



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

ALTERNATIVE DISPUTE RESOLUTION

2005 FEB -7 AM 11:20  
February 4, 2005

**MEMORANDUM**

TO: Allan Silberman  
Director of Alternative Dispute Resolution

THROUGH: James A. Pehrkon *JAP*  
Staff Director

Robert J. Costa *AK*  
Deputy Staff Director

FROM: Joseph F. Stoltz *JFS*  
Assistant Staff Director  
Audit Division

Wanda J. Thomas *wjt*  
Audit Manager

Pat Sheppard *ps*  
Lead Auditor

SUBJECT: Kevin Kelley for Congress (A03-17) – Referral Matter

On January 21, 2005, the Commission approved the final audit report on the Kevin Kelley for Congress committee. The report was released to the public on February 2, 2005. In accordance with the Commission approved materiality thresholds, the final audit report includes a matter that meets the criteria for referral to Alternative Dispute Resolution (ADR):

Finding 1. Receipt of Contributions that Exceed the Limit

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Pat Sheppard or Wanda Thomas at 694-1200.

Attachments: Report of the Audit Division on Kevin Kelley for Congress  
Committee Response to Interim Audit Report

cc: Reports Analysis Division

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# Report of the Audit Division on Kevin Kelley For Congress

May 9, 2002 – December 31, 2002

## Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

## Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## About the Committee (p. 2)

Kevin Kelley For Congress (KKFC) is the principal campaign committee for Kevin Kelley, Democratic candidate for the U.S. House of Representatives from the state of Michigan, 11<sup>th</sup> District. KKFC maintains its headquarters in Redford, MI. For more information see the chart on the Campaign Organization, p.2.

## Financial Activity (p. 2)

- **Receipts**
  - Individual Contributions \$289,615
  - Political Committee Contributions 366,872
  - Other Receipts 7,374
  - **Total Receipts** \$663,861
  
- **Disbursements**
  - **Total Disbursements** \$646,593

## Finding and Recommendation (p. 3)

Receipt of Contributions that Exceed the Limit

<sup>1</sup> 2 U S C §438(b)

# **Report of the Audit Division on Kevin Kelley For Congress**

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May 9, 2002 – December 31, 2002



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# Part I

## Background

### Authority for Audit

This report is based on an audit of Kevin Kelley For Congress (KKFC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The consistency between reported figures and bank records.
5. The completeness of receipt records.
6. A reported debt to the Candidate's spouse.
7. Other committee operations necessary to the review.

### Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. Except for November 7, 2002 through December 31, 2002, the period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are primarily those that were in effect prior to November 7, 2002.

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## Part II

### Overview of Campaign

#### Campaign Organization

<b>Important Dates</b>	<b>Kevin Kelley for Congress</b>
• Date of Registration	May 13, 2002
• Audit Coverage	May 9, 2002 – December 31, 2002
<b>Headquarters</b>	Redford, MI
<b>Bank Information</b>	
• Bank Depositories	1
• Bank Accounts	1 Checking Account
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Karen Potter White
• Treasurer During Period Covered by Audit	Richard A. Young
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Unknown
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Committee Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ January 1, 2001</b>	<b>\$0</b>
<b>Receipts</b>	
o From Individuals	289,615
o From Political Committees	366,872
o Other Receipts	7,374
<b>Total Receipts</b>	<b>\$663,861</b>
<b>Disbursements</b>	
o Operating and Other Disbursements	646,593
<b>Total Disbursements</b>	<b>\$646,593</b>
<b>Cash on hand @ December 31, 2002</b>	<b>\$ 17,268</b>

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## **Part III Summary**

### **Finding and Recommendation**

#### **Receipt of Contributions that Exceed the Limit**

A credit card held in the Candidate's spouse's name was used to make campaign related expenditures totaling \$59,812. These charges exceed the contribution limitation by \$57,812. In the interim audit report, the Audit staff recommended that KKFC provide evidence that the contributions were made using the Candidate's personal funds or refund the outstanding amount to the Candidate's spouse. Evidence provided by KKFC and information obtained by subpoena verify that the amount owed to the spouse's credit card account was paid, albeit untimely. (For more detail, see p.4.)

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## Part IV

# Finding and Recommendation

### **Finding 1. Receipt of Contributions that Exceed the Limit**

#### **Summary**

A credit card held in the Candidate's spouse's name was used to make campaign related expenditures totaling \$59,812. These charges exceed the contribution limitation by \$57,812. In the interim audit report, the Audit staff recommended that KKFC provide evidence that the contributions were made using the Candidate's personal funds or refund the outstanding amount to the Candidate's spouse. Evidence provided by KKFC and information obtained by subpoena verify that the amount owed to the spouse's credit card account was paid, albeit untimely.

#### **Legal Standard**

**A. Authorized Committee Limits.** An authorized committee may not receive more than \$1,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A) and (f); 11 CFR §110.1(a) and (b) and 110.9(a).

**B. Advances by Individuals from Personal Funds.** When an individual uses his or her personal funds, including a personal credit card, to pay for goods or services used by or on behalf of a candidate or political committee, that payment is a contribution unless the payment falls under certain exceptions for travel (see below). 11 CFR §100.7(b)(8) and 116.5(b).

**C. \$1,000 Travel Exemption.** An individual may voluntarily spend up to \$1,000 per candidate, per election, for unreimbursed travel expenses on behalf of the candidate without making a contribution. 11 CFR §100.7(b)(8).

**D. Travel Expenses Exceeding \$1,000 Exemption.** Payments for transportation expenses<sup>2</sup> that exceed the \$1,000 travel exemption (above) are considered contributions unless the committee reimburses them:

- Within 60 days of the closing date on the credit card billing statement where the charge first appeared if the payments were made on a credit card; or
- Within 30 days, if the payments were made with cash or a check. 11 CFR §116.5(b).

**E. Treatment as Debt.** A political committee shall treat the obligation arising from a payment as an outstanding debt until reimbursed. 11 CFR §116.5(c)

<sup>2</sup> Including usual and normal subsistence expenses (such as food and lodging) incurred while traveling on behalf of the candidate.

**F. Expenditures by Candidates.** Candidates for Federal office may make unlimited expenditures from personal funds. 11 CFR §110.10(a)

**G. Definition of Personal Funds.** Personal funds of the candidate include the following:

- Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had legal and rightful title or in which the candidate had an equitable interest.
- Salary and other earned income from bona fide employment and dividends and proceeds from the sale of the candidate's stock or other investments. 11 CFR §110.10(b)(2).

### **Facts and Analysis**

During the review of reported debts and obligations, the Audit staff identified a debt owed to Connie S. McNealy, the Candidate's wife. The purpose disclosed to the FEC was "Campaign Credit Card Balance." During the period October 6, 2002 through January 24, 2003, Ms. McNealy used her personal credit card to make \$59,812 in campaign related expenditures. The expenditures were made for the general election resulting in an apparent excessive contribution of \$57,812<sup>3</sup>.

The bulk of the expenditures were to the Detroit Legal News (\$49,820) for printing. The remaining amount (\$9,992) was paid to various other vendors for transportation, food, catering, and miscellaneous expenses. It was not known whether there were other campaign related charges since credit card statements for the period prior to September 27, 2002 were not made available for Audit staff review.

The Audit staff identified payments totaling \$22,015 made by KKFC during the period November 2002 through December 2003, toward the outstanding balance on the account. These payments were made directly to the credit card company. In addition, \$10,000 of the balance was transferred to another credit card account. The account holder was unknown.

At the exit conference, Counsel for KKFC stated that the credit card owned by Ms. McNealy was obtained prior to her marriage to the Candidate. Counsel did not provide documentation to support that statement. He stated that the Candidate and Ms. McNealy considered all credit cards to be jointly owned regardless of whose name was imprinted on the card. Counsel also stated that both Ms. McNealy and the Candidate paid the credit card bills.

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<sup>3</sup> \$59,812 less a \$1,000 general election contribution and \$1,000 for voluntary unreimbursed travel expenses

### **Interim Audit Report Recommendation**

The Audit staff recommended that KKFC:

- Provide for review, all credit card statements for the periods covering KKFC's inception to current date (May 2002 – April 2004<sup>4</sup>) including any card to which any portion of the balance was transferred;
- Provide cancelled checks or other payment records that show the source of the funds used to make payments on the balances;
- Provide evidence demonstrating that the credit card charges were made using the Candidate's personal funds;
- Absent such evidence, refund to the Candidate's wife the amount of the outstanding credit card balances and provide evidence of such refund (copies of the front and back of the negotiated refund check(s) along with evidence payment was made on the credit card balances);
- If funds were not available to make the necessary refund, the refund amount must continue to be disclosed as a debt on Schedule D until funds became available.

### **Committee Response to Recommendation and Audit Staff's Assessment**

In response, Counsel for KKFC again stated that the credit card, viewed as a joint credit card of the Candidate and his spouse, "was used by Committee staff to make campaign-related purchases with the understanding that the Committee was obligated to pay for all campaign-related charges... All of the campaign charges made with the credit card and related finance charges were paid by the Committee, the Candidate, or were transferred to credit cards issued to the candidate. As a result, the spouse did not make excessive contributions to her husband's campaign." Counsel further stated "The spouse never paid for any of the charges made by the Committee with the credit card."

Counsel provided a spreadsheet, copies of canceled checks, credit card statements and an investment account statement to support these assertions. In the response, Counsel stated the following:

- KKFC incurred campaign-related expenditures totaling \$59,812 and finances charges totaling \$4,791;
- KKFC made payments to Ms. McNealy's credit card account totaling \$22,015;
- Transfers totaling \$23,999 were made from Ms. McNealy's credit card account to three other credit cards purportedly issued to the candidate;
- A payment in the amount of \$18,124 was made to Ms. McNealy's credit card account from an investment account jointly owned by the Candidate and his wife; and
- A debt (owed by the Committee) in the amount of \$465 remains outstanding.

Counsel also stated that KKFC was in the process of amending its disclosure reports to reflect the payments and transfers.<sup>5</sup> As of January 6, 2005, the amendments had not been filed.

<sup>4</sup> Excluding statements previously provided.

<sup>5</sup> On December 8, 2004, Counsel met with representatives from both the Audit Division and Reports Analysis Division to discuss the correct format to file the amended reports

Not included in the response was evidence that the Candidate was liable for amounts owed to the credit card accounts to which the transfers totaling \$23,999 were made, thus demonstrating that the payments to his wife's credit card account were made using his personal funds. Also, requested credit card statements for Ms. McNealy's account were not provided in order to confirm that there were no other campaign-related expenditures.

The Commission issued subpoenas to three credit card companies seeking the identities of the individual(s) responsible for paying the account balances and the identities of the individual(s) to whom the credit cards were issued. Also subpoenaed were copies of credit card statements.

Responses to the subpoenas identify the Candidate as the individual liable for payment for all three accounts to which transfers were made. According to the credit card statements provided for these accounts, \$15,599 of the amount transferred was paid in full by July 11, 2003. Statements showing payment of the remaining \$8,400 were not provided. In addition, credit card statements provided for Ms. McNealy's account included the period May 10, 2002 through September 19, 2002. A review of these statements found no additional expenditures that appeared to be campaign-related.

Based on the information provided, the Audit staff concludes that the excessive contributions totaling \$57,812 resulting from the use of Ms. McNealy's credit card have been resolved, albeit untimely. Kevin Kelly for Congress still must file amended reports to disclose correctly the payments and transfers made to discharge the debts.

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MAY 26, 2004

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**RESPONSE OF KEVIN KELLEY FOR CONGRESS  
TO THE INTERIM REPORT OF THE AUDIT DIVISION**

*For:  
Pat Sheppard*

This response is filed on behalf of Kevin Kelley for Congress (the "Committee") to the April 7, 2004 Interim Report of the Audit Division on Kevin Kelley for Congress covering the period May 9, 2002 through December 31, 2002 (the "Interim Report").

**I. Audit Finding**

The Audit staff found that campaign related expenditures were made with a credit card issued to the candidate's spouse resulting in excessive contributions made by her to her husband's campaign committee.

**II. Response**

A personal credit card that was viewed as a joint credit card of the candidate and his spouse was used by Committee staff to make campaign related purchases with the understanding that the Committee was obligated to pay for all campaign-related charges made with the credit card by the Committee. As the documents and explanation provided below demonstrate, all of the campaign charges made with the credit card and related finance charges were paid by the Committee, the candidate, or were transferred to credit cards issued to the candidate. As a result, the spouse did not make excessive contributions to her husband's campaign.

Between October 6, 2002 and January 24, 2003, the Committee used a personal credit card issued only to the candidate's spouse to make 21 campaign expenditures totaling \$59,811.75. The credit card charges were made by Committee staff with the understanding that the Committee was obligated for and would make payments to the credit card company for all campaign charges. From November 2002 through April 2003, the Committee made six payments totaling \$22,015 to the credit card company. When the Committee's funds were exhausted, the candidate transferred \$23,999 to personal credit cards issued to him and he made a payment of \$18,413.86 from a personal account. By June 2003, the entire campaign balance on the credit had been paid. The spouse never paid for any of the charges made by the Committee with the credit card.

The Commission's regulations treat as a contribution "[t]he payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee..." 11 C.F.R. §116.5(b). In this case, the credit card was considered a joint personal credit card of the candidate and his spouse by the Committee and the spouse did not make any payments from her personal funds for the campaign credit card charges, therefore, the use of the credit did not result in a contribution by the spouse to her husband's campaign.

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### III. Response to Interim Audit Report Recommendation

A spreadsheet itemizing the charges incurred and payments made to the credit card company is attached as Exhibit 1. Supporting documents are attached as Exhibits 2 through 7. A summary of the documents demonstrating that the Committee and the candidate paid the campaign charges on the credit card follows:

In October 2002, 12 Committee charges totaling **\$39,805.15** were made with the credit card. A finance charge of **\$2.75** was incurred. There were no payments made by the Committee leaving a balance owed by the Committee of **\$39,807.90**.

In November 2002, 8 Committee charges totaling **\$18,484.52** were made with the credit card. A finance charge of **\$717.89** was incurred. The Committee made a payment of **\$15.00** with check number 1496 leaving a balance owed by the Committee of **\$58,995.31**.

In December 2002, no Committee charges were made with the credit card. A finance charge of **\$964.97** was incurred. The Committee made a payment of **\$1,000** with check number 1517 leaving a balance owed by the Committee of **\$58,960.28**.

In January 2003, one Committee charge totaling **\$1,522.08** was made with the credit card. A finance charge of **\$973.58** was incurred. The Committee made a payment of **\$10,000** with check number 1521 and **\$10,000** was transferred to a Discover card issued to Kevin F. Kelley (xxxx xxxx xxxx xxxx 1841) leaving a balance owed by the Committee of **\$41,455.94**. See Exhibit 2.

In February 2003, no Committee charges were made with the credit card. A finance charge of **\$627.05** was incurred. The Committee made a payment of **\$5,000** with check number 1529 leaving a balance owed by the Committee of **\$37,082.99**. See Exhibit 3.

In March 2003, no Committee charges were made with the credit card. A finance charge of **\$570.46** was incurred. The Committee made a payment of **\$5,000** with check number 1534 leaving a balance owed by the Committee of **\$32,653.45**. See Exhibit 4.

In April 2003, no Committee charges were made with the credit card. A finance charge of **\$524.94** was incurred. The Committee made a payment of **\$1,000** with check number 1535 and **\$5,599.00** was transferred to a Citi card issued to Kevin F. Kelley (xxxx xxxx xxxx 4579) leaving a balance owed by the Committee of **\$26,579.39**. See Exhibit 5.

In May 2003, no Committee charges were made with the credit card. A finance charge of **\$234.47** was incurred. A transfer of **\$8,400** was made to an MBNA card issued to Kevin F. Kelley (xxxx xxxx xxxx 1491) leaving a balance owed by the Committee of **\$18,413.86**. See Exhibit 6.

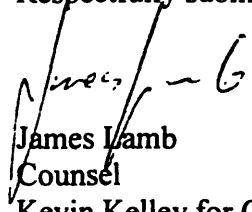
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In June 2003, no Committee charges were made with the credit card. A finance charge of **\$175.15** was incurred. A payment of **\$18,123.98** was made from a joint account that had a balance of more than \$47,000 at the time of payment leaving a balance owed by the Committee of **\$465.03**. See Exhibit 7. ✓

The Committee is in the process of amending its disclosure reports to reflect the payments and transfers. They will be filed with the Commission shortly.

The Committee hereby respectfully submits this response to the Interim Report. Should the Commission or Audit Staff require any additional information, please contact us.

Respectfully submitted,



James Lamb  
Counsel  
Kevin Kelley for Congress

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