

# Democratic National Committee

Steve Grossman, *National Chair* • Governor Roy Romer, *General Chair*

September 23, 1997

Via messenger:

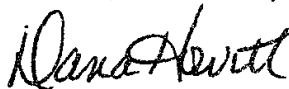
Joel Rossener, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington DC 20463

Re: MUR 4549

Dear Mr. Rossener:

Per request, enclosed is a copy of the DNC's Response to Complaint filed in MUR 4549.

Sincerely,



Dana Howitt  
Paralegal

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**BEFORE THE  
FEDERAL ELECTION COMMISSION**

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**In the matter of:**

**Democratic National Committee  
and  
R. Scott Pastrick, Treasurer**

**MUR 4549**

**RESPONSE TO COMPLAINT**

This memorandum constitutes the response of the DNC Services Corporation/Democratic National Committee ("DNC") and R. Scott Pastrick, as Treasurer, to the Federal Election Commission's ("the Commission") initiation of MUR 4549. The DNC hereby moves the Commission to dismiss this matter and close its file since the complaint on which this matter is based is legally unfounded.

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Commission by the Republican National Committee alleging that the DNC "knowingly and willfully refus[ed] to file a pre-general election report with the Commission, thus failing to use its best efforts to comply with the reporting requirements of FECA." RNC Complaint at 1. As demonstrated herein, and as the RNC well knows from past Commission precedent, the DNC was not legally required to file a pre-general election report.

**II. ARGUMENT**

The settled law on the pre-election reporting requirements of a national party committee is that pre-election reports are required only when that national party committee makes "contributions to or expenditures on behalf of any candidate in a federal election." 2 U.S.C. § 434 (a)(4)(A)(ii).

The RNC has offered absolutely no evidence that the DNC made contributions to candidates during the October 1-16 reporting period. Marshall Decl. ¶ 3 (included as Attachment A.) The RNC has asserted that "[t]he law is clear that if the DNC made any contributions or expenditures in connection with the 1996 general election campaigns of its Democratic federal candidates at any time, which it did, it would be required to file a pre-general election report." Settled and undisputable federal election law is directly to the contrary. Instead, FEC regulations specify what common sense mandates: "Pre-election reports . . . shall be filed by a political committee which makes contributions or expenditures in connection with any such election if such disbursements have not been previously reported." 11 C.F.R. § 104.5(c)(1)(C)(ii)(A). The DNC scrupulously has reported all contributions and expenditures made by it in this campaign, and in so doing has fully complied with both the spirit and the letter of FECA.

A transfer from a political committee to an affiliated committee is simply does not constitute the same legal circumstance as a "contribution to or expenditure on behalf of" a federal candidate, which triggers a pre-election reporting requirement. 2 U.S.C. § 434(a)(4)(A)(ii). Settled and undisputed federal election law is directly to the contrary. See General Counsel's Brief in MUR 2399 at 3 (included as Attachment B). The RNC's ineffectual attempt to distinguish this clearly applicable precedent raises a variety of superficial distinctions without finding a difference. As the Commission's General Counsel concluded in MUR 2399, a pre-election reporting requirement is only triggered when a committee (whether registered under one name or two) makes contributions or expenditures on behalf of federal candidates during the reporting period. The Commission's General Counsel found that the disbursements made by the committee in question in MUR 2399 were transfers to an affiliated committee, and that "[a]ccordingly,

respondents were not required to file a pre-election report by the express terms of 2 U.S.C. § 434(a)(4)(A)(ii). General Counsel's Brief in MUR 2399 at 3 (emphasis added). In that transfers to affiliated committees are not considered contributions or expenditures on behalf of a federal candidate, transfers do not trigger a pre-election reporting requirement. See also Reiff Decl. (included as Attachment C).

### **III. CONCLUSION**

For these reasons, the Commission should find no reason to believe the DNC violated 2 U.S.C. § 434(a)(4)(A)(ii) and close this matter with respect to the DNC.

Sincerely,



Joseph E. Sandler, General Counsel  
Joseph M. Birkenstock, Deputy General Counsel  
Democratic National Committee  
430 S. Capitol St., SE  
Washington, DC 20003  
(202) 863-7110

Attorneys for Respondents Democratic National Committee  
and R. Scott Pastrick, as Treasurer

Date: December 10, 1996

**BEFORE THE FEDERAL ELECTION COMMISSION**

**In re:**

**DEMOCRATIC NATIONAL  
COMMITTEE**

**MUR 4567**

**DECLARATION OF BRADLEY K. MARSHALL**

1. My name is Bradley K. Marshall. I currently serve as Chief Financial Officer of the Democratic National Committee, a national political party committee registered with the Federal Election Commission as DNC Services Corporation/Democratic National Committee ("DNC"). I have served in this position since approximately February 1, 1994.

2. As Chief Financial Officer, I am responsible for overseeing all of the DNC's disbursements, including responsibility for the review of all expenditure requests and check requisitions, and the review of all checks and wire transfers by which funds are drawn on the DNC's bank accounts.

3. During the period from and including October 1, 1996 through and including October 16, 1996, the DNC made no contributions to or expenditures on behalf of any candidate in a federal election.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 9, 1996.



**Bradley K. Marshall**

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
National Republican Congressional ) MUR 2399  
Committee Contributions and )  
Jack McDonald, as treasurer )

## GENERAL COUNSEL'S BRIEF

## I. STATEMENT OF THE CASE

On April 23, 1987, the Commission found reason to believe that the National Republican Congressional Committee Contributions ("the Committee") and Jack McDonald, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(iii). The factual basis for this finding was that the Committee had failed to file its 1986 Post-General Election Report, which had been due on December 4, 1986, until January 27, 1987, some 54 days late.

## II. ANALYSIS

Under the Federal Election Campaign Act ("the Act"), all political committees, other than authorized committees of a candidate, that elect to file quarterly (as opposed to monthly) reports, shall file

(iii) a post election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election ....

2 U.S.C. § 434(a)(4)(A). The Committee in this case is a registered political committee that files reports with the Commission on a quarterly basis. In 1986, the 30th day after the general election held on November 4th, was December 4, 1986. Accordingly, respondents were obliged to file their (1986) Post-

General Election Report by December 4, 1986, under the strictures set forth in the above cited statute. In fact, respondents failed to file said report until January 27, 1987, some 54 days late.

In their response to the notification that the Commission had found reason to believe that they violated 2 U.S.C. § 434(a)(4)(A)(iii), respondents stated by a letter dated May 21, 1987, that they

where [sic] under the belief that since they had been relieved of the requirement of filing a pre-election report due to the lack of pre-election activity, they were similarly relieved of the requirement of filing a post-election report.

However, when advised of the Commission's contrary view by the December 23, 1986 Non-Filer Notice, which was received by Respondents on January 5, 1987, Respondents undertook to comply expeditiously with the requirement. Once the need to file the post-electic report was confirmed with Commission staff, Respondents filed the required report.

The statement that respondents "had been relieved of the requirement of filing a pre-election report" refers to the provision in the Act that states that political committees that file on a quarterly basis must file a pre-election report "no later than the 12th day before ... any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election ...." 2 U.S.C. § 434(a)(4)(A)(ii).

In the period relevant to the filing of a pre-election report in 1986, specifically October 1, 1986 to October 15, 1986, respondents made itemized disbursements in the amount of \$2,330,000. All of these disbursements were made to the National Republican Congressional Committee - Expenditures, and thus consisted neither of contributions to or expenditures on behalf of any candidate in a federal election. Accordingly, respondents were not required to file a pre-election report by the express terms of 2 U.S.C. § 434(a)(4)(A)(ii).

In contrast, the statutory provision that respondents are alleged to have violated, 2 U.S.C. § 434(a)(4)(A)(iii), does not make the filing of a post-election report contingent upon the making of contributions to or expenditures on behalf of a federal candidate. Rather, as we have already noted, the statutory provision in question simply sets forth a requirement that the post-election report be filed by certain political committees, by a certain date, and that it be complete as of a certain date. Respondents' explanation for their failure to file the post-election report amounts to nothing more than an admission that they misconstrued the pertinent statutory provisions.

\*/ Respondents' belatedly filed post-election report, covering the period October 1, 1986 to November 24, 1986, disclosed receipts totalling \$5,041,426, and disbursements totalling \$6,589,000. The volume of activity along with the fact that the period covered by the report included the weeks immediately preceding and following a general election, makes respondents' failure to file the required report in a timely manner all the more serious, in the view of this Office.



As for the remainder of respondents' response, quoted above, it does appear from the records of the Commission's Reports Analysis Division ("RAD") that counsel for the Committee did respond by telephone on January 6, 1987, the day after respondents state that they received the Non-Filer Notice, dated December 23, 1986. There followed over the next several days a series of telephone conversations between counsel for the Committee and RAD, in which said counsel argued the position that the filing of a post-election report was not required by the Act. After four telephone conversations between RAD and persons representing respondents, between January 6, 1987 and January 12, 1987, respondents filed the 1986 Post-Election report on January 27, 1987. In their response, dated May 21, 1987, to the Commission's finding of reason to believe a violation occurred in the present matter, counsel for respondents stated: "Respondents will not contest the Commission's position regarding the post-election report applicability."

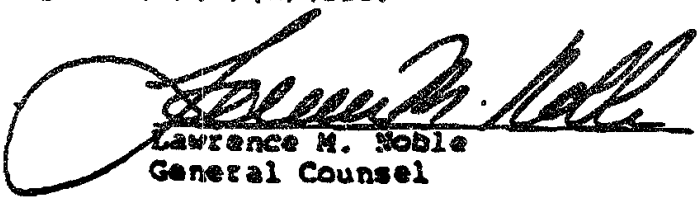
In conclusion, it is apparent that respondents were required to file their 1986 Post-General Election Report on December 4, 1986, but they failed to do so until January 27, 1987. Consequently, there is probable cause to believe respondents violated 2 U.S.C. § 434(a)(4)(A)(iii).

**III. GENERAL COUNSEL'S RECOMMENDATION**

Find probable cause to believe the National Republican Congressional Committee Contributions and Jack McDonald as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(iii).

Date

1/26/88

  
Lawrence M. Noble  
General Counsel

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In re:

**DEMOCRATIC NATIONAL  
COMMITTEE**

**MUR 4567**

**DECLARATION OF NEIL P. REIFF**

1. My name is Neil P. Reiff. I currently serve as Deputy General Counsel of the Democratic National Committee. I have served in this position since approximately July 1, 1993.
2. I have responsibility, among other things, for ascertaining the requirements for filing by the DNC of disclosure reports required to be filed under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431 et seq., and under the laws of the various states.
3. On October 2, 1996, I contacted, by telephone, Ms. Debbie Manzano, who is the Reports Analyst employed by the Federal Election Commission ("FEC") responsible for reviewing the reports filed with the FEC by the DNC.
4. In that telephone conversation, Ms. Manzano confirmed to me that the DNC would be required to file a pre-general election report with the FEC, reporting receipts and disbursements for the period from and including October 1, 1996 through and including October 16, 1996, only if the DNC made contributions to or expenditures on behalf of a specific candidate for federal office during such period; that if the DNC did not make contributions to or expenditures on behalf of a specific candidate during such period, the DNC would not be required to file a pre-general election report; and that transfers of funds by the DNC to affiliated party committees during such period would not cause the DNC to be required to file a pre-general election report.

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
December 9, 1996. .



A handwritten signature in dark ink, appearing to read 'Neil P. Reiff', is written over a horizontal line.

Neil P. Reiff