



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SECRET
SECRET

2005 JUL 11 P 4: 54

July 11, 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *APS for JAP*
Staff Director

FROM: Allan D. Silberman *[Signature]*
Director, ADR Office

SUBJECT: **ADR 267** – Jene Witte
Recommendation to Close the File

SENSITIVE

On June 10, 2005, the ADR Office (ADRO) received from OGC/CELA a complaint, MUR 5558, to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 267**, 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 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 this matter will not be returned to OGC for further action.

Summary: Complainant, David C. Rhine, contends that the Respondent, Jene Witte, sent out a mass mailing supporting the candidacy of Senator John Kerry without including the required disclaimer notice. Complainant further contends that the mailing, which he speculates exceeded a thousand dollars in costs, represented an undisclosed campaign contribution. The letter in question, which included a mail-in voter registration form, encouraged recipients to register and to vote for Kerry. Respondent acknowledged sending out the referenced letters urging recipients to register and vote for John Kerry. Respondent asserts that she sent out five letters to women in Washington state, adding that she was part of a group of seven, including herself, who together sent out approximately 60 letters urging recipients to register and vote for Kerry. All letters were reportedly sent at the senders' expense.

Attached for the Commission's review is the ADR Case Analysis Report on **ADR 267** along with copies of the EPS Rating and ADR Rating Sheets.

Recommendations:

1. Dismiss ADR 267/MUR 5558 and close the file as to Respondent Jene Witte.
2. Send the appropriate letters.

25190261786

ADR CASE ANALYSIS REPORT

ADR Case: 267

Respondent: Jene Witte

MUR: 5558

Respondent's Rep: Jene Witte

Date Case Opened: 10-8-04

Committee Type: N/A

Date Forwarded to ADRO: 6-10-05

Committee Name: N/A

Date Reviewed by ADRO: 6-28-05

District #/or State: N/A

Tier Level: 2

Election – Won or Lost: N/A

EPS Rating: 30

Election Cycle: 2004

ADR Rating: 60

Complainant: David C. Rhine

Summary of Complaint: Complainant contends that the Respondent sent out a mass mailing supporting the candidacy of Senator John Kerry without including the required disclaimer notice. Complainant further contends that the mailing, which he suggests exceeded a thousand dollars in costs, represented an undisclosed campaign contribution. The letter in question, which included a mail-in voter registration form, encouraged recipients to the register to vote and to vote for Kerry.

Respondent's Reply: Respondent acknowledged sending out the referenced letters urging recipients to register and vote for John Kerry. Respondent asserts that she sent out five letters to women in Washington state, adding that she was part of a group of seven, including herself, who sent out in total approximately 60 letters urging recipients to register and vote for Kerry. All letters were reportedly sent at the senders' expense.

Analysis: The regulations require disclaimers notices on public communications, which includes among others, communications by means of any broadcast, newspaper, magazine or mass mailing. 11 C.F.R. § 110.11(a). Mass mailings are defined as a mailing by the United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any thirty-day period. 11 C.F.R. § 100.26. Respondent asserts that no more than 60 letters similar to those sent by her to the Complaint were posted to unregistered voters and that she was responsible for no more than five. Given the lack of evidence of a mass mailing as speculated by the Complainant, the recommendation is that this matter be dismissed.

Issue:

- Disclaimer notices, 2 U.S.C. § 441d and 11 C.F.R. § 110.11(a)

Recommendation:

1. Dismiss ADR 267/MUR 5558, close the file as it pertains to Respondent Jene Witte
2. Send the appropriate letter.

25190261787

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.

MUR # 5558/ADR 267

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

Maximum point total: 100.

60

Rating Approved Case

[Close](#)

Team 9 Multiple Statute of Limitation Dates Yes

[Printer Friendly Version](#)

Rating Summary	EPS History	EPS Audit Info
-----------------------	--------------------	-----------------------

Rating Factors:	40
Countervailing Factors:	-10
Total:	30
Additional Considerations for Tier 1 & 2 Cases:	0
Total Score:	30
Tier:	2
Score Date:	05/31/2005
Most Recent Score:	

Case Data	Committees	Initial Considerations	Rating Factors	Countervailing Factors
Additional Considerations for Tier 1 and 2 Cases				

Case Type:	MUR	Status:	Closed
Case Number:	5558	Budget Category:	External Enforcement
Case Name:	JENE WITTE	Statute of Limitations Date:	09/28/2009
Number of Active Respondents:	1	Multiple Statute of Limitations Date:	No
Case Opened Date:	10/08/2004	Name of Complainant:	Rhine, David C.
Most Recent Activation Date:		Staff Person:	Jordan, Jeff

Violation: TITLE 2 [M-Z]-REPORTING
TITLE 2 [A-L]-ELECTIONEERING

Number of Respondents: 1

Summary: The Complainant alleges that Respondent sent out a mailing, urging recipients to "vote for John Kerry," which violated the Act because it did not contain a required disclaimer. Although the Complainant is aware of only the one letter he received, he believes that this may have been part of a mass mailing because a "professional folding machine" prepared the material. Further, he asserts that the letter's author, apparently an active

25190261789

partisan, should have been aware of the legal requirements for such a mailing, and may have intentionally included spelling and grammatical errors in the text of the letter to convey that it was a "note from the heart." The letter also contained attachments with voter registration information. Hot or Noteworthy Issues - Disclaimer violations. Written by: P. Blumberg

Players:

FEC Paralegal	DEJARNETT-MILLER, ALVA E.	10/14/2004
CED Leader	Jordan, Jeff	10/14/2004
Primary Respondent	Witte, Jene	10/14/2004
Complainant	Rhine, David C.	10/14/2004

History:

25190261790