

2012 JUN 26 PH 1: 34

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 6525

Friends of Christine O'Donnell 08 and
Matthew J. Moran, as treasurer

CELA
DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both 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 complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 6525 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6525.

In the Complaint, Jonathon Moseley alleges that he is owed \$5,058.55 by the principal campaign committee of Christine O'Donnell, Friends of Christine O'Donnell 08

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1 and Matthew J. Moran, in his official capacity as treasurer ("O'Donnell 08" or
2 "Committee").² Compl. ¶¶ 1, 7. According to Moseley, the amount owed includes
3 \$1,802.55 for unreimbursed expenses allegedly incurred during O'Donnell's 2008 primary
4 election campaign, and \$3,256 for work he performed during the campaign. *Id.* at ¶ 7.
5 Moseley contends that the Committee is attempting to convert the alleged unpaid debt into
6 an excessive, involuntary campaign contribution. *Id.* at ¶ 1.

7 As support for this allegation, Moseley submitted an invoice dated June 2, 2008, and
8 addressed to "Christine O'Donnell" at "518 North Lincoln Street, Herndon, Virginia
9 20171." Compl., Ex. D. The first line of the invoice lists a figure of \$6,518.52 for what
10 Moseley describes as "total expenses reported on detail [sic] spreadsheet" (Ex. E), which
11 purportedly describes his campaign-related expenses through May 2008. The invoice
12 shows three payments totaling \$4,700 by the Committee to Moseley, along with a "subtotal
13 of Expenses unpaid from March Report" of approximately \$1,800. The invoice also lists
14 the three charges, \$1,480, \$1,480, and \$296, for "income lost from leaving job in LA."
15 These items total \$3,256, which, when added to the \$1,802.55 debt claimed by
16

² During the relevant time period, Ms. O'Donnell had two campaign committees: Friends of Christine O'Donnell (Identification Number C00427377), which was in existence from August 8, 2006 through August 27, 2008, when it terminated, and Friends of Christine O'Donnell 08 ("O'Donnell 08") (Identification Number C00449595), which was formed on April 28, 2008, and is still in operation. Although both committees were in existence during much of Ms. O'Donnell's 2008 primary election campaign, and the respondents in this matter identified themselves as "Friends of Christine O'Donnell," it appears that the complainant's allegations relate to O'Donnell 08, as it is the committee that filed most of the reports related to the expenses at issue.

1 Moseley, amounts to \$5,058.55, the figure set forth in paragraph 7 of the Complaint.³

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3 Moseley also includes what appears to be a letter from the Committee, dated
4 June 29, 2010, offering to settle the dispute. Compl., Ex. A. The Committee's letter
5 acknowledges that it owes Moseley \$1,300, but rather than paying him small installments
6 over a long period of time, it offers to pay him \$700 immediately, with a check for that
7 amount enclosed. *Id.* The letter further states that, by cashing the check, Moseley would be
8 agreeing that the balance owed to him by the Committee was paid in full, thereby, asking
9 him to forgive the remaining \$600. *Id.* Moseley asserts, however, that the check was
10 mailed to his aunt, who cashed it without reading the accompanying letter or consulting
11 him. Compl. ¶ 13.

12 Moseley maintains that by not paying his total claim of \$5,058.55, the Committee
13 has effectively converted the sum in dispute into an involuntary contribution to the
14 Committee. Compl. ¶ 1. Pointing out that the legal limit on contributions during 2007-
15 2008 was \$2,300 per election cycle, *see* 2 U.S.C. § 441a(a)(1),⁴ he concludes that the
16 Committee would thereby have accepted an excessive, unlawful contribution. *See* 2 U.S.C.
17 § 441a(1)(A), 441a(f).

³ We note that there appear to be some discrepancies between the figures listed in the Complaint, invoice, and spreadsheet. Specifically, the invoice includes approximately \$684 for expenses that do not appear to be included in the \$5,058.55 figure claimed in the Complaint and the invoice states that \$1,818.52 remained unpaid after May 2008, following the Committee's payment of \$4,700; whereas the Complaint alleges that Moseley is owed a slightly different amount — \$1,802.55 — for "unreimbursed expenses." Further, the "grand total" amount of expenses listed on the spreadsheet for May 2008 (at Ex. E) is \$6,772.52, which is higher than the \$6,518.52 figure for unpaid expenses set forth on the first line of the invoice. None of these discrepancies are material to our recommendations.

⁴ The February 2007 *Record*, a Commission publication, lists inflation-adjusted contribution limits for 2007-2008, available at <http://www.fec.gov/pdf/record/2007/feb07.pdf>.

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1 In the Committee's Response, it characterizes Moseley's claims as "frivolous,
2 without merit, and false." Resp. at 3. The Committee argues that, in 2010, it properly
3 settled all debts with Moseley. Referring to the Committee's June 29, 2010 letter to
4 Moseley, the Committee asserts that it tendered the \$700 check to Moseley, on the
5 condition that cashing the check evidenced his acceptance of full and complete payment for
6 "any amount claimed to be owed by Respondent to Moseley." *Id.* at 4. The Committee
7 states that Moseley cashed the check at some point on or after June 29, 2010. *Id.*

8 The Committee further contends that, after Moseley cashed the check, on September
9 3, 2010, he issued a public statement claiming that the Committee's debt had been resolved
10 in full. *Id.* at 3. The Response includes what appears to be a press release in which
11 Moseley is quoted as acknowledging that "[a]ll expenses I submitted have now been
12 completely retired. The campaign no longer owes anything on those expenses." Resp.,
13 Attach. 1. The release lists Moseley as the "contact" and also states that he issued the
14 release at his own expense and without coordination with the O'Donnell campaign. *Id.*

15 Regarding the invoice that Moseley claims to have sent to "Christine O'Donnell" at
16 "518 North Lincoln Street, Herndon, Virginia 20171," the Committee responds that the
17 invoice was apparently sent to the wrong address. Resp. at 4. O'Donnell, in an attached
18 affidavit, denied receiving the invoice prior to the filing of the Complaint. Resp., Aff. of
19 Christine O'Donnell ¶ 6. Further, the Committee states that neither O'Donnell nor her
20 Committee ever resided in Herndon, Virginia. Resp. at 4.

21 Finally, the Committee claims that it properly reported the expenses submitted by
22 Moseley even though it questioned the legitimacy of some of the charges. *Id.* The
23 Committee claims that it first reported owing a debt of \$4,000 to Moseley, with a memo

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1 entry to the effect that the amount was "Under Review," as noted in its 2008 Pre-Primary
2 Report, filed September 2, 2008. The Committee then paid him a total of \$2,700 in August
3 and September 2008, leaving a balance of \$1,300. *See* Resp. at 4. From October 2008 until
4 April 2010, the Committee continued to disclose this debt owed to Moseley in its reports
5 filed with the Commission. *Id.* After the Committee confirmed that the \$700 check it had
6 sent to Moseley had been deposited, the Committee states that it "reported no further
7 amounts owed to Moseley" in its original Pre-Primary Report, which covered the time
8 period from July 1, 2010 through August 25, 2010. Resp. at 5.

9 Based on the record evidence, we believe that Moseley's claim that the Committee
10 transformed a debt to him into an excessive contribution should instead be considered more
11 accurately as a claim that he and the Committee have a disputed debt that, perhaps, the
12 Committee failed to report. Under 11 C.F.R. § 116.1(d), "disputed debt means an actual or
13 potential debt or obligation owed by a political committee, including an obligation arising
14 from a written contract, promise or agreement to make an expenditure, where there is a
15 bona fide disagreement between the creditor and the political committee as to the existence
16 or amount of the obligation owed by the political committee." Commission regulations
17 require "a political committee [to] report a disputed debt in accordance with" 11 C.F.R.
18 §§ 104.3(d), 104.11 "if the creditor has provided something of value to the political
19 committee" and "until the dispute is resolved, the political committee shall disclose on the
20 appropriate reports any amounts paid to the creditor, any amount the political committee
21 admits it owes, and the amount the creditor claims is owed." 11 C.F.R. § 116.10(a). Here,
22 although the specific dollar amounts of the debt in question is in dispute, it appears that the
23 Committee properly disclosed to the Commission what it believed to be the debt it owed to

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1 Moseley. The Committee submitted to the Commission, for example, a memo entry when
2 the validity of one of the debts was not clear. Further, the invoice allegedly sent
3 by Moseley was mailed to the wrong address and to the wrong party, as the Committee, not
4 O'Donnell, handled reporting issues and debt repayment.

5 The record, however, indicates that the Committee appears to have settled its
6 acknowledged \$1,300 debt to Moseley for \$700, less than the actual amount that Moseley
7 has contended he was owed. If the \$700 payment to Moseley represented less than the
8 actual value of the debt owed, such payment would violate Commission regulations.
9 See 11 C.F.R. § 116.7 (debt settlement plans filed by terminating committees and
10 Commission review). Under Commission regulations, only a terminating committee may
11 settle a debt for less than the full amount owed to the creditor. See 11 C.F.R. § 116.2(a).
12 Ongoing committees — such as the O'Donnell Committee — may not settle outstanding
13 debts for less than their full value and may obtain debt relief only under limited
14 circumstances, not present here, such as situations where they obtain a Commission
15 determination that the creditors cannot be found or are out of business. See 11 C.F.R.
16 §§ 116.2(b), 116.9(a). Thus, the O'Donnell Committee should have reported the \$600 debt
17 owed to Moseley until it was appropriately extinguished. See 2 U.S.C. § 434(b)(8).

18 Nonetheless, in light of the fact that the Committee reported the debts to
19 Moseley of which it had notice, further enforcement action is not warranted. Therefore, the
20 Office of General Counsel believes that the Commission should dismiss this matter.

21 RECOMMENDATIONS

22 Accordingly, because the Office of General Counsel has scored MUR 6525 as a
23 low-rated matter, the Office of General Counsel recommends that the Commission exercise


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its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, the Office of General Counsel recommends the Commission remind the Friends of Christine O'Donnell 08 and Matthew J. Moran, in his official capacity as treasurer, that the Committee's debts must be continuously reported until properly extinguished under 2 U.S.C. § 434(b)(8) and 11 C.F.R. Part 116 (Debts Owed by Candidates and Political Committees). Finally, the Office of General Counsel recommends that the Commission close the file and send the appropriate letters.

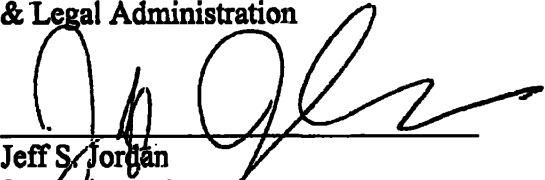
Anthony Herman
General Counsel

6/24/10
Date


BY:



Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration



Ruth Heilizer, Attorney
Complaints Examination
& Legal Administration