



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 14, 2004

MEMORANDUM

TO: The Commission

THROUGH James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

SUBJ: Case for ADR Activation

On November 30, 2004 the ADR Office received from OGC/CELA MUR 5593 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 215**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 215/MUR 5593: Complainant contends that Respondents, i.e., Jack Davis for Congress, Jack Davis, and Robert Davis, Treasurer, failed to include disclaimers on campaign material distributed by the Davis campaign committee. The complaint claims that the Committee's mailings, web site, and newspaper advertisements either did not contain the appropriate disclaimer notice or those that did contain some notification did not conform to the requirement of the regulations. Respondents contend that the Committee complied with the "spirit of the law" but acknowledged errors for failing to place disclaimer notices in a printed box as required. Respondents also contend that while some direct mail pieces failed to advise that they were "paid for by Jack Davis", the letters did have his signature.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 215** along with a copy of the EPS and ADR Rating Sheets. The *Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office (ADRO) anticipates addressing if the case is assigned to ADR. In addition, the Report has been reviewed by OGC, which concurs in the description of the case. If the Commission concurs in the recommendation to assign the matter to ADRO, the above case description will be provided to Respondents as part of ADRO's notification package sent to Respondents.

Recommendation: We recommend that **ADR 215/MUR 5593** be assigned to ADR Office for processing.

ADR CASE ANALYSIS REPORT

ADR Case # 215

Respondents: Jack Davis for Congress
Jack Davis
Robert Davis, Treasurer

MUR: 5593

Respondents' Rep: Jack Davis

OGC Case Open Date: 10-29-04

Committee Type: Principal Campaign Comm.

Date Forwarded to ADRO: 11-30-04

Committee's Name: Jack Davis for Congress

Date Reviewed by ADRO: 12-6-04

District #/or State: NY -- 26th C.D.

Tier Level: 4

Election -- Won/Lost: Lost

EPS Rating: 11

Election Cycle: 2004

ADR Rating: 55

Complainant: Bradley J. Stamm

Summary of Complaint: Complainant contends that Respondents failed to include disclaimers on campaign material distributed by the Jack Davis Campaign committee. The complaint claims that the Committee's mailings, web site, and newspaper advertisements either did not contain the appropriate disclaimer notice or those that did contain some notification did not conform to the requirement of the regulations. Complainant contends that the regulations require that the disclaimer must appear in a printed box set apart from the other content of the communications, must be of sufficient type-size as to be clearly legible by the reader and in the case of single-sided documents must be on the front of the document.

Alleged Violations: 2 U.S.C. § 441d and 11 C.F.R. §§ 110.11(a), 110.11(b) and 110.11(c)

Respondents' Replies: Respondents, while contending that the Committee complied with the "spirit of the law", acknowledged errors by failing to place disclaimer notices on campaign material in boxes. Respondents further contends that while some direct mail pieces failed to advise that they were "paid for by Jack Davis", the letters did have his signature.

Analysis: Some of Respondents' campaign material contained no disclaimers. Others notices were of such small size as to be almost illegible. The regulations advise that a disclaimer in twelve (12) point type size satisfies the size requirement of the regulations. 11 C.F.R. § 110.11(c)(2)(i). None of the notices were set out in boxes as required in the regulations, which advises that the disclaimer must be contained in a printed box set apart from the other contents of the communication. 11 C.F.R. § 110.11(c)(2)(ii). Respondents' forthrightly attested to the fact that the campaign committee paid for all communications, but failed in some instances to advise the public of such and in other instances failed to ensure that the disclaimer information was readily discernable. The disclaimer notice also was missing from the Committee's web site and from an advertisement in a local newspaper.

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Issues: Disclaimer Notices -- 2 U.S.C. § 441d(c) and 11 C.F.R. §§ 110.11(a), (b)(1) and (c)

Related FEC Experience/Guidance: The Commission's guidance regarding the obligation of principal campaign committees to include disclaimers on any public communications is set forth in the Act, regulations and Commission Campaign Guides and reiterated in numerous OGC and ADR settlements. Numerous Advisory Opinions also provide guidance on a committee's obligation to include disclaimers on all communications including AOs 1998-22, 1995-9 and 1978-33.

Potential Terms of Settlement: Due to the inexperience of Respondents, terms of settlement may include attendance at an FEC seminar for campaign committees and/or a civil penalty. However, if the candidate does not anticipate another campaign for federal office, termination will be incorporated into the final terms of settlement.

Recommendation: Assign to ADRO

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