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Arent Fox
ATTORNEYS AT LAW

2004 OCT 26 P 12: 20

October 25, 2004

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Response - MUR 5532.
By Hand Delivery

Dear Mr. Jordan:

This firm represents Klayman for Senate (a/k/a Friends of Larry Klayman) and its treasurer, James R. Graham, and submits this Response to the Complaint of Paul R. Jensen, dated August 22, 2004, and forwarded by the Federal Election Commission (FEC) to the campaign's offices on or about September 20, 2004. An extension was granted by the FEC to respond on or before October 26, 2004.

In his FEC Complaint, Mr. Jensen (who briefly worked for Mr. Klayman's U.S. Senate campaign) claims that disbursements made by Friends of Larry Klayman to Arent Fox for legal fees to defend a civil action Jensen filed against Mr. Klayman were an impermissible "personal use." Attached to Jensen's FEC Complaint were only selected pages from his civil complaint. The missing pages from Mr. Jensen's civil complaint (pages 2 and 3), are attached as Exhibit 1 to this Response.

Mr. Jensen's arguments lack merit for a number of reasons.

First, Arent Fox was retained initially to provide consulting services to the campaign with regard to FEC compliance: such as the filing of periodic reports and compliance with FEC law. When Jensen filed civil suit, the firm was also retained by the campaign to defend that action. Arent Fox reviewed the civil complaint and determined it was filed against, and directly related to, the candidate's campaign. Not only does the caption of Jensen's civil complaint state it is being filed against "Larry Klayman A Senate Candidate," the civil complaint also refers to Larry Klayman as "a candidate for election to the United States Senate from Florida, whose principal campaign committee is called 'Friends of Larry Klayman' ('The Committee') whose office is in Miami Beach, Florida at 1613 Alton Road".¹

¹ Mr. Klayman was served with the civil complaint at this campaign headquarters.

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COUNSEL

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Second, the complaint itself concerns issues related to Jensen's brief tenure with the campaign and the candidate's dealings with several other campaign consultants. The gravamen of Jensen's civil complaint was whether Jensen had taken campaign materials (such as surveys) when he was severed from the campaign, and whether the candidate discussed this with campaign's pollster and other consultants. It is telling Jensen *omits from his attachments to his FEC Complaint* pages 2 and 3 of his civil complaint, where these campaign -related factual allegations were set forth. See Exhibit 1. Specifically, Mr. Jensen's civil complaint alleges:

Paragraph 3. At various times throughout the months of November, December, 2003 and January, 2004, knowing it to be false, Klayman spoke to various persons, including Tony Fabrizio and Scott Reed... telling them that Jensen had "stolen both physical and intellectual property" of the campaign...

While the campaign strongly disputes these allegations, they are all campaign-related. Tony Fabrizio, a pollster with Fabrizio, McLaughlin & Associates, and Scott Reed, a political consultant, were both with Mr. Klayman's campaign. And Mr. Jensen's civil complaint admits the subject of the alleged discussions involved "physical property of the campaign."

Third, Mr. Jensen's civil complaint does not allege facts related to Mr. Klayman's personal activities. All of the allegations relate directly to campaign activity and Mr. Klayman's stature as a candidate. *But for* the campaign (and Jensen's brief role in it), Jensen would not have the pretext to file his civil complaint and Klayman for Senate would not have incurred legal expenses to defend it.²

Fourth, the use of campaign funds to defend this civil action is clearly permissible under the FEC law, regulations and Advisory Opinions. Even the Advisory Opinions cited by Mr. Jensen support this determination. As Mr. Jensen's own FEC Complaint admits "(t)he Commission has previously concluded that legal expenses in defense of allegations relating directly to the candidate's campaign activities or status as Federal officeholder may be paid for with campaign funds. Advisory Opinions 1998-1, 1997-12, 1996-24 and 1995-23; see also Advisory Opinion 1993-15."

Advisory Opinion 1995-23 is directly on point. There, Representative Christopher Shays was sued personally in a civil action by an opponent who alleged Shays had wrongfully taken down his opponent's campaign signs. In finding Congressman Shays' legal bills could be paid with campaign funds, the FEC held: "(u)nder the Act and new Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to

² Arent Fox quickly and successfully moved to dismiss Jensen's civil suit in the United States District Court for the Eastern District of Virginia. The case was dismissed on March 5, 2004.

influence the candidate's election . . ." The " legal expenses described in your request pertain to a law suit arising directly from campaign activity . . ." Thus, the FEC found that "campaign funds from your committee may be used to pay the expenses of your defense in the described law suit."

As in the Shays lawsuit, the case Jensen filed against Mr. Klayman – naming him as a U.S. Senate candidate and making direct reference to his alleged actions as a U.S. Senate candidate – falls within the purview of campaign activity. Since the civil complaint Jensen filed occurred during the campaign, was about the campaign, and was intended to influence the campaign: the payment of legal expenses by Klayman for Senate is as compelling as in the Shays case.

Fifth, BCRA's amendments to the FECA and the Commission's new regulations support the Committee's use of campaign funds to pay these legal expenses. New Section 439a provides that campaign contributions "may be used by the candidate . . . (for) expenditures in connection with the campaign for federal office (but) shall not be converted by any person to personal use." A prohibited personal use is defined as any expense "that would exist irrespective of the candidate's election campaign" such as a home mortgage.

It is clear Jensen's civil complaint, by its captioned subject matter and allegations, are certainly in connection with the Klayman campaign. Jensen's now-dismissed allegations involved the conduct of the campaign, campaign property, and campaign consultants. In fact, Jensen's campaign-related allegations are legally similar to the Counts the Commission approved the use of campaign funds to pay for the defense in post-BCRA Advisory Opinion 2003-17 (Treffinger).

Finally, Jensen's motivation in filing his civil complaint is transparent: he wanted to harm the campaign. At the time he filed his civil suit he was working with the Florida Senate campaign of one of Mr. Klayman's opponents, Bob Smith, with whom Jensen had previously worked during Smith's tenure as a Senator from New Hampshire.

For all of these reasons, the Commission should find no reason to believe any violation occurred in this matter and close the file.

Sincerely,

ARENT FOX



Craig Engle

Encl. Statements of Designation of Counsel
Missing pages 2 and 3 from Jensen's Civil Complaint

STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent.

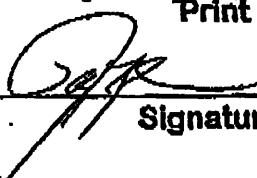
MUR-5532

NAME OF COUNSEL: Craig EngleFIRM: Arnett FoxADDRESS: 1050 Connecticut Ave., N.W.Washington, D.C. 20036-5339TELEPHONE: (202) 775-5791FAX: (202) 857-6395

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

Larry Klayman For Friends of Larry Klayman
Print Name10/25/04

Date



Signature

Candidate

Title

RESPONDENT'S NAME: Friends of Larry KlaymanADDRESS: 168 S.E. 1st St. STE.1001MIAMI, FL 33131TELEPHONE: HOME (305) 577-8944BUSINESS (786) 497-2926

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STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent.

MUR 5532

NAME OF COUNSEL: Craig Engle

FIRM: Arent Fox, PLLC

ADDRESS: 1050 Connecticut Avenue, NW

Washington, DC 20036

TELEPHONE: (202) 775-5791

FAX: (202) 857-6395

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

James R. Graham

Print Name

10/25/04



Treasurer

Date

Signature

Title

RESPONDENT'S NAME: Friends of Larry Klayman

ADDRESS: 168 S.E. 1st Street, Suite 1001

Miami, FL 33131

TELEPHONE: HOME (305) 577-8944

BUSINESS (786) 497-2926

1 jurisdiction under 28 U.S.C. §1332.

2 EXHIBIT 1

3 2. On or about August 11, 2003, Plaintiff was hired by Klayman and The Committee as a full time
4 employee. Other persons were also so employed, and outside consultants and advisors engaged.
5 Klayman claimed to be a man of uncompromising integrity whose ethics were beyond reproach.
6 Such claims were almost immediately belied by The Committee's failure to do what Klayman
7 promised Jensen (in terms of fundraising) to meet the Committee's expenses, and the
8 concomitant almost immediate failure by Klayman and The Committee to keep promises to pay
9 staff their salaries and expenses. Ultimately, when Klayman returned empty-handed from a
10 week-long fundraising trip to California, and plaintiff still had been paid absolutely nothing,
11 plaintiff quit, realizing The Committee would never be able to afford to pay his promised salary.
12 A few days later, on or about October 20, 2003, Jensen confronted Klayman with a draft lawsuit¹,
13 and gave Klayman one last chance to keep his promise and pay Jensen, explaining that if
14 Klayman did not make good on his word, Jensen would sue The Committee that very day. Faced
15 with that inevitability, Klayman relented and Jensen was paid. In return, Jensen gave Klayman
16 all of the property of The Committee that Jensen possessed, and met again with Klayman and
17 another staffer to discuss pending issues facing Klayman's candidacy. Jensen provided answers
18 to every question asked of him. Subsequently, on several occasions, Klayman and his remaining
19 staff phoned Jensen for information, which Jensen readily provided. At no time did Jensen
20 retain, much less pass on to others, any proprietary information or property of either Klayman
21 personally, or of The Committee.

22
23 3. At various times throughout the months of November, December, 2003 and January, 2004,

24
25 _____
26 Plaintiff is no longer in possession of a copy of this document, having given all copies to
27 Defendant, at his request.

1 knowing it to be false, Klayman nevertheless spoke to various persons, including Tony Fabrizio
2 and Scott Reed, telling them that Jensen had "stolen both physical and intellectual property" of
3 the campaign, and then shared the same with others, and in so doing "had committed a crime",
4 and needed to "hire a criminal lawyer". At the time Klayman published his statement to
5 Fabrizio, Fabrizio was speaking to Klayman on the telephone from Alexandria, Virginia. Other
6 persons to whom Klayman published the statements were located, among other places, in
7 Arlington County, Virginia and Washington, D.C.. Accordingly, this Court is the proper venue
8 for this action.

9

10 4. None of the statements of Klayman as herein alleged were in any sense privileged, or true.

11

12 **COUNT I**

13 **SLANDER**

14 5. Plaintiff reincorporates and realleges the allegations contained above in paragraphs 1-4 as if set
15 forth in herein at this point.

16

17 6. The aforesaid alleged statements of Klayman were published by him with actual malice towards
18 Jensen, expressly made for the purpose of unjustly causing Jensen to suffer. Jensen is a lawyer
19 and political consultant, and Klayman published his statements to persons Klayman believed
20 might in the future be in a position to help or hurt Jensen in his profession and trade, and it was
21 Klayman's desire to hurt Jensen in his profession and trade.

22

23 7. Klayman's malice towards Jensen was in part motivated by Jensen's repeated insistence to
24 Klayman that Klayman honor his commitments and promises to pay other staff and debts of The
25 Committee, and that Klayman cease lying to potential supporters and influential Republicans
26 about his beliefs and background, despite the fact that Jensen had not gone forward with his