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CALIFORNIA AND  
THE DISTRICT OF COLUMBIA

May 29, 2003

Susan L. Lebeaux, Esq.  
Assistant General Counsel  
Federal Election Commission  
959 E Street N.W.  
Washington, D.C. 20463

Re: Notice 2003-9 Request for Comments

Dear Ms. Lebeaux:

This letter responds to the Commission's request for comments from the public on its enforcement procedures (Notice 2003-9).

First, my compliments to the Commission for requesting comments and scheduling a hearing on this subject. When I was on the Commission I supported Commissioner Smith's recommendation that the Commission hold a hearing on this subject. I am pleased to see it taking place now that time permits.

The Commission's notice requesting comments listed a number of subjects, all worth considering. I write on only one of those subjects, however, concerning extensions of time

My former colleagues on the Commission may recall that I felt strongly that the Commission should establish and publicize rules of procedure for respondents to request, and the Commission to grant, extensions of time for response to Commission actions, in particular the probable cause brief. Formal rules, publicly disclosed, have the advantages of letting all respondents and practitioners know how they should proceed and what to expect; of eliminating at least the perception of *ad hoc* responses from the General Counsel's office or the Commission; and of reducing the opportunities for gaming the system by more sophisticated practitioners. Court rules often specify procedures for requesting extensions of time and the standards for granting them, and I believe the Commission should do the same, both for the benefit of respondents and practitioners, and the Commission itself.

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Commissioners may also recall that at one time I proposed a fairly detailed set of rules concerning extensions of time and circulated that proposal to Commissioners and the General Counsel's office. The General Counsel's office may still have a copy, and my former office may be able to provide a copy. I will not try to spell those suggestions out again in this context. The basic elements, however, would include (1) the deadline for requests to be submitted in order to be granted, e.g., before the expiration of the relevant deadline specified in the Act or the regulations, (2) a standard extension that could automatically be granted by the General Counsel's office, e.g., for thirty days, with requests for longer extensions requiring a showing of good cause, and possibly requiring Commission approval; and (3) a requirement that extensions requested within a certain period immediately prior to the running of the statute of limitations, e.g., six months or one year, be required to offer a waiver of the statute for a period of time commensurate with the extension.

The rules could also specify the result of a respondent failing to meet a deadline, e.g., a late response will be summarily rejected, or will be considered in the Commission's discretion, etc., but the Commission has wrestled with a consistent approach to that circumstance in the past, unsuccessfully as I recall, and that is not a necessary element of a rule for requesting an extension – failure to meet a deadline, without an extension, would simply leave the respondent with the uncertainty of not knowing what the Commission will do.

The rules for extensions could also apply to the deadlines for disputing administrative fines, with extensions to be granted by the reviewing office.

The rules for extensions would not, in my opinion, be required to be incorporated into the Commission's regulations by a formal rulemaking procedure, but could simply be a Commission directive or policy. They would, of course, have to be publicly announced to achieve their purpose, and could be made available on the Commission's website, but that should not require making public all other Commission directives.

My thanks to the Commissioners for their consideration of these comments. As much as I would relish the opportunity to address them in person, my schedule does not permit a trip to Washington, D.C. at this time, so I am not requesting to testify.

Sincerely,



DARRYL R. WOLD

Copy: By facsimile transmission to 202-219-3923