



FEDERAL ELECTION COMMISSION  
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April 29, 2005

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Allan D. Silberman  
Director, ADR Office

SUBJ: Case for ADR Activation

**SENSITIVE**

On March 31, 2005 the ADR Office received from RAD 05L-04 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 254**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

**ADR 254:** RAD determined that Respondents, the Nebraska Republican Party Federal Campaign Committee and Demarus Carlson, Treasurer, failed to disclose additional financial activity on its 2003 Year End Report, totaling \$51,900.79 (a 30% increase). Specifically, Respondents' 2003 Year End Report filed on Jan. 28, 2004, disclosed \$10,039.35 in disbursements for Federal Share of Allocated Federal/Non-Federal Activity, \$25,789.73 for Non-Federal Share of Allocated Federal/Non-Federal Activity and \$70,272.57 for Other Disbursements. On May 18, 2004, Respondents filed an amended 2003 Year End Report, which disclosed \$10,818.74 in disbursements for Federal Share of Allocated Federal/Non-Federal Activity, \$27,819.44 for Non-Federal Share of Allocated Federal/Non-Federal Activity, and \$120,313.73 for Other Disbursements. Respondents advised that several disbursements were not properly recorded on their reporting system software causing the activity to be inadvertently omitted from the original 2003 Mid-Year and Year End reports. The errors were subsequently corrected and amended filed with the Commission.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 254** along with copies 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 254/RAD 05L-04** be assigned to ADR Office for processing.

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## ADR CASE ANALYSIS REPORT

ADR Case: # 254 Respondents: NE Rep. Federal Camp. Comm.  
RAD: # 05L-04 Demarus Carlson, Treasurer  
Date Forwarded to ADRO: 3-31-05 Respondent's Rep: Demarus Carlson  
Date Reviewed by ADRO: 4-12-05 Committee Type: State Party  
Election Cycle: 2004 Committee Name: NE Rep. Fed. Camp. Comm.  
Tier Level: 3 District #/or State: Nebraska  
EPS Rating: 13 Election: N/A  
ADR Rating: 46 Complainant: RAD Referral

**Summary of Referral:** RAD determined that Respondents failed to disclose additional financial activity on its 2003 Year End Report, totaling \$51,900.79. Specifically, Respondents' 2003 Year End Report filed on Jan. 28, 2004, disclosed \$10,039.35 in disbursements for Federal Share of Allocated Federal/Non-Federal Activity, \$25,789.73 for Non-Federal Share of Allocated Federal/Non-Federal Activity and \$70,272.57 for Other Disbursements.

On May 18, 2004, Respondents filed an amended 2003 Year End Report, which disclosed \$10,818.74 in disbursements for Federal Share of Allocated Federal/Non-Federal Activity, \$27,819.44 for Non-Federal Share of Allocated Federal/Non-Federal Activity, and \$120,313.73 for Other Disbursements.

On October 8, 2004, a Request for Additional Information (RFAI) requested clarification regarding the total additional disbursements totaling \$51,900.79 that had not been disclosed on the Committee's original 2003 Year End Report. (The Committee's original 2003 Year End Report filed on January 28, 2004 disclosed \$68,757.76 for Other Federal Operating Expenditures. The Committee's subsequent 2003 Amended Year End Report filed on May 18, 2004 disclosed \$67,799.29 for Other Federal Operating Expenditures. The difference, \$958.47, consequently reduced the previously reported overall total increase from \$52,858.92 to \$51,900.79)

**Respondents' Reply:** Respondents' reply to the RFAI advised that several disbursements were not properly recorded on their reporting system software causing the activity to be inadvertently omitted from the original 2003 Mid-Year and Year End reports. The errors were reportedly discovered later and both reports were amended with all activity incorporated in the filed reports. .

**Alleged Violations.** 2 U.S.C. §§ 434(b)(4)(A) and (H)(v) and 11 C.F.R. §§104.3(b)(1)(ix)(A) and (B) and 104.17(b)(3)(i)

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**Analysis:** The issues in this case relate to Respondents' failure to report additional total disbursements amounting to \$51,900.45 on the Committee's 2003 Year End report. Committees are obliged to report all disbursements including, inter alia, itemized and unitemized disbursements along with the amounts allocated to Federal and Non-Federal activity. This is the second referral from RAD in less than three months pertaining to Respondents. The previous referral, i.e., ADR 226/RR 04L-11, involved Respondents failure to report additional disbursements on their 2003 Mid Year report. The same systemic problems identified in the subject case were also identified in the earlier matter. Respondents in the earlier matter reported that the problems were caused by staff and a contractor who was inattentive to the needs and requirements of the Committee. Respondents reported that the staff has been replaced, the contract with the aforementioned contractor terminated and new officers have taken over the operations of the Committee. The changes instituted by the Committee's new officers and staff is not yet reflected in the current referral.

**Issues:**

- Reporting of disbursements 2 U.S.C. §§ 434(b)(4)(A) and (H)(v) and 11 C.F.R. §§ 104 3(b)(1)(ix)(A) and (B)
- Reporting allocable expenses 11 C.F.R. § 104.17(b)(3)(i)

**Related FEC Experience/Guidance:** RAD's analysis of Respondents' responsibility to report disbursements is explicit, as is the guidance provided in the Commission's publications for authorized committees, which has been reiterated in numerous MUR and ADR settlements.

**Potential Terms of Settlement:** Seeing that the subject case raises identical issues addressed in the earlier matter (ADR 226), the terms of settlement will build on the former agreement and aim to strengthen the Committee's internal reporting procedures.

**Recommendation: Assign to ADR**

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## ADR Office (ADRO) Case Selection Criteria for Assigning Cases to ADR Processes

In order for cases to be considered by the ADR Office, respondents will need to first indicate their desire to submit their case to ADR. Cases reviewed by the Office will be evaluated according to the following factors, which will identify cases that are considered appropriate for ADR and prioritize them for processing

RR 052-04/ADR 254  
MUR#

	No/False	Yes/True
1. Some remedial action has been taken by Respondent to correct violation (score: 0 or 5) • Respondent conveys desire to comply with law and accept responsibility for actions	(0)	5
2. Respondent is inexperienced (score: 0 or 5) • Respondent lacks knowledge in campaign finance matters	(0)	5
3. Amount of money at issue is limited (Below 10,000 (5), up to 50,000 (3), above 50,000 (1)) • Amount of money at issue is amenable to alternative resolution	5	3 (1)
4. Case involves a single, identified issue (score: 0 or 5) • Preference will be given to single as a opposed multi-issue case	(0)	5
5. Genuine <i>sua sponte</i> submission (score: 0 or 5) • Case submission is complete and lacks any gaps or discrepancies	0	(5)
6. "Accepted" allegation of FECA violation (score: 0 or 5) • Respondent admits or does not contest that a violation has occurred	0	(5)
7. Respondent has already "paid" for the same conduct at issue in complaint (score: 0 or 5) • Respondent has been assessed criminal or civil penalties for the conduct in question	(0)	5
8. Principal respondents have already filed complete and forthcoming response (score: 0 or 5) • Respondent has filed complete and forthcoming response to complaint	0	(5)
9. Violation appears not to have altered election outcome (score: 0 or 5) • Activity not conducted at critical time or significant in terms of overall campaign	0	(5)
10. Material facts are reasonably clearly known and identified (score 0 or 5) • Case lacks need for extensive fact-finding	0	(5)
11. Feasibility of reaching a voluntary resolution (score: 0 or 15) • Respondent's affirmative reply to letter conveys interest in voluntary resolution of case	(0)	15
12. Appropriate number of respondents (score: 0 or 5) • Appropriate number of respondents identified in case file	0	(5)
13. Commission interest in case (score: 0 or 10) • Commissioners have indicated interest in case (10) otherwise score "0"	(0)	10
14. Timely case (score 0 to 10) • Case is current, i.e. within 2 years of event (10) or beyond 2 years (0)	0	(10)
15. Worthy ADR action (score: 0 to 10) • EPS rating above 20 (10), between 19 and 0 (5) and below (score 0)	0	(5) 10

Maximum point total: 100.

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