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## Commission

### Message from the Chairman

On July 29, 2009, the Commission held a public hearing to hear testimony on ways the Commission can improve both its website and the ways in which the FEC uses the Internet to communicate to the public. While the Commission is continually engaging in efforts to improve all aspects of how it discloses information to the public, our goal with this initiative is to learn how we can ensure that our website continues to be a state-of-the-art resource for disclosure of information to the public, including disclosure of campaign finance data, information about federal campaign finance laws and actions of the Commission.

The issues discussed at the hearing were included in a Notice of Public Hearing and Request for Comment published in the Federal Register on July 1. In response to that Notice, we received suggestions and recommendations from all segments of the public, including representatives of political committees, the media, the academic community and advocacy groups.

At the daylong hearing, the Commission heard testimony from nine experts. Witnesses included lawyers specializing in campaign finance law, campaign finance reform and

## Regulations

### Civil Penalties Adjusted for Inflation

On July 1, 2009, the Commission published final rules that apply cost-of-living adjustments to certain civil monetary penalties under the Federal Election Campaign Act (FECA), the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended, requires federal agencies to adjust for inflation the civil monetary penalties within their jurisdiction at least once every four years according to detailed formulae.

The Inflation Adjustment Act requires the Commission to adjust civil penalties by a Cost of Living Adjustment (COLA), which is defined as the percentage by which the U.S. Department of Labor's Consumer Price Index for all urban consumers (CPI) for June of the year preceding the adjustment exceeds the CPI for June of the year in which each civil penalty was last set or adjusted. The amount of the resulting increase is then subject to rounding rules based on the size of the civil penalty. The Inflation Adjustment Act imposes a 10 percent cap on the first adjust-

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## Commission

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open government advocates, software developers and campaign consultants. These witnesses focused on the importance of strengthening the integrity of the raw data the Commission receives from the filing community and ways to improve the organization and thoroughness of data on the FEC website, including more intuitive and robust search capabilities and cross-referencing. They also proposed new channels for conveying information that would allow interested parties both to take full advantage of the agency's rich data and to keep up with

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developments in campaign finance law and practice. They suggested that our goals should be mindful of the needs of four main constituents, namely, the filing community, the media, the public generally and the academic community. Witnesses also discussed possible improvements to the FEC filing software and the certification process of the FEC for use of outside vendor software. There were recommendations that the FEC include additional related data, other than just the information required to be filed by law, to augment the capacity of the website to provide other helpful information relating to federal elections.

We have been very pleased with the comments and advice we have received, and we are reopening the time for written comment on the FEC's Website and Internet Communications Improvement Initiative until midnight Friday, August 20, 2009, in order to allow for the broadest public participation in this project.

In addition to the Federal Register Notice published July 1, which sets forth the range of information the FEC is seeking, the comments received so far and a transcript of the open session hearing are available on the FEC website at <http://www.fec.gov/pages/hearings/internet-hearing.shtml>.

Many of you may have turned to the Commission's website in the past for information and found either that the information is not organized as intuitively as you desired or that information is either not readily accessible or perhaps not even available. This is the type of feedback that we most need to receive and that only the public users of our website can provide. I encourage you to please share your comments with us.

Comments should be sent to [improvefecinternet@fec.gov](mailto:improvefecinternet@fec.gov).

—Steven Walther  
Chairman

## Regulations

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ment under its rules, but no cap on subsequent adjustments.

The adjusted penalty amounts took effect July 1, 2009, when the final rules were published in the *Federal Register*, and only apply to violations that occur after that date. The Commission previously applied the Inflation Adjustment Act formulae to its civil penalties in 1997, 2002 and 2005.

## Civil Penalties Adjustments

The Federal Election Campaign Act provides for civil penalties for any person who violates any portion of the FECA or chapters 95 and 96 of Title 26. The FECA's civil penalties are organized into two tiers. The higher tier applies to "knowing and willful" violations of the FECA or chapters 95 and 96 of Title 26, the lower to those that are not "knowing and willful." While the amounts paid in each enforcement case are arrived at through a conciliation process, Commission regulations at 11 CFR 111.24 specify the civil penalty amounts established by 2 U.S.C. §§437g(a)(5), (6) and (12) and 441f, as adjusted by the Inflation Adjustment Act. The adjustments for 2009 are as follows:

- For violations that are not knowing and willful, the previous \$6,500 civil penalty is now \$7,500;
- For violations that are knowing and willful, the previous \$11,000 civil penalty is now \$16,000;
- For knowing and willful contributions made in the name of another, the previous \$55,000 civil penalty is now \$60,000;
- For violations of confidentiality that are not knowing and willful, the previous \$2,200 civil penalty is now \$3,200; and
- For knowing and willful violations of the confidentiality rules, the previous \$6,500 civil penalty is now \$6,500. 11 CFR 111.24(a) and (b).

## Administrative Fines

The FECA permits the Commission to assess civil penalties for violations of the reporting requirements of 2 U.S.C. §434(a) in accordance with the schedule of penalties established and published by the Commission. 2 U.S.C. §437g(a)(4)(C). Each schedule contains penalties for late-filed reports and penalties for non-filed reports. A report is considered to be late-filed if the committee submits it within a certain number of days after the deadline. Reports filed later than that are considered non-filed. 11 CFR 111.43(e). Penalty calculations are based not only on the tardiness of the report, but also the level of activity, or the estimated level of activity, as appropriate, and other factors. 111.43(d). An administrative fine calculator is available on the FEC's website at [http://www.fec.gov/af/af\\_calc.shtml](http://www.fec.gov/af/af_calc.shtml).

## Civil Penalties for 48-Hour Notices

Principal campaign committees are required to report, within 48 hours of receipt, any contributions of \$1,000 or more that are received after the 20<sup>th</sup> day, but more than 48 hours before, any election. 2 U.S.C. §434(a)(6). The FECA permits the Commission to assess civil penalties for violations of the 48-hour notice reporting requirement. The Commission last adjusted the civil penalties for these reporting violations in 2005. However, under the rounding rules for the calculation of adjustments, no changes were required for civil penalties for timely filing of 48-hour notices by principal campaign committees.

## Additional Information

The final rule and its Explanation and Justification were published in the *Federal Register* on July 1, 2009 (74 FR 31345) and are available on the FEC web site at [http://www.fec.gov/law/cfr/ej\\_compilation/2009/notice\\_2009-09.pdf](http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-09.pdf).

—Myles Martin

## Audits

### Commission Adopts Procedural Rules for Audit Hearings

The Commission is instituting a pilot program that provides political committees that are audited pursuant to the Federal Election Campaign Act (the Act) with the opportunity to have a hearing before the Commission prior to the Commission's adoption of a Final Audit Report on the matter. The Commission has previously adopted a similar program for hearings at the "probable cause" stage of the enforcement process. The audit hearings will provide audited committees with the opportunity to present oral arguments to the Commission directly and give the Commission an opportunity to ask relevant questions prior to adopting a Final Audit Report.

### Background

On January 14-15, 2009, the Commission held public hearings regarding procedures and processes that it uses to resolve enforcement cases. Many commenters at the hearing praised the FEC's program for holding probable cause hearings during the enforcement process, and some commenters requested that a similar procedure be adopted with respect to other Commission processes, including audits.

Accordingly, the Commission has established a new pilot program that will allow a committee that is being audited by the Commission's Audit Division to request a hearing in cases where the Audit Division's draft Final Audit Report concludes that the committee violated the Act or Commission regulations. The pilot program became effective on July 27, 2009. The Commission will evaluate this pilot program after one calendar year and consider whether it should be made permanent, be discontinued or be modified.

## Opportunity to Request a Hearing

Under current Commission procedures, once the Commission's Audit Division completes its audit field work, it conducts an exit conference at which it presents its preliminary findings to the audited committee. Based on the field work and the committee's response at the exit conference, the Audit Division prepares an interim or preliminary audit report that, in certain situations, the Commission considers in executive session prior to the report being sent to the committee being audited. The committee then has the opportunity to respond in writing. The Audit Division subsequently prepares a draft Final Audit Report for Commission consideration. If one or more Commissioners object to the report, the matter is discussed and decided in an open meeting of the Commission.

The Commission wishes to provide those committees being audited with an opportunity to address the Commission directly and in person, before the Commission considers adopting any Audit Division findings that the committee violated the Act or Commission regulations.

When the Audit Division prepares its draft Final Audit Report and recommends that the Commission adopt findings that a violation of the Act or regulations occurred, it shall attach a cover letter informing the committee of the opportunity to provide a written response and request an oral hearing before the Commission, which the committee must request within 15 days after receiving the draft Final Audit Report. Requests for a hearing must be made in writing and must be filed with the committee's response.

The Commission will grant a request for an oral hearing if any two Commissioners vote affirmatively. Hearings are voluntary, and the Commission will draw no adverse inference based on the committee's request for, or waiver of, such a hearing. Each request for a hearing

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## Audits

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must state specifically why the committee is requesting the hearing and what issues the committee expects to address. The Commission will determine the format and time allotted for each hearing at its discretion.

## Hearing Procedures

Once the Commission has granted an oral hearing, committees or their counsel will have the opportunity to present their arguments and the Commissioners may pose questions to the committee or their counsel, if represented. Committees are expected only to raise issues that were identified in their hearing request. The Commission may request that the committee submit supplementary information or briefing after the hearing. Hearings may be held in either open or closed session depending on the issues. If the hearing is held in closed session, the transcript will become part of the record of the audit and may be relied upon for Commission determinations. The Commission may make transcripts public after the matter is closed in accordance with Commission policies on disclosure. For hearings held in open session, the audio recording will be placed on the FEC website.

## Additional Information

The full text of the Commission action is available at [http://www.fec.gov/law/cfr/ej\\_compilation/2009/notice\\_2009-12.pdf](http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-12.pdf).

—Myles Martin

## Advisory Opinions

### Commission Adopts Procedural Rules for Advisory Opinions

The Commission has established a pilot program allowing persons requesting advisory opinions, or their counsel, to answer questions at

an open meeting of the Commission where the draft advisory opinion is considered. The new program took effect on July 7, 2009. The Commission believes that this procedure will promote transparency and fairness, while ensuring that advisory opinions continue to be issued in an efficient and timely manner.

## Background

On January 14-15, 2009, the Commission held a public hearing on possible changes to a number of its policies, practices and procedures, including possible changes to the advisory opinion process. One issue generating significant attention was whether advisory opinion requestors, or their counsel, should be allowed to appear before the Commission during the advisory opinion process. After reviewing public comments, the Commission is implementing a new procedure that would allow requestors to appear before the Commission to answer questions at the open meeting when the Commission considers the requestor's draft advisory opinion.

## Current Advisory Opinion Procedures

At present, any person may request an advisory opinion concerning the application of the Federal Election Campaign Act (the Act) or Commission regulations to a specific transaction or activity by the person. Requestors or their counsel must submit their request in writing. The Commission, in turn, must issue an advisory opinion within 60 days of receiving a complete advisory opinion request. The 60-day deadline is reduced to 20 days when a federal candidate or a candidate's authorized committee submits a complete request within 60 days of a federal election. At times, the Commission expedites certain highly significant, time-sensitive requests and issues these advisory opinions within 30 days. Advisory opinions are issued if approved by at least four Commissioners.

Members of the public have two distinct opportunities to participate in the advisory opinion process. First, they may submit written comments on the advisory opinion request, which is released to the public and posted on the Commission's website as soon as it becomes complete. Second, they may submit written comments on a draft advisory opinion, which typically is provided to the requestor and made available to the public prior to the Commission meeting at which the advisory opinion will be considered.

## Notice of Intent and Open Meeting Procedures

Under this new program, requestors wishing to appear before the Commission must submit a written notice of intent in advance indicating that they will be available to respond to questions at the open meeting at which the advisory opinion request is to be considered. The notice must be received by the Office of the Commission Secretary (OCS) by e-mail, hand delivery or fax no later than 48 hours prior to the scheduled open meeting. Requestors are responsible for ensuring that OCS timely receives the notice.

In the event that an advisory opinion draft response is not made available to the public and to the requestor within one week (3 days for requests under the 20-day expedited procedure) prior to the Commission open meeting at which the advisory opinion request is to be considered, the requestor shall have an automatic right to appear before the Commission, and no advance notice shall be required.

Requestors who appear before the Commission shall take a seat at the witness table during consideration of their advisory opinion and respond to any questions Commissioners may have. Requestors who cannot appear physically at an open meeting may participate remotely, subject to the Commission's technical capabilities. To ensure availability, requestors wishing to participate remotely

are advised to notify the OCS when they submit their notice of intent to appear.

Under the procedures established by the Commission, requestors are limited to answering Commissioners' questions. The Commissioners, the General Counsel and the Staff Director may ask requestors questions appropriate or relevant to answering the advisory opinion request at hand. Commissioners also may ask the General Counsel and the Staff Director questions pertaining to the request.

### **Additional Procedures**

Under the new procedures, for all advisory opinion requests subject to the 60-day deadline, the Commission will provide at least one draft response to the requestor and the public no later than one week prior to the Commission open meeting at which the advisory opinion will be considered. This timetable will provide requestors adequate time to decide whether to submit a notice to the Commission to appear at the meeting, as well as provide the public meaningful opportunity to submit comments on the draft and for the Commission to properly consider any such comments.

For requests subject to the 20-day deadline, this timetable shall be shortened to provide a draft response no later than three business days prior to the open meeting at which the advisory opinion will be considered. This timetable is in addition to the existing 10-day deadline for accepting written public comments following the date the advisory opinion request is made public.

Also, the Commission has decided to expand the 20-day expedited process provided for certain advisory opinions. This expedited procedure is currently limited to any candidate or candidate's authorized committee that:

- Submits a request within 60 calendar days preceding the date of an election for federal office;

- Presents a specific transaction or activity related to the election; and
- Explains in the request the electoral connection.

In order to be more inclusive, the Commission will attempt to apply an expedited schedule to any entity or individual who, within 60 calendar days preceding the date of an election for federal office, submits an advisory opinion request pertaining to a proposed public communication referencing a clearly identified federal candidate. This new practice with respect to election-sensitive requests is in addition to the Commission's current, informal practice of expediting certain highly significant time-sensitive requests.

After one calendar year, the Commission will evaluate the new procedures and consider whether the procedures should, by an affirmative four votes of the Commission, be discontinued or modified.

### **Additional Information**

The full text of the Commission action is available at <http://www.fec.gov/law/policy/enforcement/public-hearing011409.shtml>.

—Paola Pascual-Ferrá

## **AO 2009-07 Campaign's Use of Candidate-owned LLC's Boat**

A limited liability company (LLC) partially owned by a member of Congress may provide free or discounted use of its recreational boat to the member's campaign as an in-kind contribution, subject to the LLC's contribution limits. The campaign must pay the usual and normal charge for any rental value of the boat that exceeds the LLC's limits, just as any other political committee would.

### **Background**

Rep. Randy Neugebauer, along with several members of his family,

formed an LLC under Texas law that elected to be treated as a partnership for federal income tax purposes.

Rep. Neugebauer and his wife own a sixty-percent share in the company, with the remaining forty percent held by family. After its formation, the LLC purchased a recreational boat to be harbored in the Washington, D.C., area with the intention of renting the boat to third parties at the seasonal fair market value.

The Neugebauer for Congress Committee, Rep. Neugbauer's principal campaign committee, asked if it could use the LLC's boat for campaign events without charge so long as that use did not exceed Rep. Neugebauer's right to use the boat, and if so, whether it could pay the LLC fair-market-value rental charge upon exceeding his right to use. As an alternative, the committee asked if it could simply pay the LLC the fair-market-value rental charge for use of the boat, and if so, whether Rep. Neugebauer could use his personal funds to make that payment. If so, the committee wanted to know how to report such an expenditure as well as whether or not the LLC could rent the boat to other political committees at the fair-market rate.

### **Analysis**

Candidates for federal office, except Presidential candidates electing to accept public funding, may make unlimited expenditures from personal funds. 11 CFR 110.10. Personal funds include candidate's assets. 2 U.S.C. §431(26); 100.33(a). The facts presented in the request, however, indicate that the boat is an asset of the LLC. Accordingly, the LLC, rather than Rep. Neugebauer, would be providing the use of the boat to the Committee. Thus, any value deriving from the boat would not constitute "personal funds" of Rep. Neugebauer under the Act.

Because the LLC would be providing the use of the boat to the Committee, the Commission analyzed this transaction under the

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## Advisory Opinions

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statutory framework applying to LLCs. By allowing the Committee to use the boat for campaign events without charge, the LLC would be providing the rental value of the boat to the Committee for the purpose of influencing the election of Rep. Neugebauer. The Committee's use of the LLC's boat without charge, therefore, would be an in-kind contribution by the LLC.

The Commission generally treats contributions by LLCs consistent with the tax treatment that the entities elect under the Internal Revenue Code. Because the LLC in this case has elected to be treated as a partnership for federal income tax purposes, it would be allowed to contribute up to \$2,400 per election. 11 CFR 110.1(b) and (e). Accordingly, the Committee could use the LLC's boat without charge up to \$2,400 in rental value of the boat, per election. In this case, the LLC would be contributing the charge for the boat rental at a commercially reasonable rate in the Washington, D.C., area prevailing at the time the services of the boat were rendered to the Committee. 11 CFR 100.52(d)(2).

When the Committee's use of the boat exceeds \$2,400 per election, the Committee may continue using the boat if it pays the LLC the usual and normal charge for a comparable boat rental in the Washington, D.C., area. The payment for the use of the boat at the usual and normal charge would not be treated as an in-kind contribution from the LLC to the Committee. 11 CFR 100.52(d)(1) and (d)(2).

The committee would report the free or discounted use as an in-kind contribution from the LLC and its rental payments as operating expenditures. 11 CFR 110.1(b) and (e), also 11 CFR 100.52(d)(1) and (2). Payments from Rep. Neugbauer's personal funds would be reported as in-kind contributions. 11 CFR 104.13. The Commission would

treat interactions between the LLC and any other campaign committee, leadership PAC or party committee in the same manner.

Date Issued: June 26, 2009;  
Length: 6 pages.

—Christopher B. Berg

### AO 2009-10

### Federal Officeholder May Use Campaign Funds to Pay Certain Legal Fees

A federal officeholder may use campaign funds to pay legal fees and expenses incurred in connection with a federal investigation of allegedly improper campaign contributions and legislative appropriations because the fees would not exist irrespective of his campaign or duties as a federal officeholder. However, use of campaign funds to pay for the Congressman's representation in legal proceedings regarding allegations that are not related to his campaign activity or duties as a federal officeholder would constitute an impermissible personal use of campaign funds.

### Background

Representative Visclosky is the U.S. Representative from the First District of Indiana. Visclosky for Congress (the Committee) is Rep. Visclosky's principal campaign committee.

According to media reports contained in the advisory opinion request, the FBI and federal prosecutors are investigating whether a lobbying firm, PMA Group, made improper political contributions to Rep. Visclosky and other members of the U.S. House of Representatives. Although many details of the federal investigation are not public at this time, media reports indicate that the investigation centers on more than \$500,000 in alleged campaign contributions from PMA Group and its clients to three Congressmen, including Rep. Visclosky.

### Analysis

The Federal Election Campaign Act (the Act) identifies six categories of permissible uses of contributions accepted by a federal candidate, including otherwise authorized expenditures in connection with the candidate's campaign for federal office and ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of federal office. 11 CFR 113.2(a)-(e). The Act prohibits the "personal use" use of campaign contributions by any person. 2 U.S.C. §439a(b)(1) and 11 CFR 113.2(e). The Act specifies that conversion to personal use occurs when a contribution or amount is used "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. §439a(b)(2); see also 11 CFR 113.1(g).

The Committee may use campaign funds to pay legal fees and expenses incurred by Rep. Visclosky in connection with a federal investigation into the alleged provision of illegal campaign contributions by the PMA Group and its clients to the Committee and Rep. Visclosky's alleged improper earmarking of appropriations for clients of PMA, and any other legal proceedings that involve the same allegations. These allegations relate to Rep. Visclosky's campaign or duties as a federal officeholder, or both, and the legal fees would not exist irrespective of Rep. Visclosky's campaign or duties as a federal officeholder. The Committee may not, however, use campaign funds to pay legal fees or expenses regarding allegations unrelated to Rep. Visclosky's campaign or duties as a federal officeholder.

In accordance with the Act and Commission regulations, the Committee must maintain appropriate documentation of any disbursements made to pay legal expenses incurred in connection with the federal inves-

tigation and other legal proceedings. 11 CFR 102.9(b) and 104.11.  
 Date Issued: June 18, 2009;  
 Length: 5 pages.

—Myles Martin

## **AO 2009-12** **Candidate May Use Campaign Funds for Certain Legal Fees**

A Senator's principal campaign committee may use campaign funds to pay legal fees relating to ethics complaints, a possible FBI investigation and lawsuits implicating the Senator, but not for allegations unrelated to his campaign or duties as a federal officeholder.

### **Background**

Senator Norm Coleman and Coleman for Senate '08, the candidate's principal campaign committee (the Committee), seek to use campaign funds to pay legal expenses associated with two lawsuits filed in Texas and Delaware, a possible FBI investigation and two complaints filed with the Senate Select Committee on Ethics (Senate Ethics Committee). While the Senator is not named as a defendant in the lawsuits, both suits, the possible FBI probe and one of the ethics complaints involve allegations that a company employing the Senator's wife received improper payments from a corporate entity. The other ethics complaint alleges a possible violation of Senate gift rules.

In the Texas lawsuit, the Chief Executive Officer of Deep Marine Technology, Inc. (DMT) and Deep Marine Holdings, Inc. (DMH) sued the companies, their controlling shareholder Nasser Kazeminy and others for using "the companies and their assets as their own personal bank account." Among the specified misuses of corporate funds is an alleged payment of \$75,000 to the Hays Companies (Hays), an insurance brokerage company that purportedly employed Senator

Coleman's wife. The lawsuit alleges that payments to Hays were "for the stated purpose of trying to financially assist United States Senator Norm Coleman."

After the Texas lawsuit was filed, a shareholder derivative action (the "Delaware Lawsuit") was filed against certain officers, directors and the controlling shareholders of DMH and DMT. The Delaware lawsuit, like the one in Texas, raised allegations concerning Senator Coleman. The complaint alleged that, "Kazeminy is a large donor to Senator Coleman's campaign and that the two men have vacationed together at Kazeminy's expense using Kazeminy's private plane in 2004 and 2005." The Delaware lawsuit also alleged that news articles reported that, "Kazeminy may have paid large bills for clothing purchases at Neiman Marcus in Minneapolis by Senator Coleman and his wife." The Delaware lawsuit alleged that Mr. Kazeminy instructed DMT's Chief Financial Officer to have DMT send quarterly payments to Senator Coleman, stating, "'We have to get some money to Senator Coleman' because the Senator 'needs the money.'" The Delaware lawsuit alleged that Mr. Kazeminy was informed that such payments to Senator Coleman would be improper and that Mr. Kazeminy then allegedly directed payment from DMT to Hays, the alleged employer of Senator Coleman's wife.

In the wake of these lawsuits, the Alliance for a Better Minnesota (ABM) posted online a letter it had sent to the FBI seeking an investigation. ABM also filed a complaint against Senator Coleman with the Senate Ethics Committee. ABM alleged that Senator Coleman may have violated Senate gift and disclosure rules and the Ethics in Government Act as a result of the alleged payments from DMT to Hays described in the complaint in the Texas lawsuit.

In a separate ethics complaint, Citizens for Responsibility and Eth-

ics in Washington (CREW) alleged that Senator Coleman accepted free or discounted lodging for his Washington, D.C., apartment, in possible violation of Senate gift rules.

Senator Coleman continues to incur legal expenses in connection with these matters, and he and his Committee seek to use campaign funds to pay those costs.

### **Analysis**

Under the Federal Election Campaign Act (the Act) and Commission regulations, campaign funds may be used for expenses in connection with the individual's campaign for federal office, duties as a federal officeholder and for any other lawful purpose that is not "personal use." See 2 U.S.C. §439a(a); see also 2 U.S.C. §439a(b); 11 CFR 113.2. The Commission determines, on a case-by-case basis, whether the use of campaign funds to pay legal fees and expenses constitutes personal use. See 11 CFR 113.1(g)(1)(ii)(A).

In this case, the Commission determined that the Committee may use campaign funds to pay for legal costs incurred in the following: reviewing the complaints to the Senate Ethics Committee and ABM's letter to the FBI; representing Senator Coleman in the FBI's investigation of alleged violations of federal law or rules governing the office of a Senator or the conduct of campaigns; monitoring and representing Senator Coleman in the Texas and Delaware lawsuits; and responding to media inquiries. However, the Committee may not use campaign funds to pay legal costs incurred representing Senator Coleman in an FBI investigation of allegations unrelated to Senator Coleman's campaign or duties as a federal officeholder.

The Commission has previously concluded that efforts to respond to the Senate Ethics Committee are directly related to an individual's duties as a federal officeholder, and that legal fees and expenses incurred in responding to the Senate Ethics

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## Advisory Opinions

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Committee's inquiries or investigations are ordinary and necessary expenses incurred in connection with the duties of a federal officeholder. See Advisory Opinions 2008-07, 2006-35 and 1998-01. Accordingly, the Commission determined that the Committee may use campaign funds to pay for legal counsel's review of the Senate Ethics Committee complaints.

In past advisory opinions, the Commission has concluded that a candidate's authorized committee may use campaign funds to pay legal fees incurred in representing a candidate or federal officeholder before a non-congressional investigation or legal proceeding when the allegations in that investigation are directly related to a candidate's campaign activity or duties as a federal officeholder. See AOs 2006-35, 2005-11

## FECTube and E-Learning

As the Commission considers recommendations to improve its website and Internet communications (see page 1), the agency has added an E-Learning section to its Educational Outreach web page and has also launched its own YouTube channel: <http://www.youtube.com/FECTube>. The E-Learning page offers interactive presentations that allow users to test their knowledge of the information presented and video workshops. The workshops are actually hosted on YouTube and include presentations about the Commission and the law it administers, as well as highlights from the agency's workshop on lobbyist bundling. Additional content and other improvements will appear in the weeks and months ahead.

and 1996-24. To the extent that the FBI is investigating allegations that Senator Coleman may have received unreported gifts in violation of federal law or violated campaign finance law, the allegations would not exist irrespective of Senator Coleman's campaign or duties as a federal officeholder. Therefore, the Commission determined that the Committee may use campaign funds to pay for counsel to review ABM's letter to the FBI and to represent Senator Coleman in the FBI's investigation into allegations that the Senator violated federal law or rules governing the office of a Senator or the conduct of campaigns. The Committee, however, may not use campaign funds to pay for Senator Coleman's legal fees that stem from allegations not directly related to his campaign or duties as a holder of federal office.

Although the causes of action in the Texas and Delaware lawsuits do not, on their face, relate to Senator Coleman's campaign or his duties as a federal officeholder, factual allegations made in the suits do. For that reason, the Committee may use campaign funds to pay for the legal fees and expenses incurred in representing Senator Coleman in these lawsuits.

The Commission has recognized that "the activities of candidates and officeholders may receive heightened scrutiny and attention in the news media." AOs 2008-07 and 1998-01. The Commission determined that a candidate or officeholder's need to respond to intense media scrutiny would not exist irrespective of the candidate's campaign or duties as a holder of federal office. Therefore, the Committee may use campaign funds to pay Senator Coleman's legal fees and expenses incurred in responding to the press regarding the FBI investigation, Senate Ethics Committee complaints and the Texas and Delaware lawsuits.

The Committee may also use campaign funds to pay certain miscellaneous legal expenses, including copying and phone calls, to the extent that those expenses relate to legal fees the Commission has determined may be paid with campaign funds.

Date Issued: June 26, 2009;

Length: 9 pages.

—Isaac J. Baker

## Alternative Disposition of Advisory Opinion Requests

### AOR 2009-17

On July 28, 2009, the Commission considered an advisory opinion request from Romney for President, Inc. concerning a Presidential primary candidate who did not receive Matching Funds and who refunded excessive contributions who seeks to donate to charity the funds remaining in his campaign account that represent refund checks not cashed and now stale. The Commission was unable to reach a consensus by the required four-vote majority and concluded its consideration of the request.

## Advisory Opinion Requests

### AOR 2009-20

Use of campaign funds to pay legal expenses of current and former office staffers (Visclosky for Congress, July 7, 2009)

### AOR 2009-21

Federal preemption of state law (West Virginia Secretary of State, July 1, 2009)

## Reports

### California Special Election Reporting: 10<sup>th</sup> District

The Special General Election to fill the U.S. House seat in California's 10<sup>th</sup> Congressional District vacated by Representative Ellen O. Tauscher will be held on September 1, 2009. Under California law, a majority winner in a special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on November 3, 2009, among the top vote-getters of each qualified party, including qualified independent candidates.

Candidate committees involved in this election must follow the reporting schedule at right. Please note that the reporting period for the Post-General election (or Post-Runoff election, if necessary) report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page.

PACs and party committees that file on a semiannual schedule and participate in this election must also follow the schedule at right. PACs and party committees that file monthly continue to file according to their regular filing schedule.

#### Filing Electronically

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

#### Timely Filing for Paper Filers

*Registered and Certified Mail.*  
Reports sent by registered or certi-

### California 10th District Special Election Reporting

#### If Only the Special General (09/01/09) Is Held, Committees Must File:

	Close of Books <sup>1</sup>	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	August 12	August 17	August 20
Post-General	September 21	October 1	October 1
October Quarterly	September 30	October 15	October 15

#### Committees Involved in Both the Special General (09/01/09) and the Special Runoff (11/03/09) Must File:

	Close of Books <sup>1</sup>	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	August 12	August 17	August 20
October Quarterly		<b>—WAIVED—</b>	
Pre-Runoff	October 14	October 19	October 22
Post-Runoff	November 23	December 3	December 3
Year-End	December 31	January 31, 2010 <sup>2</sup>	January 31, 2010 <sup>2</sup>

#### If Both Elections Are Held, Committees Involved in Only the Special General (09/01/09) Must File:

	Close of Books <sup>1</sup>	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	August 12	August 17	August 20
October Quarterly	September 30	October 15	October 15

<sup>1</sup> This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

<sup>2</sup> Notice that this filing deadline falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's close of business on the last business day before the deadline.

fied mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by registered or certified mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

*Overnight Mail.* Reports filed via overnight mail<sup>1</sup> will be considered by the delivery service on or before the mailing deadline. A committee sending its reports by Express

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<sup>1</sup> "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

## Reporting

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or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

**Other Means of Filing.** Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission's close of business on the filing deadline. 11 CFR 100.19 and 104.5(e).

Forms are available for downloading and printing at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

### 48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candidate's principal campaign committee if any of the candidate's authorized committees receive any contribution of \$1,000 or more per source between August 13 and August 29, 2009, for the Special General Election, and between October 15 and October 31 for the Special Runoff Election.

### 24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 between August 13 and August 30, 2009, for the Special General Election, and between October 15 and November 1 for the Special Runoff Election. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more during a calendar year.

### Electioneering Communications

The 60-day electioneering communications period in connection with the Special General Election runs from July 3 through September 1, 2009. The 60-day electioneering

communications period in connection with the Special Runoff Election runs from September 4 through November 3, 2009.

### Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of \$16,000 during the special election reporting periods (see reporting schedule chart on page 9). For more information on these requirements, see the March 2009 Record.

—Elizabeth Kurland

## Outreach

### Chicago Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs

The Commission will hold a regional conference in Chicago, Illinois, on September 15-16, 2009, at the Hyatt Regency Chicago. Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. For additional information, to view the conference agenda or to register for the conference, please visit the conference website at <http://www.fec.gov/info/conferences/2009/chicago09.shtml>.

**Hotel Information.** The Hyatt Regency Chicago is located in downtown Chicago within the Magnificent Mile, considered one of the greatest avenues in the world. A room rate of \$249 (single) plus a 15.4% tax is available to conference attendees who make reservations on or before August 14, 2009. To make your hotel reservations and reserve this group rate, please call 888-421-1442 or visit the hotel web site ([https://resweb.passkey.com/Resweb.do?mode=welcome\\_gi\\_new&groupID=159251](https://resweb.passkey.com/Resweb.do?mode=welcome_gi_new&groupID=159251)) and identify yourself as attending the Federal Election Commission conference. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

**Registration Information.** The registration fee for this conference is \$550, which covers the cost of the conference, materials and meals. A \$50 late fee will be added to registrations received after 5 p.m. EDT, August 14, 2009. Complete registration information is available online at <http://www.fec.gov/info/conferences/2009/chicago09.shtml>.

### FEC Conference Schedule for 2009

Conference for Campaigns,  
Party Committees and  
Corporate/Labor/Trade PACs  
September 15-16, 2009  
Hyatt Regency  
Chicago, IL

Conference for Campaigns,  
Party Committees and  
Corporate/Labor/Trade PACs  
October 28-29, 2009  
Sheraton at Fisherman's Wharf  
San Francisco, CA

## FEC Conference Questions

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; e-mail: [ro-salyn@sylvestermanagement.com](mailto:ro-salyn@sylvestermanagement.com)).

For questions about the conference workshop content in 2009, please call the FEC's Information Division at 1-800/424-1100 or send an e-mail to [Conferences@fec.gov](mailto:Conferences@fec.gov).

—Kathy Carothers

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