



Federal Election Commission  
Washington, DC 20463

2004 10:50

MEMORANDUM

**SENSITIVE**

TO: The Commission

THROUGH: James A. Pehrkon *AP*  
Staff Director

FROM: Allan D. Silbermann *AS*  
Director, ADR Office

BY: Lynn M. Fraser *LF*  
Assistant Director, ADR Office

SUBJECT: Recommendation to Close the File on ADR 220

DATE: December 21, 2004

On November 30, 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 220 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 the 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 220/MUR 5482:** The Complainant alleges that Robert G. Whittel for Congress, Jason Melton, Treasurer and Robert G. Whittel (collectively "Respondents" or "Committee") failed to report disbursements in connection with paid staff, rental cars and campaign materials. In addition, the complaint alleges that Respondents failed to file any reports until the second quarter of 2004, when it appeared to the Complainant that Respondents expended funds that should have been reported during the first quarter of 2004. Respondents state that the statement of candidacy and statement of organization were both filed on April 1, 2004, as soon as the \$5,000 threshold was reached. Respondents contend that disbursements for expenses enumerated by Complainant did not trigger the reporting requirement prior to the April 1, 2004 date.

Attached for the Commission's review is the ADR *Case Analysis Report* (CAR) on ADR 220, 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 220/MUR 5482, that the file be closed and the appropriate letters sent.

25-19-026-0092

## ADR CASE ANALYSIS REPORT

ADR Case: 220

**Respondents:**

Robert G. Whittel for Congress  
Jason Melton, Treasurer  
Robert G. Whittel

MUR: 5482

**Respondents' Rep.:**

Lyn Utrecht, Esq.

OGC Case Open Date: 07/15/04

Date Forwarded to ADRO: 11/30/04

**Committee Name:** Robert G. Whittel for Congress

Date Reviewed by ADRO: 12/9/04

**Committee Type:** Authorized

**District #/or State:** FL 5<sup>th</sup> C.D.

**Election - Won/Lost:** General/Lost

**Election Cycle:** 2004

**Complainant:** John Russell

**Summary of Complaint:** The Complainant alleges that Robert G. Whittel for Congress, Jason Melton, Treasurer and Robert G. Whittel (collectively "Respondents" or "Committee") failed to report disbursements in connection with paid staff, rental cars and campaign materials. In addition, the complaint alleges that Respondents failed to file any reports until the second quarter of 2004, when it appeared to the Complainant that Respondents expended funds that should have been reported during the first quarter of 2004.

**Violations Alleged:** 2 U.S.C. §§ 434(a)(1), 434(a)(2), 434(b), 11 C.F.R. §§ 104.3, 104.8, 104.9

**Respondents' Reply:** Respondents state that the Complainant was an opponent of Robert G. Whittel during the Florida Primary, and that the complaint is without merit. Respondents contend that the statement of candidacy and statement of organization were both filed on April 1, 2004, as soon as the \$5,000 threshold was reached. The Committee filed its first report on July 15, 2004, which discloses all the expenses at issue in the complaint, including salary payments to staff, rental car payments to Budget Car Rental and the printing expenses for campaign materials. Respondents further contend that disbursements for campaign materials and car rental did not trigger the reporting requirement prior to the April 1, 2004 date, and the salary payments did not begin until April 2004.

25-19-026-003

**Issues:**

- Statement of candidacy and organization 2 U.S.C. §§ 431(2), 432(e)1, 433(a), 11 C.F.R. §§ 100.3, 101.1, 102.1
- Filing reports timely 2 U.S.C. §§ 434(a)(1), 434(a)(2), 11 C.F.R. § 104.5(a)(1)

**Related FEC Experience/Guidance:** There have been numerous cases dealing with the issue of the initial report filing following the statement of candidacy and statement of organization resolved by both the OGC and ADRO. The regulations implementing 2 U.S.C. 434 are specific and detailed as to filing reports, as they are concerning 2 U.S.C. §§ 432 and 433. In addition, the campaign brochure for federal candidates explains in detail when and how to file the statement of candidacy beginning on the first page of the brochure for (Congressional Candidates and Committees June 2004). The brochure is also available on the FEC website.

**Analysis:** A candidate for federal office is defined at 2 U.S.C. § 431(2). The brochure for federal candidates spells out the required filings for a candidate and the candidate's authorized Committee, as well as the timing of each. Both the Respondents' Statement of Candidacy and Statement of Organization are dated April 1, 2004. The complaint argues that the individuals, including Jason Melton, did not "look" like volunteers or unpaid staff. In addition, the Complainant contends that Respondents must have paid for such professional looking campaign materials prior to April 1, 2004, as they were available for distribution "two working days after March 31<sup>st</sup>" [2004]. In reviewing the first report filed by the Committee in July 2004, there is no evidence that the candidate reached or surpassed the \$5,000 threshold for contributions and disbursements prior to April 1, 2004. Therefore, the Committee would not have been required to file the April 2004 report

**ADR Director's Recommendation: DISMISS**