




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 5498 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 217**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 217/MUR 5498: Complainant contends that Respondents, i.e., Case for Congress and James H. Case, Treasurer, failed to place disclaimer notices on campaign yard signs and banners. Photos enclosed with the complaint depict campaign signs without any reference to who authorized or paid for them. Three weeks after filing the complaint and one week before Respondents replied to the complaint, the Complainant requested, after an unannounced visit by the candidate to his home, that the complaint be withdrawn. Respondents acknowledged paying for yard signs similar to one depicted in one of the two photos that accompanied the complaint. The other sign depicted in the second photo was allegedly from the candidate's 2002 campaign. Respondents contend that they did not consider that the requirement regarding the placement of disclaimer notices applied to yard signs or that yard signs were "printed materials". They did, however, commit to placing disclaimers on any new signs they have manufactured.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 217** 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 217/MUR 5498** be assigned to ADR Office for processing.

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ADR CASE ANALYSIS REPORT

ADR Case # 217

Respondents: Case for Congress
James H. Case, Treasurer

MUR: 5498

Respondents' Rep: James H Case

OGC Case Open Date: 7-30-04

Committee Type: Principal Campaign Comm.

Date Forwarded to ADRO: 11-30-04

Committee's Name: Case for Congress

Date Reviewed by ADRO: 12-8-04

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

Tier Level: 4

Election - Won/Lost: Won

EPS Rating: 15

Election Cycle: 2004

ADR Rating: 50

Complainant: David Moore

Summary of Complaint: Complainant contends that Respondents failed to place disclaimer notices on campaign yard signs and banners. Photos enclosed with the complaint depict campaign signs without any reference to who authorized or paid for them.

Three weeks after filing the complaint and one week before Respondents replied to the complaint, the Complainant requested, after an unannounced visit by the candidate to his home, that the complaint be withdrawn.

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

Respondents' Replies: Respondents acknowledge paying for yard signs similar to one depicted in one of the two photos that accompanied the complaint. The other sign depicted in the second photo was allegedly from the candidate's 2002 campaign. Respondents contend that they did not consider that the requirement regarding the placement of disclaimer notices applied to yard signs or that yard signs were "printed materials". They did, however, commit to placing disclaimers on any new signs they have manufactured.

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." Public communication is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public or any other form of general public political advertising. 11 C.F.R. § 100.26. The regulations go further directing that "all public communications for which a political committee makes a disbursement" must include disclaimers. 11 C.F.R. § 110.11(a)(1). The same regulations 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. A latter paragraph, i.e. 11 C.F.R. 110.11(c)(2)(iv), cites "billboards" when discussing the placement of the disclaimer notice. There can

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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 August 25, 2004 replying to the complaint specifically asks that "you consider the facts and advise us whether or not a disclaimer in 12 point type is required . . ." Respondents are apparently unaware that the regulations specifically advise in the section titled "Specific requirements for printed communications" that a disclaimer in twelve (12)-point type size satisfies the size requirement of the regulations when it is used for signs, posters, etc. 11 C.F.R. 11 110.11(c)(2)(i). In the same letter, Respondents ask that, "you advise us that the disclaimer must be placed on existing signs".

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: The complainant's desire to withdraw the complaint would normally require the ADR Office to review the matter and determine if the issues involved warrant pursuit or a recommendation that the case be closed with an admonishment letter sent to Respondents. However, an identical complaint (MUR 5554) has recently filed by another complainant against the same Respondents. The latter case raises similar issues to those raised in the current matter along with others relating to disclaimers placed on other types of campaign material. Given the similarity of the complaints and issues to be addressed by the Respondents the ADR Office recommends that ADR 218 be addressed first and that settlement of ADR 217 be consolidated into the final agreement covering both matters.

Recommendation: Assign to ADRO

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