

July 29, 2016

VIA ELECTRONIC AND FIRST-CLASS MAIL

Mr. Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Attn: Donna Rawls, Paralegal
999 E Street, N.W.
Washington, DC 20463

Re: MUR 7101—Response of Mr. Robert Ziff

Dear Mr. Jordan:

The Commission's staff recently sent my client, Mr. Robert Ziff, a document styled as a "complaint" that laments—and yet specifically acknowledges—the legality of his donations to an independent expenditure-only committee. Consequently, the staff's transmittal of this "complaint" to Mr. Ziff was an error.

Commission rules require that a complaint "clearly identify as a respondent each person or entity who is alleged to have committed a violation" and "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation."¹ Commission staff is to process a complaint only if it is in "substantial compliance" with these requirements.² The document sent to Mr. Ziff fails to comply with these requirements. Even setting aside the fact that Mr. Ziff is never once identified as a respondent, this "complaint" document does not allege that *any* individual or entity "committed a violation." Indeed, the "complaint" deliberately abandons any notion of "sanctions for past conduct" and requests "*only* declaratory and/or injunctive relief" for future contributions because it recognizes that prior jurisprudence and advisory opinions prevent the Commission from finding that any listed individual or entity committed a violation.³ If the very purpose of the enforcement process that a complaint initiates is to assess the propriety of past conduct, it is not apparent how the Commission's staff could possibly validate a "complaint" document that, on its face, does the exact opposite by tabling the evaluation of specific parties' past conduct and by seeking only prospective change to a generally applicable policy. The Commission's staff should process this "complaint" as an advisory opinion or rulemaking request rather than subject my client—who, again, is not even named as a respondent by the parties who initiated this matter—to the burden and expense of defending donations that were (and are) plainly legal.

¹ 11 C.F.R. § 111.4(d)(1).

² 11 C.F.R. § 111.5.

³ Complaint at 3 (emphasis added). 52 U.S.C. § 30108(c)(2) ("Any advisory opinion rendered by the Commission ... may be relied upon by ... any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.").

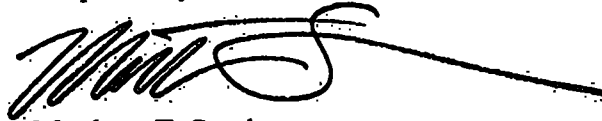
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The Commission staff's "screening" of facially invalid complaints is intended to protect innocent individuals and entities, and Mr. Ziff is worthy of such protection here. The law in this area is abundantly clear. Commission advisory opinions⁴ and informal guidance⁵ repeatedly state that individuals may donate in unlimited amounts to independent expenditure-only committees. The Commission has even instructed independent expenditure-only committees to indicate on their registration filings that they may "raise funds in unlimited amounts."⁶ Mr. Ziff simply acted in reliance on this unambiguous Commission guidance. He should not have to incur the cost or endure the notoriety of being a respondent in a Commission enforcement matter, if the "complaint" does not meet the basic threshold of alleging that he acted illegally or in a manner inconsistent with Commission precedent. The Commission's staff should have reviewed the "complaint" and found that it failed to meet the basic requirements mandated by statute and Commission rules.

Given that this "complaint" document has failed to "clearly identify as a respondent each person or entity who is alleged to have committed a violation" and "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation," the Commission should go beyond a dismissal of this matter and direct its staff to expunge Mr. Ziff's name from the record as a respondent. Please notify me (msanderson@capdale.com; 202-862-4046) if you have any questions concerning this response or the relief that it requests.

Respectfully Submitted,



Matthew T. Sanderson
Member
Caplin & Drysdale, Chartered

⁴ Fed. Election Comm'n Adv. Op. 2015-09, 2012-34, 2011-24, 2011-12, 2011-11, 2010-11, 2010-09.

⁵ See, e.g., Fed. Election Comm'n, *The FEC and the Federal Election Campaign Act* (2015) ("Independent-expenditure-only political committees ... may accept unlimited contributions, including from corporations and labor organizations"), available at <http://www.fec.gov/pages/brochures/fecfeca.shtml>.

⁶ Fed. Election Comm'n, *Registration Template for Super PACs* (2016), available at http://www.fec.gov/pdf/forms/ie_only_letter.pdf.

