



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

July 12, 2010

Mr. Jean-Paul Hau Duc Do
Law Offices of Do & Do
o/b/o Cung Pham

✓
REDACTED

**RE: Warning Letter
FPPC No. 09/633; Cung Pham**

Dear Mr. Do:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act")¹. As you may be aware, the Commission received a complaint alleging violations of the mass mailing provisions of the Act. Specifically, the complaint alleges that your client was involved in the production of a mass mailing which contained improper sender identification in violation of Section 89505, that your client made an expenditure of \$2,000 in cash in violation of Section 84300, and that your client failed to file as an independent expenditure committee in violation of Section 89503. The Commission has decided to close this case with this warning letter.

Our investigation has revealed evidence that your client commissioned the consulting firm DeSnoo & DeSnoo to produce and send a mass mailing opposing the election of Diep Mien Truong to the Westminster City Council. The mailer did contain the proper sender identification, indicating that Mr. Pham was responsible for the mailer. We also determined that your client did pay DeSnoo & DeSnoo with a cashier's check, in the amount of \$2,000.

Section 82031 of the Act defines "independent expenditure." An independent expenditure includes an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. Section 84204 requires that independent expenditures made in the last 16 days before the election be reported in a late

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

independent expenditure report, to be filed within 24 hours of making the expenditure. Section 82013(b) of the Act provides that a "committee" includes any person who makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year. By paying \$2,000 for the production and distribution of mailings which expressly advocated the defeat of Diep Mien Truong in the 2008 election, your client incurred filing obligations as an Independent Expenditure committee.

Your client violated the Act because he qualified as an independent expenditure committee, and should have filed an Independent Expenditure Committee Campaign Statement (Form 461), and an Independent Expenditure Report (Form 496) but failed to file either statement. However, he did file a Supplemental Independent Expenditure Report, thus the public harm of failing to disclose expenditures was mitigated.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

Your client must file an Independent Expenditure Committee Campaign Statement (Form 461) with the City of Westminster, reporting the expenditures made in connection with the mailing.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

REDACTED

Zachary W. Norton
Commission Counsel
Enforcement Division