

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civil no. 11-951 (CKK)
)	
FEDERAL ELECTION COMMISSION,)	
)	
Defendant.)	

PLAINTIFF'S NOTICE OF RECENT DECISION

Defendant Federal Election Commission (FEC) has moved to dismiss the complaint in the above-captioned action or, alternatively, for summary judgment. In support of its motion the FEC has relied extensively on the district court's opinion in *Petit-Frere v. U.S. Attorney's Office for S.D. of Fla.*, 664 F.Supp.2d 69, 71 (D.D.C. 2009) (*Petit-Frere*), to argue plaintiff has failed to exhaust administrative remedies.

On August 8, 2011, the district court in *Petit-Frere* issued a memorandum opinion granting defendants' motion for summary judgment. For the Court's convenience a copy is attached as Exhibit A. In explaining the background of the case, the *Petit-Frere* court stated:

On October 16, 2009, another judge in this District to whom this case was previously assigned dismissed Plaintiff's Complaint without prejudice because he determined that Plaintiff had failed to exhaust his administrative remedies. Defendants, however, informed that judge on November 9, 2009, that the factual basis for dismissal was not accurate. As a result, the case was reopened on December 4, 2009.

Petit-Frere, No. 09-1732 (JEB), slip op. at 3 (D.D.C. Aug. 8, 2011).

The November 9, 2009 notice referenced by the court states in relevant part:

In its October 15, 2009 ruling the Court considered EOUSA's letter as the letter that responded to plaintiff's request, stating that "[b]ecause EOUSA responded before plaintiff submitted this complaint for filing on August 31, 2009 constructive exhaustion does not apply and the plaintiff is required to exhaust his administrative remedies before he can exercise his right to have this court entertain this suit." Mem. Op., Pages 4-5. Defendant respectfully submits that EOUSA's August 28th letter constitutes EOUSA's acknowledgment letter, and not its final response . . . Under the FOIA, agencies must make a "determination" of a request within twenty working days. 5 U.S.C. § 552(a)(6)(A)(i) . . . An agency's letter acknowledging receipt of a request does not constitute an agency's "determination" under the FOIA because it neither grants or denies the request, nor does it grant the right to appeal the agency's response

By letter dated September 15, 2009, EOUSA issued its final response to plaintiff's request, which occurred after the filing of the instant suit on September 11, 2009 . . . The Court's dismissal of plaintiff's Complaint for failure to exhaust his administrative remedies is erroneous because plaintiff filed this civil action before EOUSA issued its final response to him. Accordingly, plaintiff constructively exhausted his administrative remedies.

Petit-Frere, No. 09-1732 (RWR), Notice at 1-2 (D.D.C. Nov. 9, 2009) (attached as Exhibit B).

In response to this notice, the *Petit-Frere* court reopened the case on December 4, 2009, noting in part its "subsequent, additional review of the relevant documents and the case law demonstrates that the dismissal was erroneous." *Petit-Frere*, No. 09-1732 (RWR, Order Reopening Case at 1 (D.D.C. Dec. 4, 2009) (attached as Exhibit C).

The August 8, 2011 memorandum opinion was the first notice plaintiff had that the *Petit-Frere* case had been reopened. Accordingly, plaintiff respectfully submits this opinion and the previous filings to which it cites for this Court's consideration in ruling on the FEC's pending motion to dismiss or, alternatively, for summary judgment.

Respectfully submitted,

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