



Federal Election Commission
Washington, DC 20463

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MEMORANDUM

TO: The Commission
AFJ/jp

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
ADS/ps
Director, ADR Office

BY: Lynn M. Fraser
LMF
Assistant Director, ADR Office

SUBJECT: Recommendation to Close the File on ADR 214

DATE: December 20, 2004

SENSITIVE

On November 19, 2004, the ADR Office ("ADRO") received this matter from OGC/CELA to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 214 is inappropriate for ADR and recommend that the case be closed. Following the procedures approved by the Commission on March 3, 2003, this matter will be closed by ADRO if the Commission approves the recommendation in this memorandum. The Office of General Counsel ("OGC") concurs in the description of this matter and also concurs that it will not be returned to OGC for further action.

ADR 214/MUR 5532: Complainant alleges that Friends of Larry Klayman, James R. Graham, Treasurer, and Larry Klayman ("Respondents" or "committee") used campaign funds totaling \$20,000 to pay, on seven occasions, the candidate's personal legal bills. The Complainant, formerly employed by the committee, states that he filed a civil suit against Larry Klayman in the Eastern District of Virginia. Craig Engle, an attorney with Arant Fox, represented the candidate. The complaint further alleges that, as the suit alleged slander by Larry Klayman, the payment of legal fees was a conversion of campaign funds to personal use. Respondents acknowledge that the legal fees in question paid by the committee to Arant Fox were for services in connection with the civil suit filed by Complainant. Respondents contend, however, the civil suit resulted from Complainant's short period of employment with the committee, and all allegations relate directly to campaign activities.

Attached for the Commission's review is the ADR *Case Analysis Report* (CAR) on ADR 214, along with copies of the EPS Rating and ADR Rating reports.

ADR Director's Recommendation: We recommend that the Commission take no further action on ADR 214/MUR 5532, that the file be closed and the appropriate letters sent.

ADR CASE ANALYSIS REPORT

ADR Case: 214

Respondents:

Friends of Larry Klayman

Larry Klayman

James R. Graham, Treasurer

MUR: 5532

OGC Case Open Date: 9/14/04

Respondents' Rep.: Craig Engle, Esq.

Date Forwarded to ADRO: 11/19/04

Committee Name: Friends of Larry Klayman

Date Reviewed by ADRO: 12/2/04

Committee Type: Authorized

District #/or State: Florida

Election - Won/Lost: Lost Primary

Election Cycle: 2004

Complainant: Paul Rolf Jensen

Summary of Complaint: Complainant alleges that Friends of Larry Klayman, James R. Graham, Treasurer, and Larry Klayman ("Respondents" or "committee") used campaign funds totaling \$20,000 to pay, on seven occasions, the candidate's personal legal bills. The Complainant, formerly employed by the committee, states that he filed a civil suit against Larry Klayman in the Eastern District of Virginia. Craig Engle, an attorney with Arant Fox, represented the candidate. The complaint further alleges that, as the suit alleged slander by Larry Klayman, the payment of legal fees was a conversion of campaign funds to personal use.

Violations Alleged: 2 U.S.C. § 439a

Respondents' Reply: Respondents acknowledge that the legal fees in question paid by the committee to Arant Fox were for services in connection with the civil suit filed by Complainant, although initially Arant Fox was retained to provide campaign compliance consultation. Respondents contend that all the legal fees were campaign related, including representation of the committee in the civil suit, which Complainant titled "Paul Rolf Jensen vs. Larry Klayman, aka Larry E. Klayman, a candidate for the United States Senate from Florida." The civil suit resulted from Complainant's short period of employment with the committee and all allegations relate directly to campaign activities. Under these circumstances, Respondents argue, the payment of legal fees from campaign funds is allowed under the FECA and Commission findings.

Issues:

- Converting campaign funds to personal use 2 U.S.C. § 439a; 11 C.F.R. § 113.1(g)

Related FEC Experience/Guidance: The FECA and its implementing regulations are clear that campaign contributions cannot be converted to personal use. The Bipartisan Campaign Reform Act of 2002 (Pub. L. 107-155 (March 27, 2002)) (“BCRA”), in revised section 439a, spelled out the permissible uses of campaign funds, as well as the prohibited uses. In addition, several Advisory Opinions informed the regulated community that the use of campaign funds to pay certain legal fees – those directly related to campaign activity -- is allowed under FECA. *See*, Advisory Opinions 1995-23, 1996-24, 1997-12, and 1998-1.

Analysis: Since 1995, the Commission’s regulations defined “personal use” as “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist *irrespective* of the candidate’s campaign or duties as a federal officeholder.” The Commission previously concluded that legal expenses in defense of allegations relating directly to the candidate’s campaign activities or status as a Federal officeholder may be paid for with campaign funds. The regulations use the same “irrespective” test as such the statute. 11 C.F.R. § 113.1(g). Regulations implementing 2 U.S.C. § 439a(b)(2) list certain uses of campaign funds that are considered *per se* personal use. This list does not include legal fees. If a particular use of campaign funds is not *per se* a personal use, it will be examined on a case-by-case basis using the *irrespective* test. 11 C.F.R. § 113.1(g)(1)(i) and (ii).

The civil suit filed in court by the Complainant identifies the defendant as Larry Klayman, a candidate for U.S. Senate, and goes on to state that the conflict leading to the civil suit arose out of Complainant’s employment with the committee. The two individuals named in the suit to whom Respondent Klayman was speaking when he made the allegedly slanderous comments were Tony Fabrizio, a political pollster, and Scott Reed, a political consultant, both associated with the committee. The civil suit alleges that Respondent Klayman made these statements (which Respondents deny were slanderous) while discussing stolen property of the campaign.

In reviewing the facts, as stated by the Complainant in both the complaint filed with the Commission and the civil suit filed in Court, the legal fees appear to be directly related to the campaign for federal office. The civil suit would not have been filed but for the federal campaign, and thus the legal fees were not an impermissible use of campaign funds. If the payments of legal fees by the committee were permissible, then there would be no violation of the FECA under the facts as alleged in the complaint.

ADR Director's Recommendation: DISMISS
