



Republican
National
Committee

Thomas J. Joseflak
Counsel

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

SEP 24 3 45 PM '97

CONFIDENTIAL

September 24, 1997

Via Hand Delivery
Lawrence N. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4250

Dear Mr. Noble:

As you are aware from our meeting of September 22nd, the Justice Department is conducting an investigation into the same transactions that encompass the Federal Election Commission's ("Commission") investigation in the above-referenced matter under review. The Republican National Committee ("RNC") is fully cooperating with the Department of Justice in its investigation.

Concurrent with its reason to believe finding of July 28, 1997, the Commission issued a subpoena to the RNC to produce documents and submit written answers. On August 22, 1997, the RNC requested an extension of time to respond to the Commission's subpoena and to the accompanying legal and factual analysis. An extension was granted until September 22, 1997.

Since that time, however, the Justice Department initiated its parallel investigation of the transactions and issues included in MUR 4250. Because the Justice Department is investigating the same issues as are in the matter under review, the RNC respectfully requests that the Commission stay its proceedings in MUR 4250 until the criminal process is completed. Alternatively, the Commission should stay administrative proceedings until the Department of Justice determines the direction of the criminal inquiry.



Federal courts have broad discretion to stay administrative and civil matters pending the outcome of parallel criminal proceedings “when the interests of justice seem[] to require such action . . .” United States v. Kordel, 397 U.S. 1, 12 n.27 (1970). Courts must decide whether to enter a stay “in light of the particular circumstances of the case.” SEC v. Dresser Indus., 628 F.2d 1368, 1375 (D.C. Cir. 1980). In deciding to grant stays, courts have relied upon a number of separate grounds, including concerns that

[the] noncriminal proceeding, if not deferred, might undermine the [defendant’s] Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of the Federal Rule of Criminal Procedure 16(b), expose the basis of the defense of prosecution in advance of criminal trial, or otherwise prejudice the case.

Id. at 1375-76.

Courts have also stayed civil proceedings on the ground that it is inappropriate to force a party to contend with a criminal and civil proceeding concerning the same transaction or occurrence at the same time. For example, in Texaco Inc. v. Borda, 383 F.2d 607 (5th Cir. 1967), the court of appeals upheld the district court’s decision to stay a civil antitrust action against a group of individuals and companies who were targets of an on-going criminal proceeding arising out of the same alleged conduct. In upholding a stay of the civil action until the criminal action was resolved, the appeals court concluded:

‘Upon a consideration of all factors involved in this case . . . a balancing of the equities, so to speak, in my opinion, justify a stay, at least until after a trial of the criminal action. The indicted defendants should not be unduly hampered, as I believe they would be if they had to fight on two fronts at the same time.’

Id. at 608-09 (quoting district court opinion below).

Courts are also much more likely to enter stays when there is no indication that a stay will prejudice the administrative or civil action. See, e.g., Borda, 383 F.2d at 609 (“It may well be that the trial of the criminal case will reduce the scope of discovery in the civil action. And perhaps it might also simplify the issues.”); Dresser, 628 F.2d at 1380 (declining to stay SEC administrative action pending a parallel criminal action because the SEC “must often act quickly, lest the false or incomplete statements of corporations mislead investors and infect markets. . . For the SEC to stay its hand might well defeat its purpose.”). See also id. at 1376 (administrative stays are appropriate when they “would not seriously injure the public interest”).

In light of the foregoing, the Commission should stay MUR 4250 until the Department of Justice completes its parallel criminal proceedings. At the very least, the Commission should stay administrative proceedings until the Justice Department determines the direction of the criminal action. Requiring the respondents to respond to

administrative subpoenas in MUR 4250 while they are the subjects of a parallel criminal investigation raises serious constitutional concerns. In addition, forcing the respondents to respond to criminal and administrative inquiries at the same time is highly burdensome and potentially prejudicial. Most importantly, there is no indication that staying MUR 4250 would adversely affect the Commission's investigation and ultimate disposition of this matter. In fact, staying MUR 4250 while the Department of Justice conducts its criminal investigation may actually enhance the Commission's investigation, and would allow the Commission to resolve this matter with the maximum possible information.

Enclosed please find the RNC's motion to stay the proceedings in MUR 4250. I request that your office present this motion to the Commission for its consideration.

If you have any questions regarding this matter, please contact me at (202) 863-8638.

Sincerely,

A handwritten signature in black ink, appearing to read "T. J. Joseph". The signature is fluid and cursive, written over the printed name.

Thomas J. Joseph

proceedings until the Department of Justice determines the direction of the criminal inquiry.

Factual Background

On July 28, 1997, the Commission notified the RNC that it had found reason to believe in MUR 4250 that the RNC and its treasurer, Alec Poitevint, had violated 2 U.S.C. § 441e. Concurrent with the reason to believe finding, the Commission issued a subpoena to the RNC to produce documents and submit written answers.

On August 22, 1997, the RNC requested an extension of time to respond to the subpoena and to the Commission's legal and factual analysis. On August 27, 1997, the Commission granted the RNC an extension of time until September 22, 1997, to respond.

Since the Commission found reason to believe in MUR 4250, the United States Department of Justice has started a parallel criminal investigation of issues which the Commission is examining in this matter. The RNC is fully cooperating with the Department of Justice in its criminal investigation and will continue to do so in the months ahead.

Argument

Because there is an on-going, parallel criminal investigation of issues that the Commission is reviewing in this matter, the Commission should stay MUR 4250.

Federal courts have broad discretion to stay administrative and civil matters pending the outcome of parallel criminal proceedings "when the interests of justice seem[] to require such action . . ." United States v. Kordel, 397 U.S. 1, 12 n.27 (1970).

0691" 553" 40" 00
00" 04" 395" 1690

Courts must decide whether to enter a stay “in light of the particular circumstances of the case.” SEC v. Dresser Indus., 628 F.2d 1368, 1375 (D.C. Cir. 1980). In deciding to grant stays, courts have relied upon a number of separate grounds, including concerns that

[the] noncriminal proceeding, if not deferred, might undermine the [defendant’s] Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of the Federal Rule of Criminal Procedure 16(b), expose the basis of the defense of prosecution in advance of criminal trial, or otherwise prejudice the case.

Id. at 1375-76.

Courts have also stayed civil proceedings on the ground that it is inappropriate to force a party to contend with a criminal and civil proceeding concerning the same transaction or occurrence at the same time. For example, in Texaco Inc. v. Borda, 383 F.2d 607 (5th Cir. 1967), the court of appeals upheld the district court’s decision to stay a civil antitrust action against a group of individuals and companies who were targets of an on-going criminal proceeding arising out of the same alleged conduct. In upholding a stay of the civil action until the criminal action was resolved, the appeals court concluded:

‘Upon a consideration of all factors involved in this case . . . a balancing of the equities, so to speak, in my opinion, justify a stay, at least until after a trial of the criminal action. The indicted defendants should not be unduly hampered, as I believe they would be if they had to fight on two fronts at the same time.’

Id. at 608-09 (quoting district court opinion below).

Courts are also much more likely to enter stays when there is no indication that a stay will prejudice the administrative or civil action. See, e.g., Borda, 383 F.2d at 609 (“It may well be that the trial of the criminal case will reduce the scope of discovery in the civil action. And perhaps it might also simplify the issues.”); Dresser, 628 F.2d at

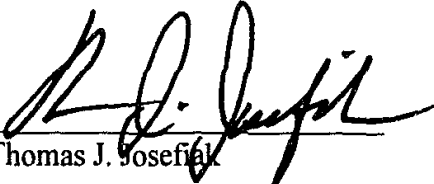
1380 (declining to stay SEC administrative action pending a parallel criminal action because the SEC “must often act quickly, lest the false or incomplete statements of corporations mislead investors and infect markets. . . For the SEC to stay its hand might well defeat its purpose.”). See also id. at 1376 (administrative stays are appropriate when they “would not seriously injure the public interest”).

In light of the foregoing, the Commission should stay MUR 4250 until the Department of Justice completes its parallel criminal proceedings. Requiring the respondents to respond to administrative subpoenas in MUR 4250 while they are the subjects of a parallel criminal investigation raises serious constitutional concerns. In addition, forcing the respondents to respond to criminal and administrative inquiries at the same time is highly burdensome and potentially prejudicial. Most importantly, there is no indication that staying MUR 4250 would adversely affect the Commission’s investigation and ultimate disposition of this matter. In fact, staying MUR 4250 while the Department of Justice conducts its criminal investigation may actually enhance the Commission’s investigation, and would allow the Commission to resolve this matter with the maximum possible information.

Conclusion

In light of the foregoing, the Commission should stay MUR 4250 until the Department of Justice completes its on-going, parallel criminal inquiry. At the very least, the Commission should stay administrative proceedings until the Department of Justice determines the direction of the criminal action.

Respectfully submitted,


Thomas J. Josefik

Counsel for the Republican National Committee
and Alec Poitevint, as Treasurer

September 24, 1997

00 "04" 395 "1693