



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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SECRETARIAT

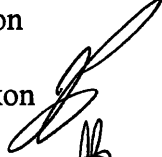
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September 26, 2005

**MEMORANDUM**

**SENSITIVE**

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director 

**FROM:** Allan D. Silberman  
Director, ADR Office 

**SUBJ:** ADR 237 – Rick for Congress and Doreen Penberthy, Treasurer  
Recommendation to Approve Settlement Agreement and Dismiss Remaining  
Respondent

Attached for your review is a signed negotiated ADR settlement agreement pertaining to **ADR 237/MUR 5521**, Rick for Congress and Doreen Penberthy, Treasurer (the "Respondents"). This matter was opened on August 26, 2004 and assigned to the ADR Office (ADRO) on June 6, 2005.

The Complainant contends that Respondents, Rick for Congress and Doreen Penberthy, Treasurer (the "Committee") and Rick Penberthy, failed to file timely the second quarter report due on or before July 15, 2004. In addition, the Complainant notes that the subject report was not filed electronically when they expended more than \$50,000. The Committee contends that they filed the subject report by the due date of 7/15/04 -- the date the report was mailed to the Commission. The Committee acknowledged that they mistakenly concluded that since the election cycle-to-date contributions, not including candidate loans, totaled \$5,429 they were not required to file electronically. The Committee subsequently learned that a \$61,182 loan from the candidate coupled with the contributions received during the cycle triggered the electronic filing requirement. The Committee subsequently completed and uploaded a duplicate copy of the Q2 report, which was filed with the Commission on 8/4/04.

**Recommendations:**

- 1) Approve the attached Settlement Agreement pertaining to Rick for Congress and Doreen Penberthy, Treasurer.
- 2) Dismiss the complaint as it pertains to Rick Penberthy
- 3) Approve the appropriate letters.
- 4) Close the file on this matter.

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FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, DC 20463

Case Number: ADR 237  
Source: MUR 5521  
Case Name: Rick for Congress

### **NEGOTIATED SETTLEMENT**

This matter was initiated by a signed, sworn and notarized complaint filed by Steven G. Hemmert. Following a review of the matter and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended ("the FECA"), and to resolve this matter, the Federal Election Commission (the "Commission") entered into negotiations with Richard Penberthy on behalf of Rick for Congress and Doreen Penberthy, Treasurer (the "Respondents" or the "Committee"). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and Respondents have addressed all the issues raised in this matter. The parties have agreed to resolve the matter according to the following terms:

1. The Commission has entered into this agreement as part of its responsibility for administering the Federal Election Campaign Act and in an effort to promote compliance with the FECA on the part of the Respondents. The Commission's use of ADR procedures is authorized in "The Administrative Dispute Resolution Act of 1996", 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. Respondents have voluntarily entered into this agreement with the Commission.
3. The complainant alleged that Respondents failed to file timely the 2004 second quarter report due on July 15, 2004. In addition, the Complainant notes that the subject report was not filed electronically after they expended more than \$50,000. The Complainant further noted that Respondents hand-written report was received at the Commission on July 22, 2004.
4. Each treasurer of a principal campaign committee of a candidate for the House of Representatives or for the Senate must file quarterly reports on the dates specified. Quarterly reports must be filed no later than the 15<sup>th</sup> day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15) except that the report for the final calendar quarter of the year must be filed no later than January 31 of the following calendar year. 2 U.S.C. § 434(a)(2)(A)(iii) and 11 C.F.R. §§ 104.5(a) and (a)(1)(i).

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5. Political committees and other persons required to file reports with the Commission must file reports in an electronic format that meets the requirements of this section if the political committee or other person has received contributions or as reason to expect to receive contributions aggregating in excess of \$50,000 in any calendar year. 2 U.S.C. § 434(a)(11)(A)(i) and 11 C.F.R. §§ 104.18(a) and (a)(i).
6. Respondents mistakenly concluded that since the Committee's election cycle-to-date contributions totaled \$5,429.00 they were not required to file electronically. The Committee proceeded to file on July 15, 2004 a hand-written report for the quarter, covering the period from April 1 through June 30, 2004. Respondents stated that the Commission's notification, received on July 30, 2004, advised them that the Committee's total contributions, when incorporated with a loan of \$61,182 from the candidate, exceeded the \$50,000 threshold triggering a requirement for electronic filing.
7. Respondents acknowledged that they misunderstood the Commission's reporting requirements and believed they were in compliance with the FECA regulations when they filed the hand-written 2004 July Quarterly Report. In order to avoid similar errors in the future, Respondents agree to: 1) send a Committee representative to a FEC seminar on federal election campaign finance reporting requirements; and 2) pay a civil penalty of \$1,500.
8. Respondents agree that all information provided to resolve this matter is true and accurate to the best of their knowledge and that they sign this agreement under penalty of perjury pursuant to 28 U.S.C. § 1746.
9. The parties agree that if Respondents fail to comply with the terms of this settlement, the Commission may undertake civil action in the U.S. District for the District of Columbia to secure compliance and/or forward any outstanding civil penalty to the US Treasury for collection.
10. This agreement will become effective on the date signed by all the parties and approved by the Commission. Respondents shall comply with the terms of this settlement within twelve months (12) months of the effective date of this agreement for item one (1) and within nine (9) months of the effective date of the agreement for item two (2) as listed in paragraph seven (7) above, payments to be made over the course of the aforementioned nine months.
11. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 237/MUR 5521 and effectively resolves this matter. No other statement, promise or agreement, either written or oral, made by either party, not included herein, shall be enforceable.

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FOR THE COMMISSION:

Allan D. Silberman,  
Director, Alternative Dispute Resolution Office

\_\_\_\_\_  
Allan D. Silberman

\_\_\_\_\_  
Date

FOR THE RESPONDENT:

Richard Penberthy  
Richard Penberthy on behalf of  
Rick for Congress and  
Doreen Penberthy, Treasurer

9/22/05  
Date

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