



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 8, 2009

**MEMORANDUM**

To: Thomasenia P. Duncan  
General Counsel

Through: Robert A. Hickey  
Staff Director

From: John D. Gibson  
Chief Compliance Officer

Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Thomas J. Nurthen  
Audit Manager

By: Mary Bradley  
Lead Auditor

Subject: Zinga for Congress (A07-23) - Referral Matter

On May 22, 2009 the Commission approved the final audit report on Zinga for Congress (ZFC). The final audit report includes the following matter that is referable:

**Finding 1. Receipt of Contributions that Exceed Limits.** – The matter is being referred to your office because ZFC's response to the interim audit report did not address this finding. Subsequent to receiving the interim audit report response, the Audit staff had a number of discussions with ZFC. To date, ZFC has not addressed this matter.

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

Attachments: Finding 1. Receipt of Contributions that Exceed Limits.

cc: Lorenzo Holloway

10190290387

## **Finding 1. Receipt of Contributions that Exceed Limits**

### **Summary**

The Audit staff identified 16 contributions from nine individuals that exceeded the limitation by \$8,600. Of these excessive contributions, \$1,800 could have been resolved by ZFC sending presumptive reattribution notices. The remaining \$6,800 appeared resolvable only by refund. The Audit staff recommended that ZFC provide evidence demonstrating that the contributions were not excessive, send notices to those contributors that were eligible for presumptive reattribution, or, refund the excessive amounts. ZFC's response to the interim audit report did not address this matter. Further, subsequent reports filed by ZFC did not disclose any refunds of the excessive contributions, a payment to the U.S. Treasury, or debts owed to the contributors.

### **Legal Standard**

**A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,100 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b), 110.9(a) and 110.17(b).

**B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
  - o Keep enough money in the account to cover all potential refunds;
  - o Keep a written record explaining why the contribution may be illegal;
  - o Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
  - o Seek a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of redesignation); and
  - o If the committee does not receive a proper redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

**C. Joint Contributions.** Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on the check or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

**D. Reattribution of Excessive Contributions.** The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

1. The reattribution must be signed by both contributors;
2. The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
3. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

1. How the contribution was attributed; and
2. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(B).

**E. Resignation of Excessive Contributions.** When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

1. The redesignation must be signed by the contributor;
2. The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
3. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

1. Is made before that candidate's primary election;
2. Is not designated in writing for a particular election;
3. Would be excessive if treated as a primary election contribution; and
4. As redesignated, does not cause the contributor to exceed any other contribution limit. 110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead.

### **Facts and Analysis**

The Audit staff identified 16 contributions from nine individuals that exceeded the limitations by \$8,600. Of these excessive contributions, one contributor was excessive by \$650 for the primary election and eight contributors were excessive by \$7,950 for the general election. Evidence that ZFC sought signed redesignations or reattributions was not provided nor was evidence provided that the contributors were notified that their contributions were presumptively redesignated and/or reattributed.

It should be noted that excessive contributions totaling \$1,800 qualified for presumptive reattribution. The remaining excessive contributions (\$6,800) appeared resolvable only by refund to the contributors or disgorgement to the U.S. Treasury. Finally, ZFC did not maintain a separate account or a sufficient balance in its bank account to refund the excessive contributions.

The Audit staff discussed this matter with ZFC representatives at an exit conference and provided a schedule of the apparent excessive contributions. ZFC representatives stated they would attempt to obtain additional designations/affidavits pertaining to the election designations.

### **Interim Audit Report Recommendation and Committee's Response**

The Audit staff recommended that ZFC provide evidence demonstrating that contributions totaling \$8,600 were not excessive. Such evidence was to include, but not be limited to, documentation that the contributions were reattributed or redesignated in a timely manner or that the excessive contributions were timely refunded.

Absent such evidence, ZFC should have sent notices to those contributors that were eligible for presumptive reattribution (\$1,800) to inform them how the contribution was attributed and offering the contributors an option of receiving a refund. For notices sent to contributors, ZFC should have provided a copy of each notice and evidence that it was sent. Absent a request for a refund by the contributors, these notices obviated the need for a refund or payment to the U.S. Treasury; and,

For the remaining excessive contributions (\$6,800), ZFC should have refunded the excessive portions to the contributors or paid that amount to the U.S. Treasury and provided evidence of the refunds or payment to the U.S. Treasury (copies of the front and back of negotiated check(s)); or,

If funds were not available to make the necessary refunds, ZFC should have disclosed the contributions requiring refunds as debts owed on Schedule D (Debts and Obligations) until funds became available to make such refunds.

ZFC's response to the interim audit report did not address this matter. Further, subsequent reports filed by ZFC did not disclose refunds of the excessive contributions, a payment to the U.S. Treasury, or debts owed to the contributors.