



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 5554 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 218**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 218/MUR 5554: Complainant contends that Respondents, i.e., Case for Congress and James H. Case, Treasurer, failed to include appropriate disclaimer notices on campaign material including campaign signs, banners, literature and website. Complainant argues that Respondents ignored the law despite being advised via an earlier complaint, i.e., MUR 5498 (ADR 217), that their signs and banners were in violation. Complainant contends that Respondents made no attempt to fix the their signs or banners. Respondents acknowledged the earlier complaint (MUR 5498) regarding yard signs and banners and urged that the Commission "consider the facts and advise whether or not a disclaimer is required." Regarding the website issue, Respondents argued that the last line of the website contains the phrase "Copyright 2004 Case/Congress Campaign Committee." However, Respondents agreed to amend their website to include a notice indicating that it was paid for by the Case Campaign Committee. Regarding campaign literature, Respondents contend that the cookbook, paid for by the Campaign Committee, was the product of the Case for Congress Committee but was not covered by section 100.29 of the regulations, which defines Electioneering Communications

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 218** 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 218/MUR 5554** be assigned to ADR Office for processing.

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ADR CASE ANALYSIS REPORT

ADR Case # 218

Respondents: Case for Congress
James H. Case, Treasurer

MUR: 5554

Respondents' Rep: James H. Case

OGC Case Open Date: 10-4-04

Committee Type: Principal Campaign Comm.

Date Forwarded to ADRO: 11-30-04

Committee's Name: Case for Congress

Date Reviewed by ADRO: 12-9-04

District #/or State: 2nd C.D. - Hawaii

Tier Level: 4

Election – Won/Lost: Won

EPS Rating: 15

Election Cycle: 2004

ADR Rating: 45

Complainant: Ethan Gabriel

Summary of Complaint: Complainant contends that Respondents failed to include appropriate disclaimer notices on campaign material including campaign signs, banners, literature and website. The complaint states that the disclaimer notice was missing from hundreds of yard signs, dozens of banners, books distributed by the campaign committee and the committee's web site. (Photos or examples of the material were enclosed with the complaint.) Complainant argues that Respondents ignored the law despite being advised via an earlier complaint, i.e., MUR 5498 (ADR 217), that their signs and banners were in violation. Complainant contends that Respondents, thereafter, made no attempt to fix the their signs or banners

Alleged Violations: 2 U.S.C. § 441d and 11 C.F.R. § 110.11

Respondents' Reply: Respondents acknowledged the earlier complaint (MUR 5498) regarding yard signs, cited their reply to that complaint and urged, as they did previously, that the Commission "consider the facts and advise us whether or not a disclaimer is required." With regard to banners, Respondents, noted the similarity to the yard sign issue, repeated their reply on that issue and requested that the Commission advise, "whether or not a disclaimer is required" Regarding the website issue, Respondents argued that "there can be no confusion about whether the website is paid for by the Case for Congress Committee" noting that the last line of the website contains the phase "Copyright 2004 Case/Congress Campaign Committee." However, Respondents agreed to amend their website to include a phase indicating that it was paid for by the Case Campaign Committee. Regarding campaign literature, Respondents contend that a cookbook, distributed and paid for by the Campaign Committee, was "obviously" the product of the Case for Congress Committee. Respondents argue that the cookbook is not covered by section 100.29 of the regulations, which defines "Electioneering Communications."

Analysis: The Commission's guidance regarding the placement of disclaimer notices on campaign material advises that, "any public communication made by a political committee ... must include a disclaimer." Respondents cite section 100.29 of the regulations that deals with "Electioneering

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Communications as a defense of the Committees' position. The latter section deals with broadcast communications, which is irrelevant to this matter. The appropriate references are section 100.26 of the regulations, which defines "public communications" and the directive contained in section 110.11(a)(1) which requires committees to include disclaimers on all public communications for which a political committee makes a disbursement. In addition, "public communication" is defined as including among other forms of communication "outdoor advertising" and "any other form of political advertising" thus clearly encompassing "yard signs" and "banners." 11 C.F.R. § 100.26. The same regulation advises that any "printed public communication" must comply with the aforementioned regulations and a subsequent provision includes "signs and posters" among examples cited when the size of the typeface disclaimer notice is discussed. The latter section also would cover a cookbook that contains references to the candidate and his committee distributed during a campaign. There can be little doubt about the intent of the Commission regarding the placement of disclaimer notices. Nevertheless, Respondents appear to place the burden on the Commission to advise them if disclaimer notices are required. Their letter of October 25, 2004 replying to the complaint specifically asks that the Commission "consider the facts and advise us whether or not a disclaimer is required." In the same letter, Respondents again request, during the discussion of "banners", that the Commission "advise us whether or not a disclaimer is required".

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

Related FEC Experience/Guidance: The Commission's guidance regarding the obligation of campaign committees to place disclaimers on any public communications is set out in the FECA, the regulations, and numerous AOs. It is also reiterated in numerous OGC and ADR settlements.

Potential Terms of Settlement: This case raises some of the same disclaimer issues noted in ADR 217, which was filed against the same Respondents although by a different Complainant. Given the similarity of the issues and identical Respondents, the ADR Office recommends that the cases be consolidated, that ADR 218 be addressed first and that the settlement of ADR 217 be incorporated into the final agreement covering both matters. Terms of settlement may include designation of a staff member to be responsible for FEC compliance, attendance at a FEC seminar and a civil penalty

Recommendation: Assign to ADRO

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