



Federal Election Commission
Washington, DC 20463

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COMMISSION
SECRETARIAT

2005 APR 15 A 10:39

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

BY: Lynn M. Fraser
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: April 13, 2005

SENSITIVE

On February 3, 2005 the ADR Office received from OGC/CELA the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 239/MUR 5567, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 239/MUR 5567: The complaint alleges that an invitation to a fundraiser for LeSueur for Congress 04 did not contain a disclaimer disclosing who paid for and/or authorized the invitation, and failed to request contributor identification to demonstrate "best efforts." Respondents replied that the invitations at issue were sent out by supporters, and that they did not assist other than to coordinate the candidate's schedule so that he could attend.

Attached for the Commission's review is the *ADR Case Analysis Report* on ADR 239, along with copies of the EPS Rating and ADR Rating reports. The *ADR Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is assigned to ADR. In addition, the *ADR Case Analysis Report* has been reviewed by OGC, which concurs in the description of the case.

ADR Director's Recommendation: We recommend that ADR 239/MUR 5567 be assigned to the ADR Office for processing.

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ADR CASE ANALYSIS REPORT

ADR Case: 239

Respondents:

LeSueur for Congress 04

Edie Ingram, Treasurer

MUR: 5567

OGC Case Open Date: 10/14/2994

Respondents' Rep.: Clinton B. LeSueur

Date Forwarded to ADRO: 2/3/05

Committee Name: LeSueur for Congress 04

Date Reviewed by ADRO: 2/10/05

Committee Type: Authorized

District #/or State: MS 2nd C.D.

Election - Won/Lost: Lost General

Election Cycle: 2004

Complainant: Hon. Bennie Thompson

Summary of Complaint: The Complainant alleges that an invitation to a fundraiser for LeSueur for Congress 04 did not contain a disclaimer disclosing who paid for and/or authorized the invitation, and failed to request contributor identification to demonstrate "best efforts."

Violations Alleged: 2 U.S.C. § 441d, 11 C.F.R. §§ 104.7(b), 104.8(a), 110.11

Respondents' Reply: The LeSueur for Congress 04 and Edie Ingram, Treasurer ("Respondents" or "Committee") contend that eighteen individuals sent out the invitations to the fundraiser and that the Committee did not assist with the invitations. Respondents state the date was coordinated with the candidate so that he could attend the reception. Respondents further contend they reported the in-kind contributions from the individuals who sponsored the fundraiser, and that the omission of the "best effort" disclaimer did not result in any reporting errors.

Issues:

- Disclaimers 2 U.S.C. § 441d, 11 C.F.R. § 110.11
- Best Efforts 11 C.F.R. §§ 104.7(b), 104.8(a)

Related FEC Experience/Guidance: The OGC and the ADRO have resolved many matters involving required disclaimers on public communications. In addition, numerous AOs have provided clarification as to the requirements of the FECA.

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Analysis: The statute and implementing regulations require that whenever a disbursement is made for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contributions through a variety of means, including mailing, the communication must clearly state who paid for, and authorized the communication. Respondents contend that "eighteen well-intentioned individuals" paid for the invitations and the mailing as in-kind contributions. However, it appears that the hosts coordinated the reception with the candidate's schedule with the understanding that he would attend. The regulations state that if the communication was paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or *its agents*, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee. The regulations define "agent," for the purposes of coordinated communications, as any person who has actual authority, either express or implied, from a candidate for Federal office to engage in making, suggesting, authorizing or requesting that a communication be created, produced or distributed. 11 C.F.R. § 109.3(b). In this case, the communication satisfied the content standard for coordinated communications in that it was a public communication that referred to a clearly identified candidate for Federal office, the communication was distributed 120 days or fewer before the general election, and it was directed to voters in the jurisdiction of the clearly identified candidate. 11 C.F.R. § 109.21(c)(4).

Potential Terms of Settlement: Potential terms of settlement might include attendance at an FEC sponsored seminar and/or a civil penalty.

ADR Director's Recommendation: Assign to ADRO
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Silberman



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

DATE & TIME OF TRANSMITTAL: Friday, April 15, 2005 12:00

BALLOT DEADLINE: Wednesday, April 20, 2005 4:00

COMMISSIONER: MASON, McDONALD, SMITH, THOMAS, TONER, WEINTRAUB

SUBJECT: **Case for ADR Activation ADR 239/MUR 5567**
Memorandum from the Director, ADR Office
dated April 13, 2005.

() I approve the recommendation(s)

() I object to the recommendation(s)

() I am recused from voting.

COMMENTS: _____

DATE: _____

SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

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