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January 11, 2005

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**VIA FACSIMILE & FIRST CLASS MAIL**

Mark Goodin, Esq.  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 5628 (Norman Fornella)

Dear Mr. Goodin:

WRF, LLP represents Norman Fornella, as reflected in the attached executed Statement of Designation of Counsel. I received your letter of January 5, 2005, which includes a letter from the Federal Election Commission ("FEC") transmitting a complaint dated December 22, 2004 and denominated by the FEC as MUR 5628. Mr. Fornella does not reside in New York and confirms that he has never received the December letter.

My client simply cannot accept the allegation that his actions were "knowing and willful." Indeed, the Commission's charges ignore AMEC's evidence that Morse Deisel relied on advice from KPMG when it set up its expense accounting system. I am also struck by the vagueness of the Commission's factual analysis. You state that "(a)ccording to AMEC, its then-CFO (Norman Fornella) or another officer determined which contributions to make and which employees would make them" (emphasis added.) Also charges Mr. Fornella with having made \$6,000 worth of contributions that were reimbursed by his former employer during the "period from October 15, 1998 to December 22, 1999" (emphasis added.) Your letter does not specify when Mr. Fornella made the contributions nor when he received reimbursement.

Without getting into the minutiae of who did or did not do what, my initial review of your findings, leads me to believe that the Commission's action against Mr. Fornella is fatally flawed since all of the alleged contributions were made more than five years ago, and hence are outside of the statute of limitations as set forth in 28 U.S.C. § 2462. See *Federal Election Commission v. Williams*, 104 F.3d 237, 239-40 (9th Cir. 1996), cert. denied, 522 U.S. 1015 (1997); *Federal Election Commission v. Christian Coalition*, 965 F. Supp. 66, 69 (D.D.C. 1997); *Federal Election Commission v. National Right to Work Committee, Inc.*, 916 F. Supp. 10, 13 (D.D.C. 1996), *Federal Election Commission v. National Republican Senatorial*

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*Committee*, 877 F.Supp. 15 (D.D.C. 1995) (catch-all statute of limitations of § 2462 bars enforcement actions seeking civil penalties under the Federal Election Campaign Act more than five years after the alleged violation.) It does not seem that the delay in contacting my client is because the Commission only recently learned of these potential violations; as AMEC disclosed the underlying facts to the Commission in October, 2003. *Id.* at 18, citing *3M Co. v. Browner*, 17 F.3d 1453, 1461 (D.C. Cir. 1994) ("[N]othing in the language of § 2462 even arguably makes the running of the limitations period turn on the degree of difficulty an agency experiences in detecting violations.").

My client is anxious to put the matter behind him but the charges and civil penalty which you have proposed not only mischaracterize his culpability but are also time-barred. Based upon the description of the Commission's preliminary procedures for processing possible violations, it appears that the only way to rectify this problem is to proceed to "probable cause." As I understand it, "probable cause" is the only mechanism to address the Commission regarding the statute of limitations, which is not discussed in the factual and legal analysis supporting the "reason to believe" finding. However, I remain very open to resolving this matter short of a "probable cause" determination should my understanding of the FEC's policies and procedures be incorrect.

If you have any further questions, suggestions, or requests, please do not hesitate to call me at the above number. Thank you for your attention.

Sincerely,



Barbara Van Gelder  
Counsel for Norman Fornella

Enclosure

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