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Federal Election Commission
Washington, DC 20463

MEMORANDUM

SENSITIVE

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: Cases for ADR Activation

DATE: November 22, 2004

On September 30, 2004, the ADR Office received from OGC/CELA four cases to review and determine their appropriateness for ADR processing. On November 5, 2004, the ADR Office received another case from OGC/CELA dealing with the same Respondents and the same issue. Based on those reviews, we determined that the cases, ADR 196/MUR 5433, ADR 198/MUR 5435, ADR 199/MUR 5457, ADR 200/MUR 5459 and ADR 213/MUR 5596, are appropriate for ADR and recommend that they be assigned to the ADR Office. As these five (5) cases deal with the same Respondents and the same issues the ADR Office consolidated them for the purpose of the analysis and review.

ADR 196/MUR 5433, ADR 198/MUR 5435, ADR 199/MUR 5457, ADR 200/MUR 5459 and ADR 213/MUR 5596: In ADR 196, ADR 200 and ADR 213, the complaints allege that LeSueur for Congress 04 and Edie D. Ingrum, Treasurer (collectively "Respondents") violated the personal use statute by paying the candidate, Clinton B. LeSueur ("LeSueur") a salary in excess of that to which he is entitled for the months of February, March and August 2004. The Complainant contends that based on LeSueur's 2003 financial disclosure report filed with the US House of Representatives reflecting earnings of \$18,000 in 2003, Respondents would be restricted to paying LeSueur a salary of no more than \$1,500 per month. The complaint states that the Pre-Primary and April Quarterly reports filed by Respondents disclose payments of \$2,900 to LeSueur in February, \$1,872.50 in March, and \$3,402 in August.

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In ADR 198 and ADR 199 the Complainant alleges that Respondents made a salary payment to LeSueur prematurely. The Complainant contends that the regulations state the first payment of a salary from campaign funds to a candidate must be made no earlier than the filing deadline for access to the primary election ballot for Federal candidates, in this case, January 9, 2004. The complaint in ADR 198 claims that the first salary payment was made to LeSueur on January 6, 2004. The complaint in ADR 199 (which appears to be a duplicate of ADR 198 with the exception of the date) claims that the first salary payment was made to LeSueur on January 5, 2004.

Respondents contend that the statute cited in the complaints for ADR 196, ADR 200 and ADR 213 limits the amount of salary that can be paid to LeSueur between January 9, 2004 and November 2, 2004 to \$14,695.89. Respondents maintain that as of the date of the response the cumulative amount that the candidate had been paid had not exceeded \$14,695.89.

As to the timing of the initial salary payment to the candidate in ADR 198 and ADR 199, Respondents contend that an inexperienced treasurer – no longer serving with Respondents – wrote the check four days prior to the acceptable date. The candidate refunded the \$600 on April 3, 2004 when Respondents became aware of the premature payment.

Attached for the Commission's review is the consolidated *ADR Case Analysis Report* on ADR 196, ADR 198, ADR 199, ADR 200 and ADR 213, along with copies of the EPS Ratings and ADR Rating reports. The *ADR Case Analysis Report* includes an analysis of the cases 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 cases.

NOTE: These five cases deal with regulations implemented with BCRA and involve issues of first impression. Traditionally the ADRO has not resolved matters comprising these issues. It is for the Commission to determine if these matters should be returned to OGC or be assigned to the ADRO.

ADR Director's Recommendations:

1. We recommend that ADR 196/MUR 5433 be assigned to the ADR Office for processing.
2. We recommend that ADR 198/MUR 5435 be assigned to the ADR Office for processing.
3. We recommend that ADR 199/MUR 5457 be assigned to the ADR Office for processing.
4. We recommend that ADR 200/MUR 5459 be assigned to the ADR Office for processing.
5. We recommend that ADR 213/MUR 5596 be assigned to the ADR Office for processing.

ADR CASE ANALYSIS REPORT

ADR/MUR Cases: 196/5433
Consolidated 198/5435
199/5457
200/5459
213/5596

Respondents:
LeSueur for Congress 04
Edie D. Ingram, Treasurer

OGC Case Open Date: 3/15/04
3/15/04
6/01/04
6/01/04
11/01/04

Respondents' Rep.: Edie D. Ingram

Date Forwarded to ADRO: 9/30/04
11/5/04

Committee Name: LeSueur for Congress 04

Date Reviewed by ADRO: 11/9/04

Committee Type: Authorized

District #/or State: MS 2nd C.D.

Election - Won/Lost: Primary - Won

Election Cycle: 2004

Complainant: Hon. Bennie Thompson

Summary of Complaints: In ADR 196, 200 and ADR 213, the complaints allege that LeSueur for Congress 04 and Edie D. Ingram, Treasurer (collectively "Respondents") violated the personal use statute by paying the candidate, Clinton B. LeSueur ("LeSueur") a salary in excess of that to which he is entitled for the months of February, March and August 2004. The Complainant also alleges that based on LeSueur's 2003 financial disclosure report filed with the US House of Representatives reflecting earnings of \$18,000 in 2003, Respondents would be restricted to paying LeSueur a salary of no more than \$1,500 per month. The complaint states that the Pre-Primary and April Quarterly reports filed by Respondents disclose payments of \$2,900 to LeSueur in February, \$1,872.50 in March, and \$3,402 in August.

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In ADR 198 and 199 the Complainant alleges that Respondents made a salary payment to LeSueur prematurely. The complaint goes on to point out that the regulations state the first payment of a salary from campaign funds to a candidate must be made no earlier than the filing deadline for access to the primary election ballot for Federal candidates, in this case, January 9, 2004. The complaint in ADR 198 claims that the first salary payment was made to LeSueur on January 6, 2004. The complaint in ADR 199 (which appears to be a duplicate of ADR 198 with the exception of the date) claims that the first salary payment was made to LeSueur on January 5, 2004.

Violations Alleged: 2 U.S.C. § 439a and 11 C.F.R. 113.1(g)(1)(i)(I)

Respondents' Reply: Respondents contend that the statute cited in the complaints for ADR 196, ADR 200 and ADR 213 limits the amount of salary that can be paid to LeSueur between January 9, 2004 and November 2, 2004 to \$14,695.89. Respondents maintain that as of the date of the response the cumulative amount that the candidate had been paid had not exceeded \$14,695.89.

As to the timing of the initial salary payment to the candidate in ADR 198 and ADR 199, Respondents contend that an inexperienced treasurer – no longer serving with Respondents – wrote the check three days prior to the acceptable date. The candidate refunded the \$600 on April 3, 2004 when Respondents became aware of the premature payment.

Issues:

- Personal use of campaign funds 2 U.S.C. § 439a and 11 C.F.R. 113.1(g)(1)(i)(I)

Related FEC Experience/Guidance: The ADR Office could not identify enforcement matters or AOs dealing with the issue of salary payments to the candidate from campaign funds. The only specific guidance on the permissible uses of campaign funds for a candidate's salary is in the explanation and justification detailing the conditions and limitations of a candidate's salary in the Federal Register. *Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 Fed. Reg. 76962 (2002) (codified at 11 C.F.R. § 113).

Analysis: It has not been the practice of the ADR Office to request assignment of a matter involving new issues, however, this analysis is provided to assist the Commission in the event the decision is to assign these five matters to the ADR Office. The statute and implementing regulations dealing with the use of campaign accounts for non-campaign purposes identified permitted and prohibited uses of campaign funds. As these five cases, in reality, deal with only two issues due to some duplication of issues and allegations in the complaints, this analysis addresses the timing and calculation of salary payments to a candidate by the principal campaign committee. The ADR Office recommends that the five matters be consolidated.

The complaints initiating ADR 196, ADR 200 and ADR 213 allege that Respondents paid an excessive amount of salary to the candidate, as the monthly payment based on the candidate's earned income for 2003, would be \$1,500 per month. The Complainant arrived at the pro-rata monthly payment by dividing \$18,000, Candidate LeSueur's earned income in 2003, by twelve months. The Respondents, on the other hand, contend that the correct manner to calculate a pro-rata salary is to calculate the percentage of the year eligible for salary payments and pro-rate the annual earned income accordingly. In this case, between the filing deadline for access to the primary election ballot (January 9, 2004) up to and including the date of the general election

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(November 2, 2004). Pro-rata is defined in the American Heritage College Dictionary as proportionately or according to a certain rate or percentage. Respondents appear to have arrived at their calculation based on their reading of “ ... no candidate may receive a salary from campaign funds in excess of what he or she received as earned income in the year prior to becoming a candidate.” 67 Fed. Reg. 76962 at 76972 (2002). Reading the explanation and justification in the Federal Register in its totality regarding the calculation of the salary available to the candidate, it appears that the maximum monthly payment approach complies with that intended by the Commission. Specifically, the explanation regarding payments made on a pro-rata basis were intended to prevent a candidate’s principal campaign committee from paying the candidate the entire minimum annual salary unless he or she is a candidate for at least one year. In addition, the fact that salary payments must cease on the date a candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate is also evidence that the Commission considered that the salary would be paid in proportional amounts. Employees usually receive salary on a weekly, biweekly or monthly basis. The statute and regulations were drafted to ensure that campaign funds were used to compensate candidates for lost income that is forgone due to becoming a candidate, but not to enrich the candidate. The commentary clearly indicates that the restrictions or limitations on salary payments to the candidate were intended to prevent possible abuse.

In the original Pre-Primary Report, Respondents did not disclose a purpose for some disbursements made to the candidate. The Complainant added up all payments to the candidate, those disclosing the disbursement as salary and those with no purpose indicated, and aggregated these disbursements to be the \$2,900 alleged in the complaint ADR 196. ADR 200 alleges a revised salary for February 2004 to \$3,200 and an overpayment in March 2004 of \$1,872.50. A review of the original and amended Pre-Primary as well as the original and amended 2004 April Quarterly reflects salary payments to the candidate of \$1,800.00 for February and \$1332.50 for March. A review of the 2004 October Quarterly report reflects salary payments to the candidate in the amount of \$3,402.

The regulations clearly set forth when the primary committee may begin salary payments to a candidate as that being the deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by State law. In Mississippi, the deadline for access to the primary election ballot in this election cycle apparently was January 9, 2004. In ADR 198 the Complainant alleges Respondents made a \$600 salary payment to the candidate on January 6, 2004. In ADR 199 the Complainant alleges Respondents made a \$600 salary payment to the candidate on January 5, 2004. Respondents do not argue that the check was written prematurely, however, they contend there was only one \$600 check on January 6, 2004 and it was an inadvertent error by an inexperienced former Treasurer. In addition, Respondents contend that when the error was pointed out in the complaint, the candidate refunded \$600 to the committee on April 3, 2004. A review of the reports disclose one disbursement for salary in the amount of \$600 to the candidate, but the date is somewhat illegible and could be either January 5 or January 6, 2004. It appears that is why the Complainant filed MUR 5457 (ADR 199) to cover either date. Respondents confirm, in their response, that the check was written on January 6, 2004, three days premature.

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ADR Director's Recommendations: Assign ADR 196, ADR 198, ADR 199, ADR 200 and ADR 213

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