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April 16, 1999

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BY HAND DELIVERY

F. Andrew Turley, Esq.
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
999 E Street
Washington, D.C. 20463

Re: MUR 4865

Dear Mr. Turley:

We represent Ackerman McQueen, Inc. in connection with the above-captioned matter. This is a response to your letters dated March 30, 1999 and December 7, 1998 (the latter of which Ackerman McQueen received only recently). This response is submitted on behalf of both Ackerman McQueen and its subsidiary, The Mercury Group, Inc.

We have reviewed the materials submitted to your office by Mr. Weldon H. Clark, Jr. The only document that can be considered a complaint pursuant to 11 C.F.R. § 111.4(b) is Mr. Clark's October 13, 1998 affidavit. That affidavit states, correctly, that the National Rifle Association has been assisted in its public relations efforts by Ackerman McQueen (prior to December 1996) and The Mercury Group (since 1997). See Clark Aff. ¶¶ 2-3. Mr. Clark's affidavit goes on to recite a number of allegations and insinuations, which we believe to be baseless but to which we need not respond because they have nothing to do with the regulation of campaign finance and, therefore, are not within the jurisdiction of the Federal Election Commission to investigate. 2 U.S.C. § 437g.

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F. Andrew Turley, Esq.

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The *only* charge in Mr. Clark's affidavit involving Ackerman McQueen and/or The Mercury Group that even remotely relates to the federal election laws is the following:

Both the NRA and Arena PAC utilize many of the same vendors and the utilization of the same public relations firm creates a situation where illegal funds for an election campaign or candidate *can be* utilized through the use of Arena PAC. Also, the NRA, through its public relations firm, *could* willingly accept inflated invoices and thus, overpay vendors performing work for both Arena PAC and NRA with NRA funds. This then permits that vendor to perform services or incur expenses on behalf of Arena PAC which are actually being paid by NRA through overpayment of invoices.

Clark Aff. ¶ 6 (emphasis added).

Mr. Clark's complaint, by its terms, rests entirely on speculation on what "could" happen or "can be" done. Mr. Clark's conjecture does not meet the Commission's requirement that a complaint "contain a clear and concise recitation of the *facts* which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3) (emphasis added). The Commission should not initiate an investigation based on Mr. Clark's mere surmises that Ackerman McQueen, The Mercury Group, or anyone else *might* be engaged in unlawful activity.

To be sure, Mr. Clark avers that he has "been informed this very type of activity occurs with regularity." Clark Aff. ¶ 6. But this bald assertion does not satisfy the requirement that "[s]tatements which are not based on personal knowledge should be accompanied by an *identification of the source of information* which gives rise to the complainant's belief in the truth of such statements." 11 C.F.R. § 111.4(d)(2) (emphasis added). Mr. Clark's failure to identify the purported source of his otherwise unfounded allegations regarding supposed unlawful action by Ackerman McQueen and/or The Mercury Group is fatal to his complaint. The Commission is precluded by statute from undertaking an investigation based on information provided by an anonymous source. 2 U.S.C. § 437g(a)(1) ("The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission").

In short, Mr. Clark has failed to provide any facts or other information tending to establish that Ackerman McQueen and/or The Mercury Group violated any federal campaign finance law or regulation in any way. Moreover, Mr. Clark's entirely unsupported allegations, even taken at face value, do not establish such a violation. The Commission should, therefore, take no action on his complaint.

GIBSON, DUNN & CRUTCHER LLP

F. Andrew Turley, Esq.

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Please call me if you have any questions or we can be of any assistance to the Commission.

Very truly yours,

Mark A. Perry

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DALLAS COUNTY DEMOCRATIC PARTY
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