

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

SECRETARY
2011 MAR 29 A 10: 55

In the Matter of)
MUR 6354) DISMISSAL AND CASE
Banciella for US Congress and) CLOSURE UNDER THE
Ricardo A. Banciella, as treasurer) ENFORCEMENT PRIORITY SYSTEM
Rolando A. Banciella)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Act, and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6354 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6354.

In this matter, complainant Frank J. Pena alleges that congressional candidate Rolando Banciella and his campaign committee, Banciella for US Congress and Ricardo A. Banciella, in his official capacity as treasurer ("the Committee"), failed to file a 2010 July Quarterly Report, despite allegedly having expended in excess of \$5,000 in connection with Mr. Rolando

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1 Banciella's candidacy.¹ Specifically, Mr. Pena alleges that Mr. Rolando Banciella paid a
2 filing fee in of \$10,440 to the state of Florida and, in support, appends to his complaint a copy
3 of a Committee-issued check, which is dated April 27, 2010 and made out to the "[Florida]
4 Department of State" in the amount of \$10,440.00. The check's memo entry states "qualifying
5 fee." Presumably taking the position that the filing fee rendered Rolando Banciella a
6 candidate pursuant to 2 U.S.C. § 431(2), the complainant concludes by stating that he is
7 "formally filing a complaint against Rolando Banciella for not filing a campaign finance
8 report."²

9 In response, candidate Banciella, apparently responding on behalf of himself and his
10 committee, asserts that he had never intended to violate the law and that after he had become
11 aware that his filing fee to the State of Florida may have triggered reporting requirements, he
12 contacted the Commission through the Reports Analysis Division ("RAD") to explain that he
13 had neither "received nor spent anything near \$5,000." Mr. Banciella states that the RAD
14 analyst told him that, under the circumstances described, the Committee should be filing
15 financial disclosure reports.

16 It appears that Mr. Banciella and his Committee, respectively, timely filed their
17 Statements of Candidacy and Statements of Organization. Both the candidate and the
18 Committee filed their Statements on May 4, 2010, or seven days after paying the Florida State
19 filing fee. As such, the candidate appears to have been in compliance with 2 U.S.C. § 432(e),
20 which requires that Statements of Candidacy be filed within 15 days of attaining candidate

¹ Mr. Pena's complaint alludes to communications that he allegedly had with Commission staff prior to the filing of his complaint which concerned the filing requirements applicable to candidate committees' financial disclosure reports. We have been unable to determine whom Mr. Pena may have contacted and what the substance of the communications may have been.

² In a subsequent email to the Commission, Mr. Pena essentially reiterated his allegations that the Banciella campaign was reportedly engaged in actively campaigning and fundraising, but had nonetheless failed to file financial disclosure reports.

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1 status, and 2 U.S.C. § 433(a), which requires that Statements of Organization be filed no more
2 than ten days subsequently. However, the Committee's 2010 July Quarterly, which should
3 have been filed thereafter, on July 15, 2010, was not filed until September 17, 2010.

4 Mr. Banciella's response indicates that he was unaware that filing fees are considered
5 to be "in connection with an election" and, therefore, count toward triggering the "candidacy"
6 threshold and the concomitant requirements to file disclosure reports. After being apprised of
7 his obligation to file disclosure reports, Mr. Banciella submitted his 2010 July Quarterly
8 Report.

9 According to the 2010 July Quarterly Report, it appears that the Banciella campaign
10 was almost entirely funded by loans from the candidate. Specifically, after subtracting the
11 total disbursements of \$10,742.16 (Detailed Summary Page, Line 22), which presumably
12 include the candidate's \$10,440 filing fee, from total receipts of \$11,019.82 (Line 20), the
13 Committee's cash on hand is only \$277.66 (Line 27).

14 Thus, it appears that except for the initial state filing fee, the Committee's
15 disbursements were limited to \$302.16.³ We note that the Committee has not filed a disclosure
16 report since its 2010 July Quarterly Report.

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18 Therefore, in
19 light of the low dollar amount associated with the Committee's activities, no further action
20 appears to be warranted. Accordingly, under EPS, the Office of General Counsel has scored
21 MUR 6354 as a low-rated matter and therefore, in furtherance of the Commission's priorities
22 as discussed above, the Office of General Counsel believes the Commission should exercise its

³ The Committee lists on its 2010 July Quarterly Report \$10,742.16 in total disbursements, but only \$285 in itemized disbursements for printing costs.

prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, due to the Committee's continued failure to file disclosure reports, this Office recommends that the Commission remind Banciella for U.S Congress and Ricardo A. Banciella, in his official capacity as treasurer, pursuant to 2 U.S.C. §§ 434(a)(1) and (2) concerning the timely filing of financial disclosure reports.

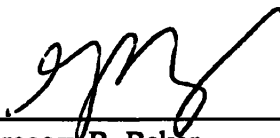
RECOMMENDATIONS

The Office of General Counsel recommends that the Commission dismiss MUR 6354, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind Banciella for U.S Congress and Ricardo A. Banciella, in his official capacity as treasurer, pursuant to 2 U.S.C. §§ 434(a)(1) and (2) concerning the timely filing of financial disclosure reports.

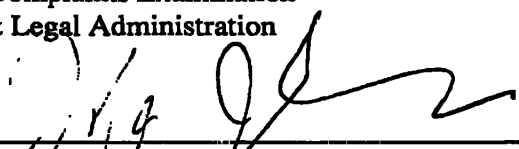
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