



FEDERAL ELECTION COMMISSION
Washington, DC 20463

COMMISSION
SECRETARIAT

2006 MAR -1 P 12: 59
March 1, 2006

MEMORANDUM

TO: The Commission

THROUGH: Robert J. Costa
Acting Staff Director

FROM: Allan D. Silberman
Director ADR Office

SENSITIVE

SUBJECT: **ADR 309** – Committee to Elect Patsy Kever and Francis Ellis, Treasurer,
Recommendation to Assign Case

On February 7, 2006, the ADR Office received from Audit AD 05-01 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 309**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

Summary: Audit determined that the Committee to Elect Patsy Kever and Francis Ellis, Treasurer, (the "Respondents" or the "Committee") received, prior to the 2004 primary election, excessive contributions from twelve individuals in the amount of \$18,890. Copies of contributors' checks located by the Audit staff carried no election designation. No other supporting documentation regarding the subject contributions was made available. Respondents presumptively redesignated the excessive portions of the subject contributions, but failed to notify contributors of their actions or offer a refund. In response to Audit's findings, Respondents argued that the subject donations were accurately reported and refunds appeared unnecessary. Respondents contend that the Committee was unaware of its potential liability until after the primary election, by which time the Candidate had donated much of her excess campaign funds. The Candidate argued that had she known about the need to make refunds, she would have held back sufficient funds to make the subject payments. In order to comply with Audit's recommendations, the Committee enclosed copies of checks written to contributors totaling \$14,140 that would be sent to the contributors and, in addition, agreed to issue the remaining refunds, from the Candidates personal account, once the recommendation is final.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 309** and ADR Rating Sheet. 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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ADR CASE ANALYSIS REPORT

ADR Case: # 309

Respondents: Comm. to Elect Patsy Keever
Francis Ellis, Treasurer

AD: 05-01

Case Open Date: 1-27-06

Respondent's Rep: Francis Ellis

Date Forwarded to ADRO: 2-7-06

Committee Type: Authorized

Date Reviewed by ADRO: 2-21-06
Keever

Committee Name: Comm. to Elect Patsy

Election Cycle: 2004

District #/or State: 11th C.D. -- NC

Election: Lost -- Primary

Complainant: Audit Referral

Summary of Referral: Audit determined that the Committee to Elect Patsy Keever and Francis Ellis, Treasurer, (the "Respondents") received, prior to the primary election of 2004, excessive contributions from twelve individuals in the amount of \$18,890. Copies of contributors' checks located by the Audit staff carried no election designation. In addition, no other supporting documentation regarding the aforementioned contributions was made available. Respondents presumptively redesignated the excessive portions of the subject contributions, but failed to notify contributors of their actions or offer a refund.

Respondents' Reply: In response to Audit's findings, Respondents argued that the subject donations were accurately reported to the Commission and refunds appeared unnecessary. Respondents contend that the Committee to Elect Patsy Keever ("the Committee") was unaware of its potential liability until after the primary election, by which time the Candidate had already donated much of her excess campaign funds. (Note: The Committee's 3rd Quarter Report disclosed donations totaling \$17,000 to the North Carolina Democratic Party, Emily's List, Friends of Nussbaum for Congress and the Canary Coalition.) The Candidate maintained that had she known about the need to make refunds, she would have held back sufficient funds to make the subject payments.

Respondents contend that they were unaware of the procedures for handling excessive contributions or of the Committee's responsibility to notify contributors to reattribute, redesignate or refund excessive contributions. The Candidate further explained that, by the time they were advised of Audit's review, it was too late to contact the contributors regarding disposition of the excessive funds. However, in order to comply with Audit's recommendations, the Committee enclosed copies of checks written to contributors -- though not cashed -- totaling \$14,140 that would be sent to the contributors and agreed to issue the remaining refunds, from the Candidates personal account, once the recommendation is final.

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Issues:

- Contribution Limits – 2 U.S.C. §§ 441a(a)(1)(A), 2(A) and (f) and 11 C.F.R. §§ 110.1(b) and 110.9
- Handling of Contributions That Appear Excessive -- 11 C.F.R. §§ 103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B)
- Redesignation of Excessive Contributions – 11 C.F.R. §§ 110.1(b)(5)(ii)(C) and (l)(4)(ii).

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Recommendation: Assign to ADR

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