



Federal Election Commission  
Washington, DC 20463

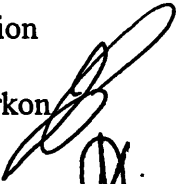
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
**SENSITIVE**

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director 

FROM: Allan D. Silberman  
Director, ADR Office 

BY: Lynn M. Fraser   
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: June 25, 2004

On June 15, 2004, the ADR Office received from OGC/CELA the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 177/MUR 5425, is appropriate for ADR and recommend that it be assigned to the ADR Office.

**ADR 177/MUR 5425:** : Complainant alleges that Respondents failed to report any campaign disbursements on the Pre-Primary Report filed with the Commission for the period of December 12, 2003 through February 18, 2004. Complainant states that Respondents obviously spent funds for campaign advertising which disclosed that the material was paid for by the committee. In addition, Complainant alleges that Respondents may have violated the 48 Hour reporting notice on all contributions over \$1,000 received during the period February 19, 2004 through March 6, 2004.

Respondents contend that no expenditures were disclosed in the Pre-Primary Report as they reimbursed the candidate for expenditures made prior to February 18, 2004 after that date. The expenditures would be reported on the April 2004 Quarterly Report. Respondents also contend that there were no contributions reportable under the 48 Hour reporting notice period of February 19, 2004 through March 6, 2004.

Attached for the Commission's review is the *ADR Case Analysis Report* on ADR 177, along with copies of the EPS Rating and ADR Rating reports. The *ADR Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is assigned to ADR. In addition, the *ADR Case Analysis Report* has been reviewed by OGC, which concurs in the description of the case.

**Recommendation:** We recommend that ADR 177/MUR 5425 be assigned to the ADR Office for processing.

177 . MUR . 5425

## ADR CASE ANALYSIS REPORT

ADR Case: 177

MUR: 5425

OGC Case Open Date: 03/08/04

Date Forwarded to ADRO: 06/14/04

Date Reviewed by ADRO: 06/22/04

Respondents:

David Brigham for Congress Committee  
Martin Olivares, Treasurer

Respondent's' Rep.: Martin Olivares

Committee Name: David Brigham for Congress  
Committee

Committee Type: Authorized

District #/or State: 16<sup>th</sup> C.D., TX

Election - Won/Lost: Won - Primary

Election Cycle: 2004

Complainant: Carlos R. "Bobby" Ortiz

**Summary of Complaint:** Complainant alleges that Respondents failed to report any campaign disbursements on the Pre-Primary Report filed with the Commission for the period of December 12, 2003 through February 18, 2004. Complainant states that Respondents spent funds for large campaign signs, lapel stickers, push cards, television advertisement production costs, newspaper advertisements, and supplies for various events during this time period. Complainant further alleges that Respondents may have violated the 48 Hour reporting notice on all contributions over \$1,000 received during the period February 19, 2004 through March 6, 2004.

**Violations Alleged:** 2 U.S.C. §§ 434(a)(6)(A), 434(a)(6)(B)(i)(I), 434(b)(2)(B), 11 C.F.R. §§ 100.52(a) and (d)(1), 100.55, 101.2, 104.3(a)(3)(ii), 104.5(f), 104.13(a),

**Respondents' Reply:** Respondents contend that the Pre-Primary Report, for the period covering December 12, 2003 through February 18, 2004, reflected no disbursements because the committee made no disbursements during this period. Respondents went on to explain that they reimbursed the candidate for his expenditures made prior to February 18, 2004 after that date, and would report it on the April 2004 Quarterly Report. Respondents also contend that there were no contributions reportable under the 48 Hour reporting notice period.

**Issues:**

- Reporting in-kind contributions by candidate 2 U.S.C. § 434(b)(2)(B), 11 C.F.R. §§ 101.2, 104.3(a)(3)(ii), 104.13(a)(1)
- Reporting expenditures from candidate's personal funds 2 U.S.C. §§ 434(a)(6)(B), 11 C.F.R. § 104.13(a)(2)
- Reporting expenditures by authorized committees 2 U.S.C. § 434(b)(4), 11 C.F.R. § 104.3(b)(4)

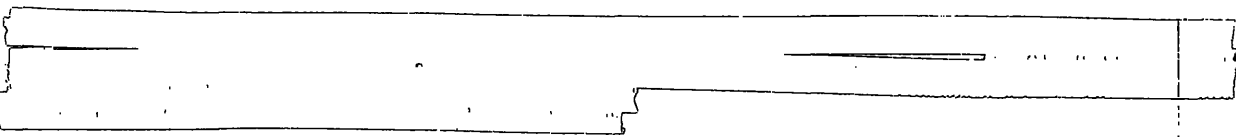
- 48 Hour Notification of contributions 2 U.S.C. § 434(a)(6)(A), 11 C.F.R. § 104.5(f)

**Related FEC Experience/Guidance:** The regulations are detailed about what constitutes a contribution and expenditure, when the candidate uses personal funds for expenditures and when the candidate is an agent of the committee. In addition, there is information in the FEC Campaign Guide for Congressional Candidates and Committees brochure, both on the FEC website and in paper format, explaining the reporting requirements for new campaign committees to provide guidance.

**Analysis:** Authorized committees are required to report all contributions, including in-kind contributions, and all expenditures, including expenditures made by the candidate. The regulations define a purchase, a payment, an advance, or a gift of anything of value, among other expenditures, as a contribution. 11 C.F.R. § 100.111(e). In addition, the regulations state that a written contract, including a media contract, promise, or an agreement to make an expenditure is an expenditure as of the date of such contract, promise, agreement or obligation is made. 11 C.F.R. § 100.112.

Respondents apparently failed to read the portions of the statute and regulations about the candidate spending his own funds on campaign expenses, and that when he made disbursements for the committee he was considered an agent of the committee; i.e., the disbursement was coming from the committee. The committee's first report disclosed no disbursements. The itemization of disbursements on the April 2004 Quarterly disclosed expenditures in eleven (11) disbursements to the candidate totaling \$10,021.77, all dated February 26, 2004. Respondents, in their reply to the complaint, acknowledge that the disbursements to the candidate were made to reimburse him for expenditures made prior to February 18, 2004. The expenditures should have been reported as in-kind contributions to the committee, as well as expenditures by the committee. 11 C.F.R. § 104.13(a). In addition, each disbursement should have been reported as a contribution and also an expenditure on the date the obligation, contract or agreement was made.

In a review of the April 2004 Quarterly Report, it does not appear that Respondents received any contribution between February 19 and 12:01 a.m. March 7, 2004 (the Primary was March 9, 2004) that would trigger the 48 Hour Notice. In addition, it does not appear that any of the expenditures were made for purposes of testing the waters as the photographs of the signs, invitations and advertisements clearly reflect a decision to compete for the Congressional seat.



**ADR Recommendation: Assign to ADRO**