



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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July 18, 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

SUBJECT: ADR 274 – Law Offices of James Sokolove
Recommendation to Assign Case

SENSITIVE

On June 30, 2005, the ADR Office received from MUR 5599 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 274**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

Summary: The complaint was filed by the Complainant, Timothy O'Brien, Executive Director of the MA Republican Party, on behalf of Ms. Olga McKinney who received a letter from James Sokolove, the Respondent, recommending that she vote for John Kerry for President. The complaint alleges that Respondent Sokolove made a corporate contribution and an illegal independent expenditure when he urged McKinney to vote for John Kerry for President. The complaint also asserts that Respondent Kerry may have accepted a prohibited corporate contribution from Respondent Sokolove. Respondent Sokolove, a sole proprietorship, acknowledged sending approximately 17,000 letters to clients and other individuals urging that they vote for John Kerry. Respondent Sokolove advised that he paid all the costs related to the subject letters, took sole responsibility for the content of the letters and neither received nor sought assistance from any candidate or campaign committee. Belatedly, Respondent Sokolove acknowledged that he should have filed FEC Form 5 with the Commission, which was submitted ten days after he received the complaint. Counsel for Respondent Sokolove asserted that there was no coordination or cooperation at any level with any committee associated with the Kerry campaign. Respondent Kerry asserted they had no involvement with the subject letter and urges that the matter, as it pertains to Respondent John Kerry for President, Inc., be dismissed.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 274** 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.

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Recommendation:

1. Assign ADR 274/MUR 5599 to the ADR Office.

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ADR CASE ANALYSIS REPORT

ADR Case: 274

Respondents: 1) Law Offices - James Sokolove
2) John Kerry for President, Inc.
2) Robert Farmer, Treasurer

MUR: 5599

Respondents' Rep.: 1) James M. Tierney, Esq.
2) Marc Elias, Esq.

OGC Case Opened: 11-1-04

Committee Type: 2) Authorized

Date Forwarded to ADRO: 6-30-05

Committee Name: 2) John Kerry for President

Date Reviewed by ADRO: 7-11-05

Election Cycle: 2004

District #/or State: N/A

Election: N/A

Complainant: Timothy O'Brien, Ex. Dir.
MA Republican Party

Summary of Complaint: The complaint was filed by the Complainant on behalf of Ms. Olga McKinney who received a letter from Respondent Sokolove recommending that she vote for John Kerry for President. The complaint alleges that Respondent Sokolove made a corporate contribution and an illegal independent expenditure when he urged McKinney to vote for John Kerry for President. The complaint also asserts that Respondent Kerry may have accepted a prohibited corporate contribution from Respondent Sokolove.

Respondents' Reply: Respondent Sokolove asserted that he is a sole proprietorship rather than a corporation. Respondent Sokolove acknowledged sending, prior to the November 2004 election, approximately 17,000 letters to clients and other individuals presenting his opinion about the upcoming presidential election and urging the recipient to vote for John Kerry. Respondent Sokolove advised that he paid all the costs, including printing and mailing, related to the subject letters, took sole responsibility for the content of the letters and neither received nor sought assistance from any candidate or campaign committee. Belatedly, Respondent Sokolove acknowledged that he should have filed FEC Form 5 with the Commission, which was subsequently filed within ten days after he responded to the complaint. Counsel for Respondent Sokolove asserted that there was no coordination or cooperation at any level with any committee associated with the Kerry campaign. Respondent Kerry asserted they had no involvement with the subject letter or with any other correspondence from Respondent Sokolove and urged that the matter as it pertains to Respondent John Kerry for President, Inc. be dismissed.

Analysis: An affidavit from Respondent Sokolove advises that his firm was established as a sole proprietorship not a corporation. Sole proprietorships are excluded from the prohibition governing

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corporate contributions to Federal election campaigns. Given the absence of evidence of coordination, consultation or concert with or suggestion from the Kerry campaign committee, party or agent, Respondent Sokolove's letter must be seen as a legitimate independent expenditure expressly advocating the election of an identified candidate. 2 U.S.C. § 431(17) and 11 C.F.R. § 100.16. In addition, given the apparent lack of corporate status on the part of Respondent Sokolove, there is no basis for the allegation that Respondent Kerry accepted a prohibited corporate contribution from Respondent Sokolove. However, although not a matter listed in the complaint, it is noted that disclaimer notices were missing from the subject letters. The statute and regulations require that disclaimer notices be included on communications that expressly advocate the election or defeat of a clearly identified candidate. 2 U.S.C. 441(d) and 11 C.F.R. §110.11(a)(2). In addition, Respondent Sokolove, having reported belatedly on filed Form 5 an expenditure of \$5,907.00 for preparation and distribution of the subject mailing, was required submit a 24-hour Pre-Election Report. As a result, the recommendation is that Respondent Sokolove be pursued relative to both the omission of disclaimer notices on the subject letters and failure to file the 24-hour notice. The recommendation also calls for dismissal, at the appropriate time, of the matter pertaining to John Kerry for President, Inc.

Issue:

- Disclaimer Notices, 2 U.S.C. § 441(d) and 11 C.F.R. § 110.11(a)
- Independent Expenditures, 2 U.S.C. § 434 and 11 C.F.R. §§ 104.4(e)(1), and 109.10(b)
- 24 Hour Notices, 2 U.S.C. § 434(g) and § 104.5(g)(2)

Related FEC Experience/Guidance: The Commission's guidance regarding disclaimer notices, independent expenditures and 24 hour notices are explicit and clearly set forth in statute, Commission regulations and the Campaign Guides. Numerous prior OGC and ADR settlements have addressed these matters and provide guidance in resolving this case.

Recommendation: Assign to ADR

Affidavit of James G. Sokolove

I, James G. Sokolove, upon my oath do state as follows:

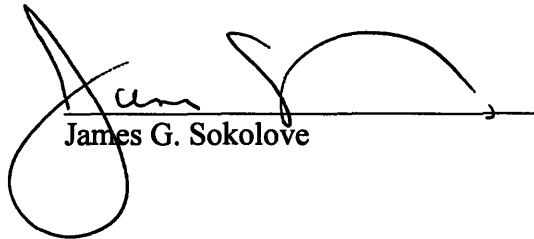
1. I received correspondence from the Federal Election Commission regarding MUR 5599 on November 15, 2004.
2. At all times relevant to this matter, the Law Offices of James Sokolove was a sole proprietorship. I have full control of the Law Offices of James Sokolove. The main office of the Law Offices of James Sokolove is in Newton Center, Massachusetts.
3. I am an attorney and I concentrate my practice on plaintiff's claims based on personal injuries, dangerous drugs, workplace and environmental hazards, products liability, and medical malpractice among other bases.
4. The Law Offices of James Sokolove advertises in various markets across the nation. The Law Offices of James Sokolove has over 70 affiliate law firms in several states that handle many of the claims identified through my advertising and other referrals.
5. Prior to the November, 2004 election, I sent correspondence to approximately 17,000 clients and other individuals who had contacted The Law Offices Of James Sokolove seeking legal assistance (hereinafter, the "Letter"). My Letter presented my thoughts and opinions about the upcoming presidential election.
6. I paid all the costs related to this Letter, including all expenses related to printing and postage.
7. The Letter was printed on special stationery, not the stationery used by The Law Offices of James Sokolove. I arranged for distribution of the Letter to be managed by a mailing house, Fidelity Communications of Everett, Massachusetts. Fidelity Communications has no input whatsoever in creating the content of the Letter. I am not aware of Fidelity Communications or any of its employees doing any work for the John Kerry for President Campaign. Fidelity Communications is the mailing house I customarily use for mailings I send in connection with my law practice.
8. When I composed the Letter, I did not republish, disseminate or distribute campaign materials prepared by the John Kerry for President campaign or otherwise incorporate any campaign materials from the John Kerry for President campaign into my Letter.
9. In preparing the Letter, I did not seek the involvement or assistance of any candidate or candidate's committee or party committee, nor did any candidate or candidate's committee or party committee assist or have any involvement in the creation of the content of the Letter, the identification of the recipients of the Letter, or the timing of the distribution of the Letter.
10. In connection with the Letter's creation and distribution, I did not seek, nor did I obtain any information about the John Kerry for President campaign's plans, projects, activities

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or needs from the John Kerry for President campaign or from any other political committee or party committee.

11. I have had no substantial discussions with any candidate or candidate's campaign or party committee about the Letter.
12. I did not create or distribute the Letter as the result of any request, instruction, guidance or suggestion of the John Kerry for President campaign or any other entity.
13. I did not seek or employ the assistance of any employee or independent contractor of a candidate's committee or party committee in the creation or distribution of the Letter.
14. After receiving the correspondence dated November 8, 2004 from the FEC bringing MUR 5599 to my attention, I have learned that FEC Form 5 should have been filed following the expenditures I made in connection with the Letter.

Signed under the penalties of perjury this 24 day of November, 2004.


James G. Sokolove

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