstances that would close a case entirely or in part, including the appropriate form number, and providing specific pointers. See also the Enforcement Form book, the source of these forms.

4. General Pointers

- When complaint-generated cases close with no further action, the closing General Counsel's Report is included with the closing letter. The GC Report may also be sent

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when the disposition is "no reason to believe," if a Factual and Legal Analysis is not included. **The Legal Review team must review the GC Report and redact it if necessary before it is mailed to respondents and the complainant.** Remember to add the appropriate enclosure notations at the bottom of closing letters. See also Chapter 3.

- Closing letters in the "no further action" categories (RTB/NFA and PCTB/NFA) may include an admonishment if the Commission has been so advised in the closing report. Note that two variations are available. When referring to the factual activity of a case, use the following version: "The Commission reminds you that the acceptance of $3,500 from Chris Smith appears to be a violation of 2 U.S.C. § 441a(f)." When referring to a statement of law, use the following: "The Commission reminds you that acceptance of excessive contributions is a violation of 2 U.S.C. § 441a(f)." See also Chapter 3, pp. 12-13.

- All letters notifying complainants that the MUR file has been closed must be sent by CERTIFIED MAIL, RETURN RECEIPT REQUESTED. Under 2 U.S.C. § 437g(a)(8), a complainant who wishes to file suit must do so within 60 days after the date of the dismissal. The D.C. Circuit has held that the 60 day period runs from the date the Commission actually votes to close the case and not the date the complainant actually receives this notice. Spannaus v. FEC, 990 F.2d 643, 644-45 (D.C. Cir. 1993) (rejecting Common Cause v. FEC, 630 F. Supp. 508, 512 (D.D.C. 1985)). Nonetheless, certified mail helps establish a receipt date if questioned.

- **When the entire file closes, the staff person must notify (by letter) all respondents previously closed-out that the file has closed and the confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply.**

  TO previously closed-out RESPONDENT: Entire File Closed Form 60

- A Statement of Reasons is required when the Commission rejects OGC's recommendation to go forward, resulting in dismissal of an entire complaint, or of a respondent, or of a particular allegation in a complaint, and the reasons for dismissal are not found in the General Counsel's Report. See *Addendum O* for closings requiring a Statement of Reasons.

a. File Closed/No Findings

- Cases closed without substantive recommendations from OGC are handled entirely by the Central Enforcement Docket. See Chapter 1 for a description of case closings in CED.

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Forms

* TO RESPONDENT: Entire file closed because the Commission's RTB vote is split or because of insufficient votes to find RTB (Externally Generated) — Form 25

* TO RESPONDENT: File closed as to certain respondent(s) because the Commission's RTB vote is split or because of insufficient votes to find RTB (Externally Generated) — Form 25A

* TO COMPLAINANT: Entire file closed because the Commission's RTB vote is split or because of insufficient votes to find REASON TO BELIEVE (Externally Generated) — Form 26

b. "No Reason To Believe" Findings

- When the evidence presented in a case prior to investigation is sufficient to show that no violation took place, the Commission may find that there is "no reason to believe" the alleged violation occurred. The following closing forms apply. See also Chapter 3.

Forms

* NO RTB / Entire case closed / (Externally generated) — Form 22

* NO RTB / File closed as to a certain respondent(s) Confidentiality caution (Externally generated) — Form 22A

* NO RTB / Entire case closed (Internally generated) — Form 23

* NO RTB / File closed as to a certain respondent(s) Confidentiality caution (Internally generated) — Form 23A

* NO RTB to Complainant / Notified only when entire file is closed — Form 24

c. "Reason To Believe/Take No Further Action" Finding

- A "no further action" disposition may occur at the same time as the reason to believe finding or it may occur later in the case. See Chapter 3 for discussion. The following forms apply to this finding.

Forms

* TO RESPONDENT: RTB and NFA Findings (Entire File Closed) (Internally Generated) — Form 31

* TO RESPONDENT: RTB and NFA (File closed as to certain respondent(s)) Confidentiality Caution — Form 32

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• TO RESPONDENT: NFA after RTB was previously found (Entire File Closed)	Form 44
• TO RESPONDENT: NFA after RTB was previously found Confidentiality Caution	Form 34A
• TO COMPLAINANT: RTB and NFA re: respondents (Entire File Closed)	Form 35

d. No Probable Cause To Believe

- When OGC's investigation of a respondent reveals no apparent violation after the briefing stage, the Commission may find that there is no probable cause to believe the alleged or referred violation occurred. The following forms notify the respondent, complainant, and the referring agency (if applicable).

Forms

• TO RESPONDENT: NO PCTB / Optional Confidentiality Caution	Form 46
• TO COMPLAINANT: NO PCTB	Form 47
• TO REFERRING FEDERAL AGENCY: NO PCTB	Form 48

e. Probable Cause To Believe/No Further Action

- The Commission may find that there is probable cause to believe a violation has occurred, but determines to take no further action based on the factual and legal circumstances of the case. The following notification forms apply.

Forms

• TO RESPONDENT: PCTB and NFA (Entire File Closed)	Form 50
• TO RESPONDENT: PCTB and NFA (File closed as to certain respondent(s)) Confidentiality Caution	Form 50A
• TO COMPLAINANT: PCTB and NFA	Form 51

f. Case Closed After Conciliation

- When a case closes through successful conciliation (either following the pre-probable cause to believe stage or probable cause to believe stage), the staff person bears responsibility for monitoring the respondents' compliance with conciliation requirements, particularly regarding civil penalty payment(s). See Chapter 5 regarding pre-probable cause to believe conciliation and Chapter 6 regarding probable cause to believe conciliation.

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- As respondents close out, the Special Assistant to the Associate General Counsel (Maura Callaway) will give the staff person a copy of the conciliation agreement showing the final, approved civil penalty. On the page showing the penalty the staff person is to note in the margin the original civil penalty amount offered "going out the door," and return the document to Maura. This provides a quick comparison of initial penalties and negotiated settlements. See *Addendum C* (Calculating Civil Penalties) regarding reference sources (conciliation database).

Forms

- TO RESPONDENT: Case Closed with signed conciliation agreement (Entire File Closed) Form 55
- TO RESPONDENT: Case Closed with signed conciliation agreement (File closed as to certain respondent(s)) / Confidentiality Caution Form 55A
- TO COMPLAINANT: Case Closed with signed conciliation agreement (BEFORE PCTB FINDING) Form 56
- TO COMPLAINANT: Case Closed with signed conciliation agreement (AFTER PCTB FINDING) Form 57
- TO REFERRING AGENCY: Case Closed with signed conciliation agreement Form 59

g. Transfer to Litigation/Close-Out

- When the Commission authorizes civil suit in a case or against certain respondents, and the case is transferred to Litigation, the MUR is not closed, but is considered closed for Enforcement's statistical purposes. Enforcement staff sends out the notification correspondence and prepares the file for public record as usual, including coding, and the team legal secretary marks the case on the EPS system as transferred to Litigation.

- When the matter is resolved in litigation or pre-litigation, the Litigation staff usually sends a memorandum to the Commission, describing the Court's action and recommending that the case be closed. This memo does not make a recommendation regarding close-out letters. Litigation staff then sends an E-Mail message to the Enforcement staff member and team leader, advising that the case has closed. Litigation staff gives copies of the court order or settlement agreement to the assigned Enforcement staff member and team leader. The **Enforcement staff person is responsible for notifying all respondents (and the complainant) in the case by sending appropriate close-out letters.**

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Forms

* TO RESPONDENT: Civil Suit Authorized Form 61

* TO COMPLAINANT: MUR transferred to Litigation / File Closed Form 66

III. FILE PREPARATION FOR PUBLIC RECORD

The Commission has a duty to place closed MURs on the public record within 30 days of notifying respondents that the file is closed. 11 C.F.R. § 111.20. FEC staff (particularly OGC), the media, the regulated community, and the general public use closed cases for research and guidance. An accurate, uniform description of basic case elements is essential for providing useful research tools and for preserving the historical record of MURs.

A. Data Coding

The staff person is responsible for the data coding function that makes up the Closed MUR Index and readies the case for the public record. The staff person must complete the coding function within five working days of receiving the closed file from OGC Docket. Generally, the staff person begins this process once they have prepared and submitted the closing correspondence to the team leader.

Each staff member has a set of coding instructions along with a subject and citation thesaurus to guide them through this closing task. A copy of the coding instructions may be obtained from the Law Librarian (Leta Holley), who is responsible for training staff on this process. Access to the MURUPDATE coding form is gained through ALL-IN-ONE, using a "ps US0" password. Follow the coding instructions, calling librarian Leta Holley with questions if necessary. The MUR Index coding form requires the following elements: MUR number, complainant and respondents' names, case opening and closing dates, statutory, regulatory, and advisory opinion cites, and subject terms to identify the issues involved in the matter.

When the coding sheet is completed, send an E-Mail message to the librarian, your team leader and team secretary, informing them that the coding has been completed. In this message, you may also identify for the librarian additional cites and subjects you coded but did not find in the thesaurus. The team leader has 48 hours to review the coding (it may facilitate the team leader's review for you to print out the completed coding form). As noted above, the team secretaries receive a copy of the closing certification from Docket which serves as notice to them to close out the case on the Enforcement Priority System (EPS). As a handy reminder, copy the attached checklist for close-out procedures and check off each step in the process as it is completed. See Attachment 7-2.

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B. Closed File Preparation

1. Legal Review/FOIA Team Review

After the coding is finished and the E-Mail notification sent, deliver the permanent file to the Assistant General Counsel for Legal Review/Administrative Law (Vinnie Convery). This transfer should also occur within five working days of receiving the closed file from OGC Docket. Staff should put the date of transfer on the routing slip and give the slip to the Special Assistant to the Associate General Counsel (Maura Callaway). OGC Docket will forward copies of the closing letters to the Legal Review team. See Attachment 7-3.

The Legal Review team will review the file to redact it as necessary for the public record. The Commission's policy makes investigative files public, subject to information exempted from disclosure under the Freedom of Information Act. See *Addendum* regarding FOIA. **Note for the Legal Review Team any information in the file that respondents requested be left off the public record.** See *Addendum A* for additional information. Information that is commonly redacted includes the following:

- Conciliation drafts, negotiations, counterproposals;
- RAD standards and thresholds;
- Enforcement Priority System number ratings and Tier numbers;
- Internal standards;
- Information relating to open MURs, Dept. of Justice referrals and open investigations;
- Personal information such as bank account numbers, addresses, Social Security numbers, medical files;
- Social Security numbers from deposition transcripts;
- Certain proprietary or privileged information.

2. Press Office Summary File

When a closed file is redacted, the Legal Review team prepares a Summary File in hard copy for the Press Office that contains General Counsel's Reports and Briefs, conciliation agreements, major responses, Commission certifications, and closing letters. From the Summary File, the Press Office prepares a press release detailing the respondents, the facts and disposition of the case. See Attachment 7-4. If the Press Office requests documents not in the Summary File, inform the Assistant General Counsel for Legal Review/Administrative Law (Vinnie Convery) of the request. Provide him with a copy of the requested document for review before it goes to the Press Office.

3. Historical Record

From the Legal Review team, the redacted permanent file goes to OGC Docket, which transfers it to FEC's Processing Branch to be microfilmed for use in the Public

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Records Division (as well as in OGC). The permanent file is filmed (in a day or two) and returned to OGC. According to the OGC Records Retention Policy, each closed case is divided into three hard copy files: 1) the permanent file, consisting of the documents on public view; 2) the conciliation file (if resolved through conciliation), documents relating to conciliation and not made public; and 3) the "miscellaneous" file, all other sensitive documents withheld from the public record.

All hard copy files are kept in-house for 60 days, the statutory time limit for lawsuits filed under 2 U.S.C. § 437g(a)(8). The "miscellaneous" files are sent to storage after 60 days. The conciliation file (in a red folder) and the permanent file are maintained for five years in OGC file cabinets near Room 629, or in OGC Docket room storage when cabinets are full. **Staff may use the hard copy closed MUR files, identifying oneself and the borrowed files by filling out and placing sign-out cards in the drawer location where the file was removed.** After five years in OGC, the closed MURs are sent to storage where they are archived for another five years and then may be destroyed. For additional details, see the Records Retention Policy at Attachment 7-5.

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UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S.MAIL

Print your name, address and ZIP Code here

FEDERAL ELECTION COMMISSION
999 E STREET, NW
WASHINGTON, DC 20463

OGC
MUR 9999 K.W.

REMOVE TO EXPOSE ADHESIVE

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Joe Smith
123 Main Street
Clifton, VA 20120

4a. Article Number
P 423 288 884

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee)

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

PS Form 3811, December 1991 *U.S. GPO: 1992—323-402 DOMESTIC RETURN RECEIPT

PS Form 3800, April 1995

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
(Do not use for International Mail (See reverse))

Sent to Joe Smith
Street & Number 123 Main Street
Post Office, State, & ZIP Code Clifton, VA 20120

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

P 423 288 884

CERTIFIED

Fold at line over top of envelope to the right of the return address

MAIL

P 423 288 884

Attachment 7-1
Page 1 of 2

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The Postal Service has asked the commission to modify our handling of Certified mail to more conform with the general standards used by non-government mailers. To that end, your caring mailroom staff has prepared this memo to inform you of these changes and of how you will be affected.

Previously, to send a Certified mail item all you had to do was affix the green return receipt (PS Form 3811) onto the envelope and let the highly trained mailroom staff do the rest. Now, not only do you need to attach the return receipt but, in addition, you need to affix a form called the Receipt for Certified Mail (PS Form 3800). These forms can be found in the docket office and in the mailroom.

While the hassle of using another form is bothersome for all, this new process will actually help you in the long run. The Receipt form comes in two parts: the bottom part is a self-adhesive pre-numbered sticker which you attach to the envelope, while the top part is a receipt for you to tear-off and keep for your records.

In summary, the procedures for sending Certified mail are as follows...

1: Attach the Receipt for Certified Mail form (PS Form 3800) to the front, upper edge of the envelope adjacent to the return address.

2: Tear-off the top part of the form, conveniently perforated for this purpose.

3: Complete the following sections on the green Return Receipt (PS Form 3811):

rear of receipt- Section #3 (Article Addressed to:)

Section #4a (Article Number) - the number on your new Receipt for Certified Mail is to be placed in this area

Section #4b (Service Type) - please mark the Certified box

front of receipt- Write your name and the commission's address in the box provided.

5: Attach the green Return Receipt to the envelope (on the front, if possible).

6: Place the envelope in your regular; outgoing mail for pick-up by your efficient mailroom staff.

7: Keep the top of the receipt with your MUR records.

If you have any questions, or need supplies, just contact your dedicated mailroom staff at 208-7171 or 219-3774.

Attachment 7-1
Page 2 of 2

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CLOSE OUT PROCEDURES
CHECKLIST

____ 1. **Obtain mailing addresses for complainant and respondents.**

a. If they are represented by counsel, use the counsel's address.

b. Those respondents represented by counsel should be listed under the MUR # in the closing letter.

c. Check FEC indices for current committee/candidate/treasurer information.

____ 2. **Draft the appropriate letters.**

a. Make sure a letter has been prepared for the complainant.

b. Make sure a letter has been prepared for each respondent.

c. *Remember to send a letter to respondents who previously received a letter stating the matter was closed as it pertained to them.

d. cc: candidate if appropriate.

e. Print letters.

f. Make sure the proper attachments are attached to letters.
* If one of the attachments is a General Counsel's Report, send to FOIA team to make the necessary redactions.

____ 3. **Prepare address labels and Certified Return Receipt cards.**

a. Return receipt cards are for Complainants only.

b. Put MUR # and initials on Return receipt cards.

____ 4. **MUR Code all MURs.**

a. Enter the MURs into the MURUPDATE system.

b. Send an E-Mail to Leta stating that they are in the system and CC team leader and secretary.

____ 5. **Have Secretary Close the Case in EPS.**

____ 6. **Take permanent file to Vinnie.**

Attachment 7-2, Page 1 of 1

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CLOSED MUR ROUTING SLIP

MUR#_____ STAFF:_____

DATE CLOSED:_____

DATE MUR FILE TRANSMITTED TO STAFF:

_____

HAS MUR BEEN CODED?

_____YES

(MURS MUST BE CODED BEFORE GOING TO VINNIE CONVERY)

TRANSMITTED FROM STAFF TO VINNIE CONVERY:

_____

HAS A STATEMENT OF REASONS BEEN ISSUED IN THIS CASE? (CHECK ONE)

_____YES _____NO

WILL A STATEMENT OF REASONS BE ISSUED IN THIS CASE? (CHECK ONE)

_____YES _____NO

*GIVE COMPLETED FORM TO MAURA CALLAWAY

Attachment 7-3, Page 1 of 1

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FEDERAL ELECTION COMMISSION

Press Office
999 E Street, N.W., Washington, D.C. 20463
Phone: 202-219-4155 Toll Free 800-424-9530

For Immediate Release:
September 17, 1997

Contact: Kelly Huff
Ron Harris
Sharon Snyder
Ian Stirton

FEC RELEASES THREE COMPLIANCE CASES

WASHINGTON -- The Federal Election Commission has made public its final action on three matters previously under review (MURs). This release contains only summary information. **Closed files should be thoroughly read for details, including the FEC's legal analysis of the case. (Please see footnote at the end of this release.)** Closed MUR files are available in the Public Records Office.

1. MUR 4060

RESPONDENTS: (a) WTIX, Inc.; George H. Buck, Jr., President (LA), June N. Phelps, Vice President (AL), Jacob E. Bogan, Secretary (GA)
(b) America First Communications, Inc. d/b/a WASO (LA)
(c) Friends of Robert Namer, Barbara Namer, treasurer (LA)
(d) Robert Namer (LA)
(e) Julius Leahman (LA)
(f) John C. Lawrence (LA)
COMPLAINANT: Deidra Jackson (LA)
SUBJECT: Corporate contributions; disclaimers
DISPOSITION: (a-b) Reason to believe, but took no further action*
[re: corporate contributions; disclaimers]
Sent admonishment letters.
(c) Reason to believe, but took no further action*
[re: corporate contributions]
Sent admonishment letter.
(d-f) Took no action*

2. MUR 4399/Pre-MUR 324

RESPONDENTS: (a) Dennis Spice, former Executive Director, State Universities Retirement System (IL)
(b) State Universities Retirement System of Illinois (IL)
(c) James S. Beedie (IL)
(d) Suzann Duckworth (IL)
(e) Tony Freveletti (IL)
COMPLAINANT: Sua sponte
SUBJECT: Contributions in the names of others

-more-

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DISPOSITION: (a) Concilation Agreement: $ 7,500 civil penalty*
[Knowingly permitted his name to be used to effect contributions and knowingly assisted others in such activity]
(b) Conciliation Agreement: $ 3,000 civil penalty*
(c-e) Reason to believe, but took no action*
Sent admonishment letters.

3. **MUR 4654**

RESPONDENTS: Committee for Quality Orthopaedic Health Care, Inc., Charles M. Younger, M.D., treasurer (DC)
COMPLAINANT: FEC Initiated (RAD)
SUBJECT: Failure to file disclosure reports timely
DISPOSITION: Conciliation Agreement: $ 2,300 civil penalty*

***There are four administrative stages to the FEC enforcement process:**
1. Receipt of proper complaint
2. "Reason to believe" stage
3. "Probable cause" stage
4. Conciliation stage
It requires the votes of at least four of the six Commissioners to take any action. The FEC can close a case at any point after reviewing a complaint. If a violation is found and conciliation cannot be reached, then the FEC can institute a civil court action against a respondent.

###

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 27, 1995

MEMORANDUM

To: OGC Staff

From: Susan T. Donaldson
Special Assistant to the General Counsel

Subject: Records Retention Policy

Background

Over the years, OGC has not had a formal records retention policy. It was never clear how long closed enforcement files should be kept in-house before being sent to storage. Enforcement files include MURs, RAD Referrals, and Pre-MURs. The retention issue has come up numerous times during the last couple of years because of the increasing number of closed enforcement files and the severe space limitations in OGC.

A committee was formed to propose an OGC policy for enforcement records retention which would address which files should be kept in-house and for what period of time. The committee was made up of representatives from each team/group within enforcement, the Assistant GC of the Admin Law Team, a representative from Docket, and the Special Assistant to the General Counsel. The committee members included Greg Baker, Holly Baker, Vinnie Convery, Rich Denholm, Craig Reffner, Kim Stevenson, Phil Wise, and Susan Donaldson. The committee met and discussed the staff requirements for closed files, the potential and experienced problems, Docket issues, the practical realities of space limitations and other comments that had been submitted from various sources. After careful consideration, the Committee came up with a proposal that was circulated to the senior enforcement staff and approved. The new procedures have been implemented and the policy is attached for your reference and information.

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OGC RECORDS RETENTION POLICY FOR CLOSED ENFORCEMENT FILES

When an enforcement file closes, it is sent to the Admin Law Team. The Admin Law Team pulls certain documents for FOIA purposes as well as documents that are not crucial to the enforcement file. The file containing these pulled documents has been referred to in the past as the "FOIA" file. The file which retains the critical documents of the enforcement file has been referred to as the "Permanent" file. Both files, which include all documents related to an enforcement case, have been kept in-house for at least 60 days due to the possibility that certain cases may be subject to a lawsuit filed under 2 U.S.C. 437g(a)(8). This 60 day requirement will not change under the new records retention policy.

(1) Permanent Files

Once an enforcement file is closed, the "Permanent File" (which does not contain any documents pulled by the Admin Law Team) will be kept for a minimum of 60 days. The permanent files contain all vital documents regarding the enforcement case including a copy of the complaint or basis referral, copies of all correspondence with the respondent or with the Commission, all OGC reports and briefs, all certifications, and the final conciliation agreement. Any Permanent Files pertaining to cases that were part of a purge will be sent to storage after 60 days. All other Permanent Files will be kept in OGC for 5 years after they are closed. This includes all enforcement cases handled by the PFESP teams.

For five years, these hard copy files will be placed in file cabinets in OGC with sign out cards for the staff's use. After 5 years, the Permanent Files will be sent to storage. All Permanent Files in storage will be destroyed 10 years after their closing dates.

If there are special circumstances that require a Permanent File to be kept in-house for more than 5 years, that request can be made through an Assistant GC to the Docket Assistant who handles the closed files. Whenever possible, this request should be made within four and a half years of the file's closing. To keep the Assistant General Counsels apprised of the status, the Docket Assistant will

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send the enforcement team leaders a list of all cases prior to sending the files to storage.

(2) FOIA Files

When the Admin Law Team goes through a closed enforcement file, they pull all documents which are not kept with the Permanent File - either because of FOIA requirements or because they are not vital parts of the enforcement file (financial information, trade secrets, mail list information, correspondence regarding conciliation, routing slips, phone messages, etc.). All of these types of documents have been placed in a separate file previously called the "FOIA File". The new records retention policy eliminates the FOIA File and replaces it with a Conciliation File and/or a Miscellaneous File as explained below.

(3) Conciliation Files

The Admin Law Team will create two files instead of one for every closed MUR that has a conciliation agreement. In one file, all documents relating to conciliation will be placed. This includes the conciliation agreement, letters discussing offers of conciliation, counter-offers, and discussions in any reports regarding conciliation. Red letter-size folders for these "Conciliation Files" will make them distinguishable. All Conciliation Files will be kept behind the Permanent File (with the same MUR #) in a file cabinet in OGC for five years after the MUR is closed.

(4) Miscellaneous Files

All documents pulled by the Admin Law team that are not related to conciliation will be placed in a file called the "Miscellaneous File". All Miscellaneous Files will be sent to storage 60 days after the MUR is closed. If there is no conciliation in a MUR, then the Miscellaneous file will be the only file created by the Admin Law Team. Since RAD Referrals and Pre-MURs never have conciliation, they will only have Miscellaneous Files created by the Admin Law Team.

(5) Locating Archived Files

The closed MUR status books located in Docket can be used to determine if a file has been archived. White stickers have been placed on the "enforcement docket cards"

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to identify the location of the files. If a file has to be retrieved from the Records Center, the information from the white sticker should be given to Kim Stevenson in the Docket Room. Docket will request retrieval of the file which should be available within one week.

(6) Using Closed Enforcement Files

The closed Permanent and Conciliation files are located in file cabinets in the hallway area of Room 629. The files are in numerical order and are available to all OGC staff. Sign-out cards should be used when a file is removed. The cards can be found on the top of the file cabinets. Fill in your name, date, which file you are using, and then place the card in the drawer where the file was removed. When you are finished using the file, return it to the appropriate drawer and return the sign-out card to the top of the cabinet. If you have any questions or problems with the files or these procedures, please direct your inquiries to Kim Stevenson, Docket Assistant. In Kim's absence, please see Retha Dixon, Docket Chief.

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Addendum A

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Addendum B

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ADDENDUM B

REPORT ATTACHMENT GUIDE

This addendum provides some general guidelines concerning attachments to reports circulated to the Commission and documents to be mailed by Docket. Although the type of attachments may vary depending on the nature of the case and complexity of the report in question, there are certain requirements that apply to all reports. First, each report requiring a vote by the Commission must have a Sunshine Recommendation form. The Sunshine form is used for administrative purposes to determine the type of meeting in which a matter will be discussed and voted on by the Commission. (See Addenda J for information on the Sunshine Act.) Second, the routing slip, also used for administrative purposes, is used to record and track the status of the report, and is color coded depending on the track of the case. For example, Track 1 cases use a red routing slip, and Track 2 cases use a blue routing slip.

Depending on the nature of the case, additional attachments may also be included. Each attachment should be referenced in the body of the report and labeled. See Chapter 3, Section VI for a detailed description of Attachments and the Final Package and Chapter 6, Section IV, D.

I. First General Counsel Reports (FGCR)

A. To the Commission:

1. Report
   a. Sunshine Form (goes on top of Report)
   b. Referral Material, if applicable[1]
   c. Complaint, if applicable[2]
   d. Factual and Legal Analysis (unless there are no affirmative RTB votes recommended)
   e. Conciliation Agreement[3] (if we are recommending entering into pre-probable cause conciliation in the FGCR)
   f. Subpoenas and/or Orders, if applicable[4]

---

1 For example: Audit reports, external agency reports, and directive 6 referrals.

2 In complaint-generated matters, the Commissioners have already received copies of the complaints; however, if a report quotes extensively from a complaint or to an exhibit attached to the complaint, the complaint may be included as an attachment.

3 See Chapter 3, Section VI, A.4.

4 When seeking the issuance of discovery subpoenas which are virtually identical, a sample subpoena can be attached to the First General Counsel Report for the Commission's consideration.

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B. To Docket: (After receiving certification)

1. Appropriate Letter(s) and addressed envelope(s):
   a. RTB letters
   b. RTB but take no further action letter
   c. Decline to open a MUR letter, et al
   d. CC envelope[5]
2. Referral Material, if applicable
3. Complaint, if applicable
4. Factual and Legal Analysis
5. Conciliation Agreement
6. Subpoenas and/or Orders[6]
7. Descriptions of Preliminary Procedures (for external or internal matters)[7]
8. Designation of Counsel form
9. Pink initial slip[8]

II. PCTB/No PCTB BRIEFS

At the Probable Cause Stage, OGC prepares a brief stating its position on the legal and factual issues of the case and recommendations as to whether or not the Commission should find probable cause to believe. Docket is then responsible for making copies of signed brief(s) and letter(s) for circulation to the Commission and mailing to respondents.

---

[5] Staff will provide addressed envelope(s) for letters that have courtesy copies, for example (CC: Senator John Smith). Docket dates and makes the copy(s) of the signed letter(s) for mailing. The staff person need only provide the addressed envelope(s) and all other attachments that will be accompanied with the courtesy copy(s).

[6] A Certified Return Receipt Card and PS Form 3800 should be attached to the addressed envelope(s). See Attachment B-1.

[7] When RTB is found against a respondent, one of two descriptions of preliminary procedures can be sent with the RTB letter. If the matter is Internally Generated, the Description of Preliminary Procedures for Processing Possible Violations Discovered by the Federal Election Commission is attached. If the matter is Externally Generated, the Description of Preliminary Procedures for Processing Complaints Filed with the Federal Election Commission is attached.

[8] The pink initial slip lets the Commissioners know that a particular document has been reviewed for accuracy and completeness. It should be initialed and checked off in the appropriate places by the staff person and his or her supervisor.

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A. To the General Counsel:

1. Original Brief
   a. Draft Conciliation Agreement, if applicable[9]

B. To Docket:

1. Appropriate Letter(s); copies; and addressed envelope(s)
2. Original Brief

III. General Counsel's Report – PCTB/No PCTB

A. To the Commission:

1. Report
   a. Sunshine Form
   b. Proposed Conciliation Agreement, if applicable
   c. Reply Brief

B. To Docket: (after receiving Certification)

1. Appropriate Letter(s); copies; and addressed envelope(s)
   a. Proposed Conciliation Agreement

IV. General Counsel's Report Recommending Acceptance of Signed Conciliation Agreement

A. To the Commission:

1. Report
   a. Copy of signed Conciliation Agreement
   b. Copy of Respondent's submission
   c. Copy of civil penalty check, if applicable

B. To Docket:

2. Appropriate Letter(s); copies; and addressed envelope(s)
   a. Copy of signed Conciliation Agreement

[9] Briefs are prepared for signature by the General Counsel. In the appropriate case, a draft conciliation agreement should be provided to the General Counsel along with the brief. See Chapter 6, Section II, F.

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V. **General Counsel's Report Recommending Rejecting Respondent's Counteroffer in whole or part, and submitting a counterproposal for approval/ authorizing suit.**

A. To the Commission:

1. Report
   a. Sunshine Form
   b. Copy of Commission's counterproposal
   c. Copy of Respondent's counteroffer

B. To Docket: (after receiving certification)

1. Appropriate Letter(s); copies; and addressed envelope(s)
   a. Copy of Commission's counterproposal

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UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S.MAIL

Print your name, address and ZIP Code here

FEDERAL ELECTION COMMISSION
999 E STREET, NW
WASHINGTON, DC 20463

OGC
MUR 9999 K.W.

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Joe Smith
123 Main Street
Clifton, VA 20120

4a. Article Number
P 423 288 884

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form 3811, December 1991 ★U.S. GPO: 1992—323-402 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

REMOVE TO EXPOSE ADHESIVE

MAIL

P 423 288 884

CERTIFIED

Fold at line over top of envelope to the right of the return address

PS Form 3800, April 1995

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to Joe Smith
Street & Number 123 Main Street
Post Office, State, & ZIP Code Clifton, VA 20120

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

P 423 288 884

Attachment B-1
Page 1 of 2

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The Postal Service has asked the commission to modify our handling of Certified mail to more conform with the general standards used by non-government mailers. To that end, your caring mailroom staff has prepared this memo to inform you of these changes and of how you will be affected.

Previously, to send a Certified mail item all you had to do was affix the green return receipt (PS Form 3811) onto the envelope and let the highly trained mailroom staff do the rest. Now, not only do you need to attach the return receipt but, in addition, you need to affix a form called the Receipt for Certified Mail (PS Form 3800). These forms can be found in the docket office and in the mailroom.

While the hassle of using another form is bothersome for all, this new process will actually help you in the long run. The Receipt form comes in two parts: the bottom part is a self-adhesive pre-numbered sticker which you attach to the envelope, while the top part is a receipt for you to tear-off and keep for your records.

In summary, the procedures for sending Certified mail are as follows...

1: Attach the Receipt for Certified Mail form (PS Form 3800) to the front, upper edge of the envelope adjacent to the return address.

2: Tear-off the top part of the form, conveniently perforated for this purpose.

3: Complete the following sections on the green Return Receipt (PS Form 3811):

rear of receipt- Section #3 (Article Addressed to:)

Section #4a (Article Number) - the number on your new Receipt for Certified Mail is to be placed in this area

Section #4b (Service Type) - please mark the Certified box

front of receipt- Write your name and the commission's address in the box provided.

5: Attach the green Return Receipt to the envelope (on the front, if possible).

6: Place the envelope in your regular, outgoing mail for pick-up by your efficient mailroom staff.

7: Keep the top of the receipt with your MUR records.

If you have any questions, or need supplies, just contact your dedicated mailroom staff at 208-7171 or 219-3774.

Attachment B-1
Page 2 of 2

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

Official Business

CERTIFIED

Z 373 166 691

MAIL

Attachment B-3
Page 1 of 1

Sample Front of Envelope

Michael Wilson, Treasurer
Fund for a Better Government
1984 Grant Street
City, ST 00000

MUR 9999 KW

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

Is your RETURN ADDRESS completed on the reverse side?

3. Article Addressed to:

Michael Wilson, Treasurer
Fund for a Better Government
1984 Grant Street
City, ST 00000

4a. Article Number
Z 373 166 691

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)
X

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

PS Form 3811, December 1994 Domestic Return Receipt

1997 Enforcement Manual

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Addendum C

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ADDENDUM C

CALCULATING CIVIL PENALTIES

I. INTRODUCTION

The information contained in this addendum regarding the calculating of civil penalties is particularly sensitive and confidential and must be kept in the strictest confidence.

As explained in the chapters on pre-probable cause (Chapter 5) and post-probable cause conciliation (Chapter 6), the conciliation process begins when this Office prepares a report to the Commission recommending that it approve a conciliation agreement to be presented to Respondents as an opening offer. This addendum includes the formulas and general guidelines to be used in calculating the recommended "out-the-door" penalty amounts for various types of violations of the Act. The formulas described therein include both Commission-approved formulas (e.g., late/nonfilers, 48 hour cases), which are shown with the date the policy was approved, and formulas that have not been formally approved, but which developed over time. For violations without set formulas, this addendum sets out approaches used in recent MURs. It is important to remember, however, that only the Commission has the authority to approve an agreement. Once the Commission has initiated conciliation and staff are negotiating a counter proposal, they should make clear to respondents that the Commission has the final authority to approve or reject the counterproposal.

The legal and policy background on the subject of civil penalties is discussed in the Chapters on pre-probable cause (Chapter 5) and post-probable cause conciliation (Chapter 6). Chapter 5 also includes a full discussion of the handling of civil penalties after a matter closes (payment plans, routing of civil penalty checks, the Civil Penalty Tracking System (CPTS), refunds, and restrictive endorsements). Information on OGC records retention policy for conciliation files (which include civil penalty discussion) can be found in the chapter on "Closing the Matter" (Chapter 7).

II. STATUTORY AUTHORITY

When the Commission has found probable cause to believe that a respondent has violated the Act, and assuming that the Commission does not refer the matter to the Department of Justice for criminal prosecution or determine to take no further action and close the file, the Commission may decide to enter conciliation. The Act provides that the Commission must attempt for a period of 30 to 90 days (less in the 45 days before a regularly scheduled election) to correct the violation by "informal means of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved." 2 U.S.C. § 437g(a)(4)(A). As noted in the chapter on pre-probable cause conciliation, a conciliation agreement may also be reached after a finding of reason to believe, but prior to a finding of probable cause to believe. 11 C.F.R. § 111.18(d).

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Conciliation agreements include a requirement that the respondent(s) pay a civil penalty. For all violations that take place after April 29, 1997, the statutory penalties of $5,000 (non- knowing and willful) and $10,000 (knowing and willful) at 2 U.S.C. § 437g(a)(5), (6) are increased to $5,500 and $11,000, respectively. 11 C.F.R. § 111.24, 62 Fed. Reg. 11316 (Mar. 12, 1997) (implementing the Debt Collection Improvement Act of 1996, 110 Stat. 1321-358, 1321-373 (April 26, 1996)).[1]

The statutory civil penalty for violation of the Act's confidentiality provisions, found at 2 U.S.C. § 437g(a)(12) is $2,200 (non-knowing and willful) and $5,500 (knowing and willful) for violations that occurred after April 29, 1997. The penalties are $2,000 and $5,000 respectively for violations that occurred before April 30, 1997.

III. GENERAL INFORMATION

A. Terminology

1. "Assessing" a civil penalty

The Commission does not have the power to compel anybody to pay a civil penalty; civil penalties must be negotiated by agreement between the respondent and the Commission (if there is no agreement, the Commission may choose to file civil suit or may take no further action). **It is incorrect, therefore, to refer to a FEC civil penalty as a "fine" or to speak of the Commission as "fining" or "assessing" a civil penalty. When describing how this Office arrived at the proposed civil penalty, use words such as "calculated" or "determined"**

2. "Out-the-door" offers

The term "out-the-door" refers to the penalty amount in the Commission's opening conciliation offer to a respondent. There are two types of out-the-door penalty amounts: the *recommended* out-the-door amount, which is derived from the formulas described herein and which this Office recommends the Commission approve as part of a proposed conciliation agreement; and the *actual* out-the-door amount, which the Commission approves and presents to respondents as an opening offer. The Commission retains full authority to accept, reject or modify the recommended out-the-door amount in any case.

[1] Agencies may further increase their civil penalties whenever this is warranted by increases in the Consumer Price Index, and (CPI increases permitting) they are required to do so at least once every four years.

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B. Factors to Consider when Calculating Civil Penalties

Although certain aggravating factors, e.g. recidivism and knowing and willful violations, are considered when calculating the recommended out-the-door amount, this Office, as a general rule and in order to preserve flexibility in negotiating a final penalty amount, does not consider mitigating factors (such as first offense, new or inexperienced player in the process, action to prevent future violations, etc.) in applying the formulas and deriving a recommended out-the-door amount. Mitigation of the penalty amount is more appropriately accomplished through the negotiation process, which is addressed more completely in the chapters on pre-probable cause and post-probable cause conciliation.

1. **Knowing and willful.** As noted above, the statute provides for higher civil penalties for knowing and willful violations. Usually, this Office recommends a civil penalty which is 200% of the amount in violation.[2] 2 U.S.C. § 437g(a)(5)(B).

2. **Recidivist Factor.** The recidivist factor is a Commission-approved formula (restated in 1997-3) for calculating the additional civil penalty applicable to committees that appear on the Recidivist Index. The Recidivist Index, periodically updated, is a list of all political committees that have been the subject of one or more conciliation agreements with the Commission prior to a finding of probable cause to believe or have had one or more probable cause findings regarding non-filing or late filing of reports within the past five years. See Attachment C-1 for sample Recidivist Index.

C. Rounding Off Civil Penalties
(See Enforcement Procedures 1994-6 and 1997-3)

The civil penalty amount is rounded off as follows:

Below $5,000: round to the nearest $100 increment.

Between $5,000 and $9,999: round to the nearest $500 increment.

$10,000 and above: round to the nearest $1,000 increment.

If a civil penalty computes to be half of the applicable increment, the penalty is rounded up. For example, if the penalty computes to $2,150, it is rounded up to $2,200. Another example: if the penalty computes to $15,500, it is rounded up to $16,000.

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[2] Section 437g(d) of the Act allows for a civil penalty of $25,000 or 300% of the amount of the violation, whichever is greater, [redacted]

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

D. Research Tools

In calculating the civil penalty amount for violations with no established formulas, staff should review the conciliation and civil penalty discussion for recent closed MURs involving the same type of violations. Closed MURs can be accessed through the computerized MUR Index located in the FEC Disclosure/Legal Inquiry System (from ALLIN1), (See Attachment C-2 for cover page of MUR Index) or by asking Maura Callaway for a printout of the Conciliation Agreement Index for the particular violation of the Act (Maura also maintains copies of recent conciliation agreements, older CAs are in Cynthia Myers' office). See Attachment C-3 for a sample page from the Conciliation Agreement Index. The Conciliation Agreement Index is particularly useful. It includes the MUR number, name of case, cites, opening civil penalty offer and final offer, and date signed. Hard copies of closed MURs, including the conciliation discussion (in red folder along with the file), are kept in file cabinets in room 629 (hallway). See Chapter 7. Objection Memos (Addendum D) are another source of information on civil penalty calculations. They are filed in binders in Cynthia Myers' office.

IV. CALCULATING THE RECOMMENDED OUT-THE-DOOR PENALTY

The only circumstances in which the Commission has formally approved civil penalty formulas are for the following violations: failure to file disclosure reports, late filing of disclosure reports, and failure to file a 48-hour notice of receipts. See Enforcement Procedure 1997-3 for compilation of formulas.

A. Filing and Reporting Violations

1. Non-Filers and Late Filers

OGC has developed a Windows-based Excel program that calculates the civil penalties for non-filers and late filers. **Instructions for accessing this program are available from team paralegals.**

a) **Failure to File Disclosure Reports (2 U.S.C. § 434(a))**

i) Begin with a base amount of $1,000 for each report filed late.

ii) Add $250 for each report not filed for a 12 Day Pre-Election Report. Add $250 for each quarterly report not filed the calendar quarter immediately prior to a primary election or general election. Add $250 for a monthly report not filed for the calendar month immediately prior to a general election.

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iii) Add $250 for each report not filed in a calendar year during which a regularly scheduled election is held and which covers a period of activity during the election year.

iv) Add $250 for each report which has not been filed more than 30 days after the original filing date. Add $250 for every additional 30 days, or any portion thereof.

v) Check the recidivist list. If the committee is **not** on the list, the recidivist factor does not apply. If the committee is **on** the list for one prior conciliation agreement or PCTB finding, the penalty equals **double** the subtotal derived from the civil penalty formula (plus rounding), or $2,500, whichever is **higher**. If the committee is on the list twice, the penalty equals **triple** the subtotal derived from the civil penalty formula (plus rounding), or $5,000, whichever is higher. If the committee is on the list three or more times, the penalty is calculated on a case by case basis.

The recidivist factor should be included in the chart in the General Counsel's Report as follows:

Recidivist Factor:
>(insert number) conciliation agreement(s) or PCTB finding(s) since 1/1/>
(insert five years back) pertaining to the late filing or non-filing of reports.

vi) Repeat the process for each non-filed report that is the subject of your case. At the end, add the penalties calculated for each report to come up with the final recommended penalty amount.

vii) See Non-Filer Flowchart at Attachment C-4.

b) **Late Filing of Disclosure Reports (2 U.S.C. § 434(a))**

i) Begin with a base amount of $250.00 per report filed late for quarterly filers and a base amount of $125.00 per report filed late for monthly filers.

ii) Add $250.00 for each report (disclosing combined receipts and disbursements of more than $10,000) filed between 31 and 60 days late. Add $250.00 for every additional thirty days, or any portion thereof.

iii) Add $250.00 for each report (disclosing combined receipts and disbursements of more than $10,000) filed late in a calendar year during which a regularly scheduled election is held and which covers a period of activity during the election year.

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iv) Add $250.00 for each 12 Day Pre-Primary Election Report (regardless of the volume of activity) filed late. Add $250.00 for each quarterly report (regardless of the volume of activity) filed late for the calendar quarter immediately prior to a primary. Add $250.00 for a monthly report filed late for the calendar month immediately prior to a primary. Add $250.00 for a monthly report filed late for the calendar month immediately prior to a general election.

v) For each October Quarterly or 12 Day Pre-General Report filed after election day by an authorized committee of a general election candidate, add $1,000.00 for every $10,000.00 in receipts or disbursements (use the higher figure), or any portion thereof.

vi) For all other reports filed late disclosing receipts or disbursements between $10,000.00 and $20,000.00 (use the higher figure), add $100.00. Add $100.00 for every additional $10,000 in receipts and disbursements (use the higher figure) or any portion thereof.

vii) Check the recidivist list. If the committee is not on the list, the recidivist factor does not apply. If the committee is on the list for one prior conciliation agreement or PCTB finding, the penalty equals double the subtotal derived from the civil penalty formula (plus rounding), or $2,500, whichever is higher. If the committee is on the list twice, the penalty equals triple the subtotal derived from the civil penalty formula (plus rounding), or $5,000, whichever is higher. If the committee is on the list three or more times, the penalty is calculated on a case by case basis.

The recidivist factor should be included in the chart in the General Counsel's Report as follows:

Recidivist Factor:
>(insert number) conciliation agreement(s) or PCTB finding(s) since 1/1/>(insert five years back) pertaining to the late filing or non-filing of reports.

viii) Repeat the process for *each late*-filed report that is the subject of your case. At the end, add the penalties calculated for each report to come up with the final recommended penalty amount.

ix) See Late-Filer Flowchart at Attachment C-5.

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2. Filing Inaccurate/Incomplete Reports

a) **Failure to File a 48-Hour Notice of Receipts (2 U.S.C. § 434(a)(6)(A))**

i) Group the missing 48-hour notices per date during the 48-hour notice period on which each 48-hour notice should have been filed but was not. **Count each date (not each notice) as a missing notice.**

ii) Begin with a base of $100 per missing notice.

iii) Add 15% of the amount of the untimely reported contributions.

iv) The penalty formula is: (Number of missing notices x $100) + (Amount of contributions not reported x 0.15).

b) **Other Reporting Violations (2 U.S.C. § 434(b))**
(No formal Commission policy, OGC guidelines)

The reporting violations in this category may include failure to itemize, failure to submit complete contributor information, and failure to report outstanding debts, transfers and disbursements. If the amount in violation is $100,000 or less, the recommended out-the-door amount should be 15 percent of the amount in violation. If the amount in violation is more than $100,000, the recommended out-the-door amount should be 20 percent of the amount in violation.

3. Failure to File Statements of Candidacy/Organization (2 U.S.C. §§ 432 and 433)

There are no set formulas for a violation of failure to file a Statement of Candidacy (2 U.S.C. § 432(e)(1)) or Statement of Organization (2 U.S.C. § 433(c)). These violations are not usually pursued in isolation but are ordinarily treated with accompanying violations of Section 434 (reporting) or Section 441a (excessive contributions) so that the civil penalty is calculated based on the formula for reporting violations without an additional penalty for the failure to file the Statement of Candidacy or Statement of Organization. In several recent matters, however, the Commission added a $1,000 civil penalty for the Section 433(c) violation because of the unusual circumstances (length of time committees operated without a treasurer of record).

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B. Excessive Contributions

1. Made/Received (2 U.S.C. §§ 441a(a)(1) or (2); 441a(f))

The recommended out-the-door amount should be 50 percent of the amount of excessive contributions contributed/received and not yet refunded, and/or 25 percent of the amount of excessive contributions contributed/received and already refunded.

2. $25,000 Aggregate Annual Limit For Individual Contributors (2 U.S.C. § 441a(a)(3))

The recommended out-the-door amount should be 100 percent of the amount of contributions in excess of $25,000.

3. If the Same Contributor Has Violated 2 U.S.C. § 441a(a)(1) and (2 U.S.C. § 441a(a)(3)):

Begin with the total amount of contributions. Subtract the amount allowed by law. Apply the "50/25 rule" described above to contributions that violate 2 U.S.C. § 441a(a)(1), but not (a)(3). Apply the 100 percent rule to each dollar over $25,000.

EXAMPLE:

- Individual Contributor contributes $1,000 in money and $30,000 in-kind to the Candidate X for Senate Committee. The first $1,000 is permitted under the law. The next $24,000 violates 2 U.S.C. § 441a(a)(1), and has not been refunded; the penalty calculation for this portion equals 50 percent of $24,000, or $12,000. The last $6,000 violates both Section 441a(a)(1) and Section 441a(a)(3). The penalty calculation for this portion equals $6,000 (100 percent of itself). The total recommended out-the-door amount equals $12,000 + $6,000, or $18,000.

C. Prohibited Contributions or Expenditures 2 U.S.C. §§ 441b (banks/corporate/labor), 441c (government contractor), 441e (foreign national), and 441f (contributions in the name of another)

Matters involving prohibited contributions or expenditures are usually serious and complex cases because of the nature of the violations and because they typically involve multiple violations, transactions and respondents. In such cases, the ordinary practice is to calculate the civil penalty based on the statutory penalty or the actual amount involved. The civil penalty calculation is not always clear-cut however. Certain cases raise the question of how to factor separate violations arising from the same transaction. A typical scenario involves the use of corporate funds to make contributions in the name of

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another. Such a case generates multiple knowing and willful violations of 441b (consenting to making corporate contributions, making corporate contributions) and 441f (making contributions in the name of another, allowing one's name to be used to make such contributions, assisting in the making of such contributions) against a number of respondents (corporation, corporate officers, employees) involving the same funds. One recent approach used to calculate the civil penalty is to take 100% (or 200% for knowing and willful) of the corporate contributions involved in the violations, plus the statutory penalty amount for each officer who consented to the contributions, and 100% of the contributions made by the remaining individual respondents. [redacted] Also consult with your supervisor.

1. Contributions or Expenditures by National Banks, Corporations, or Labor Organizations (2 U.S.C. § 441b); Contributions by Government Contractors (2 U.S.C. § 441c)

In certain cases involving 441b or 441c violations, this Office has used the following formula in recommending the out-the-door amount: 50 percent of the amount of prohibited contributions contributed/received and not yet refunded, and/or 25 percent of the amount of prohibited contributions contributed/received and already refunded. If the violation is a prohibited independent expenditure instead of a prohibited contribution, the recommended out-the-door amount used is 50 percent of the amount of the expenditure.

2. Foreign National Contributions (2 U.S.C. § 441e)

The recommended out-the-door amount used for violations of 2 U.S.C. § 441e is 100 percent of the amount at issue. [redacted]

3. Contributions in the Name of Another (2 U.S.C. § 441f)

The usual recommended out-the-door amount for violations of 2 U.S.C. § 441f is 100 percent of the amount at issue or 200 percent of the amount at issue for knowing and willful violations.

Section 441f violations often give rise to corresponding 441a (excessive contributions) violations. In recent cases involving both violations, the Commission approved a civil penalty based on 100% (or 200% for knowing and willful) of the amount at issue, rather than calculating separate penalties for the 441f and 441a violations. [redacted]

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D. Miscellaneous Violations

1. Failure to make appropriate disclaimers
(2 U.S.C. § 441d(a))

A communication containing express advocacy or soliciting contributions must contain a disclaimer notice identifying who authorized and paid for it. Traditionally, the civil penalty for failure to include the appropriate disclaimer was based on a percentage of the amount spent on the communication. This approach, however, did not cover situations where the amount spent was unknown or where the expense did not capture the extent of the impact of the communication on the election. There is no set formula for this type of violation so the statutory penalty can be considered along with a broad range of factors such as: (1) the amount spent on the ads (printing/distribution costs); (2) how many ads were distributed (3) the type of publication in which the communication appeared and its circulation; and (4) the impact of the communication the outcome of the election (margin of victory). [redacted]

2. Improper use of contributor information
(2 U.S.C. § 438(a)(4))

This Section of the Act prohibits the sale or use of contributor information obtained from FEC reports or statements for soliciting contributions or for commercial purposes. There is no set formula for this type of violation. Because most of the cases involving this type of violation are fairly old, new approaches to calculating the civil penalty may be considered including using the statutory penalties and seeking a penalty based on the amount of any benefit derived from the use of the information and/or whether the violation was knowing and willful. [redacted] Legi-Tech (Civil Suit - Court imposed $20,000 penalty -- $5,000 per violation (MUR 2361)).

V. LIST OF ATTACHMENTS

C-1. Sample Recidivist List
C-2. Copy Closed MUR System Main Menu
C-3. Sample Conciliation Agreement Index
C-4. Non-Filer Flowchart
C-5. Late Filer Flowchart

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The Advisory opinion and MUR Index have a menu program. You may request a specific AO or MUR summary sheet and do subject, citation, date or name searches. Using the main menu you also enter all print commands, initiate a new search or exit the program by entering the listed corresponding number.

CLOSED MUR SYSTEM MAIN MENU

In order to obtain information from the Closed MUR Data Base Enter the number of the option desired.

1 MUR NUMBER
2 SUBJECT SEARCH
3 CITATION SEARCH
4 DATE SEARCH
5 COMPLAINANT/RESPONDENT
6 PRINT MUR LIST
7 PRINT MUR SUMMARIES
8 BEGIN NEW SEARCH

0 EXIT

Enter the option number desired:

AT START.

The program automatically combines whatever type of search you do with the previous searches until you press #8 and begin a new search. Look for "at start" on the main menu screen in order to be sure you are doing a search which will be independent from any results obtained earlier.

In other words the first search should be the most general one because all other searches done (without initiating a NEW search by pressing #8 on the main menu) will simply sort through the initial search for different name, subject, citation or time terms as you request them.

Attachment C-2

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CASE NUMBER	NAME	CITE(S)	OPENING OFFER	FINAL OFFER	DATE SIGNED
4331	Robinson, Lake, Lerer & Montgomery, Inc./dba Robinson Lake Sawyer Miller	441f/kw	[redacted]	8000.00	06/19/96
4342	Stephens for Congress Committee, Inc./Gary Shadid, as treasurer	434(a)(2)(A)	[redacted]	2000.00	07/11/96
4349	A Lot of People Who Support Jeff Bingaman (1994)/Vince Murphy, as treasurer	434(b)/441a(f)	[redacted]	10000.00	08/22/96
4366	Phil Schiliro for Congress Committee/Joseph M. Schiliro, as treasurer	434(a)(6)(A)	[redacted]	2000.00	01/22/97
4398	Terri Bradley	441f	[redacted]	21000.00	08/22/96
4398	Thomas Kramer, et al.	441e	[redacted]	323000.00	08/22/96
4398	Republican Party of Florida(federal and non/federal accounts)/James H. Stelling, as treasurer	441e	[redacted]	82000.00	02/20/97
4403	Populist Party of America/Philip G. Chester, as treasurer	434(a)(4)(A)(iv)	[redacted]	250.00	10/11/96
4425	Gordon Smith for U.S. Senate/Greg Niedermeyer, as treasurer	434(a)(6)(A)	[redacted]	7500.00	01/27/97
4426	National Automobile Dealers Association Dealers Election Action Committee of the National Automobile Dealers Association/Leonard Fichtner, as treasurer	441b(a)/434(b)	[redacted]	26000.00	03/21/97
4484	Stewart Raimum, Jr.	441a(a)(1)(A)/441f	[redacted]	4000.00	02/20/97
4493	Transport Workers Union Political Contributions Committee/John K. Kerrigan/as treasurer	434(a)(4)(B)	[redacted]	1600.00	12/03/96
4533	Michele Alioto for Congress/treasurer	434(a)(6)(A)	[redacted]	6000.00	02/14/97
4581	Consolidated Local Union No. 177 of the I.B.E.W. Outside-Inside PAC Fund/Thomas M. Gibbons, as treasurer	434(a)(6)(A)(i)	[redacted]	1100.00	12/23/96
4603	Davis for Congress/Friends of Danny K. Davis/Jefferson Haskins, as treasurer	434(a)(6)(A)/433(c)	[redacted]	8000.00	02/07/97
4609	McDonald for Senate Committee/Philip C. Benefield, as treasurer	434(a)(6)(A)	[redacted]	50000.00	04/13/97

Attachment C-3

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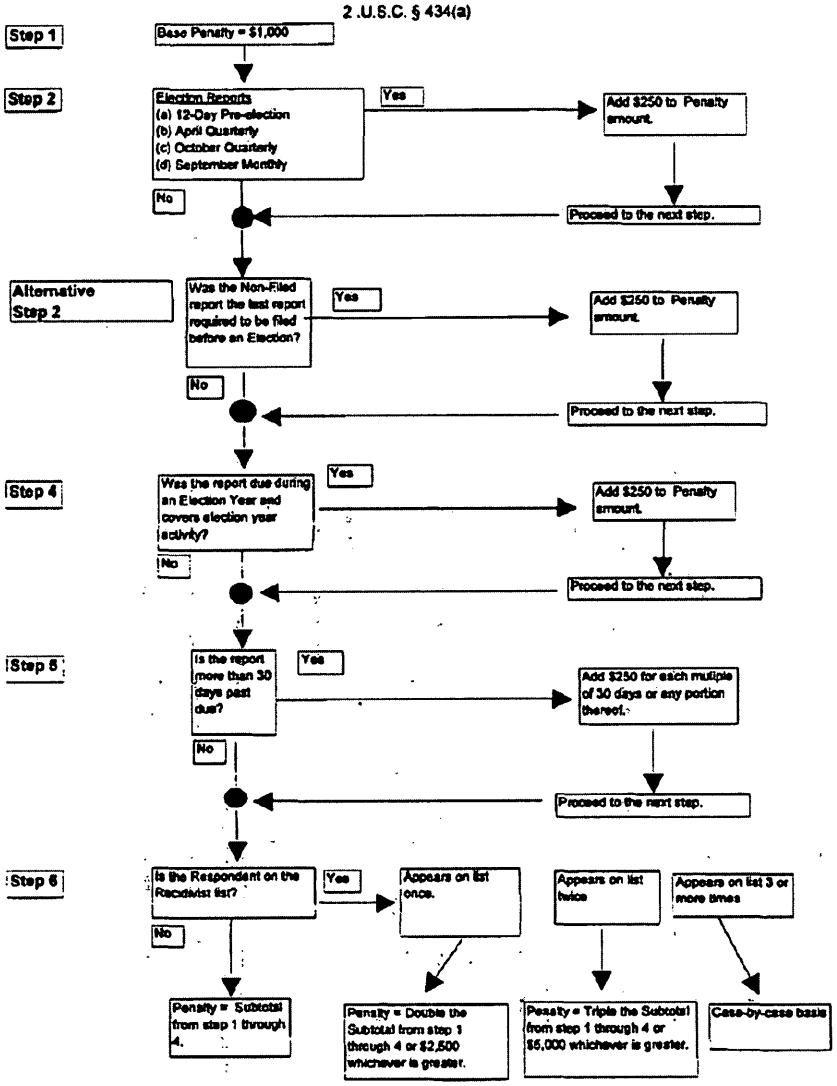
CALCULATING THE RECOMMENDED OUT-THE-DOOR PENALTY

VIOLATIONS

Failure to File a Disclosure Report

2 .U.S.C. § 434(a)



Attachment C-4

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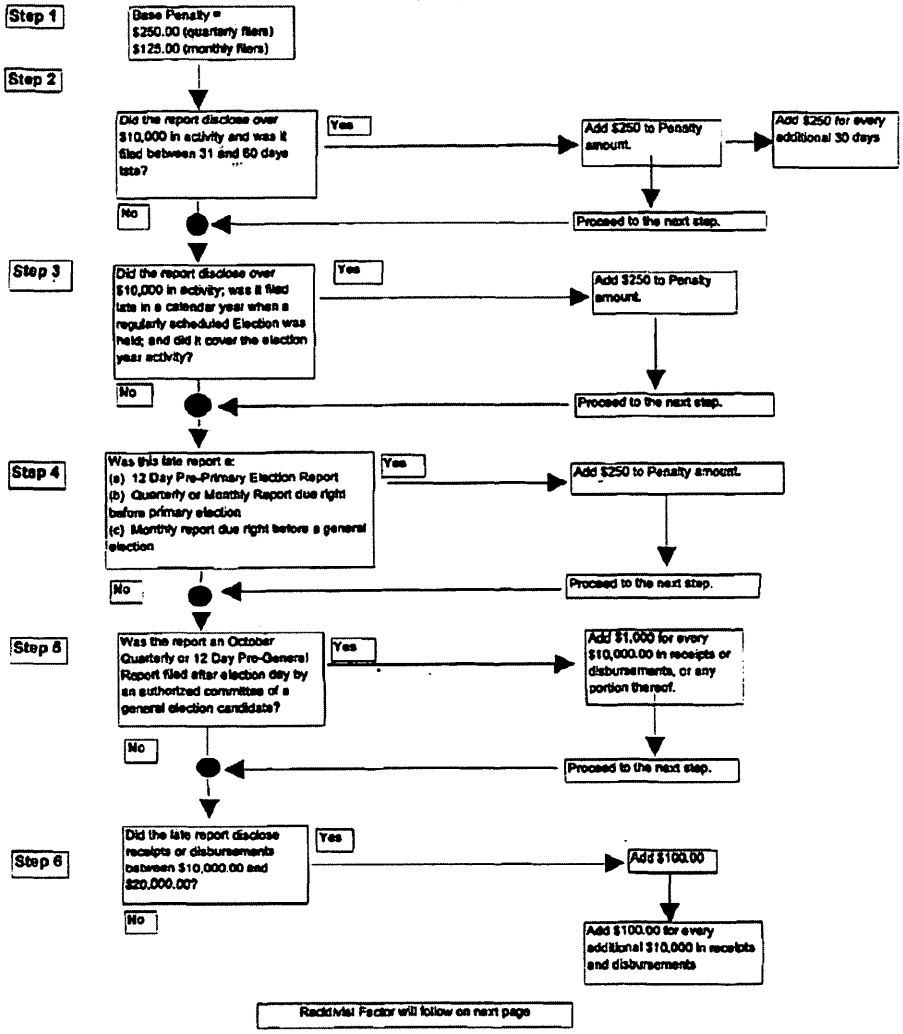
CALCULATING THE RECOMMENDED OUT-THE-DOOR PENALTY

VIOLATIONS

Late Filers

2 .U.S.C.. § 434(a)



Attachment C-5

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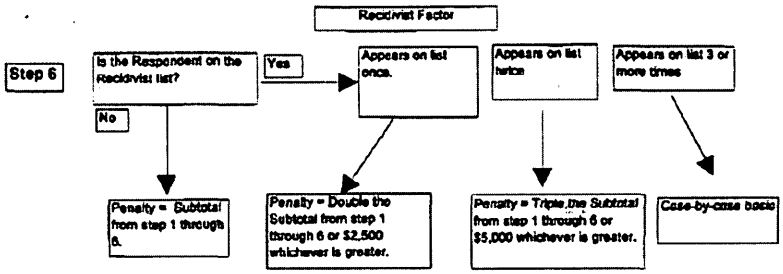

Attachment C-5

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Addendum D

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ADDENDUM D

OBJECTIONS AND EXECUTIVE SESSIONS APPEARANCES

I. INTRODUCTION

The Act requires the affirmative vote of at least four Commissioners in order to take any action in an enforcement matter. A circulation procedure is used to vote on most items in enforcement matters. There are four categories into which enforcement matters fall for circulation and Commission action: (1) automatic agenda items, (2) 72 hour tally vote, (3) 24 hour no objection circulation, and (4) informational circulation. (See Addendum I, Voting Procedures).

Most reports and memoranda which appear on the Executive Session agenda are placed there because one or more Commissioners have made an objection. However, reports or memoranda which include a recommendation to file suit are automatically placed on the agenda. Reports and memoranda may also be placed on the agenda at the request of this Office or at the request of any Commissioners.

II. OBJECTIONS

A. How Staff Members Are Notified of Objections

When a Commissioner objects in a matter, the Commission Secretary will send the assigned staff member a notification memorandum through Docket. (See Attachment D-1 for a sample of this notification memorandum). The memorandum indicates which Commissioner(s) objected and the date on which the report or memoranda will be on the Executive Session agenda. Generally, a staff member will receive just one form identifying all the Commissioners who have objected. However, on occasion, a staff member may later receive additional forms indicating that other Commissioners have objected as well.

B. Responsibilities of Staff Upon Receipt of Objection Notification from the Commission Secretary's Office

It is the responsibility of the staff member assigned to a matter to call the Executive Assistants of all Commissioners who have objected in a matter in order to ascertain the bases of the objections. The staff member should try to contact the Executive Assistants as soon as possible after receiving the notification of the objection. When the staff member speaks with the Executive Assistants, the Executive Assistants may refer to an area of the report that presents a problem for the Commissioners or to a specific recommendation. Therefore, it is advisable that the staff member have a copy of

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the report or memoranda for quick reference and that the staff member have reviewed the report or memoranda prior to contacting the Executive Assistants.

If a matter is placed on the agenda automatically, the staff person will not know whether there are any objections until the meeting. Therefore, the staff person may want to call the Executive Assistants prior to the Executive Session meeting to ask whether there are any objections or concerns regarding matters that were automatically placed on the agenda.

After ascertaining the bases of the objections, the staff member must prepare an objection memorandum. If the staff person assigned to a matter is unable to do the objection memorandum, the supervisor will do it or delegate the task to another staff member. The form for the memorandum is in the ALLIN1 library and is labeled as Form 75.

The memorandum should identify the date that the matter will be on the Executive Session agenda, the Commissioners who have objected along with the bases of the objections, and a proposed response to each objection. (See Attachment D-2, for a sample of an objection memorandum). In order to prepare the proposed response to an objection, the staff member may need to speak to other staff regarding similar matters that were recently before the Commission.

The objection memorandum is written to the General Counsel and the Associate General Counsel for Enforcement. The original of the memorandum is distributed to the General Counsel and copies are distributed to the Associate General for Enforcement, the Assistant General Counsels for Enforcement, the Special Assistant to the Associate General Counsel for Enforcement, the Associate General Counsel for Public Financing, Ethics & Special Projects, and the Assistant General Counsel for Public Financing. The memorandum should be distributed by early afternoon of the Friday before the Tuesday Executive Session in order to give Senior Enforcement Staff an opportunity to review it prior to their Monday morning meeting with the General Counsel. In some instances, it may be necessary to prepare a memorandum that merely states that you have tried to contact the Executive Assistants but are still waiting to hear back from them. If this is the case, on Monday morning, staff should follow up with a memorandum that set forth the bases for the objections.

III. EXECUTIVE SESSION APPEARANCES

A. Preparation

Staff members should be fully prepared for Executive Session appearances. At performance appraisal time, staff are evaluated on how well they have presented their matters at Executive Session meetings. In preparation for Executive Session meetings, staff members should carefully review the report or memorandum and any attachments. It is a staff member's responsibility to research prior matters and Commission actions that

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relate to issues in the present matter prior to preparing a report. However, relevant precedent should also be checked prior to the meeting.

The staff person should be sure to discuss the matter with his or her supervisor on Monday afternoon, in case there have been any last minute changes to the presentation or response of this Office following the Senior Enforcement Staff meeting. The supervisor may direct the staff person to review other matters prior to the appearance or may identify certain staff members with whom the staff person should speak prior to appearing before the Commission.

On occasion, a Commissioner may request a meeting regarding a matter which is on the agenda for a particular Executive Session. The staff person and the supervisor will meet with the Commissioner making the request prior to the Executive Session meeting.

In some instances, it may be necessary for the staff person to circulate additional information. (See Attachment D-3, for a sample of addenda material). For example, staff may need to circulate additional or revised pages of the report or memorandum which was previously circulated. Additionally, if a Commissioner requests a document or written explanation prior to the Executive Session meeting, such information must be circulated to all Commissioners prior to the Executive Session meeting.

Prior to appearing before the Commission, the staff person should run an O index that will indicate the latest financial data for political committees. (See Attachment D-4, for a sample of an O Index printout). A staff person should also run a B index to ascertain whether there has been a recent change in treasurer. (See Attachment D-5, for a sample of a B Index printout). Additionally, the staff person should review any specific disclosure reports that are relevant to the allegations.

B. Appearance at Executive Session Meeting

The supervisor will decide whether the staff person or the supervisor will be sitting at the Commission table. On most occasions, the staff person will be designated to handle the matter at the table and will sit next to the General Counsel. (See Attachment D-6, for the seating arrangement at the table). The supervisor will sit at a table behind the General Counsel. If a staff member is not able to appear at an Executive Session meeting, the supervisor or another staff person designated by the supervisor will sit at the table.

When appearing at an Executive Session meeting, staff should listen carefully to the questions posed by the Commissioners so that they are responding to the question asked. If the question is not clear, ask for clarification prior to responding. If a staff member does not know the answer to a question or does not have the information which a Commissioner is requesting, the staff member should so indicate.

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It is very important to try to keep abreast of matters before the Commission which relate to your matters. Supervisors are made aware of all matters before the Commission prior to the Executive Session meeting and can serve as a resource in this regard. Staff members may want to observe matters on an Executive Session agenda when they deal with issues similar to those in their matters.

If a vote is taken and it is unclear what the outcome is, or the language used to make the motion is confusing, the staff person should make sure the he/she and/or the General Counsel is clear, at that time, as to exactly what action the Commission decided to take.

At times, the Commission will decide to hold a matter over until the next session. When a matter is held over, the Commissioners may request that the staff person obtain certain information before the next Executive Session meeting.

C. Follow Up

A staff member will receive a certification issued by the Commission's Secretary and distributed to staff through Docket. (See Attachment D-8, for a sample of a certification). The certification indicates the votes and the actions to be taken in a matter. The staff person should check the certification closely to make sure that it is correct, i.e., the statutory provision is accurate, all recommendations are included, and all respondents' names in the recommendations are included on the certification.

If the staff member thinks that the certification is incorrect, the staff member should compare the certification to the recommendations made in the General Counsel's Report. Even if the Commission did not approve this Office's recommendations, the recommendations can still be used to verify such things as the names of respondents and the statutory provisions involved. If it appears that the certification is incorrect, the staff member should indicate which information he or she thinks is inaccurate and ask Docket to verify the certification with the Commission Secretary's office. Docket will then contact the Commission Secretary's office. If the certification is incorrect, the Commission Secretary's office will prepare an amended certification which reflects the correction.

If the Commission has approved a recommendation subject to the revision of a document, the staff member should circulate the revised document to the Commission for a tally vote and clearly indicate in an accompanying General Counsel's Report or memorandum the revisions that have been made.

If the Commission returns a report to this Office for further analysis or changes to a Factual and Legal Analysis, the staff person should review with his or her supervisor exactly what changes need to be made and revise the report as soon as is practical. (See Att. D-7, for a flow chart of this work process).

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Finally, as soon as practical after the executive session meeting, an agenda summary is to be written and circulated to the OGC staff. The purpose of the agenda summary is to inform the entire staff of current noteworthy Commission actions and to provide information to enforcement staff that may be relevant to their cases. The agenda summary should briefly outline the substantive facts of the staff member's case and explain the Commission's action. Generally, the staff member writes the agenda summary then sends (via electronic mail) it to the Special Assistant to the Associate General Counsel. However, staff members should coordinate with their supervisors to determine specific procedures. The Special Assistant collects all of the agenda summaries for each meeting and distributes them as one package to the OGC staff.

VI. LIST OF ATTACHMENTS

Att. D-1. Objection Notice
Att. D-2. Objection Memorandum
Att. D-3. Addenda Memorandum
Att. D-4. O Index
Att. D-5. B Index
Att. D-6. Commission Seating Plan (Unavailable)
Att. D-7. Flow Chart
Att. D-8. Certification

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DONNA ROACH
COMMISSION SECRETARY

DATE: JANUARY 13, 1992

SUBJECT: MUR 3256 - GENERAL COUNSEL'S REPORT
DATED JANUARY 8, 1992.

The above-captioned document was circulated to the Commission on THURSDAY, JANUARY 9, 1992 at 11:00 A.M..

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens _____

Commissioner Elliott _____

Commissioner McDonald XXX

Commissioner McGarry _____

Commissioner Potter _____

Commissioner Thomas _____

This matter will be placed on the meeting agenda for TUESDAY, JANUARY 28, 1992.

Please notify us who will represent your Division before the Commission on this matter.

Att. D-1, 1 of 1

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1/93

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 17, 1992

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

Lois G. Lerner
Associate General Counsel

FROM: Mary L. Taksar

SUBJECT: Pre-MUR 252-- Objection
New Enterprise Stone & Lime Company

Commissioner Elliott has objected to the report dated April 10, 1992, placing it on the agenda for Tuesday, April 21, 1992.

Commissioner Elliott's Objection

According to Craig Engle, Commissioner Elliott objected to the report because of the time period covered in the subpoena to New Enterprise. She believes that this Office is going back too far in questioning contributions that were made from 1979 to the present time.

Proposed Response

Due to the large number of contributions made to Congressman Shuster by New Enterprise employees since 1979 and the fact that New Enterprise admitted that some employees were reimbursed for their contributions in 1987 and 1989, this Office believes that it is important to do a thorough investigation of New Enterprise's practice of reimbursing employees. This Office does not believe that it is unreasonable to ask whether employees were reimbursed for any contributions which they made since 1979.

Att. D-2, 1 of 1

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1/93

FEDERAL ELECTION COMMISSION
WASHINGTON DC

MEMORANDUM

January 23, 1992

TO: The Commission

SENSITIVE

FROM: Lawrence M. Noble
General Counsel

EXECUTIVE SESSION

BY: Lois G. Lerner
Associate General Counsel

JAN 28 1992

SUBJECT: Addenda in MUR 3382

The First General Counsel's Report in MUR 3382, dated January 9, 1992, has been objected to and placed on the agenda for Tuesday, January 28, 1992. We ask that this memorandum and attachments also be placed on the agenda for the Commission's consideration in conjunction with the report in MUR 3382.

The attachments seek to clarify the figures used as the basis for the alleged violations, particularly with respect to the reattributions and the 2 U.S.C. § 441f question.

As the report pointed out, the committee reattributed $61,072 in excessive primary contributions or general election contributions that required refund or reattribution because the candidate lost the primary election. Of this amount, $7,000 consisted of checks drawn on joint accounts where the reattribution was to the other account holder, $10,250 consisted of checks drawn on joint accounts where the reattribution was to some one other than a joint account holder, and $5,650 consisted of checks drawn on accounts where neither the original contributor or the reattributed contributor was the account holder. The remaining $38,172 consisted of checks drawn on single accounts where the reattribution was to someone other than the account holder.

The sum total of all reattributions to individuals who appeared to have no ownership of the original contribution is $54,072.00.[1] See, Attachment entitled, Beard Committee Chart Explaining Footnote 01 On Page 05 Of The General Counsel's Report Signed January 9, 1992. This raises the possibility that the committee was having contributions reattributed in a manner that resulted in the receipt of contributions in the names of

1/ In the General Counsel's Report this amount was stated as $45,072.00, however after requesting confirmation of this figure from Audit, it was discovered that the amount should have been $54,072.00.

Att. D-3, 1 of 2

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others. These reattributed contributions were allegedly refunded.

The $54,072 in contributions reattributed to someone other than the account holder includes reattributions to persons with the same last name and at the same address as the original contributor, to persons with different last names at the same address as the original contributor, to persons with the same last names but at different addresses (often different states) as the original contributor, and to persons with different last names and at different addresses as the original contributor. There is also an instance of reattributions involving an estate. From the information developed during the audit and from committee reports, it is not possible to ascertain at this point whether the person to whom contributions were reattributed were spouses of the original contributors, adult offspring, minor children, or other family members.

The report treats the committee's activity in obtaining reattributions that appear to result in the receipt of contributions in the names of others as well as the evidence that the committee spent general election contributions on the primary as circumstances that offset the making of refunds. Thus, we have recommended a civil penalty of approximately 50 percent of the amount of the 2 U.S.C. § 441a(f) violation rather than the customary 25 percent.

Attachments

Staff person: Phillip L. Wise

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FEDERAL ELECTION COMMISSION
OGC INDEX - (01) (91-92)

OREGON REPUBLICAN PARTY
BERT FARRISS 9900 SW GREENBURG RD SUITE 280 PORTLAND PARTY QUALIFIED OR 97223
FILING FREQUENCY: QUARTERLY

FORM TYPE	RPT TYPE	AI	PGI	REC DATE	PGS	BEG MICRO	COVERAGE DATES		BEG CASH	RECEIPTS	DISBURSE	END CASH
1		A		1/29/91	2	91036834600						
1		A		6/17/91	2	91036981877						
1		A		5/18/92	2	92037550986						
80	NY	2		11/20/91	3	91037201633	1/01/91	6/30/91				
80	NY	3		12/12/91	2	91037225155	1/01/91	6/30/91				
80	YE	2		4/08/92	3	92037461413	7/01/91	12/31/91				
80	YE	2		4/08/92	1	92037461417	7/01/91	12/31/91				
3	NY	N	P	7/31/91	62	91037052624	1/01/91	6/30/91	303	104953	100611	
3	NY	A	P	12/06/91	5	91037224522	1/01/91	6/30/91	-	-	-	
3	NY	A	P	12/20/91	64	91037234361	1/01/91	6/30/91	303	104953	100611	4645
3	NY	A	P	2/11/92	38	92037374216	1/01/91	6/30/91	303	104953	100611	4645
3	YE	N	P	1/31/92	20	92037320546	7/01/91	12/31/91	4645	35064	39657	52
3	YE	A	P	3/02/92	3	92037411661	7/01/91	12/31/91	4645	35064	39657	52
3	YE	A	P	4/21/92	9	92037514111	7/01/91	12/31/91	4645	35064	39657	52
3	01	N	P	4/15/92	20	92037474550	1/01/92	3/31/92	52	37898	34101	3849
								TOTAL		177915	174369	

Att. D-9, 1 of 1

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B-Index

COMMITTEE ID: C00153031

OREGON REPUBLICAN PARTY

TERESA MAY

8196 S W HALL BLVD SUITE 101

BEAVERTON OR 97008

OREGON REPUBLICAN PARTY

QUALIFIED PARTY RELATED

QUARTERLY

UNAUTHORIZED

Attachment D-5

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FEC Seating Plan: Unavailable

Attachment D-6

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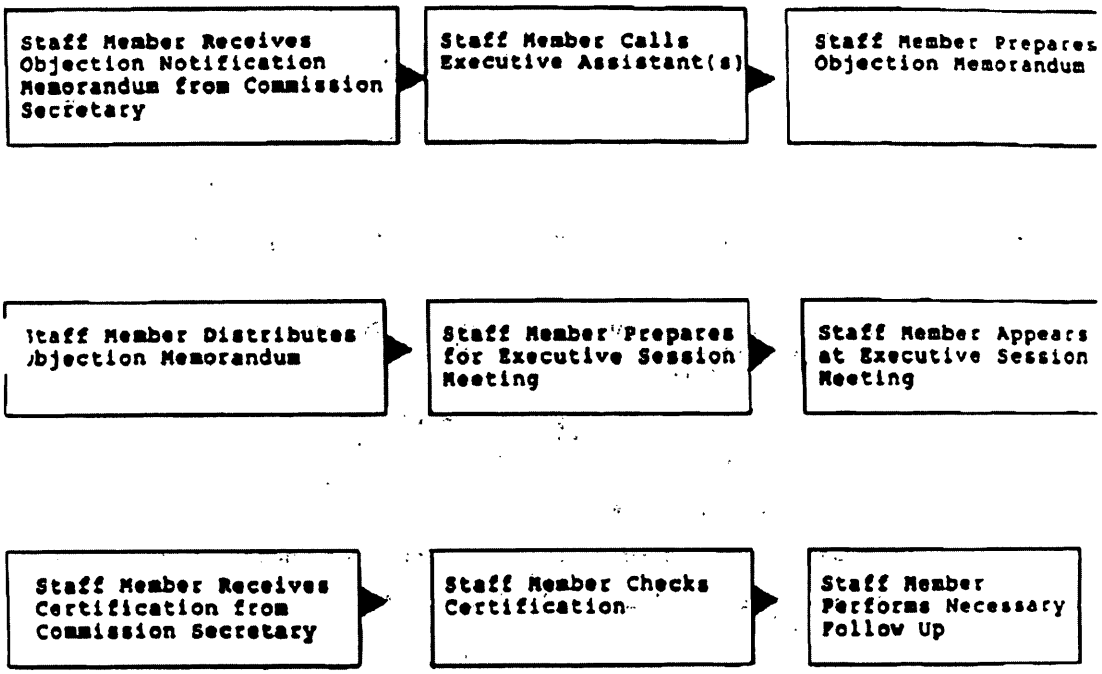
OBJECTIONS AND
EXECUTIVE SESSION APPEARANCES

Flow Chart of the Work Process



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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
USA Today;	)	MUR 3557
NBC News.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 1, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3557:

1. Find no reason to believe USA Today and NBC News violated 2 U.S.C. § 438(a)(4).

2. Approve the appropriate letters, as recommended in the General Counsel's Report dated August 27, 1992.

3. Close the file.

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

Attest:

9-1-92
Date

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., August 27, 1992 2:06 p.m.
Circulated to the Commission: Thurs., August 27, 1992 4:00 p.m.
Deadline for vote: Tues., September 1, 1992 4:00 p.m.

dr

Att. D-8, 1 of 1

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Addendum E

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ADDENDUM E

EXTENSIONS OF TIME

I. INTRODUCTION

Respondents have an opportunity to respond to Commission actions at several stages of the enforcement process. Respondents must submit their responses within certain, prescribed time periods.

While Respondents should submit their responses within the prescribed periods, the Commission recognizes that circumstances may require a Respondent to request an extension of time during one or more of the stages of the enforcement process. Requests for extensions may arise at: the complaint stage, prior to a finding of reason to believe; the post-reason to believe stage, for externally or internally generated matters; the discovery stage, both formal and informal; and finally, the probable cause stage. This addendum will first examine the required time frames for responses. Next, it will describe the steps a staff member should follow to process a Respondent's request for an extension of time.

The following chart will provide a quick reference for the initial response periods and subsequent extensions of those time periods.

QUICK REFERENCE CHART

Date of Receipt =Rec. of Notif.	Response Due	OGC May Extend Up To	Commission Approval	Extension Policy
Complaint	15 days from date of receipt	30 days	> 30 days	20 days
Post-RTB (internal and external)	15 days from date of receipt	45 days	> 45 days	20 days
Post-RTB (w/ discovery)	30 days from date of receipt	30 days	> 30 days	20 days
Discovery formal/informal	30 days from date of receipt	30 days	> 30 days	20 days
Pre-Probable Conciliation	30 day period	See Chapter V		
Probable Cause Response	15 days from date of receipt	45 days	> 45 days	20 days

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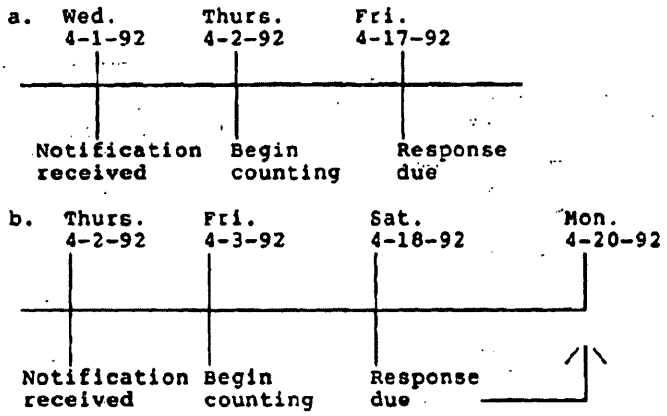
II. INITIAL RESPONSE PERIODS

A. Computing Time: For purposes of the enforcement process, the general rules for the computation of time should be considered.

1. General Rule: The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday. 11 C.F.R. § 111.2(a).

2. Service by Mail: Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission or such person and the paper is served by or upon the Commission or such person by mail, three (3) days shall be added to the prescribed period. 11 C.F.R. § 111.2(c)

3. Examples:



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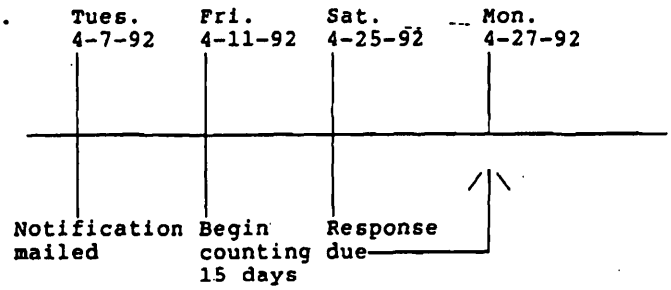
c.



B. Responses to Complaint Generated Matters Prior to a Finding of Reason to Believe:

1. After a complaint is filed against a Respondent, the Respondent must be notified. The Respondent then has an opportunity to demonstrate that no action should be taken on the basis of the complaint. The Respondent has fifteen (15) days, from the date of receipt of notification, to file with the Commission a letter or memorandum setting forth reasons why the Commission should take no action. 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6.

2. Based on (I)(A)(2) and (II)(B)(1) above, a response must be filed within eighteen (18) days of the mailing of notification, unless the exact date of receipt is known i.e., notification was sent by certified mail, or the Respondent tells us that notification was received on a particular date.

3. What if? What if the time period for a response has run, or is about to run, and counsel calls and states that the client has just sent the notification package to counsel's office? Answer: At this point, counsel should probably be requesting an extension of time to respond and should not expect the initial time period to begin again.

C. Responses to Externally or Internally Generated Matters Subsequent to a Reason to Believe Finding:

1. The Act and regulations do not grant Respondents a right to respond to notification that the Commission has found reason to believe that they violated the Act. However, the notification letters do allow Respondents 15 days, from the date of receipt, to respond. See 2 U.S.C. § 437g(a)(2) and 11 C.F.R. § 111.9(a).

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2. If discovery (formal or informal) is attached to the reason to believe notification, then Respondents have 30 days (instead of 15), from the date of receipt, to respond.

D. Responses to Formal Discovery: If discovery is sent to the Respondents after notification, then the same 30 day period applies as in (C)(2) above.

E. Pre-Probable Cause Conciliation: 30 days.

F. Probable Cause Stage: At this stage of the enforcement process, the investigation will be closed. The Office of the General Counsel must prepare a brief stating the Office's position on the factual and legal issues and making recommendations on whether or not the the Commission should find probable cause to believe that a violation has occurred. The Respondent must receive a copy of the brief. As in the notification of the reason to believe finding, the Respondent has 15 days, from the date of receipt of the General Counsel's Brief, to respond. 2 U.S.C. § 437g(a)(3) and 11 C.F.R. § 111.16

III. PROCESS FOR EXTENDING TIME TO RESPOND

When a Respondent requests an extension of time, certain steps must be taken in order to process that request.

A. First Step: Form of the Extension Request: The first step to take in processing a request for an extension is to determine whether the Respondent submitted a proper request. A request for an extension is in the proper form if:

1. The request is in writing.

2. The request demonstrates good cause.

3. Respondents are urged to submit their requests for extensions five (5) days before the original due date.

a. What if: The Respondent submits an extension request 3 days prior to the original due date and requests a 25 day extension to answer interrogatories? Answer: This then becomes a question of authority to grant the extension. The Office of the General Counsel may grant this extension, although it did not

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meet the five day threshold, because the request did not exceed 30 days. However, if that same extension requested 50 days, then Commission approval would be required. See (III)(A)(2)(a) below.

4. The request should show the date notification was received.

5. The request should state the length of the extension being requested.

B. Second Step: If the request for an extension is proper in form, then the next step is to determine whether the Office of the General Counsel has authority to grant the extension.

1. This Office has the authority to grant extensions up to 45 days for responses to findings of reason to believe and responses to probable cause briefs. In other cases, this Office may grant extensions up to 30 days. Office policy is to grant no more than 20 days. See Attachment E-1: Library Form 27: Notification Letter.

2. This Office may grant multiple extensions within these time periods. What if? Respondent calls six days before the response is due. Respondent asks for a 15 day extension. After the request is forwarded in writing, shows good cause, etc., then it will probably be granted by this Office. Subsequently, Respondent requests another 5 day extension. This Office has authority to grant this extension as well.

3. As mentioned above, if an extension request is submitted less than five days prior to the original due date, but the requested extension does not exceed 45 days for responses to reason to believe findings or 30 days for other responses, then the Office of the General Counsel may grant the extension.

C. Third Step: The next step is to determine who, within OGC, has authority to grant an extension.

1. If the length of the requested extension is within this Office's authority, then Assistant General Counsel's may grant the extension. The staff member will prepare the letter, granting or denying the extension, and will sign the letter. See Attachment E-3 and E-4: Library Forms 17 and 18. NOTE: The extension letter will be routed through the Assistant General Counsel.

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D. Fourth Step: Commission involvement in the extension process:

1. The Office of the General Counsel does not have authority to grant extensions in the following cases:

   a. The requested extension is greater than 30/45 days. The request, then, must be submitted to the Commission for consideration. In addition, if any extension this Office granted exceeds the due date for the next report, then a report to the Commission will be prepared. This is important when the First General Counsel's Report with recommendations will be later than 40 days. (Attachment E-5).

   b. If an extension request is submitted less than five days prior to the original due date, and the requested extension exceeds 45 days for responses to reason to believe findings or 30 days for other responses, then this request must also be presented to the Commission for consideration.

   c. If a Respondent requests multiple extensions which exceed the 30/45 day period, then the Commission must vote on the extension.

2. If the Commission must vote on an extension request, then a Memorandum to the Commission will be prepared with this Office's recommendation regarding the request. (Attachments E-6 and E-7).

3. Extension of the Pre-Probable Cause Conciliation Period:

   a. In internally generated late/non-filer and other straight-forward excessive and prohibited contribution cases, (straight-forward means matters only where the issue involved is the making or acceptance of an excessive or prohibited contribution, and there are no factual disputes regarding such making or receipt) the Commission offers to enter into conciliation when it sends notification of the reason to believe finding.

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b. Where the granting of the period to respond to RTB results in the extension of the pre-probable cause conciliation period, a General Counsel's Report, without recommendations, must be prepared informing the Commission of the extension of conciliation and the reasons for the extension.

4. Commission voting on extension requests: If a memorandum/report is circulated for a tally vote deadline of 5:00 p.m. on the Friday before a scheduled Executive Session, and the memorandum/report is objected to, or there are less than four affirmative votes, the matter will be placed on the agenda for the next scheduled Executive Session. If the voting deadlines are suspended, then a memorandum/report regarding an extension of time in an enforcement matter will be circulated on a no-objection basis and absent three objections, the recommendation(s) will be approved without the matter being placed on the Executive Session agenda. In the event three objections are received, the matter will be placed on the agenda for the next scheduled Executive Session.

E. Fifth Step: Additional Responsibilities of the staff member regarding extensions of time:

1. When an extension of time has been granted, the staff member will prepare a memorandum to the Assistant General Counsel. (Attachment E-8)

2. When preparing a report to the Commission to extend the period for pre-probable cause conciliation period, the staff member will also prepare a memorandum to the Associate General Counsel. The memorandum will summarize the status of negotiations and explain why an extension is warranted.

3. Finally, the staff member will prepare the extension notification letters to the Respondent.

IV. LIST OF ATTACHMENTS

E-1. Form 27
E-2. Form 29
E-3. Form 17
E-4. Form 18
E-5. Report to Commission when extension date exceeds due date of next report
E-6. Memorandum to Commisson
E-7. Form 97
E-8. Memorandum to Assistant General Counsel

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8/94

[FORM 27]

>
>
>
>

RE: MUR >
>

Dear >:

On >, 19>, the Federal Election Commission found that there is reason to believe >[] >[you] >[("Committee") and you, as treasurer,] violated 2 U.S.C. § >, >[a] provision(s) of >[the Federal Election Campaign Act of 1971, as amended ("the Act")] >[Chapters 95 and 96 of Title 26, U.S. Code]. 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 >[] >[you] >[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 >[along with answers to the enclosed questions] within >15 days/30 days* of your 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 >[] >[you] >[the Committee and you, as treasurer], the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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

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*If discovery is being sent, allow 30 days instead of 15 days. 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 investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact >, the >[staff member] >[attorney] assigned to this matter, at (202) 219->.

Sincerely,

>[Chairman's Name]
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
>[Questions]

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8/94

[FORM 29]

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

>
>
>
>

RE: MUR >
>

Dear >:

On >, 19>, the Federal Election Commission found that there is reason to believe >[you] >[] >[("Committee") and you, as treasurer,] violated > U.S.C. § >, >[a] provision>[s] of the >[Federal Election Campaign Act of 1971, as amended ("the Act") >[Chapters 95 and 96 of Title 26, U.S. Code]. 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 >[] >[you] >[you and the Committee]. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed >[Order to Answer Questions] >[Subpoena to Produce Documents] >[or] must be submitted within 30 days of your receipt of this >[order] >[subpoena] >[order and subpoena]. Any additional materials or statements you wish to submit should accompany the response to the >[order] >[subpoena] >[order and subpoena].

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this >[order] >[subpoena] >[order and subpoena]. If you intend to be represented by counsel, 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 or other communications from the Commission.

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

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

Att. E-2, 1 of 2

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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, requests for pre-probable cause conciliation will not be entertained 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.

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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact >, the >[staff member] >[attorney] assigned to this matter, at (202) 219->.

Sincerely,

>[Chairman's name]
Chairman

Enclosures
>[Order] >[Subpoena] >[Order and Subpoena]
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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[FORM 17]

>
>
>
>

RE: MUR >
>

Dear >:

This is in response to your letter dated >, 19>, which we received on >, 19>, requesting an extension >[of > days] >[until >] to respond to >. After considering the circumstances presented in your letter, >[the Office of the General Counsel] >[the Federal Election Commission] has granted the requested extension. Accordingly, your response is due by the close of business on >, 19>.

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

Sincerely,

>
>Attorney/Paralegal

Att. E-3, 1 of 1

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8/94

[FORM 18]

>
>
>
>

RE: MUR >
>

Dear >:

This is in response to your letter dated >, 19>, requesting an extension >[of > days] >[until >] to respond to >.

Considering the Federal Election Commission's responsibilities to act expeditiously in the conduct of investigations, >[the Office of the General Counsel] >[the Commission] cannot grant your full request, but can only agree to a > day extension. Accordingly, the response is due by close of business on >, 19>.

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

Sincerely,

>
>Attorney/Paralegal

Att. E-4, 1 of 1

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Procedure 1987-8

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

July 15, 1987

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Extension of Time

Attached is a good example of the type of report that should be sent to the Commission when we have granted an extension of time that will take us beyond the due date of the next report.

It is particularly important to send these when the First General Counsel's report with recommendations will be later than 40 days, but should be used in all cases where the report due date must be adjusted because of a granted extension.

Attachment

cc: Lawrence M. Noble
Retha Dixon

Att. E-5, 1 of 3

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SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

MUR # 2461
DATE COMPLAINT RECEIVED BY OGC 6/5/87
DATE OF NOTIFICATION TO RESPONDENTS 6/12/87
STAFF MEMBER Beard

COMPLAINANT: Democratic Congressional Campaign Committee

RESPONDENTS: Michigan Republican State Committee and Ronald D. Dahlke, as treasurer

Friends of Jim Dunn and Pauline Dunn, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a(a)
2 U.S.C. § 441a(d)

INTERNAL REPORTS CHECKED: Disclosure Reports
Advisory Opinions 1984-15, 1985-14

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Office of the General Counsel received a complaint on June 5, 1987 from the Democratic Congressional Campaign Committee. The complaint alleges that the Michigan Republican State Committee ("MRSC"), paid for the production and transmission of numerous mailings during the 1986 general election campaign, which expressly advocated the election of Jim Dunn and expressly promoted the defeat of Congressman Carr. The complaint also alleges that MRSC has not reported these expenditures as allocable to the contribution or expenditure limitations of FECA.

Respondents were notified of the complaint on June 12, 1987. On June 26, 1987, this Office received a request from counsel for the Friends of Jim Dunn for an extension of time to respond to

Att. E-5, 2 of 3

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the complaint. The request stated that counsel had just been informed of the complaint and an extension would be needed in order to fully respond. In light of the circumstances this Office granted a twenty-day extension of time until July 22, 1987. On June 30, 1987, this Office received a request from counsel for MRSC for a twenty-day extension of time to respond to the complaint. The request stated that counsel for MRSC had been out of the state and thus needed additional time to prepare a response. In light of these circumstances this Office granted an extension of time until July 23, 1987.

After receiving these responses and evaluating them, this Office will report to the Commission with appropriate recommendations.

Lawrence M. Noble
Acting General Counsel

7/13/87
Date

By: Lois G. Lerner
Lois G. Lerner
Associate General Counsel

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Rishel

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

SENSITIVE

DATE & TIME TRANSMITTED: THURSDAY, JANUARY 23, 1992 4:00 P.M.

BALLOT DEADLINE: MONDAY, JANUARY 27, 1992 4:00 P.M.

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, POTTER, THOMAS

SUBJECT: MUR - REQUEST FOR EXTENSION OF TIME. MEMORANDUM TO THE COMMISSION DATED JANUARY 23, 1992.

( ) I approve the recommendation(s)

( ) I objection to the recommendation(s)

COMMENTS: _____

_____

_____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

Att. E-6, 1 of 3

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January , 199

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR
Request for Extension of Time

By letter dated January 21, 1992, counsel for the Committee and , as treasurer ("Respondents"), requested an extension of time until January 31, 1992, to respond to the Commission's finding that there was reason to believe that Respondents had violated the Federal Election Campaign Act of 1971, as amended and to respond to the Commission's Subpoena to Produce Documents and Order to Submit Written Answers. Attachment 1. The original responses were due on December 6, 1991. In a letter dated December 3, 1991, an extension of time was requested until January 23, 1992 in order to respond due to the illness of Respondents' counsel. Attachment 2. They were initially granted the 43 day extension. Attachment 3. However, on January 17, 1992, the Respondents' original counsel withdrew and was replaced by Robert . Attachment 4. Mr. has requested the additional eight (8) day extension in order to familiarize himself with the case and to respond.

Due to the fact that a review is continuing of answers and documents already received from other Respondents in this matter, the additional eight (8) day extension will not prejudice the investigation. Therefore, the Office of the General Counsel recommends that the Commission grant the requested extension until January 31, 1992.

Att. E-6, 2 of 3

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RECOMMENDATIONS

1. Grant the extension of time until January 31, 1992, to the Committee and ., as treasurer.

2. Approve the appropriate letter.

Attachments
1. Request for Extension
2. Original Extension Request
3. Letter Granting the 43 Day Extension
4. Designation of Counsel of and Withdrawal Letter of

Staff Assigned:

Att. E-6, 3 of 3

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C.

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR >
Request for Extension of Time

By letter dated >, 19>, > requested an extension of > days in which to respond to >. (Attachment 1.) The letter explains that an extension is necessary >.

The Office of the General Counsel recommends that the Commission >[grant] >[deny] the requested extension (provide reasons for denial.)

RECOMMENDATIONS

1. Grant an extension of > days to (respondent).

OR

Deny (respondent) the requested extension of > days >[and approve an extension of > days].

2. Approve the appropriate letter.

Attachments
1. Request for Extension

Staff Assigned: >

Att. E-7, 1 of 1

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: _____
Assistant General Counsel

FROM: _____

SUBJECT: MUR _____ Extension of Time

DATE: _____

Respondent:

_____

_____

Original Due Date:

Extended Due Date:

Number of Days Extended:

Att. E-8, 1 of 1

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Addendum F

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ADDENDUM F

BANKS AS A SOURCE OF INFORMATION

The key to following the flow of money into and out of the banking system is an understanding of the inner workings of the system itself. From the smallest community credit union to the international banking giants, they all take in, account for, pay out, and record the movement of money. The inner workings of the banking system can be divided into two types of transactions: 1) account transactions and 2) non-account transactions.

1. Account Transactions

Account transactions are financial events that directly affect the movement of money through a bank account. Directly affect means deposits to, or withdrawals from, an account. Account transactions occur in checking, savings, and credit union accounts. Records of account transactions are maintained through the use of the following documents:

- Signature Cards
- Bank Statements
- Deposit Tickets/Items
- Checks/Withdrawal Items
- Credit and Debit Memorandums

Signature Cards - Opening an Account:

The first document prepared and maintained in a bank's system or recordkeeping is the signature card. Every financial institution requires that a customer (individuals, trusts, business organizations, etc.) fill out a signature card when opening an account. It indicates who owns the account and may require that the account owner(s) supply his or her address, occupation, employer, date/place of birth, and social security number. When a business organization opens an account, corporate resolutions and partnership and trust agreements, if applicable, often are included as part of the background information requested by the bank. This type of information is kept with the signature card.

The signature card may provide valuable leads to other witnesses or unknown co-conspirators. Since the card contains the signature of the account owner(s), it can serve as a sample of the owner's handwriting.

Bank Statements - Record of Transactions:

Banks periodically reconcile the financial activity in each account. A record of this reconciliation is prepared and retained by the institution and a copy is sent to the

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account's owner. Details of all financial activity affecting the account for the period in question are shown on a bank statement.

When requesting copies of bank statements from the bank request the **BANK COPY** of the statement which will include the **TRANSACTION/DISCREET NUMBER** of each transaction. This is the number that the bank uses to locate the document on their microfilm - it makes for a much easier retrieval of the documents you are interested in.

Deposit Slips/Deposit Items:

From the bank's point of view, the deposit function is the most important of all of the banking transactions. The majority of loans and investments made by the institution come from the depositor's dollars. When deposits cease the institution ceases.

The original documents involved in a deposit are not retained by the bank. Currency is returned to circulation, checks go back to the bank of origin, and deposits made via an electronic transfer show up as bookkeeping entries. However, copies of each deposited item, except currency, are made. The bank organizes and maintains these copies on microfilm.

Transaction Entry Point:

A deposit enters the banking system through a transaction entry point. There are three different types of transaction entry points:

- Teller - a teller receives deposits directly from the customer, or through the mail or the automatic teller machine (ATM).

- Cash Services Department - high volume deposit customers such as major retail establishments, grocery stores or governmental units make their deposits to the bank via armored cars or delivery services. The Cash Services Department handles these type of deposits.

- Other Internal Department of the Bank - deposit transactions can occur through intra-account activities (transfer of funds from a savings account into the same customer's checking account) or electronic transfers between financial institutions. Businesses and companies can make deposit transactions into banking accounts from their own bookkeeping departments with the advent of direct deposit. These services are handled by different departments inside the financial institution.

The transaction entry point is vital - two undeniable events occur: money is moved from somewhere by someone and a permanent record is made.

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The Proof Department -

From the transaction entry point, deposits go to the Proof Department. Here, checks are encrypted with the bank's own numerical codes - **proof numbers**. Proof numbers establish the "**location keys**" for the bank's retrieval and bookkeeping system. Magnetic ink character recognition (MICR) encoding also occurs in the Proof Department. An MICR number enables a check to be read at high speed by computers during the processing and clearing procedure. A portion of the MICR number is placed on checks when they are initially printed. After a check is deposited, the remainder of the MICR number is placed on the check in the bank of deposit's Proof Department.

In addition to being encoded, the check is microfilmed. In the microfilming process, all checks shown on one deposit slip are microfilmed consecutively before proceeding to the next group of deposited items. The order of microfilming is generally determined by the transaction entry point. For example, all of Teller No. 1's transactions are microfilmed and then all of Teller No. 2's transactions are microfilmed, etc. Currency is not microfilmed. Once it is inside the bank it is counted and, after the count has been verified, it goes its own separate way.

From the Proof Department, deposited items take different routes through the bank of deposit's system. The path that an item takes is dependent upon the bank of origin's (bank upon which the item is drawn) relationship to the bank of deposit. There are four paths an item of deposit may take. The four types are illustrated in the following chart:

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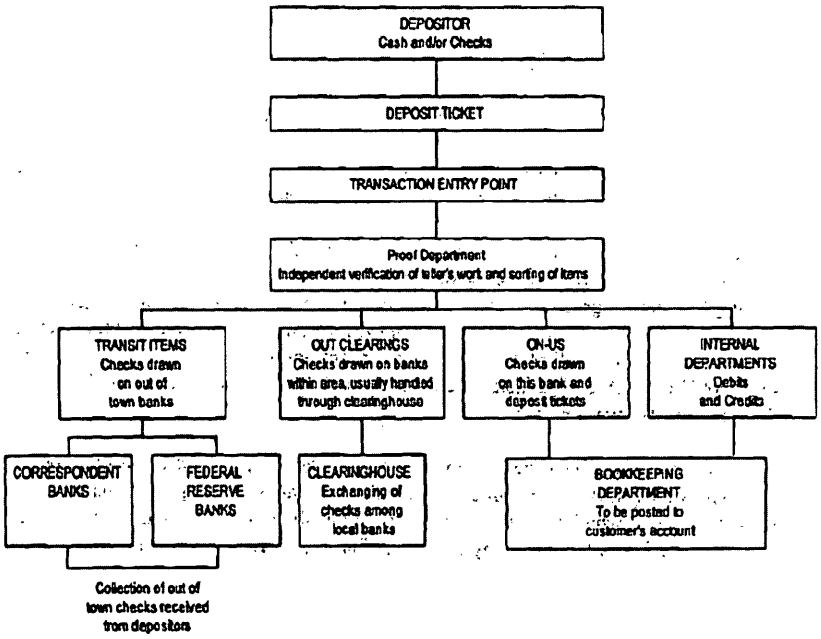
BANK OPERATIONS



As mentioned above, once currency is counted and verified it goes its own separate way. However, Title 31 U.S.C. Section 5313 states that financial institutions are required to file a report on currency transactions in excess of $10,000. This report is the Department of the Treasury Form 4789, Currency Transaction Report (CTR). The CTR identifies the depositor by address, social security number, date of birth and the actual owner of the currency if he or she is someone other than the depositor. The CTR also records the total amount of the transaction, the types of bills involved in the transaction and various other information. Banks are required to file these reports; willful failure to file constitutes a felony. U.S. Customs Service headquarters maintains a data base of CTR filed.

Checks/Withdrawal Items:

Funds normally are withdrawn from a bank account through the issuance of a check. Withdrawal slips and automatic teller machines are also used to withdraw funds. The face of a check contains information that is informative. It shows the bank of origin, date and amount of check, name of the payee, and the authorized signature of the owner of the account on which the check is drawn. The following information also appears on the face of the check:

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- American Banker's Association (ABA) Transit Number and Federal Reserve Routing Code. This is the number on the upper right side of a check that looks like a fraction. The numerator contains the ABA transit number; the denominator is the bank of origin's check routing symbol. An ABA transit number is a two-part code assigned to banks and savings institutions by the ABA. The first part shows a two or three digit number that corresponds to the city, state or territory where the bank of origin is located. The second part identifies the bank itself. The bank of origin's check routing symbol is a three or four digit number that provides three pieces of information: 1) The bank of origin's Federal Reserve district, 2) The federal reserve facility through which the check is collected, and 3) The funds availability assigned to the check. Funds availability is either immediate or deferred. If "0" is the last digit, immediate availability is indicated. A digit of 1 through 9 indicates a deferred payment.

- Pre-Qualifying Numbers. The portion of the MICR number that comes printed on a check indicates bank of origin information (paying bank's number and check routing symbol); customer account number and the check's number.

- Post-Qualifying Number. The portion of the MICR number entered by the bank of deposit's Proof Department shows the dollar amount of the check.

When requesting a copy of a check ask for **BOTH SIDES** of the check. For one thing if the check was issued to an individual it should contain that individual's signature. If it was issued to a business it will probably contain a stamped endorsement. The back of the check will also contain information related to the movement of money. Proof numbers from all of the banks that the check passed through will be available.

If the check is deposited, it follows the clearing process detailed on page 3. Checks that are cashed are recognizable by teller stamps or "cashed" codes that are encoded or stamped on the face of the check itself.

Credit and Debit Memos - Special Transactions:

Any transaction that affects an account but does not involve a deposit ticket or check withdrawal requires special handling. A record of these transactions is listed on the customer's bank statement through memorandum entries. These entries are shown to report the movement of money that takes place without going through the normal transaction points of entry or withdrawals through checks. Credit memos or "CM" indicate an increase in the account funds, a flow of funds into the account. A debit memo or "DM" indicates a decrease in the account funds, a flow of funds out of the account.

2. Non-Account Transactions

Non-account transactions are financial transactions that occur at a financial institution but do not flow through an account. Examples of non-account transactions include loans; purchase or negotiation of cashier's checks, money orders, travelers

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checks; and currency transactions such as exchanging currency for currency and cashing third-party checks. Wire transfers, entries into a safe-deposit box and the purchase or sale of securities are also considered non-account transactions for investigative purposes.

Loans -

Loan applications, loan repayment ledgers and loan correspondence files are usually maintained by financial institutions. A loan application usually requires a financial statement completed by the individual requesting the loan. This is a good lead document. The loan repayment schedule and correspondence file contain: 1) Repayment methods, 2) Final disposition of loan proceeds, 3) Loan collateral, 4) Downpayment, and 5) Credit checks and internal memoranda.

Cashier's Checks, Certified Checks, Traveler's Checks and Money Orders -

These financial instruments require special handling by a bank because they involve various departments inside the bank. **Cashier's checks** are drawn by the bank on its own funds and are issued by an authorized officer of the bank. The bank employee will ask the customer to designate a remitter and a payee in order to fill in these lines on the check. A **certified check** is a check where the bank guarantees that there are sufficient funds on deposit for that particular check. A **money order** is a negotiable instrument that serves as a substitute for a check. The money order is issued for a specific amount of payment and the customer fills in the name of the purchaser and payee. The bank employee imprints only the amount of payment. A **traveler's check** is an internationally redeemable draft. It is purchased in various denominations and is only valid with the holder's own endorsement against his or her original signature.

Currency Transactions - Currency Exchanges and the Cashing of Third-Party Checks -

Documenting the movement of money involved in a pure currency exchange is difficult. Currency for currency exchange transactions generally leave no paper trail inside the bank system.

A third party check is a check that the payee endorses to another party. It can be traced by the bank's "proof system" if the third party is a legitimate entity.

Wire Transfers - Electronic Transfers -

Wire transfers, commonly referred to as funds transfers, refer to a series of transactions the purpose of which is to move funds from one location to another location. Funds transfers are governed by the Uniform Commercial Code (U.C.C.) Article 4A.

A funds transfer begins with the **originator**'s instructions to the financial institution that will begin the process of the funds transfer. The originator's instruction is also known as the **payment order**. The payment order instructs the originator's bank to make a payment of money to the individual or entity named in the payment order. The recipient of this funds transfer is identified as the **beneficiary**. While the originator may

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only tell his/her bank whom to pay, the actual funds transfer may include several payment orders issued by financial institutions to effectuate the funds transfer.

There will always be at least three parties to a funds transfer. The three parties include the originator, the receiving bank and the beneficiary. Other parties that usually are involved in a funds transfer are the originator's bank, the beneficiary's bank and an intermediary bank.

Originator - the sender of the first payment order in the funds transfer process;

Originator's Bank - the bank used by the originator of the funds transfer;

Receiving Bank - any bank in the funds transfer process that receives a payment order;

Beneficiary - the person who is the recipient of the funds transfer;

Beneficiary's Bank - the bank that makes the payment from the funds transfer to the beneficiary according to the payment order; and

Intermediary Bank - is a receiving bank other than the originator's bank or the beneficiary's bank, and the customary position of a Federal Reserve Bank in a funds transfer that utilizes FEDWIRE.

Funds transfers are principally executed by means of three electronic funds transfer systems. These systems are FEDWIRE, CHIPS and SWIFT. Funds transfers can also be effectuated by telex, telephone, mail or facsimile.

FEDWIRE - the wire transfer system owned and operated by the Federal Reserve System. It was established in 1918 and connects the Federal Reserve Banks, their branches and other agencies, such as the Treasury Department. FEDWIRE is commonly used to settle major commercial transactions. FEDWIRE transfers cannot be made between a Federal Reserve Bank and a bank located outside the U.S.

CHIPS - stands for the Clearing House Interbank Payment System which is owned and operated by the New York Clearing House Association. CHIPS is the preferred system for transferring U.S. dollars offshore.

SWIFT - stands for the Society for Worldwide Interbank Financial Telecommunications. SWIFT is a Belgium based communication system that is oriented to serve banks, securities brokers and dealers, clearing institutions and recognized securities exchanges by providing international communication services to conduct funds transfers in different currencies.

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SWIFT has no funds transfer capability.

TELEX - is simply another communications device that is frequently used to complete simple funds transfers. A telex is also commonly referred to as a book transfer in that it provides a message to move funds from one account to another at the same financial institution.

OTHER MEDIA - other types of media are used to execute funds transfers; however, they are usually less favored because they lack security of the funds transfer systems described above. The security that a bank is concerned with in a funds transfer process is the ability of the receiving bank to ensure that the payment order has been authorized by the bank's customer.

It is important to remember that funds transfers are not the equivalent of having cash on hand. A funds transfer should be viewed as a legal concept, such as a claim on a bank that must make a payment as the result of a funds transfer, rather than specific property or cash that the bank has as the result of a funds transfer.

The focal point for investigating a funds transfer should be at the beginning of the funds transfer process. This would be the relationship between the originator and the originator's bank. The account statement of the customer is one of the most useful documents in this process. When a funds transfer has been identified on such a statement, the next request should be for the 'detail statement'.

Records detailing both ends of the transaction should be available either from the bank of origin or destination, or both. Out of the country (off shore) wire transfers can create a retrieval problem depending on the country involved.

Safe-Deposit Boxes -
Financial institutions rent or lease storage facilities in secured areas of the bank to its customers. The safe-deposit box rental agreement indicates the date the box was first rented and the identity of the renter; however, bank records will not reveal the contents of the box. An entry log maintained by the bank shows the date and times of visits to the box and also reports the identity of the visitor.

Bank Credit Cards -
Many banks offer credit cards to their customers, charge slips and repayment information relating to these cards might be available.

Bank Records -
Financial institutions restrict access to records of money movement. The Bank Secrecy Act and the Right To Financial Privacy Provisions of Federal law restrict open dissemination of financial information to law enforcement. Accordingly, without the individual customer's permission, banks are forbidden to provide financial records to

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anyone, except when they are legally compelled to do so. Banks are also required to notify the customer of any request unless legally told not to. Such legal compulsion can take the form of subpoenas, summonses or court orders.

The Bank Secrecy Act requires financial institutions to keep certain records of customer transactions. United States Treasury Regulations implementing the Bank Secrecy Act provide, in part, that an original, microfilm, or other copy or reproduction of most checking account deposits and saving accounts must be retained for 5 years. The record must include the following: 1) Signature card, 2) Statements, ledger cards or other records disclosing all deposits and withdrawals, 3) Copies of both sides of customer checks, bank draft money orders and cashier checks drawn on the bank or issued and payable by it. In addition, banks must retain for a 2 year period all records necessary to: 1) Reconstruct a customer's checking account, these records must include copies of customer's deposit tickets and 2) Trace and supply a description of a check deposited to a customer's checking account. The requirements listed above apply only to checks and deposits in excess of $100. Most banks find it cheaper to microfilm all such records including checks and deposits of less than $100 rather than sort their records. The bank Secrecy Act also requires financial institutions to retain a record of any extension of credit over $5,000 as well as every transfer of more than $10,000 outside the United States.

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Addendum G

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ADDENDUM G

WITHDRAWALS, ERRATA, RESUBMISSION, ADDENDA AND RETURNED REPORTS

A. Withdrawal and Resubmission

On occasion, after a report or memorandum has circulated to the Commission, errors or oversights may be noticed in the report or new information may come to the staff's attention that makes it prudent for the document to be withdrawn so that it can be appropriately revised. For instance, withdrawals are appropriate when a relevant issue has not been addressed, when a statement in the report conflicts with the attached documentation, when a recommendation or analysis conflicts with established policy or another report, or when a court decision requires a new examination of the issues. These are situations that cannot be addressed adequately with an addenda or errata. While staff often may catch errors requiring withdrawal on their own, sometimes they are brought to the staff's attention by an objection from a Commissioner.

Withdrawals may only be made before a vote has occurred. Thus, a withdrawal may be made: (1) any time during the voting period for the report or memorandum when it is on circulation; (2) if an objection has been filed, any time before 10 a.m. on the Friday prior to the Executive Session for which it is set; or (3) at the table during the Executive Session. The 10 a.m. Friday deadline exists because that is when the Commission Secretary's office prepares the agenda for the following Tuesday's Executive Session.

If the voting period is over and no objections were filed so that the recommendations became certified, withdrawal is not an available or appropriate avenue. Instead, staff will need to prepare a new report to correct the oversight or errors.

In order to withdraw a report or memorandum during the voting period or prior to 10 a.m. on Friday, a short memorandum should be prepared withdrawing the report. Use **Enforcement Form 99**. The sample memoranda are at the end of this Chapter. See Attachments G-1 and G-2. Because withdrawal of a document is time sensitive, the memorandum should be expedited and hand carried to the Associate General Counsel's secretary. After 10 a.m. on Friday, withdrawal usually must be made at the table (the Executive session meeting), increasing both the time expended and the attention drawn to the withdrawn report.

For all withdrawals, an electronic message (EM) should be sent to the team leader, Docket, the Associate General Counsel for Enforcement, and the General Counsel as soon as it is determined that a withdrawal is necessary.

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Withdrawal should not be viewed as a routine procedure because it often reflects a lack of thoroughness and accuracy in the preparation of the report or memorandum and impacts negatively on this Office's credibility with the Commission.

Resubmission can occur shortly after the original report or memorandum has been circulated or at any time after a report has been withdrawn. Often, a withdrawal is combined with a simultaneous resubmission of the revised or corrected report. The attached sample G-2, **Enforcement Form 99**, covers memorandum that is used for resubmission of the attached revised report. Simultaneous resubmission is feasible when the revisions and/or corrections can be quickly made.

When a report or memorandum is resubmitted, the following guidelines apply:

For items on circulation or placed on the agenda (either by objection or by procedure), if the revision being resubmitted does not affect the recommendations or any item that needs to be voted on (for example, the conciliation agreement), you recirculate the appropriate page with a cover memo that explains what report it relates to and the reason for the recirculation. If, however, the resubmission affects the recommendations or any document mentioned in a recommendation, such as a conciliation agreement, the following guidelines apply:

If the entire report **does not exceed ten (10) pages including attachments**, withdraw the report and resubmit an entire new copy along with a cover memo explaining the reasons for the withdrawal and the changes made. **Enforcement Form 99** should be used for the cover memo.

For reports where the **OGC generated portion (report and attachments) does not exceed 10 pages but also contains non-OGC generated materials**, resubmit the OGC generated materials with a cover memorandum detailing the changes in the resubmission and explaining that the additional attachments can be found attached to the original report circulated in the matter.

For longer reports where the **OGC generated portion (reports and attachments) exceed 10 pages regardless of whether there are additional non-OGC generated materials**, circulate the appropriate replacement pages as well as a new recommendation page. Identify in the cover memo the report these new pages belong to and detail your reasons for the resubmission.

Under any of these scenarios, you may, include a request for a shorter than 72 hour circulation time, if appropriate.

B. Errata

Errata are used to correct small oversights or minor errors in reports or memoranda. Typical examples of when errata are appropriate involve omitted

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attachments, incorrect citations in reports, incorrect MUR numbers on report, a pagination problem on a page (where a complete line of text is missing), and mathematical errors. An erratum should **not** be used if the correction is of a substantive nature and effects a recommendation by this Office to the Commission, i.e., changes to the text in the factual and legal analysis and/or the conciliation agreement, and changes to the civil penalty amount. An example of an erratum, **Enforcement Form 99**, follows at the end of this chapter. See Attachment G-3.

The ability to circulate an erratum depends on the time factors of the voting period and whether an objection has been filed. If an objection has been made to a report or memorandum on circulation, an erratum can be prepared for inclusion as an agenda item.

C. Addenda

Through the use of addenda, staff are able to supplement the material in the report or memorandum with additional information.

An addendum is appropriate when it is discovered that additional documentation should have been circulated with the report or memorandum or where pages of the attachments were inadvertently omitted during the review or photocopying processes. The ability to circulate an addendum will be influenced by time factors relating to the voting period. Sometimes the necessity for an addendum will come to light when an objection has been made to place a matter on the agenda and the objection alerts staff to the need or advisability of circulating additional information. Staff should promptly consult with their supervisor or the Associate General Counsel for Enforcement if it appears there is a need or desire to circulate an addendum. An example of an addendum, Enforcement Form 99, follows at the end of this Chapter. See Attachment G-4.

D. Returned Reports

When a report or memorandum has been placed on the Executive Session agenda for discussion, the Commission may vote to return the report to OGC for revision based upon the discussion or votes at the meeting. In these circumstances, a new report or memorandum will be prepared and resubmitted for a new tally vote, or this Office will ask that it be placed back on the agenda. A new sunshine form is required.

The revised report should note in the text or a footnote that pursuant to the Commission's direction the report or memorandum has been revised, etc. It will not always be necessary to reproduce all of the attachments, only those that have been revised or that require approval and have not yet been approved, such as factual and legal analyses and conciliation agreements.

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E. Attachments

G-1. Example of Withdrawal
G-2. Example of Withdrawal and Resubmission
G-3. Example of an Erratum
G-4. Example of an Addendum

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CONFIDENTIAL DRAFT ~ 11/97

EXAMPLE OF WITHDRAWAL

FORM 99

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 9999 – Withdrawal of General Counsel's Report dated May 1, 1998

On May 1, 1998, this Office circulated a General Counsel's Report in MUR 9999 to the Commission on a 72 Hour Tally Vote basis. At this time, this Office is withdrawing the report because the proposed civil penalty was calculated incorrectly. A revised report will be circulated shortly.

Staff Assigned: John Brown

Attachment G-1

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

CONFIDENTIAL DRAFT – 11/97

EXAMPLE OF WITHDRAWAL AND RESUBMISSION

FORM 99

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 9999 – Withdrawal and Resubmission
Corrected Recommendations to the General Counsel's
Report dated May 9, 1998

On May 9, 1998, this Office circulated a General Counsel's Report in MUR 9999 containing the incorrect civil penalty amount in the proposed conciliation agreement. At this time, this Office withdraws the report and submits a corrected copy in this matter.

Attachment

Staff Assigned: John Brown

Attachment G-2

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

CONFIDENTIAL DRAFT – 11/97

EXAMPLE OF ERRATUM

FORM 99

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 9999– Erratum
General Counsel's Report dated May 1, 1998

On May 1, 1998, a General Counsel's Report in MUR 9999 was circulated to the Commission. It has come to our attention that an incorrect Advisory Opinion is referenced on page 3. Although the report references AO 1988-1, the correct opinion number is AO 1989-1.

Staff Assigned: John Brown

Attachment G-3

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

CONFIDENTIAL DRAFT ~ 11/97

EXAMPLE OF ADDENDUM

FORM 99

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 9999 – Addendum to General Counsel's Report dated May 1, 1998

This Office submits the attached addendum to the above-referenced General Counsel's Report. The report was prepared with a table of contents; however, the table was inadvertently omitted during the copying process before circulation to the Commission. The Commissioners may wish to insert the attached table following page vi of the circulated report.

Attachment

Staff Assigned: Mary Smith

Attachment G-4

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Addendum H

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ADDENDUM H

TROUBLESHOOTING AND PROOFREADING DOCUMENTS

Troubleshooting and proofreading all documents, such as reports, letters, briefs, subpoenas, and interrogatories are essential steps in the production of an acceptable final work product and to achieve the goal of "zero defects" under the Total Quality Management program. By identifying and correcting many commonly occurring errors, you improve the quality of your work product. And you can avoid embarrassment when such errors are pointed out or corrected during the Executive Session or when you have to withdraw and recirculate a report, or circulate an addendum or errata.

This addendum reviews the more common errors that should be identified and corrected when troubleshooting and proofreading a document. At the end of this discussion are convenient checklists for troubleshooting and proofreading documents.

I. TROUBLESHOOTING

For purposes of this addendum, troubleshooting refers to reviewing documents for errors that are not readily identifiable through traditional proofreading methods that have focused on misspelled words, punctuation errors, and format problems. For convenience as a readily usable reference, this section has been organized according to the type of document.

A: Reports/Memoranda

This section addresses reports with recommendations, though many points are also relevant to reports and memoranda without recommendations.

1. Text

Make sure the correct MUR number, Pre-MUR number, or RAD Referral number is in the caption of the report.

a. Recommendations

Closely and separately examine the recommendations to be sure they contain the correct language, the correct citations, and the correct names and spellings. The Certifications are prepared by the Commission Secretary's office and are taken verbatim from the recommendations. Errors in the citation or spellings may require a follow up report or memoranda to correct the errors so that there is an accurate record of the Commission's action.

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Check to be sure that the recommendations in the report are consistent with the narrative portion of the report discussing them. For instance, if the report says that there is reason to believe a respondent violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a), then both of those provisions should be included in the recommendations. A similar comparison should be made with related factual and legal analyses and proposed conciliation agreements.

Check to be sure you have made a recommendation with respect to all named respondents or that the report explicitly states that no recommendation is being made at this time with respect to a particular respondent. This requirement is especially important in First General Counsel's Reports. Be especially vigilant in complaint generated matters that a recommendation is made with respect to all respondents who received notice of the complaint unless the report states explicitly why a recommendation is not being made at this time with respect to a particular respondent.

Moreover, where a report or memorandum recommends dismissal of a respondent, include a recommendation to close the file with respect to that respondent. A dismissal may include a no reason to believe finding or a reason to believe finding coupled with a finding to take no further action (assuming that is the only allegation pending with respect to that respondent). Don't forget the recommendation to "approve the appropriate letters."

Remember in RAD referrals and Pre-MURs the first recommendation should be either to "open a MUR" or "decline to open a MUR." However, in RAD referrals for non-filers where we are recommending a merger into an already open MUR, it is not necessary to make a recommendation to open a MUR in the new non-filer referral.

b. Signature Line and Postscripts

Check to be sure the report or memorandum has the proper signature line in accordance with the track designation. Consult the report or memorandum form in the ALLIN1 system to determine the correct signature line.

Associate General Counsel Signs:

--All reports and memoranda in Tracks 1 and 2 matters.
--All extension of time memoranda.

General Counsel Signs:

--All reports and memoranda in Track 3 matters, except extensions of time memoranda.
--All Probable Cause and No Probable Cause reports.
--All memoranda forwarding Statements of Reason.
--All Close Investigation Reports.
--All suit authorization Reports.
--All General Counsel's Briefs.

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Check to be sure you have listed all of these attachments at the end of the report or memorandum.

The report or memorandum should also identify the staff person. Generally, this is done at the end of the report or memorandum, except for First General Counsel's Reports where the form provides a place for it at the beginning of the report. This rule applies to all General Counsel's Reports, Comprehensive Investigative Reports, and Memoranda.

2. Attachments

Check to make sure that all of the attachments required for the type of report or memorandum are included. (See Addendum >, List of Report Attachments). They should be as good and as legible copies as possible, since they will be copied once again when the document is circulated to the Commission. They must also be letter size (8 1/2 by 11). Larger sizes must be reduced to letter size on the photocopier.

The attachments should be marked both by attachment and by page number. A stamp is available from the receptionist or the team secretary to facilitate the marking of attachments.

a. Factual and Legal Analyses

Remember the Factual and Legal Analysis is the only written explanation a respondent receives for the Commission's reason to believe finding. Although it is taken in large measure from the narrative of the report, it should be edited appropriately as a statement from the Commission explaining its finding to the respondent. Be certain to delete references to open compliance matters, internal procedures or policy (such as referral thresholds), discussion of investigative plans, or mention of findings against other respondents in the same matter.

Check to be sure the citations for the violations in the Factual and Legal Analysis correspond with the recommendations and the report, including citations to the regulations.

The Factual and Legal Analysis should also set forth the jurisdictional basis for the Commission's action. This means that in a complaint generated matter, the Factual and Legal Analysis should state at the outset that the matter was generated by a complaint. For an internally generated matter, the Factual and Legal Analysis should state that the matter arose from information ascertained by the Commission in the normal course of carrying out it supervisory responsibilities and cite to 2 U.S.C. § 437g(a)(2).

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Remember, as Form 69 indicates, all Factual and Legal Analyses should conclude with the language: "Accordingly, there is reason to believe [name of respondent] violated [cited sections]."

b. Conciliation Agreements

Check over proposed conciliation agreements attached to a report or memorandum to be certain that the correct party is identified in the caption and preamble. Check that the correct MUR number is in the caption.

Check that the cited violations in the agreement correspond to the Commission's findings with respect to that respondent. If the Commission has taken no further action with respect to a particular finding, it is then deleted from any proposed agreement.

Also, check the amount of the civil penalty in the proposed agreement to be sure it matches the amount stated in the report. If an installment payment plan is being included in the agreement, make sure the date set for the first payment has not already passed and that there is sufficient advance time for the payments considering when the agreement is likely to be fully executed. For example, you can often avoid this problem by making the first payment due 30 days after the respondent receives a fully executed agreement and the other payments in specific intervals after that.

Check to be sure required injunctive language is also in the agreement, such as refunds of excessive or prohibited contributions, filing of missing reports or amendments to reports, etc.

Check the signature line. The Associate General Counsel signs conciliation agreements in all Track 1 and Track 2 matters. The General Counsel signs conciliation agreements in Track 3 matters.

c. Subpoenas

Check subpoenas attached to a report or memorandum to be certain they are directed to the proper party. Also, check to be sure that, starting with page two, the following information is typed in the upper left hand corner:

MUR #
Subpoena and Order to [name of party]
Page #

Also, be sure there is sufficient space for the day, month, and year that the Commission Secretary must type in and for the signature lines. The Commission Secretary requests that at least four lines of space be allowed above the signature lines.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

3. Administrative Forms

a. Sunshine Forms

Be certain there is a sunshine form [the one signed by the Associate General Counsel for Enforcement, Lois G. Lerner] filled out and included with the report or memorandum package when the final package is sent forward for review and signature.

All reports with a recommendation and all reports circulating on a 24-hour no-objection basis require a sunshine form.

b. Routing Cards

Check the routing card to be certain it is the appropriate one for the track designation for that matter. Remember that when reports or memoranda are returned for revision and the routing card has become filled up, you should add a new routing card when you send the package back with its revisions.

Secretaries should initial and date the routing card in the lower right hand corner when they proofread a document.

B. Letters/envelopes

Check the inside address and the envelope's address label for the correct address and zip code. Correspondence has been returned to the office because of errors that should have been corrected during proofreading. Make sure any return receipt card is correctly filled out and that the MUR # and staff person's name is typed in the margin for identification when the card is returned.

Also, check to be sure the proper respondent and correct MUR number have been identified in the heading and text of the letter. Check also the citations relating to the findings to be sure they correspond with the certification.

Check the signature line to be sure it conforms with the signature authority policy. Absent unusual circumstances, the following signature policy applies:

Commission Chairman Signs:

--All RTB notification letters (Forms 27-31).

General Counsel Signs:

--Letters enclosing briefs (Forms 45, 45A).
--PCTB/No PCTB notification letters (Forms 46, 47, 49, 49A, 50, 51).
--Notification of Suit Authorization (Forms 54, 61).

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Associate General Counsel Signs:

--Letters to other federal agencies, except the U.S. Marshal (Forms 6, 7, 20, 48, 59, 62, 63, 63A).
--No RTB or split vote letters (Forms 22, 23, 24, 25, 26).
--Injunctive Relief letters (Forms 13, 14).

Assistant General Counsels Sign:

--Notification to respondent and complainant of initial complaint (Forms 8, 8A, 9, 9B, 10).

Docket Chief Signs:

--No jurisdiction and improper complaint letters (Forms 1-4).

Staff Signs:

--All letters not otherwise covered above.

Letters prepared for signature by the staff, the Assistant General Counsels, and the Docket Chief will be signed without reference to the General Counsel's name.

Sincerely,

Jane Doe
Staff Attorney

OR

Sincerely,

John Doe
Paralegal Specialist

Letters prepared for the Associate General Counsel's signature will be in this form:

Sincerely,

Lawrence M. Noble
General Counsel

[four spaces]

BY: Lois G. Lerner
Associate General Counsel

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Letters prepared for the General Counsel's signature will be in this form:

Sincerely,

[four spaces]

Lawrence M. Noble
General Counsel

Letters prepared for the Chairman's signature will be in this form:

Sincerely,

[four spaces]

Joan D. Aikens
Chairman

Make sure the notification package contains all of the required enclosures. Make sure the Factual and Legal Analysis has the correct MUR number.

Make sure additional pages of the letter contain this information in the upper left hand corner:

[Person to whom letter is addressed]
Page #

With extension of time letters, include a completed form for your supervisor. (See Addendum A, Extensions of Time).

C. Briefs

Be certain the recommendations at the end of the brief conform with the text of the brief.

Check the caption for the proper identification of the respondents to whom the brief is being sent and the correct MUR number.

Check the signature line: all briefs are signed by the General Counsel.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

II. PROOFREADING

This section covers the more traditional forms of proofreading that should be done before a final package is sent forward for review and signature.

All final reports, briefs, memoranda, and letters should be proofread prior to signature by staff members and then by the team secretary. The date and initials of the secretary who proofreads the document should be entered on the lower right hand corner of the routing card. Draft reports and briefs being circulated for comment need not be proofread until they are in final form.

A. Misspelled Words and Word Usage

Proofread all documents carefully for misspelled words and incorrect word usage. First, use the "Spell Check" function of ALLIN1. Second, proofread each word and line carefully. Spell check will not pick up wrong words which are spelled correctly. For instance, if you type in "for" when you mean "four," spell check will not catch the error. Reading each line from right to left (backwards) has proven to be an effective method for catching errors.

A list of Commonly Misspelled Words and a list of Commonly Confused Words is included at the end of this Addendum for your reference.

B. Section Symbols

1. The section symbol (§) should not be used unless the title of the U.S.C. or the C.F.R. is also used. Instead, the word "section" should be spelled out.

Pursuant to 2 U.S.C. § 441a ....

or

Pursuant to Section 441 ....

NOT

Pursuant to § 441a ....

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

2. The section symbol (§) should not stand alone at the end of a line. Use GOLD/SPACE BAR to link the section symbol with the following section number or use the Abbreviation Function, especially for frequently used citations.

The respondent relies on the provision at 2 U.S.C. § 441a(f) ...

NOT

The respondent relies on the rule at 2 U.S.C. § 441a(f) ...

C. Names

1. A person's first name and middle initial should be kept on the same line. Also, never divide a person's initials when used in place of first names. Use GOLD/SPACE BAR to make the linkage.

The respondent is T.S. Eliot.

OR

The respondent is T.S. Eliot.

NOT

The respondent is T. S. Eliot.

2. Do not divide a person's name from his/her courtesy title, such as Mr., Mrs., Ms., or an official title, such as Sen., Rep., Gov. Use GOLD/SPACE BAR to link it to the rest of the name.

The Commission issued interrogatories to Mr. Nathaniel Hawthorne ....

NOT

The Commission issued interrogatories to Mr. Nathaniel Hawthorne ....

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D. Dates

In a date including the month, day, and year, the month and day should be kept together on the same line.

The redesignations were not made until December 14, 1991.

NOT

The redesignations were not made until December 14, 1991.

E. Punctuation

Check the document for correct punctuation. For reference, see the Basic Punctuation Guide at the end of this Addendum.

F. Spacing

1. Only one space between words within a sentence.

The committee amended its reports.

NOT

The committee amended its reports.

2. Two spaces between the period at the end of sentence and the beginning of the next sentence.

The committee amended its reports. Then, it filed ....

NOT

The committee amended its reports. Then, it filed ....

3. Two spaces should also exist between the footnote number and the beginning of the sentence in a footnote.

1. The response was received ....

NOT

1.The response was received ....

This problem can be easily avoided if you TAB or indent five spaces before starting the text of the footnote, thus providing sufficient space for the footnote number that is automatically added.

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G. Numbers

1. Spell out numbers one through ten when used in a sentence.

The committee obtained reattributions from five contributors.

NOT

The Committee obtained reattributions from 5 contributors.

2. Use the figures for numbers higher than ten.

The committee refunded 25 contributions.

NOT

The committee refunded twenty-five contributions.

3. Use figures in a series of related numbers unless spelling them out is necessary to avoid confusion.

The committee redesignated 5 contributions, reattributed 10 contributions, and refunded 15 contributions.

4. Use figures for definite amounts.

The committee received $35,545.00 in excessive contributions.

5. Avoid using two figures next to each other where it may create confusion.

In 1991 twenty-five contributions exceeded the limits.

NOT

In 1991 25 contributions exceeded the limits.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

H. Forms of Address

The following is a list of titles and their corresponding forms of address and salutations to use in letter.

Address on Letter and Envelope	Addressee	Salutation
The President The White House Washington, D.C. 20500	The President	Dear Mr. President
The Vice President of the United States United States Senate Washington, D.C. 20510	The Vice President	Dear Mr. Vice President
Senator [ ] United States Senate Washington, D.C. 20510	The Honorable [full name]	Dear Senator [surname]
Representative [ ] House of Representatives Washington, D.C. 20515	The Honorable [full name]	Dear Mr. [surname]
Mr.* [full name], Esquire [local address]		Dear Mr. [surname]

* Where appropriate, substitute "Ms." for "Mr." Note "Mrs." is appropriate where the person has identified herself as such, i.e., Mrs. Barbara Bush.

III. LIST OF ATTACHMENTS

Att. H-1. Check list; Reports and Memorandum
Att. H-2. Check list; Letters
Att. H-3. Check list; Briefs
Att. H-4. Basic Punctuation Guide
Att. H-5. Commonly Misspelled Words
Att. H-6. Commonly Confused Words

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CHECK LIST

Reports and Memoranda

		Yes/No
I.	**Text**	
1.	Do recommendations contain correct citations and spellings of respondents' names?	_____
2.	Is the caption and MUR number correct?	_____
3.	Are recommendations made on all issues (i.e., "open or decline to open" or "approve the appropriate letters")?	_____
4.	Are recommendations made on all respondents and to "close the file" (where appropriate)?	_____
5.	Do recommendations conform to the text of the reports?	_____
6.	Does report have the proper signature line?	_____
7.	Are all necessary attachments listed at the end of the report, are they marked, attached, and letter size?	_____
8.	Is the staff person identified?	_____
II.	**For Factual and Legal Analysis**	
9.	Does the factual and legal analysis conform to the recommendations and the text of the report?	_____
10.	Does the factual and legal analysis contain the proper jurisdictional statement?	_____
11.	Have references to open enforcement matters, internal policies, or findings regarding other respondents been deleted?	_____
III.	**Conciliation Agreement**	
12.	Does the conciliation agreement identify the correct respondent in the caption and text?	_____
13.	Has the correct conciliation agreement form been used (preprobable versus post probable)?	_____

Att. H-1, 1 of 2

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14. Do cited violations in the conciliation agreement conform to the Commission's findings? _____

15. Does the proposed civil penalty in the agreement match the figure in the report? _____

16. Does the agreement have required injunctive language? _____

17. Does the agreement have the proper signature line? _____

IV. **Subpoenas**

18. Are the subpoenas directed to the respondent or witness? _____

19. Is each page properly identified? _____

20. Does it contain sufficient space for the signatures and dates? _____

V. **Administrative Forms**

21. Has a correct sunshine form been attached and filled in? _____

22. Is the correct routing card attached? _____

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CHECK LIST

Letters

		Yes/No
1.	Is the inside address correct?	_____
2.	Are the enforcement matter number and the respondent (where applicable) identified in the "RE:" section and properly tabbed and spaced?	_____
3.	Is each page properly identified in the upper left hand corner?	_____
4.	Does each letter have the proper signature line?	_____
5.	Are the envelopes correctly addressed?	_____
6.	Are return receipt cards (where used) properly filled out and attached?	_____
7.	Are all the enclosures there?	_____
8.	Do Factual and Legal Analyses have the MUR number on them?	_____
9.	Does the conciliation agreement have the correct MUR number and respondent in the caption?	_____

Att. H-2, 1 of 1

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CHECK LIST

Briefs

		Yes/No
1.	Do the recommendations conform to the text of the brief?	_____
2.	Does the caption identify the proper party?	_____
3.	Have references to open enforcement matters, internal policies, or findings regarding other respondents been excised from the brief?	_____
4.	Does the brief have the proper signature line?	_____
5.	Does the caption have the correct MUR number?	_____

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BASIC PUNCTUATION GUIDE

I. COMMA

A. Use a comma to separate words and phrases in a series.

The question of redesignation, reattribution, or reallocation is

The treasurer is responsible for keeping the records properly, preparing the reports accurately, and filing the reports on time.

[Use of the comma between the last two items in the series before the conjunction is preferable, but not essential.]

B. Use a comma to set off items from the rest of the sentence. Remember in the middle of a sentence, two commas will often be necessary to "set off" an item.

1. Words in Apposition

Sam Smith, the treasurer of the committee, stated

2. Contrasted Words

reattribution, not redesignation, was the proper

3. Transitional Words

Moreover, the respondent argued

4. Long Introductory Prepositional Phrases

Compare

Upon further review of the allegations in this matter, the Commission

with

In 1991 the Commission found

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5. **Dependent Clauses Preceding the Main Independent Clause**

   If you intend to be represented by counsel in this matter, please advise

   Counsel argued that because the committee had not received adequate notice regarding the due date for the report, it should not be held responsible.

6. **The Year in Dates**

   The contribution was made on July 21, 1992, and refunded on September 7, 1992.

C. **Use a comma to separate two independent clauses joined by a conjunction.**

   Common Conjunctions: and, but, so, yet, for, or, nor

   The reattributions were received, and the committee amended its reports.

   [See use of semicolon with independent clauses in the next section.]

II. **Semicolon**

A. **Put a semicolon outside quotation marks.**

   The check was dated September 10, 1990; made payable to "Smith for Congress"; and drawn on ... .

   NOT

   "Smith for Congress;"

B. **Use a semicolon, rather than a comma, to separate clauses in a series that are long or include commas within them.**

   Take no further action with respect to Avail-Ability, Inc.; Bill Taylor & Associates, Inc.; and Bibb Distributing Company.

C. **Use a semicolon to separate two independent clauses joined by a conjunctive adverb or transitional word.**

   Examples: however, moreover, therefore, hence

   The committee obtained the redesignations; however, it did not amend its reports.

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The committee failed to obtain the redesignations; hence it did not amend it reports.

[Note: a comma after the transitional word may be used when you wish to put emphasis on that word.]

D. Use a semicolon to separate two independent clauses joined by a conjunction [see Comma above] where one or both of the independent clauses contain commas that would otherwise cause confusion.

The committee obtained redesignations, sought reattributions, and made refunds; but it failed to amend its reports.

III. COLON

Use a colon to introduce a list or quotation.

List:

The complaint makes four allegations:

Quotation:

The brochure states: "Paid for by. . . ."

IV. APOSTROPHE

Apostrophes are most often used to show possession.

A. Distinguish between possessives and plurals.

Singular possessive:

The Respondent's counsel

Plural possessive:

The Respondents' counsel

B. Distinguish between "it's" and "its."

it's = it is

It's time for another reminder. [It is time]

its = singular possessive

The committee amended its reports.

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V. QUOTATION MARKS

A. Use double quotation marks to set off a direct quotation.

The committee asked that "no further action be taken against it."

B. Use single quotation marks to quote material within a direct quotation enclosed by double quotation marks.

The Respondent said that she "had not provided any 'targeted list' to the committee."

[Note that the left single quotation mark can be found in the upper left hand corner of the computer keyboard.]

C. Place quotation marks outside commas and periods but inside colons and semicolons.

," ." ": ";

D. Longer, quoted material that is indented and single spaced and introduced with a colon, i.e., a "block quote," omits quotation marks at the beginning and end of the material.

The Respondent stated:

> I was not given a list of PACs with key contact persons to solicit for contributions through any direct mail program.

VI. PARENTHESES

A. Use parentheses to set off material in a sentence that is not part of the main thought of the sentence.

> The Commission found reason to believe the committee had received excessive contributions (but not including Joseph Smith's contributions).

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B. Use parentheses to enclose figures or letters in an enumeration or list.

The committee: (1) refunded $10,000 in excessive contributions; (2) reattributed $15,000 in excessive contributions to spouses; and (3) redesignated $5,000 in excessive contributions to the next election.

C. Use parentheses along with quotation marks to enclose abbreviated references to be used in the document to refer to a particular person or thing.

The Association of Trial Lawyers of America Political Action Committee ("ATLA PAC" or "Trial Lawyers PAC")

VII. DASH

The dash is also used to insert material into a sentence.

It provides a more abrupt and greater separation of material from the main body of the sentence than a comma or parentheses provides.

The committee failed to amend its report to show -- and thus failed to disclose -- the PAC contributions.

Remember that since most keyboards do not have a "dash" key, a dash can be created by double-striking the hyphen key.

VIII. BRACKETS

Brackets are another method to insert material into a sentence. They are used, however, when the author is inserting his or her own editorial comments, omissions, explanatory notes, or a change in capitalization or number.

For instance, use brackets to indicate spelling or grammar errors in quoted material.

That respondent said that "irregardless [sic] of the Act's requirements, his contributions were permissable [sic]."

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IX. HYPHEN

The hyphen is used primarily to form compound words.

> The contribution was reattributed to the contributor's daughter-in-law.
>
> Large, last-minute contributions are reportable.
>
> The party's get-out-the-vote drive occurred

Note, however, that the hyphenated version of compound adjectives is used before the noun, but the hyphen is not used after the noun or verb.

> The four-month-old amendments were incomplete.
>
> The amendments were four months old and incomplete.

X. ELLIPSES

Ellipses dots are used to indicate omissions from quoted material.

> "This interpretation...should be rejected out of hand on logical grounds alone."

Use four dots on a separate line to indicate the omission of an entire paragraph between two quoted paragraphs.

For further reference:

(1) A Uniform System of Citation;

(2) GPO Style Manual (1973); and

(3) Margaret Shertzer, The Elements of Grammar (1986).

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COMMONLY MISSPELLED WORDS

I. Correct Spellings

accommodate
acknowledgment
admissible
all right
analogous
argument
benefited
canceled
cannot
catalog
colloquy
commingle
comprehensible
consensus
controvertible
corollary
credible
defensive
de minimis
development
divisible
dossier
eligible
embarrass
employee
enclosure
enforceable
exonerate
exorbitant
feasible
foresee
fulfill
fungible
germane
gobbledygook
harass
harebrained
illegible
innuendo
inquiry
irresponsible
liaison
maneuver
manifest
marshaled
mileage

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misspell
moneys
occasion
occur, occurred
paralleled
partisan
percent
permissible
privilege
proffer
promissory
referable
rescind
sensible
separate
seriatim
tangible
technique
threshold
totaling
toward
transferor
willful

II. Plural Examples

attorney	attorneys
brother-in-law	brothers-in-law
notary public	notaries public
passer-by	passers-by
going-on	goings-on
also-ran	also-rans
higher-up	higher-ups
go-between	go-betweens
addendum	addenda
memorandum	memoranda
money	moneys

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COMMONLY CONFUSED WORDS

accede	yield; adhere
exceed	surpass
accept	to receive
except	to exclude
adapt	adjust
adept	skillful, proficient
adverse	opposed
averse	disinclined
advise	recommend, suggest (verb)
advice	opinion (noun)
affect	influence, change
effect	accomplish, result
all ready	entirely ready
already	previous; occurred
among	reference to more than two
between	reference to only two
apt	suitable, appropriate
liable	legally bound
awhile	for some time
a while	a short time
biannual	semiannual; twice a year
biennial	every two years
born	birth
borne	carried
canvas	tent cloth
canvass	to solicit for votes
capital	seat of government, money
capitol	legislature's building
casual	happening by chance
causal	happening by design

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compare	note points of difference or similarity
contrast	note points of difference only
complement	complete
compliment	praise
continual	frequently recurring
continuous	uninterrupted
credible	worthy of acceptance
credulous	believable on uncertain evidence
discredit	destroy confidence in
disparage	undervalue
discreet	prudent
discrete	distinct
disinterested	lack of self-interest
uninterested	indifferent
elicit	to draw
illicit	illegal
envelop	to cover about
envelope	wrapper
extant	in existence
extent	range, degree
farther	distance (spatial)
further	not distance
few	refers to number
less	refers to quantity
formally	ceremoniously
formerly	in previous times
imply	speaker or document implies
infer	listener or reader infers
ingenious	skillful, clever
ingenuous	simple, naive
majority	more than half
plurality	less than half, but more than any other

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militate	to influence
mitigate	to moderate or make less severe
new	recent
novel	unusual
ordinance	law
ordnance	military supplies
partially	to some degree
partly	in part
peremptory	decisive
pre-emptory	preference
personal	individual
personnel	staff
perspective	view
prospective	expected
precede	to go before
proceed	to begin
precedence	priority
precedents	usage
principal	chief, primary
principle	proposition, rule
stationary	fixed
stationery	paper
tantamount	equivalent
paramount	highest
waiver	give up a claim
waver	hesitate

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Addendum I

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ADDENDUM I

VOTING PROCEDURES AND AGENDA PLACEMENT

I. Introduction

The Commission uses a circulation procedure to vote on most items in enforcement matters. These procedures permit more efficient and expeditious action, particularly for enforcement matters which often require frequent or numerous actions by the Commission. Note that the Act requires the affirmative vote of at least four Commissioners for the Commission to take any significant action in an enforcement matter. 2 U.S.C. § 437c(c); 2 U.S.C. § 437g(a)(2), (a)(4)(A)(i), (a)(5)(C), (a)(6)(A). The voting procedures minimize the number of items that are placed on the Executive Session agenda, requiring an appearance by the staff person and discussion and consideration by the Commission.

The discussion that follows outlines the Commission voting procedures and agenda placement for enforcement matters. The full voting procedures and agenda deadlines for all items requiring Commission action are more fully described in Commission Directives 17 and 52.

Because of the statutory confidentiality of Commission enforcement matters, all enforcement documents are circulated on a sensitive basis, bearing a "SENSITIVE" stamp, and enforcement matters are always discussed in Executive Session (see Addendum J, The Sunshine Act and OGC's Practices and Procedures).

II. Circulation Vote Procedures

Enforcement matters usually fall into one of four categories for circulation and Commission action:

(1) automatic agenda items;

(2) 72 hour tally vote circulation;

(3) 24 hour no objection circulation;

(4) informational circulation.

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A. Automatic Agenda Items (blue paper)

Enforcement reports to the Commission that recommend the filing of a civil suit are automatically placed on the agenda of the next Commission executive session. In addition, this Office can request that a particular report be placed on the next agenda. These reports are discussed more fully in the "Agenda Placement" section of this Addendum.

B. 72 Hour Tally Vote (green paper)

All other enforcement reports and memoranda with recommendations that require a Commission vote circulate for three full business days on a tally vote basis and on green paper. Except for Friday in which only one circulation usually takes place, the Commission Secretary's office circulates documents to the Commission twice per day, at 11 a.m. and at 4 p.m. The Commissioners' voting deadline for all circulations is once per day, at 4 p.m. (thus the actual vote period for documents circulated at 11 a.m. is 3 business days later at 4 p.m., or 77 hours).

Reports circulated for a tally vote have a voting cover sheet that provides the time frame in which the Commissioners have to vote on the matter, identifies the report or memorandum by date, and provides a place for the Commissioner to indicate approval or objection and a place for optional comments. An example of this voting cover sheet is included at the end of this Addendum. For the recommendations in the document to be adopted, at least four Commissioners must affirmatively approve them by so indicating on the vote sheet and returning the vote sheet to the Commission Secretary's office.

Shortened Tally Vote. Please note that this Office can ask for the tally vote deadline to be shortened, to 24 or 48 hours if circumstances require an expedited decision (an example of a cover memorandum seeking a shortened voting deadline is included at the end of the Addendum).

Reports and memoranda that circulate on a Tally Vote basis go on the agenda (1) if at least one Commissioner files an objection to the recommendations or (2) if fewer than four Commissioners approve the recommendations, even though there are no objections. The latter situation can happen if one or more Commissioners fail to return the voting cover sheet and are thus recorded by the Secretary's office as a "no vote" on the particular circulation item. Please note that the Commissioners only vote on the recommendations. They may take exception to the analysis in the report and, thus, may file an objection; but the vote is on the recommendations.

If a Commissioner files an objection, staff is notified through a memorandum that indicates the Commissioner(s) who objected and the date of the Executive Session on which the report or memorandum will be on the agenda. See Addendum B for more discussion on the procedure regarding objections and preparation for Commission appearances.

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If there are no objections filed and there are at least four affirmative votes, the Commission Secretary's office prepares a certification, which is the Commission's official record of the action taken with respect to the recommendations in a particular report or memorandum. The certification is signed and dated by the Commission Secretary, and a copy is forwarded to the staff person through OGC Docket soon after the voting period ends. See example at the end of this Addendum. Available for staff use is the PLUS database which references certification information, but should not be substituted for the actual document.

C. 24 Hour No Objection (yellow paper)

Comprehensive Investigative Reports and First General Counsel Reports without recommendations circulate on a 24 Hour No Objection basis and on yellow paper. The vote sheet that accompanies documents circulated in this way contains no approval mechanism but rather only a space for a Commissioner to object. See example at the end of this Addendum. Thus, although there are no recommendations on which the Commissioners vote in these types of reports, a Commissioner may still choose to object in order to place the report or memorandum on the next Executive Session agenda. If there is no objection, staff will receive a notice from the Commission Secretary's office. See example at the end of this Addendum.

Special procedure during suspension of voting deadlines. The Commission may suspend voting deadlines during holiday periods which extends the voting deadline for items in circulation. During such a period, enforcement memoranda recommending granting or denial of extensions of time are circulated on a 24 Hour No Objection basis, rather than the usual 72 Hour Tally Vote. The recommendations are approved unless at least three Commissioners object.

D. Informational (white paper)

General Counsel's Reports without recommendations (after the First General Counsel's Report), outgoing correspondence containing formal notifications, as well as all complaints, amendments, General Counsel's Briefs, and Respondent's Briefs are circulated to the Commission on white paper. These are considered informational circulations. For instance, a General Counsel's Report without recommendations may be prepared to inform the Commissioners that preprobable cause conciliation is being extended because of the likelihood of reaching an agreement, or that it is being ended and the matter is moving to the briefing stage because of the inability to achieve agreement or because of the lack of an answer from the respondent. General Counsel's Briefs circulate informationally so that Commissioners have them in their files when the General Counsel's Report on Probable Cause goes forward. See Chapter 6. All outgoing enforcement correspondence following a Commission vote is also circulated on an informational basis to the Commission. New complaints and amendments to complaints are also treated this way. Staff need to monitor amendments to complaints and to notify

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OGC Docket when they are received so that they can be circulated (see Chapter 2, on supplements and amendments).

After a report or memorandum has been discussed at the Executive Session, revisions to the factual and legal analysis or conciliation agreement may be required by the Commission's vote. When the Commission has not asked that the revised documents be recirculated on a tally vote, an informational circulation of the revised documents may be advisable in certain circumstances to give the Commissioners a copy of the approved document that was sent out. See Section IV.C.

There is no formal voting or objection period for informational circulations and no notice will be received acknowledging review by the Commissioners. Nevertheless, a Commissioner may choose to place such an informational report or memorandum on an Executive Session agenda for discussion.

Draft Statements of Reasons. A type of unusual informational circulation to be aware of are draft Statements of Reasons, which this Office forwards and which the Commission Secretary circulates on pink paper to call attention to these time sensitive documents (see Addendum D, Statements of Reasons).

E. Role of OGC Docket

When a report or memorandum is signed by the General Counsel or Associate General Counsel for Enforcement, as appropriate, it goes to OGC Docket. OGC Docket staff reviews it and using the above-discussed guidelines they determine how the document will be circulated. They then complete a transmittal memorandum, and transmit the document to the Commission Secretary's office. When Docket forwards the document to the Commission Secretary's office, a copy of the transmittal memorandum is also forwarded to the staff person (but not the supervisor). See the example at the end of this Addendum.

This transmittal memorandum instructs the Commission Secretary's office how to circulate the report or memorandum, i.e., on a 72 Hour Tally Vote basis, a 24 Hour No Objection basis, an Informational basis, or other basis, such as an automatic agenda item. Staff should review this memorandum as soon as it is received to make sure the report is circulating on the proper basis and the correct color (blue, green, yellow, white). Also, please note that if you desire any unusual circulation for a document you are forwarding, be certain to flag this on the routing card so OGC Docket staff can convey the proper instruction to the Commission Secretary's office.

OGC Docket receives multiple copies of the report or memorandum when it goes on circulation based upon the distribution list for each type of document which is maintained by the Commission Secretary's office. These copies are distributed to the staff person, supervisor, Associate General Counsel for Enforcement, General Counsel, and other enforcement team leaders. The original copy of the report is retained

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temporarily in the Commission Secretary's office until the voting period has elapsed and the recommendations certified or until after the report or memorandum has been voted on at the Executive Session meeting and the certifications prepared. At that point, it will be returned to OGC Docket for placement in the permanent file.

The below chart illustrates these voting procedures.

VOTING PROCEDURES

Automatic Agenda Item	• circulates on blue • authorize suit reports • reports and memoranda that this Office requests be placed on the agenda • anything circulated in a matter already on the next agenda • voting takes place at the Commission meeting
72 Hour Tally Vote	• circulates on green • applies to all reports with recommendations (except authorized suit reports or special request by OGC) • placed on agenda by objection or by failure to garner four affirmative votes by the voting deadline • voting deadline can be shortened if necessary
24 Hour No Objection	• circulates on yellow • applies to First General Counsel Reports and Comprehensive Investigative Reports without recommendations • applies to extension of time requests during suspension of voting deadlines • placed on agenda only by objection; no affirmative vote required
Informational	• circulates on white • applies to informational circulations, i.e., complaints and amendments, General Counsel's Reports without recommendations, probable cause briefs, certain outgoing correspondence, etc. • no vote or certification, but may be objected to and put on the agenda • draft Statements of Reasons are circulated on pink paper

III. Agenda Placement

A. Objection

Reports and memoranda that circulate on a 72 Hour Tally Vote basis (green), a 24 Hour No Objection basis (yellow), and Informational circulations (white) may be placed on the next Executive Session agenda by the filing of an objection by one or more Commissioners. Because 72 Hour Tally Vote reports or memoranda contain recommendations requiring Commission approval, they are circulated with a vote sheet as the cover page. A Commissioner uses this vote sheet to cast a vote either approving of the recommendations or objecting to them. The 24 Hour No Objection circulation

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includes a cover page allowing Commissioners to object. Informational circulations do not have separate vote sheets because there is no decision requiring Commission approval, but a Commissioner may, nevertheless, make a written request to place it (or any other enforcement matter) on the agenda.

Objections must be received by the Commission Secretary's office by close of business on a Thursday in order to place a matter on the following Tuesday Executive Session agenda. A Commissioner may file an objection before the voting period has run. Thus, for example, a report that circulates with a voting period running from 4 p.m. on a Wednesday to 4 p.m. the following Monday may be objected to by close of business on Thursday. This objection will place the report on the Tuesday agenda, even though other votes may be cast or objections filed any time up to 4 p.m. on Monday, the day prior to when the report will be on the agenda.

Staff are generally notified of objections through a memorandum from the Commission Secretary's office distributed through OGC Docket. Where the voting period extends past Friday, staff may receive notice that a report or memorandum has been placed on the agenda when a copy of the agenda is distributed on Friday afternoons. See Addendum D for further discussion on handling objections.

"For the record" Objections. On occasion a Commissioner may file an objection, but note that it is "for the record." This special designation means that while the Commissioner wishes to be recorded as not approving the recommendations, the Commissioner is not asking that the report or memorandum be placed on the agenda for discussion and further consideration. Staff will receive the same memorandum from the Commission Secretary's office, but indicating next to the Commissioner's objection that it is "for the record." Whether the report or memorandum is placed on the agenda will depend on whether any other Commissioner files an objection. An objection "for the record" alone will not place the document on the agenda.

B. Failure to Receive Four Affirmative Votes

Reports and memoranda that circulate on a 72 Hour Tally Vote basis may also be placed on the agenda even when no objections have been filed if there are fewer than four affirmative votes for the recommendations. This happens when Commissioners do not return their voting ballots and are thus recorded as "no votes"; it can occur when Commissioners are unexpectedly out of the office during the voting period. When it is known that several Commissioners will be away at the same time, the Commission has suspended the voting periods in order to minimize the likelihood that items will go on the agenda because of fewer than four affirmative votes.

Generally, staff will become aware that a report or memorandum has been placed on the agenda because it received fewer than four affirmative votes only when the agenda is distributed on Friday afternoons. An objection notice is not distributed because no objection has been filed.

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C. Automatic Agenda Items

Automatic agenda items circulate on blue paper without a vote sheet. There is a stamp on the upper right hand corner of the first page indicating the agenda date. The report must be received by the Commission Secretary's office by close of business (5:30 p.m.) on a Wednesday to be placed on the next Tuesday Executive Session agenda. There is no pre-meeting tally (hence no voting cover sheet) on automatic agenda items. Therefore, there is no procedure for staff to ascertain in advance if there are any objections to the recommendations. In selected instances and after consultation with a supervisor, staff may contact some of the Executive Assistants to determine if there are any objections. Automatic agenda items generally fall into two categories: (1) civil suit authorizations; and (2) requests by the Office of the General Counsel.

1. Civil Suit Authorization

Reports or memoranda recommending the filing of a civil suit will automatically go on the next Executive Session agenda. The recommendation may authorize (1) a civil suit to enforce a subpoena, (2) a civil suit (after exhaustion of post-probable cause conciliation) alleging a violation of the Act or regulations, or (3) a contingent civil suit, e.g., if a proposed conciliation agreement is not accepted within a specified numbers of days.

2. By Request of OGC

In addition, the Office of the General Counsel may ask that a particular report or memorandum be placed on the agenda for a particular meeting (for an expedient resolution of an issue, for example.) This request can be made regardless of the recommendations in the report or memorandum or whether the circulation is solely informational. If a decision has been made to place a document on the next Executive Session agenda, please be sure that OGC Docket is aware of how the document should circulate, so that they can convey the appropriate instruction to the Commission Secretary's office. Note that if a matter is scheduled for the next Executive Session agenda, any additional materials circulated in that matter for the Commission's information will be put on blue paper with the agenda date stamp, to alert the Commissioners' offices that it relates to an already scheduled agenda item.

3. Late Submissions

As noted in section C above, a document is timely submitted for the next Tuesday Executive Session if it is forwarded to the Commission Secretary's office by close of business (5:30 p.m.) on Wednesday the week before. "Late submissions" are those submitted after Wednesday for the next meeting. Such submissions should include a cover memorandum that briefly explains the urgency of the agenda document and, if the document is beyond informational and necessary for consideration before a vote, requests

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that the Commission suspend its rules to consider the late submission. See the examples of such memoranda at the end of this Addendum. At the Executive Session, a Commissioner must move to suspend the rules to consider the late submission before the Commission can consider it.

IV. Agenda Dispositions and Certifications

A. Agenda Disposition

For documents which are automatically put on the agenda, there is no vote prior to the meeting, so the Commission must dispose of such items by voice votes at the meeting. When a report or memorandum is circulated for a tally vote and placed on the agenda by objection, there will already have been some form of vote recorded. That tally vote may stand or may be replaced depending on what takes place at the Executive Session meeting.

For instance, four or five Commissioners may have cast a vote approving the recommendations and only one Commissioner has filed an objection. In this instance, the objecting Commissioner may raise a point and seek to persuade other Commissioners or seek to reject or amend the recommendations. If a motion which changes the recommendations is made that passes by at least four affirmative votes, it will replace the tally vote. If no motion is made or none passes by four affirmative votes, the tally vote will usually stand. If no new motion passes, the objecting Commissioner may withdraw his or her objection and ask to be recorded on the tally vote as approving the recommendation, or may let his or her objection stand. At the same time, a Commissioner who had cast a vote approving the recommendations may withdraw such approval. If that happens, the tally vote would change, and it may result in fewer than four Commissioners affirmatively voting to approve the recommendations.

Sometimes a report or memorandum will be placed on the agenda by one or more objections or where one or more other Commissioners have not voted. If there is no new motion that passes, those Commissioners will usually have the opportunity to cast a vote at the table, thus changing the tally vote.

Once a vote is taken by the Commission disposing of the recommendations, a Commissioner who voted in favor of the prevailing motion may ask for its reconsideration. The affirmative vote of four Commissioners is required for reconsideration, though such agreement is usually reached where reconsideration is sought. A vote to reconsider the prior vote will, in effect, nullify that prior vote. A new vote will be necessary to dispose of the recommendations.

In those instances where at least four Commissioners are unable to agree on how to dispose of certain recommendations, a deadlock may occur. That means that the Commission was unable to decide a question by the affirmative votes of four or more members. It is simply a "no decision." It should not be read as a no reason to believe or

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no probable cause finding because no motion to that effect prevailed. In this case, the Commission will usually vote to close the file with respect to that respondent or to close the entire file if the deadlock affects the whole matter. (Note that if the Commission disposes of a complaint generated matter via such a deadlock or via a majority vote against this Office's recommendation to go forward, a Statement of Reasons is required, see Addendum O).

B. Withdrawals or Returned Reports

On occasion, the General Counsel may withdraw a report at the meeting, for example to more fully analyze an issue brought up during the discussion. Similarly, upon discussion of a matter, the Commission may vote to return a report to the Office of the General Counsel for further analysis based on the discussion or votes at the meeting. In either case, a new report or memorandum will be prepared and resubmitted for a new tally vote, or this Office will ask that it be placed back on the agenda. The revised report should note for the Commissioners that the matter had previously been before them and summarize the reason for its withdrawal or return to this Office.

C. Post-findings Circulations

When a report or memorandum is discussed at the Executive Session and significant revision of the factual and legal analysis or conciliation agreement is required, the Commission may vote to have the revised documents circulated for another vote. These documents will usually be circulated under a cover memorandum that succinctly explains the procedural circumstances, gives an overview of the revisions, and includes a separate recommendation to approve the attached documents. Generally, this document will circulate on a 72 Hour Tally Vote basis, although if time is of the essence a shorter tally vote period can be used, see Section II. B.

D. Certifications

Whenever the Commission votes on recommendations in a report or memorandum, the Commission Secretary will issue a Certification of that vote. This Certification becomes the official record, along with the minutes, of the Commission's actions. The Certification ordinarily will repeat verbatim the actual recommendation voted on by the Commission, whether it comes from the report or memorandum or from a motion at the meeting. The Certification recites the date of the Commission's vote and the result of that vote; it is signed and dated by the Commission Secretary. A copy is distributed to OGC Docket, which makes copies for the staff person, the supervisor, and the Associate General Counsel for Enforcement. Compare attachments 3 and 8 at the end of this Addendum.

Certifications for reports and memoranda that circulate on a 72 Hour Tally Vote basis and are not objected to are usually completed and distributed shortly after the end of the voting period. Certifications for reports and memoranda that are considered at an

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Executive Session will be prepared and distributed shortly after the Executive Session. Note that the date of Commission action may not be the date that the Certification is prepared; it is the former date that is significant for notification purposes.

When staff receives a Certification, staff should carefully review it to be sure it is accurate. If mistakes are found, staff should first compare the Certification with the recommendations in the report. If the mistake was in the recommendations, staff will need to initiate the proper corrective action. For this reason, it is imperative that when the report is initially prepared, staff carefully proofread all recommendations to be sure they have correct spellings and correct citations. If, however, an error has been made by the Commission Secretary's office, staff should notify OGC Docket of the error. OGC Docket will then coordinate with the Commission Secretary's office in obtaining a corrected Certification.

Formal Certifications are not issued for 24 Hour No Objection circulations because there are no recommendations on which the Commission votes. Instead, the Commission Secretary forwards a memorandum simply stating that the report circulated without objection. See attachment 3 at the end of this Addendum.

E. Notification Letters

Notification letters of Commission action should not be sent out until staff has received the Certification and reviewed it to be sure it is correct. If corrective action must be taken, the notification letters should be held up until such action has been completed, which may require a new vote by the Commission.

V. **List of Attachments**

I-1. Tally Vote Cover Sheet
I-2. Cover Memo Seeking Shorter Voting Deadline
I-3. Certification (no objection)
I-4. 24 Hour Circulation Vote Sheet
I-5. Notice of No Objection to 24 Hour Vote Circulation
I-6. Transmittal Memorandum
I-7. Memo to Suspend Rules for Late Submission
I-8. Certification

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

SENSITIVE

DATE & TIME TRANSMITTED: FRIDAY, JANUARY 24, 1992 12:00

BALLOT DEADLINE: TUESDAY, JANUARY 28, 1992 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, POTTER, THOMAS

SUBJECT: MUR 2761 - GENERAL COUNSEL'S REPORT DATED JANUARY 23, 1992.

( ) I approve the recommendation(s)

( ) I objection to the recommendation(s)

COMMENTS: _____

_____

_____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

Attachment I-1

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 26, 1993

MEMORANDUM

SENSITIVE

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Shorter Voting Deadline for Memorandum in MUR 3538

Pursuant to the Circulated Vote Provisions of Directive 52, the Office of General Counsel is circulating the attached report on a 48 hour tally vote basis because of the limited timeframe in which to respond to the subpoena discussed in the memorandum.

Attachment I-2

This document does not bind the Commission,
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2761
Dr. Tim LaHaye and	)	
Family Life Seminars.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 27, 1991, the Commission decided by a vote of 4-2 to take the following actions in MUR 2761:

1. Decline, at this time, to enter into conciliation with Dr. Tim LaHaye and Family Life Seminars prior to a finding of probable cause to believe.

2. Approve the appropriate letter, as recommended in the General Counsel's Report dated February 21, 1991.

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

Attest:

2-28-91
Date

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

Received in the Secretariat: Friday, Feb. 22, 1991 9:15 a.m.
Circulated to the Commission: Monday, Feb. 25, 1991 11:00 a.m.
Deadline for vote: Wednesday, Feb. 27, 1991 11:00 a.m.

dh

Attachment I-3

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Kraher

24 HOUR NO-OBJECTION MATTER

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

DATE & TIME OF TRANSMITTAL FRIDAY, NOVEMBER 4, 1988 4:00

COMMISSIONER: AIKENS, ELLIOTT, JOSEFIAK, McDONALD, McGARRY, THOMAS

RETURN TO OFFICE OF COMMISSION SECRETARY BY MONDAY, NOVEMBER 7, 1988 4:0

SUBJECT: RAD Ref. 88NF-43: General Counsel's Memorandum to the Commission dated November 4, 1988

( ) I object to the attached report.

COMMENTS: _____

_____

_____

_____

DATE _____ SIGNATURE _____

OBJECTIONS, SIGNED AND DATED, MUST BE RECEIVED IN THE COMMISSION SECRETARY'S OFFICE NO LATER THAN THE DATE AND TIME SHOWN ABOVE OR THE MATTER WILL BE DEEMED APPROVED. PLEASE RETURN ONLY THIS SHEET TO THE COMMISSION SECRETARY.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION
(yellow paper)

Attachment I-4

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RECEIVED
FEDERAL ELECTION COMMISSION
88 NOV -4 PM 12:48

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

November 4, 1988

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
Assistant General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: RAD Referral 88NF-43

The Commission found reason to believe that respondent Salute America Political Action Committee ("Salute America") violated 2 U.S.C. § 434(a)(4)(A)(i) on November 1, 1988. The Reports Analysis Division ("RAD") informed this Office on November 2, 1988, that the Non-Filer Notice of August 5, 1988, alluded to in the RAD Referral was returned unclaimed. It appears that the RAD staff person assigned the matter failed to resend the Notice in accordance with RAD policy. Due to changes in personnel in RAD, the analyst originally handling the referral was not available to check the final referral report. Thus the error was not discovered until after the Commission had taken action on November 1, 1988.

As indicated in the Rad Referral, Salute America was contacted by phone concerning the missing report. Furthermore, it remains a fact that the report was never filed with the Commission as required by statute. Therefore, the Office of General Counsel's recommendation to find reason to believe that a violation occurred remains unchanged.

This Office is circulating, on a 24 hour no objection basis, a Factual and Legal Analysis and letter to respondents that this Office believes to be appropriate under the circumstances.

Attachment
Letter and Factual and Legal Analysis

(yellow paper)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS / DONNA ROACH
SECRETARY OF THE COMMISSION

DATE: SEPTEMBER 12, 1991

SUBJECT: MUR 3358 - FIRST GENERAL OCUNSEL'S REPORT DATED SEPTEMBER 10, 1991.

The above-captioned matter was received in the Commission Secretariat at 12:53 p.m. on September 11, 1991 and circulated on a 24-hour no-objection basis at 4:00 p.m. on Wednesday, September 11, 1991.

There were no objections to the above-captioned matter.

Attachment I-5

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: _____

SUBJECT: _____

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[ ]	Compliance	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Extension of Time Exception	[ ]	Other (see distribution below)	[ ]
Other	[ ]		

_____ _____

_____ _____

_____ _____

Attachment I-6

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SENSITIVE
FEDERAL ELECTION COMMISSION
88 FEB 29 PM 5:27
EXECUTIVE SESSION
MAR 01 1988

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 29, 1988

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2282 - Letter from Counsel

Attached for the Commission's consideration is a letter from counsel for the National Republican Senatorial Committee related to the Committee's request for an extension of time in which to respond to the General Counsel's Brief in MUR 2282. This Office asks that the rules regarding the placing of documents on the Commission's agenda be suspended so that this letter may be included in the discussion of the Committee's request during the Executive Session of March 1, 1988.

Attachment

(blue paper)

Attachment I-7

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3358
Donald L. Ritter;	)	
Lehigh Valley Citizens for	)	
Don Ritter and Betty S.	)	
Gates, as treasurer.	)	

CERTIFICATION

I, Delores R. Harris, recording secretary for the Federal Election Commission executive session on December 10, 1991, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3358:

1. Find no reason to believe that Don Ritter violated 2 U.S.C. §§ 432(h), 434(b), and 439a.

2. Find no reason to believe that the Lehigh Valley Citizens for Don Ritter Committee and Betty S. Gates, as treasurer, violated 2 U.S.C. §§ 432(h), 434(b), and 439a.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated December 2, 1991.

4. Close the file.

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

Attest:

December 11, 1991
Date

Delores R. Harris
Delores R. Harris
Administrative Assistant

Attachment I-8

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Addendum J

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ADDENDUM J

THE SUNSHINE ACT AND OGC'S PRACTICES AND PROCEDURES

I. OGC RECOMMENDATIONS

Under Sunshine Act procedures, OGC is required to provide Sunshine Act recommendations for each item submitted for the Commission's consideration. The purposes of the Sunshine Act recommendations are: 1) to advise the Commission as to whether particular OGC items should be discussed in open or closed session; 2) to inform the Commission of the exemptions which should be claimed for each item placed on the Executive agenda; 3) to assist the Commission Secretary in preparing the ballot for the Sunshine vote and the list of exemptions claimed for each agenda item; and 4) to provide guidance in the event that a transcript is requested after the matter has been closed.

Commission meetings that are required by statute to be closed include: 1) meetings concerning matters specifically exempted from disclosure by statutes which require public withholding in such a manner as to leave no discretion for the Commission on the issue; 2) meetings which establish particular types of matters to be withheld; and 3) all Commission meetings, or portions of meetings, pertaining to any notification or investigation that a violation of the Act has occurred. 11 C.F.R. §§ 2.4 and 2.5.; 2 U.S.C. § 437g(a)(12).

Any notification or investigation that a violation of the Act has occurred includes, but is not limited to, determinations made pursuant to 2 U.S.C. § 437g; the issuance of subpoenas, the discussion of referrals to the Department of Justice, or consideration of any other matter related to the Commission's enforcement activity. 11 C.F.R. § 2.4(a)(2).

Except as provided at 11 C.F.R. § 2.4(c), the requirement of open meetings will not apply where the Commission finds, in accordance with 11 C.F.R. § 2.5, that an open meeting or the release of information is likely to result in the disclosure of:

1. Compliance matters ("statutory exemption")
2. Internal personnel decisions
3. Confidential financial/commercial information (example: debt settlements)
4. The formal censure of any person
5. Invasion of personal privacy
6. Investigatory records complied for enforcement purposes (examples: judicial referrals, audits)
7. Premature disclosure having adverse effect on Commission action (examples: contract negotiations, conciliation efforts, interim audit reports)
8. Matters specifically concerning a civil action (example: subpoena enforcement) "litigation exemption"

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II. PROCEDURES FOR CLOSING MEETINGS

No meeting or portion of a meeting may be closed to public observation under this section unless a majority of the Commissioners votes to take such action. The closing of one portion of a meeting shall not justify closing any other portion of a meeting.

A. Summary of Procedures for OGC Matters

The Sunshine procedures will operate as follows:

- Whenever an OGC staff member prepares a document for Commission consideration, the staff member will also prepare and attach a Sunshine Recommendation Form ("Sunshine Form"), (Attachment J-1), informing the Commission as to whether the matter addressed in the document should be considered in Executive Session or Open Session, and the reasons therefore. If a report or memo includes a recommendation, it must have a Sunshine Form attached on top of the package.
- The Sunshine Form contains a signature line for the General Counsel; this authority has been delegated to the Associate General Counsels for audit and enforcement matters. Be sure to use the form which corresponds to the appropriate AGC.
- Docket will transmit matters to the Commission Secretary's office. The signed Sunshine Form will be included as a cover sheet.
- The Commission Secretary will remove and retain the Sunshine Form. Only the underlying matters will be circulated to the Commission.
- For matters objected to on the merits, the Commission Secretary will prepare a Sunshine ballot sheet, (Attachment J-2), so that the Commission may vote to discuss these items in Executive Session. The ballot sheet will be circulated to the Commission on a 24 Hour No Objection basis. This will occur on Fridays after the Executive agenda has been drawn up.
- Any objections to the Sunshine status of an item will be scheduled for discussion at the beginning of the Tuesday meeting.
- The General Counsel will certify that the meeting may be properly closed to the public, indicating the pertinent exemptions.

B. Certification - Sunshine Recommendation Form

Each time the Commission votes to close a meeting, the General Counsel shall publicly certify that, in his or her opinion, each item on the agenda may properly be closed to public observation. The certification shall state each relevant exemption provision. The original copy of the certification shall be attached to, and preserved with, the statement required by 11 C.F.R. § 2.5(d). The Sunshine Recommendation Form is

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completed by the staff member and included with the documents when circulated for approval.

1. When to use the Form

a. Generally, use the form when the drafted document contains information that the staff member would not discuss with a member of the public, for example matters that are internally generated that may contain discussion of internal referral thresholds and matters involving civil penalty guidelines. As when discussing Commission matters with the public, err on the side of caution.

b. It is not necessary to include a Sunshine Form for final briefs because they are not circulating for any type of Commission vote. It is also not necessary to include a Sunshine form for closed investigation reports and memorandums for withdrawals.

2. Categories to Check Off

a. When filling out Sunshine Forms for most General Counsel's reports, you should check the first two categories of the Sunshine Recommendation form. See Attachment J-1. Generally, you should not check the category for discussions of investigatory records and investigative techniques.

b. When filling out a Sunshine Form for recommending suit, you should mark the line for "Matter specifically concerns the Commission's participation in a civil action. . . " as well as the "compliance" line. While it sounds like a relatively small matter, it is important as we may need to defend the closing of the meeting.

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4/92

Date & Time Transmitted _____

TO: Commissioners

FROM: Office of the General Counsel

SUBJECT: _____

DEADLINE: _____

SUNSHINE RECOMMENDATION

A. _____ Open Session B. _____ Executive Session because:

_____ Discussion would involve compliance matters which would be confidential under 2 U.S.C. § 437g. (11 C.F.R. § 2.4(a)(1) and (2)).

_____ Matter relates solely to the Commission's internal personnel decisions, or internal rules and practices (11 C.F.R. § 2.4(b)(1)).

_____ Report contains privileged or confidential financial or commercial information. (11 C.F.R. § 2.4(b)(2)).

_____ Discussion would involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person. (11 C.F.R. § 2.4(b)(3)).

_____ Disclosure would constitute a clearly unwarranted invasion of privacy. (11 C.F.R. § 2.4(b)(4)).

_____ Discussion involves investigatory records compiled for law enforcement purposes, and production would disclose investigative techniques. (11 C.F.R. § 2.4(b)(5)).

_____ Premature disclosure would be likely to have adverse effect on the implementation of a proposed Commission action (11 C.F.R. § 2.4(b)(6)).

_____ Matter specifically concerns the Commission's participation in a civil action or proceeding, or an arbitration. (11 C.F.R. § 2.4(b)(7)).

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Attach. J-1

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

DATE & TIME TRANSMITTED FRIDAY, NOVEMBER 4, 1994 12:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, POTTER, THOMAS

Return to Commission Secretary by MONDAY, NOVEMBER 7, 1994 12:00

SUBJECT: SUNSHINE VOTES FOR EXECUTIVE SESSION OF NOVEMBER 8, 1994

The staff recommends that the Commission discuss the agenda items on the attached list in executive session. Each agenda item is exempt from public disclosure under the provisions of the Commission's Sunshine Regulations indicated on the attached list. (11 C.F.R. Part 2)

Objections, signed and dated, must be received in the Commission Secretary's Office no later than the date and time shown above or the Sunshine recommendations will be deemed approved. Please return the vote sheet and the attached list of exemptions to the Secretary.

_____ I object to the Sunshine recommendation(s) checked on the attached.

_____ I object for the record only to the Sunshine recommendation(s) checked on the attached.

_____ Date

_____ Commissioner

Attach. J-2

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Addendum K

This document does not bind the Commission,
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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Addendum L

This document does not bind the Commission,
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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Addendum M

This document does not bind the Commission,
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Addendum N

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ADDENDUM N

TREASURER POLICY

I. INTRODUCTION

Addendum N to the enforcement manual will address the Commission's treasurer policy and practice. This section will first examine the statutory and regulatory provisions of the Act relating to treasurer policy. Next, this section will address the Commission's general treasurer policy, including naming the treasurer or the successor treasurer as a respondent in General Counsel's Reports, briefs and conciliation agreements. Following this discussion, the addendum will address two distinct areas: acting as treasurer and the treasurer's personal liability. At the end of this section, a chart is included setting forth the necessary actions that the staff person must take when there is a change in the committee's treasurer at different stages of the enforcement process.

II. STATUTORY PROVISIONS

Under 2 U.S.C. § 432(a), every political committee shall have a treasurer. This section of the Act provides that no contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant. The name and address of the treasurer shall be listed on the Statement of Organization. 2 U.S.C. § 433(b)(4). Also, no expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent. 2 U.S.C. § 432(a). Under 11 C.F.R. § 102.7(a), political committees may designate, on the committee's Statement of Organization, an assistant treasurer in the event of a temporary or permanent vacancy in the office, or in the event the treasurer is unavailable.

2 U.S.C. § 433(c) provides that any change in information previously submitted in a Statement of Organization shall be reported in accordance with Section 432(g) of the Act no later than 10 days after the date of the change. (See also 11 C.F.R. § 102.2(a)(2)). It is not sufficient to notify the Commission of a change of treasurer merely by putting the new treasurer's name on the next report filed by the committee.

The treasurer's responsibilities are set forth in Sections 432 and 434 of the Act. 2 U.S.C. § 432(c) provides a list of all records of which the treasurer is required to keep an account. In performing record keeping duties, the treasurer shall use his best efforts to obtain, maintain and submit the required information and shall keep a complete record of such

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efforts. 11 C.F.R. § 102.9(d). Under 2 U.S.C. § 432(d), the treasurer shall preserve all records required to be maintained and all reports required to be filed for three years.

Section 434(a)(1) of the Act provides that each treasurer of a political committee shall file reports of receipts and disbursements and that the treasurer shall sign each report. 2 U.S.C. § 434(b) sets forth the requirements for the contents of each report required to be filed under Section 434.

Under 11 C.F.R. § 103.3(b), the treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations. Sections 103.3(b)(1)-(5) of the regulations provide detailed instructions for those situations when the treasurer receives contributions which appear to be illegal, or which are later determined to be illegal.

III. GENERAL TREASURER POLICY

A. Background

On August 18, 1983, the Commission determined to adopt a policy "whereby the Committee officials and/or candidates should as a matter of course be named as respondents in a MUR when the Commission is proceeding against a Committee, provided that the Committee officials be named individually only if the Commission has a basis for believing from the start that there is some individual responsibility."[2] (Agenda Doc. #83-134, Minutes of the Open Meeting of August 18, 1983). Thus, the Commission directed that treasurers would be named in their official capacity as respondents in an enforcement matter along with the committee. The Commission further directed that treasurers would be named individually only if the Commission had a basis for believing that there was individual responsibility. The issue of personal liability of a committee treasurer will be addressed in more detail later in this addendum.

In the General Counsel's memorandum to the Commission, the issue of notice was addressed at length. (General Counsel's memorandum to the Commission dated August 8, 1983). The memorandum concluded that treasurers should be named as respondents in matters at the "reason to believe" stage of the enforcement process, in order to provide treasurers with notice and an opportunity to respond. By giving the treasurer notice

2. Although the minutes refer to naming "Committee officials and/or candidates" as respondents, it should be noted that candidates are not, as a matter of course, named as respondents in enforcement proceedings against committees.

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at the initial stage of the enforcement process, the Commission will avoid possible procedural arguments at the probable cause stage and prevent potential delay.

B. CURRENT PRACTICE

1. General Counsel's Reports and Briefs

On May 24, 1984, the Commission directed that a successor treasurer would be named as a respondent in his official capacity in an enforcement matter alleging violations of the Act which occurred during the tenure of a prior treasurer. This determination was based, inter alia, upon Rule 25(d)(1) of the Federal Rules of Civil Procedure which states in part: "When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party." Fed. R. Civ. P. 25(d)(1). In a memorandum to the Commission on the subject of naming successor treasurers as respondents, the Office of the General Counsel concluded that the Commission is justified in naming a current treasurer in his official capacity in enforcement actions seeking compliance, including the payment of civil penalties, from a committee for statutory violations committed by a past committee treasurer. (General Counsel's memorandum to the Commission dated May 10, 1984).

In some instances, the name of the committee's treasurer is not known at the initial stages of the enforcement process. If the treasurer's name is unknown, the recommendation in the First General Counsel's Report should read: "Find reason to believe that ABC Committee and its treasurer violated . . . ."

As a practical matter, the staff person should always check the B Index to verify the committee's current treasurer when preparing a General Counsel's Report or brief. When a committee changes its treasurer after the Commission has made reason to believe findings against the former treasurer in his official capacity, the staff person should name the new treasurer as a respondent in the next General Counsel's Report. The staff person also should note the change of treasurer in a footnote, and give the date of the change, the former treasurer's name, and indicate whether an amendment was made to the Statement of Organization.

When a committee changes its treasurer after the Commission has made a probable cause finding, the staff person must send the new treasurer a supplemental brief. In the supplemental brief, state that the Commission found probable cause against the committee and its former treasurer. Explain that in accordance with Commission policy, the General Counsel is recommending probable cause against the new treasurer. Incorporate by reference the original brief into the new brief and enclose a copy of the original brief. Once the new

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treasurer has filed a responsive brief, or the time in which to file a responsive brief has expired, prepare a General Counsel's Report recommending that the Commission find probable cause against the new treasurer.

2. Conciliation Agreements

Another issue which may arise in the context of successor treasurers is naming the current treasurer as a respondent in a conciliation agreement. Current treasurers often object to being named in conciliation agreements when they were not the committee's treasurer at the time of the violation. It is Commission policy to name the current treasurer as a respondent in a conciliation agreement. However, the Commission has approved the practice of adding the following statement to the text of the conciliation agreement: "Mr. Smith is the present treasurer of the ABC Committee. Mr. Jones was, at times relevant to this matter, treasurer of the ABC Committee." When such language is used, the staff person should remember to name the current treasurer as a respondent in the caption of the conciliation agreement. In addition, the preamble of the conciliation agreement may be changed to read: "The Commission found reason to believe that the ABC Committee and its treasurer violated . . . ." to avoid using the name of the current treasurer against whom no reason to believe findings have been made.

IV. ACTING AS TREASURER

In certain instances, the treasurer of record may have ceased to perform his duties as treasurer and another individual may have assumed those duties. If the committee fails to amend the Statement of Organization, one issue which may arise is whether the committee has violated 2 U.S.C. § 433(c) for failure to amend its Statement of Organization. Another issue which may arise is whether to name as a respondent in an enforcement matter the individual who has been performing the duties of the treasurer.[3] If an individual other than the treasurer is in fact performing the treasurer's duties, that individual may be named as a respondent "acting as treasurer."

When determining whether to name an individual as a respondent in an enforcement matter as the committee's "acting treasurer," several factors may be considered. These factors include: (1) whether the treasurer of record has ceased to perform his duties as treasurer; (2) whether the individual acting as treasurer maintained the committee's books and records; (3) whether the individual acting as treasurer accepted contributions on behalf of the committee; (4) whether the individual acting as treasurer made expenditures on behalf of

3. In some instances, the candidate may have assumed the duties of the treasurer.

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the committee; (5) whether the individual acting as treasurer made deposits into and disbursements from the committee's accounts; and (6) whether the individual acting as treasurer filed the committee's financial reports. (See FEC v. Committee to Elect Bennie Batts, No. 87-5789 (S.D.N.Y. Feb. 14, 1989)). In the event it is determined that the individual acting as treasurer should be named as a respondent, the caption should read: "ABC Committee and Mr. Smith, acting as treasurer."

V. PERSONAL LIABILITY OF TREASURER

The issue of the treasurer's personal liability is complex. There are, however, several general principles which may serve as guidelines in this area. To begin with, it is necessary to distinguish between those instances in which a treasurer is named as a respondent in his official capacity and those instances in which the treasurer is named as an individual respondent. Obviously, if the treasurer is named as an individual respondent in an enforcement matter, then the treasurer faces potential personal liability.

In suits brought by the Commission to enforce the Act, courts have held that treasurers and committees are jointly and severally liable. Under joint and several liability, both the committee and the treasurer are liable for the full amount of any civil penalty imposed by the court, but between them they need only pay the amount of the civil penalty once. Two decisions are especially worth noting in the area of treasurer liability. In the first case, the Commission filed suit against the Gus Savage for Congress '82 Committee and Thomas J. Savage, Treasurer, for violating 2 U.S.C. § 434(a)(2). The court entered a default judgment against the committee and its treasurer, ordering them to file all outstanding reports and to pay a civil penalty of $5,000. When the committee and its treasurer failed to comply with the court's order, the Commission sought civil and criminal contempt sanctions. Although the court refused to impose civil or criminal sanctions against the committee or its treasurer, the court recognized the potential personal liability of a committee treasurer:

> Liability . . . filters through the candidate to his amorphous campaign committee, or, more precisely, to the committee's treasurer, who is legally responsible for any violations of the Act. It is the treasurer, and not the candidate, who becomes the named defendant in federal court, and subjected to the imposition of penalties ranging from substantial fines to imprisonment. 2 U.S.C. § 437g(d).

FEC v. Gus Savage for Congress '82 Committee and Thomas J. Savage, Treasurer, 606 F. Supp. 541, 547 (N.D. Ill. 1985).

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In a more recent case, the Commission filed suit against John A. Dramesi for Congress Committee and Russell E. Paul, as treasurer, seeking civil contempt sanctions against both the committee and its treasurer. In an unpublished opinion, the court held that the committee and its treasurer were in civil contempt. FEC v. John A. Dramesi for Congress Committee and Russell E. Paul, as treasurer, No. 85-4039 (D.N.J. Sept. 5, 1990). Addressing the issue of the treasurer's liability, the court rejected the treasurer's argument that he could not be held personally liable for actions undertaken in his official capacity as committee treasurer:

> Political committees, like corporations are fictitious entities. Because political committees have a tendency to dissolve after an unsuccessful campaign, FECA's provisions require political committees to designate an individual who will act on behalf of the Committee, 2 U.S.C. § 432(a), and who will make a personal best effort to ensure that the Committee is complying with the law, 2 U.S.C. § 432(c)(i), 11 C.F.R. § 102.9(d). A necessary corollary to these principles is that an individual will also stand responsible for his indiscretions as a treasurer. It is because of the ephemeral nature of such political committees that Congress chose to place this burden upon treasurers. Russell E. Paul's argument, therefore, that he is not liable to pay the underlying debt, since there are no funds in the committee, is specious.

Id. Because the John A. Dramesi for Congress Committee was no longer in existence, the court did not take any action against the committee even though the court found that the committee was in contempt.

As the two decisions above indicate, there is legal support for the position that a committee treasurer may be held personally liable for violations of the Act. It is important to remember, however, that the issue of personal liability of a committee treasurer does not arise frequently during the enforcement process. As a practical matter, the issue of treasurer liability generally does not arise in the enforcement process where the committee is solvent and willing to pay the civil penalty.

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VI. EXAMPLES OF CHANGES IN TREASURER AT DIFFERENT STAGES OF THE ENFORCEMENT PROCESS

The following chart indicates the action required when the staff person becomes aware of a change in the committee's treasurer. Remember, the current committee treasurer should always be named as a respondent in an enforcement matter.

Time Change of Treasurer Occurred	Action Required
Prior to RTB	Name the current treasurer as a respondent and note change of treasurer in First G.C. Report.
After RTB	Name new treasurer as a respondent in the next G.C. Report. Send new treasurer a copy of the RTB notification (if necessary).
Prior to Probable Cause Brief	Name new treasurer as a respondent in the PC brief.
After Probable Cause Brief	Send new treasurer a copy of the PC brief and give opportunity to respond.
After Probable Cause Finding	Send new treasurer a supplemental brief. Recommend that the Commission find PC against the new treasurer.

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Addendum O

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ADDENDUM O

STATEMENTS OF REASONS

I. INTRODUCTION

A. **Statements by the Commissioners.** Unlike General Counsel's Reports which are signed by the General Counsel or the Associate General Counsel, Statements of Reasons in Enforcement matters are statements signed by the Commissioners themselves.

B. **Basis for the Requirement.** Section 437g(a)(8) permits aggrieved complainants to seek judicial review of Commission decisions to dismiss their administrative complaints. Statements of Reasons are required in certain instances to enable meaningful judicial review. See Common Cause v. FEC, 676 F. Supp. 286 (D.D.C. 1984). Although individual Commissioners may issue such statements to express their particular view on a matter, Statements of Reasons are never required in internally generated matters, or on issues affecting only internally generated respondents or allegations.

C. **When Necessary.** A Statement of Reasons is not required when the Commission adopts a recommendation of this Office to close a complaint generated matter, or to close a matter as to particular respondents, without any sanction (e.g. finding no reason to believe, finding no probable cause to believe, deciding to take no further action). This is because the reviewing court will look to the General Counsel's Report for the legal basis for such dismissal. FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 39 n.19 (1981). In any instance, however, where the Commission rejects this Office's recommendation to go forward, resulting in dismissal of an entire complaint, or of a respondent, or of a particular allegation in a complaint, reasons for such dismissal cannot be found in the General Counsel's Report. Therefore, a separate Statement of Reasons is required. Attachment O-1 to this addendum is a chart which shows at a glance when a Statement of Reasons is required.

II. PROCEDURES

OGC and Commission procedures, described below, call for this Office to forward a proposed Statement of Reasons to the Commission. The Commissioners through their Executive Assistants (EAs) then finalize the statement.

A. Timing and Routing

1. **Triggering of Process.** Team secretaries will fill out and place in the team leaders' agenda books a checksheet (appended at Attachment O-2) to facilitate recognition of instances when a Statement of Reasons is required. Whenever the Commission votes to dismiss allegations or respondents in

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a complaint generated case, the attorney or paralegal should consider whether a Statement of Reasons is necessary and at the same time, the team leader will complete the Statement of Reasons checksheet. After the meeting, the team secretary will review the checksheet, and if any Statements of Reasons are necessary, will calculate the due date(s) (see below) and fill this in on the checksheet. The secretary will then copy this form to the staff member and the team leader, and will ensure that the draft statement is timely sent forward. Monitoring of the progress, completion, and (if applicable) mailing of these statements is done at the Enforcement Team level.

2. **Forwarding and Routing.** The cover memo and draft statement are routed as an expedited matter from the attorney or paralegal to the team leader, through the Associate General Counsel, and to the General Counsel within 10 working days of the Commission's vote. No Sunshine Act form is required. Docket forwards the package to the Commission Secretary's office, which circulates the memo and draft statement informally, on pink paper, to the Commissioners' offices (See Addendum I, Voting Procedures). Within 10 working days, the Commissioners will revise, finalize, and return a signed original Statement of Reasons to OGC. (Under the Commission's policy, responsibility for finalizing the draft rests with the office of the Commissioner who made the prevailing motion; to facilitate this process, attorneys or paralegals may be asked by the movant's EA to forward the draft statement via EM). The final Statement of Reasons should be ready for issuance no later than 30 days after the Commission's vote which necessitated the statement.

3. **Disposition of the Final Statement of Reasons.** The final Statement of Reasons, signed by the Commissioners, is forwarded to Docket, where the original is placed in the permanent file and copies are distributed as ordinary enforcement distribution.

a. If the entire matter has been closed, the attorney or paralegal must send the Statement of Reasons to the complainant as follow-up to the earlier notification letter (see Ch. 6, Sec. V; Form 58 at Attachment O-4).

b. If the matter is still open, no notification is made to the complainant; instead, the original Statement of Reasons, put into the permanent file, is made public upon the conclusion of the entire matter. (At this time, however, the attorney or paralegal should make a note on the jacket of his or her working file, that when the matter is closed, a copy of the statement must be included

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with the notification to the complainant that the matter is closed (See Ch. 6, Sec. V).

In both instances discussed above, copies of the statements should also be sent to the appropriate respondent.

4. Special Practice for Deadlock Votes. Statements of Reasons are also required when the Commission's dismissal of a respondent or an allegation results from a Commission deadlock (i.e. a lack of four votes to go forward), as opposed to a majority decision. Democratic Congressional Campaign Committee v. FEC, 831 F.2d 1131 (D.C. Cir. 1987). In dismissals resulting from deadlock, however, the Commissioners themselves prepare the statement(s), and no draft statements need be prepared and forwarded by this Office. In these instances, the enforcement team involved must still monitor the completion of the statements and staff remains responsible for forwarding final Statements of Reasons to complainants (see II.A.3. above). The team secretary will calculate the overall due date on the Statement of Reasons checksheet, and it is recommended that staff members or team leaders contact an EA of one of the Commissioners who voted against going forward to confirm that a Statement of Reasons is required. Thereafter, these offices can be contacted again if statements are not forthcoming in a timely fashion.

B. Requirements

1. Draft Statement of Reasons.

a. Substance. The draft Statement of Reasons contains a short summary of the Commission's decision and the reasons for it. The Statement should be brief (rarely more than 2-3 pages), and should be written as a supplement to the substantive General Counsel's Report that had been considered by the Commission, rather than as an entirely self-sufficient document. The attorney or paralegal should attempt to summarize the views expressed during Executive Session for not going forward. The explanation should make clear whether the Commission's disagreement with this Office was primarily factual, legal, or based upon prosecutorial discretion (Heckler v. Chaney should be cited if appropriate). See Attachment O-3 for a sample draft Statement of Reasons.

b. Form. The draft Statement of Reasons (see Form 102 at Attachment O-4) is printed out on line-numbered paper. The draft Statement contains a caption of the case at the top and signature lines at the end for those Commissioners who voted not to go forward.

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2. Cover Memorandum.

The cover memorandum to the Commission is from the General Counsel (see Form 102), and is usually no more than one page long. It contains short paragraphs pointing to the Commission's vote which necessitated a Statement of Reasons. See Attachment O-3 for a sample cover memorandum.

III. TROUBLESHOOTING

A. Sua Sponte Action by the Commission. In unusual instances, the Commission will close a matter in full or in part without a General Counsel's Report being before them, or addressing the point. Even if the Commission does not reject a recommendation of this Office, if it closes a matter or part of a matter without written explanation for this action in a General Counsel's Report, a Statement of Reasons is required. Please be alert to these unusual instances.

B. Resolve Questions Quickly. Questions about whether a Statement of Reasons is necessary should be addressed to the team leader immediately after the vote in question.

C. Importance of Timetable. The timing outlined above is crucial when the vote in question closes the entire case. The D.C. Circuit has concluded that under section 437g(a)(8)(B), the complainant has 60 days from the date of the Commission's vote in which to file suit to contest the dismissal, see Spannaus v. FEC, 990 F.2d 643 (D.C. Cir. 1993), and it might be alleged that due process is violated should the statement explaining the Commission's reasoning not reach the complainant well in advance of this filing deadline. The timetable for completion of Statements of Reasons also applies when the matter remains open after the Commission action necessitating a Statement of Reasons. In such instances the Statement of Reasons will be placed in the permanent file rather than mailed to the complainant. Nonetheless, the reasons for the Commission action are freshest in the attorney's or paralegal's as well as the Commissioners' minds immediately after the vote, while reconstruction of such reasons long after the fact may be difficult or impossible. See, e.g. Common Cause v. FEC, 842 F.2d 436, 450 (D.C. Cir. 1988) (pointing to difficulty where pivotal Commissioner no longer at the Commission).

D. Importance of Brevity. Please remember that the draft Statements of Reasons this Office prepares are not intended to stand alone, but rather are written as a supplement to the General Counsel's Report in question. Only with this in mind can this Office comply with the exceedingly tight time frame for forwarding of draft Statements of Reasons.

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IV. LIST OF ATTACHMENTS

Att. O-1. At a Glance: When Statements of Reasons Are Required
Att. O-2. Statement of Reasons Checksheet
Att. O-3. Sample Proposed Statement of Reasons
- Commission Secretary's Circulation Memo
- General Counsel's Cover Memorandum
- Draft Statement of Reasons

Att. O-4. Forms 58, 58(A) and 102

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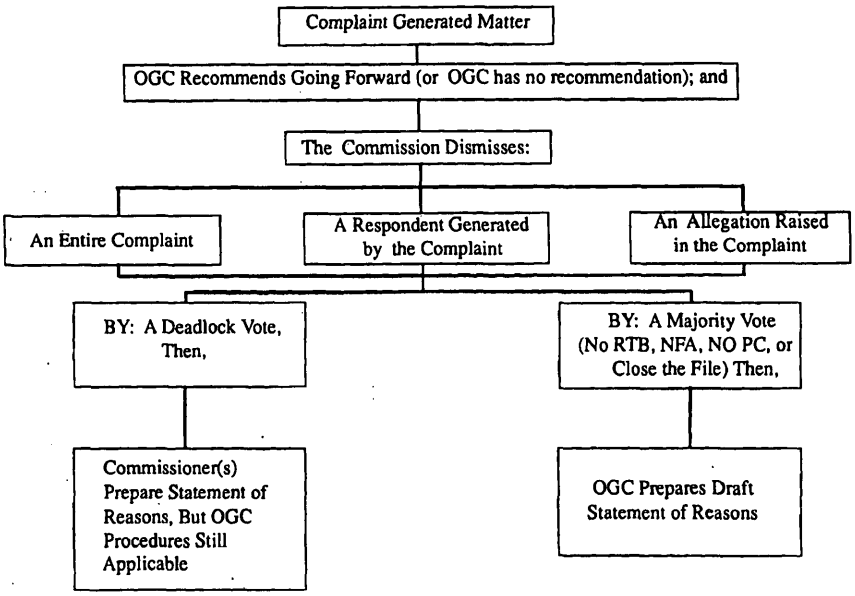
A Statement of Reasons is Necessary When:



Att. O-1

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STATEMENT OF REASONS CHECKSHEET

[Team secretary: 1st line + a; Team leader: b,c,d,; Team secretary: e)

AGENDA DATE: _____

MUR No.: _____ Staff : _____

a. External? Y N (circle one)

b. Action: Allegation Dismissed? Y N (circle one)

Respondent Dismissed? Y N (circle one)

(Name:_____)

c. Statement of Reasons Necessary? Y N (circle one)

d. Deadlock Vote: Y N

e. Due Date for Statement to GC (10 working days):_____

Statement Completion (30 days from vote)_____

MUR No.: _____ Staff : _____

a. External? Y N (circle one)

b. Action: Allegation Dismissed? Y N (circle one)

Respondent Dismissed? Y N (circle one)

(Name:_____)

c. Statement of Reasons Necessary? Y N (circle one)

d. Deadlock Vote: Y N

e. Due Date for Statement to GC (10 working days):_____

Statement Completion (30 days from vote)_____

MUR No.: _____ Staff : _____

a. External? Y N (circle one)

b. Action: Allegation Dismissed? Y N (circle one)

Respondent Dismissed? Y N (circle one)

(Name:_____)

c. Statement of Reasons Necessary? Y N (circle one)

d. Deadlock Vote: Y N

e. Due Date for Statement to GC (10 working days):_____

Statement Completion (30 days from vote)_____

Att. O-2

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Bernstein

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

MEMORANDUM

TO: THE COMMISSION
ATTN: ROBERT A. DAHL
EXECUTIVE ASSISTANT

FROM: MWE MARJORIE W. EMMONS/BONNIE J. FAISON
SECRETARY OF THE COMMISSION

DATE: SEPTEMBER 9, 1991

SUBJECT: STATEMENT OF REASONS FOR MUR 3112

Attached is the General Counsel's report regarding the Statement of Reasons for MUR 3112.

Please note that the signed Statement of Reasons must be completed and in the Office of the Commission Secretary no later than September 23, 1991.

Att. O-3, 1 of 5

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

September 6, 1991

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: Draft Statement of Reasons in MUR 3112

In this matter, the Office of the General Counsel recommended pursuit of allegations relating to 2 U.S.C. § 441f, and recommended closing the matter as to the balance of the allegations in the complaint and amendments. On August 13, 1991, the Commission rejected this Office's recommendations with regard to the section 441f issue and determined to close the entire file. Specifically, the Commission disagreed with this Office's 2 U.S.C. § 441f recommendations against Harold Mays, Rex Mays, Ray Adams, Vincent Guobaitus, Thomas Styczynski, and Murl Meyer; a 2 U.S.C. § 441a(a)(1)(A) recommendation against Harold Mays; and a recommendation to take no action at this time against Sam Jones, Friends of Sam Jones and A.S. Quinn, as treasurer. The Commission, therefore, voted to find no reason to believe that the respondents violated the relevant sections of the Act, rejected this Office's request for investigation and closed the file.

A draft Statement of Reasons reflecting the basis for the Commission's action is attached.

Attachment
Draft Statement of Reasons

Staff Assigned: Debby Curry

Att. O-3, 2 of 5

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Sam Jones and A.S. Quinn, as treasurer, Sam R. Jones, Harold Mays, Mary Mays, Mays Equipment Rental Company, Rex Auto Parts, Thomson Aviation and Mays International Trucking	)	MUR 3112

STATEMENT OF REASONS

On August 13, 1991, the Commission rejected recommendations of the General Counsel to:

(1) Find reason to believe Harold Mays violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f by making contributions in the names of others;

(2) Find reason to believe Ray Adams, Vincent Guobaitus, Thomas Styczynski, Murl Meyer and Rex Mays violated 2 U.S.C. § 441f;

(3) Take no action at this time against Sam Jones and Friends of Sam Jones and A.S. Quinn, as treasurer, with respect to allegations of contributions made in the name of others; and

(4) Approve Subpoenas to Produce Documents and Orders to Submit Written Answers, and Subpoenas to Approve For Deposition to Harold Mays; Rex Mays; Ray Adams; Vincent Guobaitus; Thomas Styczynski and Murl Meyer.

The Commission concluded on the basis of information provided by respondents including affidavits and responses submitted under oath that there was no reason to believe respondents committed violations of the relevant sections of the Federal Election

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Campaign Act of 1971, as amended ("the Act") in connection with the allegations raised in the complaint and amendments to the complaint.

Because the complaint was based on telephone calls from an anonymous informant and the individuals implicated had submitted affidavits indicating that they had freely made personal contributions to the Jones Committee, the Commission concluded there was insufficient evidence to proceed at this time. The Commission, therefore, found no reason to believe the respondents violated the relevant provisions of the Act, and in the proper ordering of its priorities and resources, voted to close the file in the matter. See Heckler v. Chaney, 470 U.S. 821 (1985). The Commission did, however, express its willingness to open a new MUR if additional information regarding the matter became available.

Date

John Warren McGarry
Chairman

Date

Joan D. Aikens
Vice Chairman

Date

Lee Ann Elliott
Commissioner

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Date

Thomas J. Josefiak
Commissioner

Date

Danny L. McDonald
Commissioner

Date

Scott E. Thomas
Commissioner

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>
>
>
>
>

FORM 58

RE: MUR >

Dear >:

By letter dated >, 19>, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by you against >. Enclosed with that letter (was) (were) >[list material provided to complainant, e.g., First General Counsel's Report] >.

Enclosed please find a Statement of Reasons >[adopted by the Commission explaining its decision to (describe action >) >[from > Commissioners explaining their vote.] This document will be placed on the public record as part of the file of MUR >.

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

Sincerely,

>
>Attorney/Paralegal

Enclosure
Statement of Reasons

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

<<FORM58A>>

>

RE: MUR >

Dear >:

Enclosed please find a Statement of Reasons >[adopted by the Commission explaining its decision to (describe action >) >[from > Commissioners explaining their vote.] This document will be placed on the public record as part of the file of MUR >.

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

Sincerely,

>
>Attorney/Paralegal

Enclosure
Statement of Reasons

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FORM 102

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR >
(Respondents' Names))

STATEMENT OF REASONS

>>>>>>>>>>>

Date >Chairman

Date >Chairman

Date >Commissioner

Date >Commissioner

Date >Commissioner

Date >Commissioner

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: Draft Statement of Reasons in MUR >

>

A draft statement of Reasons reflecting the basis for the Commission's action is attached.

Attachment
Draft Statement of Reasons

Staff Assigned: >

Att. O-4, 4 of 4