



Final Audit Report of the Commission on Friends for Menor

May 10, 2006 – December 31, 2006

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.¹ 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 Campaign (p. 2)

Friends for Menor is the principal campaign committee for Ron Menor, Democratic candidate for the U.S. House of Representatives from the state of Hawaii, 2nd District and is headquartered in Honolulu, Hawaii. For more information, see chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**

○ From Individuals	\$ 134,292
○ From the Candidate	110,000
○ From Political Committees	27,225
○ Other Receipts	48
Total Receipts	\$ 271,565

- **Disbursements**

○ Operating Expenditures & Other Disbursements	\$ 245,498
○ Repayment of Candidate Loans	25,500
Total Disbursements	\$ 270,998

Commission Findings (p. 3)

- Candidate Loan and Receipt of Excessive Contributions (Finding 1)
- Loan From the Candidate and Spouse (Finding 2)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This report is based on an audit of Friends for Menor (FFM), 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, the scope of this audit was limited to the following:

1. The consistency between reported figures and bank records.
2. The disclosure of individual contributors' occupation and name of employer.
3. The receipt of loans and contributions from the Candidate.

Part II

Overview of Campaign

Campaign Organization

Important Dates	Friends for Menor
• Date of Registration	May 25, 2006
• Audit Coverage	May 10, 2006 to December 31, 2006
Headquarters	Honolulu, HI
Bank Information	
• Bank Depositories	1
• Bank Accounts	1 Checking Account
Treasurer	
• Treasurer When Audit Was Conducted	Amadeo P. Manuel
• Treasurer During Period Covered by Audit	Amadeo P. Manuel
Management information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Treasurer

Overview of Financial Activity (Audited Amounts)

Cash on hand @ May 10, 2006	\$ 0
Receipts	
o From Individuals	\$ 134,292
o From the Candidate	110,000
o From Political Committees	27,225
o Other Receipts	48
Total Receipts	\$ 271,565
Disbursements	
o Operating Expenditures & Other Disbursements	\$ 245,498
o Repayment of Candidate Loans	25,500
Total Disbursements	\$ 270,998
Cash on hand @ December 31, 2006	\$ 567

Part III

Summaries

Commission Findings

Finding 1. Candidate Loan and Receipt of Excessive Contributions

FFM disclosed loans and/or contributions from the Candidate totaling \$75,000 that initially could not be verified as coming from the Candidate's personal funds. These funds were all transferred to FFM from the Candidate's business account and potentially resulted in impermissible contributions. In the interim audit report, the Audit staff recommended that FFM demonstrate that the loans were from the Candidate's personal funds. Absent such a demonstration, it was recommended that FFM refund any impermissible contributions and properly disclose the source of the loans. After consideration of FFM's response, the following was determined with respect to the \$75,000:

Candidate Loan

Sixty thousand dollars was received by the Candidate's business from corporations. FFM provided evidence that \$54,500 of that amount was the Candidate's personal funds. There remained a question concerning a \$5,500 loan received from an incorporated mortgage lending company. However, the Commission determined that there was insufficient evidence that the loan resulted in a prohibited contribution.

Receipt of Excessive Contributions

It was determined that three individuals loaned \$15,000 resulting in excessive contributions of \$8,780. The Commission determined that the loans from individuals resulted in FFM's receipt of excessive contributions.

(For more detail see page 4)

Finding 2. Loan From the Candidate and Spouse

FFM reported a \$9,000 loan from the Candidate that was apparently made with funds from the Candidate's spouse that were first deposited into a joint checking account of the Candidate and his spouse. The Commission considered the extent to which the contribution limits of 2 U.S.C. 441a(a)(1)(A) and 11 CFR §110.1(a) and (b) applied to this loan. The Commission determined that the contribution limits of the Act and Regulations did not apply to this loan. (For more detail see page 8)

Part IV

Commission Findings

Finding 1. Candidate Loan and Receipt of Excessive Contributions

Summary

FFM disclosed loans and/or contributions from the Candidate totaling \$75,000 that initially could not be verified as coming from the Candidate's personal funds. These funds were all transferred to FFM from the Candidate's business account and potentially resulted in impermissible contributions. In the interim audit report, the Audit staff recommended that FFM demonstrate that the loans were from the Candidate's personal funds. Absent such a demonstration, it was recommended that FFM refund any impermissible contributions and properly disclose the source of the loans. After consideration of FFM's response, the following was determined with respect to the \$75,000:

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Receipt of Excessive Contributions

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Legal Standard

A. Contents of Reports. Each report must disclose for the reporting period and election cycle, the date and amount of loans made by or guaranteed by the candidate and the identification of each person who makes, endorses or guarantees a loan to the committee. 2 U.S.C. §434(b)(2)(G) and (3)(E).

B. Contribution Defined. A gift, subscription, loan (except when made in accordance with 11 CFR §§100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution. The term *loan* includes a guarantee, endorsement, and any other form of security. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A

loan, to the extent it is repaid, is no longer a contribution. 11 CFR §100.52(a), (b)(1) and (b)(2).

C. Candidate as Agent of Authorized Committee. Any candidate who receives a contribution, obtains any loan, or makes any disbursement in connection with his or her campaign shall be considered as having received such contribution, obtained such loan or made such disbursement as an agent of his or her authorized committee(s). 11 CFR §101.2(a).

D. Definition of Personal Funds. *Personal funds* of the candidate mean the sum of all of the following:

(a) *Assets.* Amounts derived from any asset that, under applicable State law, at the time the individual 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;

(b) *Income.* Income of the candidate received during the current election cycle, as defined in 11 CFR §400.2, including:

- (1) A salary and other earned income that the candidate earns from bona fide employment;
- (2) Income from the candidate's stocks or other investments;
- (3) Bequests to the candidate;
- (4) Income from trusts established before the beginning of the election cycle as defined in 11 CFR §400.2;
- (5) Income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;
- (6) Gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle, as defined in 11 CFR §400.2; and
- (7) Proceeds from lotteries and similar legal games of chance. 11 CFR §100.33

E. Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans) from, among other sources, the treasury funds of a corporation. 2 U.S.C. §441b.

F. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b). The Bipartisan Campaign Reform Act of 2002 (BCRA) includes provisions that indexes the individual contribution limit for inflation. The individual contribution limit for the 2006 election cycle was \$2,100.

Facts and Analysis

FFM disclosed loans and/or contributions from the Candidate totaling \$75,000 that initially could not be verified as coming from the Candidate's personal funds. These funds were all transferred to FFM from the Candidate's business account. Based on an examination of bank statements and other records relating to the Candidate's business

account, the Audit staff determined the source of the funds was apparently \$54,000 from two corporations and \$21,000 from an unknown source.

The source for these funds was discussed at an exit conference held at the end of audit fieldwork. In support of his claim that the amounts were from personal funds, the Candidate provided a letter which emphasized that contributions to his campaign were never deposited into the law firm account.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FFM provide evidence demonstrating that \$75,000 transferred to FFM came from the Candidate's personal funds. The evidence was to include records to establish that the funds deposited into the Candidate's business account meet the definition of *personal funds* in accordance with 11 CFR §110.10.

A. Candidate Loan

In response to the interim audit report, FFM provided a legal service agreement and a counsel retention agreement to establish that \$48,500 of the \$54,000 from the two corporations was income for services provided by the Candidate's law firm and therefore, were personal funds of the Candidate. FFM also clarified the previously unknown source for \$6,000 of the \$21,000 questioned by the Audit staff and provided evidence that the funds were the personal funds of the Candidate.

For the remaining \$5,500 received from the corporations, FFM indicated the funds were the result of a separate loan extended by a mortgage lending company to the Candidate. For this arrangement, FFM provided a promissory note between the Candidate's law firm and the CEO of the mortgage lending company and asserted that the loan agreement was "negotiated...as part of discussions for the provision of legal services by the candidate to the company."² FFM also provided a declaration from the Candidate stating the purpose of the \$5,500 loan was to "cover general overhead expenses related to [the Candidate's] law practice" and was made "in recognition of [the Candidate's] agreement to represent and perform work on behalf of [the mortgage lending company] in Hawaii, and to foster a positive working relationship between [the Candidate] and his client going forward." The promissory note and the declaration by the Candidate do not establish that the loan was made in exchange for the provision of legal services. The Audit staff concluded that the information submitted did not establish that proceeds of the \$5,500 loan were the Candidate's personal funds.

FFM was provided a copy of the draft final audit report on December 3, 2009 that included the Audit staff's conclusion stated above. In response, the FFM argued that the \$5,500 business loan from the mortgage lending company was permissible because there was no evidence to demonstrate that any portion of \$5,500 was utilized by the Candidate to make loans to FFM since the Candidate's business account maintained a sufficient balance of other permissible funds. FFM also reiterated that neither the Candidate nor the mortgage lending company intended that the proceeds of the loan to be used for

² Although the promissory note was made between the Candidate's law firm and the CEO of the mortgage lending company, the loan proceeds were actually paid by the incorporated mortgage lending company.

campaign purposes. Rather, the Declaration by the Candidate stated the loan proceeds were deposited into the business account to cover law practice related expenses. That statement of intent was consistent with promissory note which specifies that "repayment of this loan is to be secured by accounts receivable of the Law Offices of Ron Menor." In its response, FFM also indicated that the \$5,500 loan has already been paid in full with interest.

Commission Conclusion

The Commission agreed with the Audit staff's conclusion except with respect to the \$5,500 loan from the mortgage lending company. The Commission concluded that there was not enough evidence to support a finding that this was an impermissible contribution.

B. Receipt of Excessive Contributions

In response to the interim audit report, FFM also provided records indicating that \$15,000 of the original \$75,000 questioned by the Audit staff was from two separate personal loans. FFM indicated that some of the funds were from a \$10,000 personal loan provided by FFM's Treasurer and spouse. The remaining \$5,000 was a personal loan from another individual. The documentation provided for these personal loans did not indicate that the loans were income earned by bona fide employment, investments, bequests, or customarily received gifts. As such, the proceeds of these loans were not the Candidate's personal funds and resulted in FFM's receipt of excessive contributions from three individuals totaling \$8,780.³ FFM's Treasurer and his spouse subsequently waived repayment by the Candidate for \$8,000 of the \$10,000 loan amount in exchange for legal services provided by the Candidate's law firm. A copy of a receipt indicating the repayment of \$3,900 by the Candidate was also provided for the \$5,000 loan. The repayments on both of these loans by the Candidate totaling \$11,900 (\$8,000 + \$3,900) are considered contributions to FFM. FFM has not filed amended reports to disclose the source of these loans or to report the repayments made by the Candidate as contributions.

FFM was provided a copy of the draft final audit report on December 3, 2009 that included the Audit staff's conclusion stated above. In response, FFM stated that if the Commission determines that these amounts exceeded applicable contribution limits then FFM believes the receipt of these excessive amounts occurred inadvertently and FFM is prepared to work with the Commission to implement whatever corrective actions are necessary. FFM indicated that these loan amounts have been paid in full with interest or the Candidate performed legal services in lieu of repayment of their loans.

Commission Conclusion

The Commission agreed with the Audit staff's conclusion that FFM received excessive contributions from three individuals totaling \$8,780.

³ One of the three individuals also made other contributions totaling \$80 to FFM. The excessive amount from all three individuals is calculated as \$8,780 (Contributions from these three individuals totaling \$15,080 less their combined contribution limit of \$6,300 (\$2,100 x 3)).

Finding 2. Loan From the Candidate and Spouse

FFM reported a \$9,000 loan from the Candidate that was apparently made with funds from the Candidate's spouse. These funds were from the sale of stock belonging to the Candidate's spouse and were deposited into a joint personal account of the Candidate and his spouse prior to the being deposited into the FFM account. The Commission considered the extent to which the contribution limits of 2 U.S.C. 441a(a)(1)(A) and 11 CFR §110.1(a) and (b) applied to this loan. The Commission determined that the contribution limits of the Act and Regulations did not apply to this loan.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b). The Bipartisan Campaign Reform Act of 2002 (BCRA) includes provisions that indexes the individual contribution limit for inflation. The individual contribution limit for the 2006 election cycle was \$2,100.

B. Definition of Personal Funds. *Personal funds* of the candidate include amounts derived from any asset that, under applicable State law, at the time the individual 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. 2 U.S.C. §431(26)

Facts and Analysis

FFM reported a \$9,000 loan from the Candidate. The source of the funds was a \$10,000 check drawn on a trust and made payable to the Candidate's spouse. The \$10,000 check was deposited into the joint checking account of the Candidate and his spouse. On the same day a \$9,000 check was issued payable to FFM and signed by the Candidate's spouse. The memo line of this check identified the purpose as a loan to FFM. The balance in the joint personal account on the day prior to the deposit of \$10,000 was not sufficient to allow for the transfer of \$9,000 to FFM.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FFM provide evidence demonstrating that the contribution was not excessive or prohibited. Such evidence was to include documentation demonstrating the Candidate's entitlement to the funds from the trust and the purpose of the \$10,000 check issued to the Candidate's spouse from the trust account. FFM also was to provide information regarding the person(s) who established the trust and the beneficiary of the trust.

In response to the interim audit report, FFM stated that the source of the \$10,000 was the Candidate's spouse. FFM explained that these funds were from the sale of stock belonging to the Candidate's spouse and were deposited into a joint personal account of the Candidate and his spouse. FFM further explained that it was their understanding that under Federal law a Candidate's spouse could contribute or lend an unlimited amount of his/her personal funds to the Candidate's campaign. However, funds given to or loaned

to a candidate from any person, including a relative or friend of the candidate, are not considered the personal funds of the Candidate. Therefore, the Audit staff concluded that FFM received an excessive contribution of \$8,526 from the Candidate's spouse.⁴

FFM was provided a copy of the draft final audit report on December 3, 2009 that included the Audit staff's conclusion stated above. In response, FFM again stated the source of the funds was the Candidate's spouse but also provided an affidavit from her explaining the couple's joint intent in making the loan.

Commission Conclusion

The Commission considered the extent to which the contribution limits of 2 U.S.C. 441a(a)(1)(A) and 11 CFR §110.1(a) and (b) applied to the loan from funds of the Candidate's spouse that had first been deposited into a joint account of the spouse and the Candidate. The Commission determined that the contribution limits of the Act and Regulations did not apply to this loan.

⁴ The Candidate's spouse made other contributions totaling \$1,626 to FFM. The excessive amount is calculated as \$8,526 (\$9,000 loan + \$1,626 other contributions - \$2,100 contribution limit).