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FEDERAL ELECTION
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 5 4 09 PM '01

July 5, 2001

AGENDA ITEM
For Meeting of: 7-12-01

MEMORANDUM TO: The Commission
THRU: Lois G. Lerner *LL*
Acting General Counsel
FROM: Vincent J. Convery, Jr. *VC*
Assistant General Counsel
SUBJECT: Processing Closed Cases for the Public Record

This Memorandum was prompted by Commissioner Mason's request of June 15, 2001.

From 1976 through mid-1987, each attorney or paralegal assigned to an enforcement matter was responsible for preparing his or her own investigative file for the public record. The results were mixed. Many of the files contained duplicative or irrelevant materials. In some instances, information which should not have been disclosed to the public was disclosed. Many cases, even routine cases, were not placed on the public record within the thirty days set out in Commission regulations.

Accordingly, in May, 1987, the Commission established an Administrative Law team within the Office of General Counsel and charged it, in addition to other assignments, with responsibility for preparing all closed enforcement files for the public record. Initially, the team consisted of an Assistant General Counsel and two paralegal specialists. An additional attorney was added in late 1994.

The team inherited many cases which were overdue, several of them substantially overdue, for public disclosure. In processing these, and newly closed cases, the team in its early months attempted to improve the product being placed on the public record by creating an index of documents, and a notation of redacted materials, in each file it reviewed. See, e.g., Attachments 1 and 2. Production of these additional materials proved to be extremely burdensome and resulted in no improvement in timeliness. Thus, after several months, the team stopped producing the indices and notices. Gradually, the team began placing almost all cases on the public record within the regulatory time. In little more than one full year of operation, *i.e.*, by the end of May, 1988, the team had taken in

293 cases and had processed 285 of them for the public record. Also, with responsibility for processing being centralized, the team members, through repetition, experience and training, developed an expertise reviewing the files. The result was a more orderly, more understandable, more useful record for researchers, Commission staff, and members of the regulated community.

Section (a)(2) of the Freedom of Information Act, 5 U.S.C §552, requires that Agencies place on the public record, *inter alia*, final opinions, including concurring and dissenting opinions, made in the adjudication of cases. From the outset, the Administrative Law team never has purported to place on the public record all the documents in a particular case file. Since, with the exception of Statements of Reasons, the Commission does not write "opinions," the team's goal has been to provide the reader with a clear view as to the allegations contained in the complaint or referral; the arguments raised by the respondents; the issues before the Commission, whether identified by this Office or by the Commissioners themselves; the pertinent evidence, either supporting or refuting the allegations; the actions taken by the Commission; and the materials considered by the Commission in taking those actions. Generally, the following categories of documents will appear on the public record: complaint or referral; correspondence between this Office and respondents, including letters of notification; designations of counsel; requests for extensions; responses (initial responses, responses filed during discovery and depositions); all reports and memoranda from this Office to the Commission; certifications of Commission votes; conciliation agreements.

In view of the thirty day timeframe set out in the Commission's regulations, the team strives to make public as much relevant information as possible as quickly as possible. In doing so, it is mindful that, should a reader believe that too little information has been disclosed in a case, he or she may request, under Section (a)(3) of the FOIA, that the Agency disclose any material that had been redacted from the file. At that point, the FOIA Officer can make a closer examination of the redacted material and determine whether it should be released.

It should be noted that the complexity of the team's workload has continued to increase although its staffing has remained constant since the addition of the second attorney in 1994.¹

In the Fall of 2000, the team was given the additional task of preparing Administrative Fine cases for the public record. Since November, 2000, the team has taken in more than 220 of these files, including 109 on June 15. Because of the format of those cases, it is most practical to assign the same paralegal to all of them.

¹ In this respect, it is interesting to consider the number of potential "sources" of the cases which must be reviewed for the public record. In 1987, when the Administrative Law Team was established, there were three Enforcement Teams with a total of nine staff attorneys, and a Title 26 Team with three staff attorneys. Now, there are four Enforcement Teams with a total of twenty-seven staff attorney positions, and two PFESP teams, with a total of thirteen staff attorney positions.

This, obviously has taken from the time she has available to process "normal" enforcement cases and requires the second paralegal to process a greater proportion of those cases. Additionally, the paralegals respond to FBI requests for background checks on Presidential nominees. The current Administration was delayed in making many of its nominations. Thus, the team has received an inordinate number of requests (approximately 200) since January, most of them with extremely short deadlines.

Generally, the paralegals perform the initial review of the enforcement case files, which is followed by additional review, and sign off, by the Assistant General Counsel. This review entails a page by page analysis of each file, with an assessment as to whether information contained therein is exempt under the FOIA. Entries relating to internal agency procedures, personal privacy, financial privacy, and the conciliation process are among those routinely redacted from the files. In times of extremely heavy workload, the staff attorney or the Assistant General Counsel have performed the initial review in selected cases.

At all times, the staff attorney and the Assistant General Counsel continue to perform additional duties of providing advice and representation in most non-FECA legal matters to other Divisions and Offices within the Commission. For example, the Administrative Law attorneys recently have provided support concerning a broad range of topics to: the Administrative Division (in particular, to the Administrative Officer, the Contracting Officer and the Accounting Officer); the Personnel Office; the Congressional Affairs Office; the FOIA Office; the EEO Office; the Office of Inspector General; the Office of Administrative Review; and the Office of Alternative Dispute Resolution. In addition, the Administrative Law attorneys represent the Commission in bid protest proceedings and in actions brought against the Agency before the Merit Systems Protection Board and the Equal Employment Opportunity Commission.

The current system for placing closed enforcement matters on the public record has worked smoothly and well for the past fourteen years.² However, over time, circumstances have changed. Enforcement and PFESP cases have become more complex. The number of issues, and the number of respondents, in the "average" case has continued to increase, which has led to far more documents being created and filed in those matters.

² From the beginning of 1997 through the end of May, 2001, the figures for number of MURs and Pre-MURs processed for the public record, as compared with the number processed within thirty days, are as follows: 1997: 293/290; 1998: 145/143; 1999: 124/122; 2000: 155/117; 2001: 46/41. These figures do not include Debt Settlement Proposals; Audit and RAD Referrals in which the Commission does not open a MUR; and Administrative Fine cases.

The Commission last addressed the public records process with respect to enforcement matters in 1983.³ We welcome the Commission's taking a fresh look at this process with the idea of bringing it more into line with current realities.

Attachments

³ See Directive 48, dated August 1, 1983, at Attachment 3. While the instructions set out in this document may have been adequate for the era in which they were issued, they no longer are so. In fact, because of changed circumstances, particularly computerization, and lack of demand, several of the procedures established in Directive 48 no longer are followed.

PUBLIC INDEX FILE - MUR 2161
(MUR 2132 was merged into MUR 2161)

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1. Complaint, filed 22 Jan 86, by Rep. Bobbi Fiedler, w/exhibits 1-19.
 2. Ltr, dtd 31 Jan 86, K.W. Gross (Associate General Counsel, FEC) to B. Fiedler.
 3. Ltr, dtd 31 Jan 86, K.W. Gross to Michael D. Antonovich.
 - 3a. Ltr, dtd 31 Jan 86, K.W. Gross to Friends of Mike Antonovich Committee.
 4. Ltr, dtd 31 Jan 86, K.W. Gross to Rolanđ Smith, Treasurer, Friends of Mike Antonovich.
 5. Ltr, dtd 31 Jan 86, K.W. Gross to Antonovich Birthday Committee.
 6. Ltr, dtd 31 Jan 86, K.W. Gross to Joseph Crail, Treasurer, Antonovich for Senate Exploratory Committee.
 7. Ltr, dtd 13 Feb 86, B. Fiedler to FEC (Amended complaint).
 8. Ltr, dtd 14 Feb 86, Paul E. Sullivan to FEC.
 9. Ltr, dtd 19 Feb 86, Paul E. Sullivan (Counsel to Respondants) to FEC.
 10. Ltr, dtd 21 Feb 86, K.W. Gross to Allen E. Brandstater, Treas, Antonovich Birthday Cmte.
 11. Ltr, dtd 21 Feb 86, K.W. Gross to Scott B. McKenzie, Treas, The Antonovich Transfer Cmte.
 - 11a. Memo, 21 Feb 86, M.W. Emmons to the Commission, Subject: MUR 2132 - amended complaint.
 12. First General Counsel's Rpt, dtd 25 Feb 86.
 13. Memo, 25 Feb 86, Office of General Counsel (OGC) to Office of Commission Secretary (OCS), Subject: MUR 2132 - First General Counsel's Rpt.
 14. Memo, 27 Feb 86, OCS to OGC, Subject: MUR 2132 - 1st G.C. Report.
 15. Ltrs, 26 Feb 86, K.A. Gross to a) Friends of Mike Antonovich and R. Smith, Treas., b) Antonovich for Senate Explor. Cmte, and J. Crail, Treas., c) Antonovich B'day Cmte., d) Friends of M. Antonovich, and e) Michael D. Antonovich.

16. Ltrs, 21 Feb 86, designating Paul E. Sullivan as counsel to a) Antonovich for Senate Exploratory Cmte, b) Joe Crail, c) Michael D. Antonovich, and d) Roland Smith.
17. Ltr, 3 Mar 86, P.E. Sullivan to FEC.
18. Ltr, 6 Mar 86, K.A. Gross to P.E. Sullivan.
- 18a. Comprehensive Investigative Report #1, dtd 6 Mar 86.
- 18b. Memo, 6 Mar 86, OGC to OCS, Subject: MUR 2132 -Comprehensive Invest. Rpt. #1.
- 18c. Memo, 10 Mar 86, OCS to OGC, Subject: MUR 2132 - Comprehensive Invest. Rpt.
19. Memo, 21 Mar 86, Reports Analysis Division (RAD) to OGC, Subject: RFAI - Antonovich for Senate.
20. Memo, 21 Mar 86, RAD to OGC, Subject: RFAI - Antonovich Birthday Cmte.
21. Memo, 21 Mar 86, RAD to OGC, Subject: Ltr to Friends of M. Antonovich.
22. Memo, 21 Mar 86, RAD to OGC, Subject: RFAI to Friends of M. Antonovich.
23. Ltr, 21 Mar 86, P.E. Sullivan to FEC, Subject: Response to Complaint in Mur 2132, w/atchs.
24. Memo, 21 Mar 86, RAD to OGC, Subject: RFAI to Antonovich Transfer Cmte.
25. Ltr, 28 Mar 86, Judy Ridgway (Communications Director, Bobbi Fiedler Campaign Cmte) to FEC, Subject: Amended Complaint to MUR 2132. (Regarded by FEC as a new, independent complaint in MUR 2161).
26. Memo, 8 Apr 86, M.W. Emmons to Cmsn, Subject: MUR 2161 - Complaint.
27. Ltr, dtd 10 Apr 86, K.A. Gross to J. Ridgway, Bobbi Fiedler Cmte.
28. Ltrs, dtd 10 Apr 86, K.A. Gross to a) Antonovich Birthday Cmte (State); b) Michael D. Antonovich; c) Californians for Justice in the Courts, c/o Ms. Pat. Pilus, and d) Friends of Mike Antonovich (State).
29. Statement dtd 17 Apr 86, designating Paul E. Sullivan as counsel for Californians for Justice in the Courts.

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- 29a. General Counsel's Report, dtd 16 Apr 86.
- 29b. Memo, 17 Apr 86, OGC to OCS, Subject: MURs 2132 and 2161 - General Counsel's Rpt.
- 29c. Ltr, 22 Apr 86, B. Fiedler to FEC.
30. Ltr, 30 Apr 86, P.E. Sullivan to FEC, Subject: Response to Complaint in MUR 2161.
- 30a. Ltr, 2 May 86, P. Reilly (FEC) to P.E. Sullivan.
- 30b. Ltr, 19 May 86, K.A. Gross to B. Fiedler.
- 30c. Memo, 19 May 86, RAD to OGC, Subject: RFAI to Antonovich for Senate Cmte.
31. Memo, 23 Jun 86, RAD to OGC, Subject: RFAI to Antonovich for Senate Cmte.
32. General Counsel's Report, MUR 2132 and MUR 2161, dtd 11 Jul 86.
33. Memo, 14 Jul 86, OGC to OCS, Subject: MUR 2132 - General Counsel's Report.
34. Memo, 16 Jul 86, OCS to OGC, Subject: Objection to MUR 2132 and 2161.
35. Certification of Commission Action, dtd 23 Jul 86.
36. Ltr, 1 Aug 86, J.D. Aikens (FEC) to P.E. Sullivan.
37. Ltr, 9 Sep 86, P.E. Sullivan to FEC.
38. G.C. Report dtd 21 Sep 86.
39. Memo, 24 Sep 86, OGC to OCS, Subject: MUR 2161 - G.C. Report.
40. Memo, 26 Sep 86, OCS to OGC, Subject: Objection to MUR 2161.
41. Certification of Commission Action, dtd 10 Oct 86.
42. Ltr, 14 Oct 86, L.M. Noble to P.E. Sullivan.
43. Memo 7 Oct 86, RAD to OGC, Subject: RFAI to Antonovich for Senate Committee.
44. Memo, 7 Oct 86, RAD to OGC, Subject: RFAI to Antonovich Transfer Cmte.

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45. Memo, 27 Jan 87, RAD to OGC, Subject: RFAI to Antonovich Transfer Cmte.
46. Memo, 5 Feb 87, RAD to OGC, Subject: RFAI to Antonovich Transfer Cmte.
47. Ltr, 23 Mar 87, B. Fiedler to FEC.
48. Ltr, 9 Apr 87, G.P. Rishel (FEC) to B. Fiedler.
49. G.C. Report, dtd 31 Mar 87.
50. Memo, 31 Mar 87, OGC to OCS, Subject: MUR 2161 G.C. Report.
51. Memo, 13 Apr 87, OCS to OGC, Subject: MUR 2161 w/atch (Statement of Reasons).
52. Memo, 7 Apr 87, RAD to OGC, Subject: RFAI to Antonovich for Senate.
53. Ltr, 4 May 87, P.E. Sullivan to FEC, Subject: Conciliation Agreement - MUR 2161.
54. G.C. Report, dtd 13 May 87.
55. Memo 13 May 87, OGC to OCS, Subject: MUR 2161 - General Counsel's Report.
56. Certification of Commission Action, dtd 18 May 87.
57. Closing ltr, 21 May 87, L.M. Noble to J. Ridgway.
58. Closing ltr, 21 May 87, L.M. Noble to B. Fiedler.
59. Closing ltr, 21 May 87, L.M. Noble to P.E. Sullivan.
60. Conciliation Agreement, signed by FEC 21 May 87.
61. Ltr, dtd 12 Jun 87, P.E. Sullivan to FEC w/atch (Statement of Michael D. Antonovich).
62. The Office of General Counsel obtained from the California Secretary of State numerous campaign finance reports which had been filed there by the Antonovich Campaign Committee, the Antonovich Birthday Committee, and the Friends of Mike Antonovich. For the sake of clarity, these documents, which extend to approximately 800 pages, have been deleted from the public record. They are maintained in OGC and, upon request, are available for inspection and copying.

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NOTE: In preparing its file for the public record, O.G.C. routinely removes those documents in which it perceives little or no public interest, and those documents, or portions thereof, which are exempt from disclosure under the Freedom of Information Act.

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Attachment(s) 1 and 2
to 9-23-86 G.C. Rpt.

have been removed from this
position in Public Record File.

See Index Item(s) 37 and 42.

Sec. III of 9-23-86 G.C. Rpt., and Atch 3 to Rpt.
have been deleted pursuant to 24.S.1. § 437g (a)(4)(B)(i)

ATTACHMENT 2
Page 1 of 1

FEDERAL ELECTION COMMISSION

MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE	
	REVOKES Directive 5, Section B Dated 3/31/83	NO. 48
	EFFECTIVE DATE August 1, 1983	

SUBJECT

PROCEDURES FOR PLACING CLOSED
MURS ON THE PUBLIC RECORD

I. General

The Commission regulations at 11 CFR §111.20(a) provide that once the Commission terminates its proceedings in a matter under review (MUR):

...it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

II. Release Schedule and Flow of Documents

1. Office of General Counsel

a. Once the Commission has acted to close a MUR, the Office of General Counsel (OGC) will prepare and send notification letters to each complainant and respondent informing them of the action taken closing the file, and the fact that the action will be made public within 30 calendar days. A copy of the notification letter will be sent to the Staff Director's office.

b. OGC will as soon as practicable, but not later than 25 calendar days from the date notification letters are sent, complete review of the closed MUR file and sanitize it by removing all materials which are not accessible to the public and note the reasons for the excisions (e.g. the Freedom of Information Act or the Federal Election Campaign Act).

Attachment 3
Page 1 of 5

c. OGC will sanitize and finalize the preparation of two summary files, one for the Press Office and one for Public Disclosure. These files will be transmitted to the appropriate offices within 25 calendar days after the notification letters are sent. See Attachment "A" for a list of the contents of the summary file.

d. If the reproduction of the second summary file involves voluminous photocopying, OGC will forward the file to the Administrative Division for photocopying. In those instances, the Administrative Division will handle such matters on a priority basis and return the file to OGC docket within one working day.

2. Public Disclosure Division

a. Public Disclosure will place the summary file in binders and make it available to the public within 3 calendar days of receipt from OGC.

b. The Processing Branch will microfilm the complete sanitized file within 5 working days of receipt from OGC.

c. The Processing Branch will return the complete sanitized file to OGC docket after it has completed microfilming.

d. Once microfilming is complete, the Processing Branch will provide the microfilm location number to the Press Office to be added to the index sheet.

3. Press Office

a. The Press Office will, within 2 working days of receipt from OGC, prepare an index which will show the date the MUR is placed on the public record, MUR number, respondent, complainant and disposition. Within 2 working days of when microfilming is complete, the microfilm location will be added to the index. (See Attachment B--MURs Open to the Public Index Sheet.) A copy of the completed Public Index Sheet will be sent to OGC, Public Disclosure, Commission Secretary and the Staff Director's office.

b. Once the Press Office has received the summary file, a press release will be prepared and distributed.

c. The Press summary file will then be placed in a file cabinet for use by the press and/or FEC staff.

4. Staff Director's Office

a. The Staff Director's office will be responsible for monitoring this internal procedure. In instances where a MUR is not placed on the public record within 29 days from the date notification letters are sent, the Staff Director's office will call appropriate staff and remind them of the 30 day deadline.



John C. Surina
Staff Director

SUMMARY FILE CHECK-OFF

MUR # _____

_____ Date of Close-out Letters (Mailing Date)

CONTENT CHECK-OFF

- _____ Close-Out Letter(s)
- _____ Final OGC Report or Memorandum or Conciliation Agreement(s)
- _____ Respondent(s) Reply to Brief(s)
- _____ General Counsel's Brief(s)
- _____ Respondent's Reply to RTB Finding
- _____ First General Counsel's Report
- _____ Respondent's Reply to the Complaint
- _____ Original Complaint(s) (If Any)
- _____ Other Report or Correspondence*
- _____ All Certifications**

_____ Preparer of the Summary File

Date _____ File Reviewed by _____

- * To be included if, in the opinion of the staff member, it is important.
- ** Certifications of Commission actions should be placed in the Summary File prior to the documents which formed the basis of the action and in reverse chronological order.

(Revised 7/5/83)

ATTACHMENT "A"

Attachment 3
Page 4 of 5

JR PLACED ON
PUBLIC RECORD

MUR #

RESPONDENT

COMPLAINANT

DISPOSITION

MICROFIL
LOCATION

ATTACHMENT "B"

Attachment 3
Page 5 of 5

