



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 26 2006

CERTIFIED MAIL
RETURNED RECEIPT REQUESTED

William J. McHenry

Farmington Hills, MI 48335

RE: MUR 5818
William J. McHenry

Dear Mr. McHenry:

On September 19, 2006, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

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Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Audra Wassom, the staff attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondent: W.J. McHenry

MUR: 5818

I. INTRODUCTION

Information obtained by the Commission in the normal course of its supervisory responsibilities indicates that Fieger, Fieger, Kenney & Johnson, P.C. ("the Firm") may have made prohibited contributions to John Edwards for President ("the Edwards Committee") by using individual employees and their relatives as conduits during 2003-2004. W.J. McHenry is either a current or former Firm employee, or a family member of a current or former Firm employee, who made a contribution to the Edwards Committee. As set forth below, there is a factual basis for the Commission to investigate whether the contribution attributed to W.J. McHenry actually was a contribution from the Firm in the name of another.

II. FACTUAL AND LEGAL ANALYSIS

Fieger, Fieger, Kenney & Johnson, P.C. is a professional corporation, with Geoffrey N. Fieger listed as President, and both Vernon R. Johnson and Jeremiah J. Kenney listed as Vice Presidents. Commission records reflect that all 16 of the attorneys currently employed by the Firm, or employed by the Firm at the time of their contribution, as well as 30 other individuals who appear to be former Firm attorneys, current non-lawyer employees, and family members of current or former Firm attorneys contributed to the Edwards committee in 2003. Of these 46 contributors, 36 contributed the individual maximum amount of \$2,000 on one of three days, March 30, 31 or June 30, 2003. Further, 34 of these 46 contributors have no previous record of

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contributing to any Federal campaign. Individuals associated with the Firm made \$93,500 in contributions to the Edwards committee in 2003.

According to news accounts, Joseph Bird, a former attorney at the Firm has alleged that the Firm reimbursed him for contributions he and his spouse made to the Edwards Committee. Sarah Karush, *Lawyer Says Fieger Partner Told Him to Contribute to Edwards Campaign*, DETROIT NEWS, Dec. 3, 2005. Approximately two weeks after Mr. Bird joined the Firm in 2003, Vernon Johnson, a named partner and vice president of the Firm, allegedly told Mr. Bird that "he was expected to give to the Edwards campaign." *Id.* Bird claims that he brought in two \$2,000 checks, one from him and one from his wife, the next day, and that he received a reimbursement check for \$4,000 two days later. *Id.* The same news report states that Johnson denies the incident with Bird, and named partner, Geoffrey Fieger, claims Bird is a disgruntled former employee seeking revenge against the Firm. *Id.* Another news report, however, quoted Mr. Fieger as asserting that he gave bonuses to so-called "civic-minded employees" (without explaining the meaning of that term) and that he expected a grand jury indictment based on those bonuses. Joe Swickard, *Fieger: I Expect To Be Indicted*, DETROIT FREE PRESS, Jan. 17, 2006. Notwithstanding the denial attributed to Mr. Johnson in the news story, the Firm has not denied the allegations in connection with this matter.

W.J. McHenry is an attorney at Fieger, Fieger, Kenney & Johnson, P.C. W.J. McHenry made a \$2,000 contribution to the Edwards committee on March 31, 2003. W.J. McHenry had contributed to a Federal political committee prior to his contribution to the Edwards committee. If W.J. McHenry accepted reimbursement for his contribution to the Edwards committee, then he may have violated the Act. The Act prohibits any person from making or accepting a contribution in the name of another person. Likewise, persons are prohibited from knowingly

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permitting their names to be used to effect contributions made in the name of another person and from knowingly assisting in making such contributions. 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(iii).

The circumstances of this matter establish a basis for the Commission's reason to believe finding. First, a former Firm attorney reportedly made specific allegations that the Firm reimbursed campaign contributions to the Edwards committee from him and his wife. Second, although members of the Firm denied Mr. Bird's allegations in statements to the press, the Firm has not explicitly denied the allegations in connection with this matter. Third, Mr. Fieger reportedly said in reference to the allegations that he gave "bonuses" to "civic-minded employees." Fourth, the Commission's records show a large number of maximum contributions made on the same days by individuals associated with the Firm, many of whom had never previously contributed to any Federal campaign.¹

Based on all of the above, the Commission finds reason to believe that W.J. McHenry violated 2 U.S.C. § 441f.

¹ While the making of multiple contributions on the same day by persons associated with a common employer is not a sufficient basis in and of itself to establish reason to believe, it is relevant evidence that must be considered in connection with other circumstances, such as those present in this matter.

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