



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SEP 23 2008**

Neil P. Reiff, Esq.  
Sandler, Reiff & Young, P.C.  
300 M Street, SE  
Washington, D.C. 20003

RE: MUR 5787  
Kalyn Free for Congress and Loyce Bell,  
in her official capacity as treasurer  
Kalyn Free

Dear Mr. Reiff:

On September 10, 2008, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. § 439a(b)(1) and 2 U.S.C. § 434(b)(2), (3) and (8), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 113.1g(1)(i)(I), a regulation promulgated pursuant to the Act. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

In your June 13, 2008 letter transmitting the signed proposed conciliation agreement, you also enclosed a statement by Ms. Free to be submitted to the Commission with the conciliation agreement, and stated that "[A]fter the Commission accepts the conciliation agreement, Ms. Free would like her statement to be included in the public record." Ms. Free's statement was submitted to the Commission with the signed proposed conciliation agreement. However, consistent with Commission practice, Ms. Free's statement will not be included in the public record of this matter.

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Letter to Neil P. Reiff, Esq.

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty from the Committee is due within 30 days of the conciliation agreement's effective date. Please provide evidence that Kalyn Free has refunded \$6,906 to the Committee. If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Delbert K. Rigsby  
Attorney

Enclosure

Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Kalyn Free ) MUR 5787  
Kalyn Free for Congress and Loyce Bell, )  
in her official capacity as treasurer )

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b)(2), (3) and (8) and 439a(b)(1) and that Kalyn Free violated 2 U.S.C. § 439a(b)(1) (collectively "Respondents").

NOW, THEREFORE, the Commission and the Respondents having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Kalyn Free was a candidate for United States Congress in Oklahoma in 2004.

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2. Kalyn Free for Congress (“the Committee”) is the principal campaign committee for Kalyn Free within the meaning of 2 U.S.C. § 431(5). Loyce Bell is the treasurer of Kalyn Free for Congress.

3. A contribution accepted by a candidate may be used by the candidate for otherwise authorized expenditures in connection with the candidate’s campaign for federal office.

A candidate’s principal campaign committee may pay a salary to a candidate in accordance with 11 C.F.R. § 113.1(g)(1)(i)(I). A candidate may receive salary payments that do not exceed the lesser of the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks or the earned income that the candidate received during the year prior to becoming a candidate, but any earned income that a candidate receives from salaries or wages from any other source shall count against the minimum salary paid to a Federal officeholder holding the seat sought by the candidate. *Id.* The committee shall not pay salary to a candidate before the filing deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by state law. *Id.* During the time period in which a principal campaign committee may pay a salary to a candidate, such payment must be computed on a pro-rata basis. *Id.* Any amount paid for salary paid by an authorized committee to a candidate that exceeds the permissible amount is considered to be prohibited personal use of campaign funds by the candidate and must be refunded in full to the committee. *See* 2 U.S.C. § 439a(b)(1) and 11 C.F.R. § 113(g)(1)(i)(I).

4. Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with 2 U.S.C. § 434(a) and must comply with the requirements of 2 U.S.C.

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§ 434(b)(2) and (3). The treasurer must also report the amount and nature of outstanding debts and obligations owed by or to such political committee. 2 U.S.C. § 434(b)(8).

5. Although candidates may make unlimited contributions to their own campaigns, 11 C.F.R. § 110.10(a), including advances, the contributions must be properly reported. If candidates make contributions that they intend to be advances, their committees should report the contributions in memo entries on Schedule A as in-kind contributions, identify them as “advances,” and continuously report them on Schedule D until repaid. *See* 11 C.F.R. § 116.5(b) and (c). *See also* 11 C.F.R. § 104.11 (debts exceeding \$500 or debts of any amount that have been outstanding for more than 60 days must be reported on Schedule D). Certain travel and subsistence expenditures do not have to be reported as contributions if payment is made with a credit card and is reimbursed within 60 days of the closing date of the billing statement on which the charges appear. 11 C.F.R. § 116.5(b)(2). However, those travel and subsistence expenses must be reported as expenditures. *See* 2 U.S.C. § 434(b)(4)(A). Otherwise, advances for travel and subsistence expenses are in-kind contributions, and reported the same way as other advances. *See also* 2 U.S.C. § 434(b)(3) (authorized committees must identify persons during the reporting period, whose contribution(s) have an aggregate amount in excess of \$200 within the election cycle).

6. A committee may maintain a petty cash fund for disbursements not in excess of \$100 to any person in connection with a single purchase or transaction. 2 U.S.C. § 432(h)(2). A record of all petty cash disbursements shall be maintained in accordance with 2 U.S.C. § 432(c)(5), which requires the name and address of every person to whom any disbursement is made, and the date, amount and purpose of the disbursement.

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7. The treasurer of a political committee must preserve all records for 3 years after the report is filed. 2 U.S.C. § 432(d).

8. On July 27, 2004, the State of Oklahoma held its primary election for United States Congress. Kalyn Free, a candidate for United States Congress in Oklahoma, lost the primary election on this date. On September 29, 2004, two months after the primary election, the Committee made \$50,000 in salary payments to Kalyn Free. The Committee reported these payments on its 2004 October Quarterly Report, which was filed with the Commission on October 15, 2004.

9. After the Commission sent a notice to the Committee that Ms. Free's salary payments must be calculated in accordance with 11 C.F.R. §113.1(g)(1)(i)(I), the Committee determined that it had overpaid the salary allowed to Ms. Free. On March 28, 2005, the Committee amended its 2004 October Quarterly Report and submitted a miscellaneous statement stating that it had determined that it was only permitted to pay Ms. Free a salary of \$21,000, rather than the \$50,000 it had paid her. The Committee also stated that it had not reimbursed \$14,659 to Ms. Free for expenses that she incurred in the form of advances on behalf of the Committee, and netted those expenses with the salary overpayment of \$29,000 to conclude that Ms. Free must refund \$14,341 to the Committee. None of the advances by the candidate had previously been reported.

10. In response to the March 28, 2005 amendment to the 2004 October Quarterly Report, the Commission requested documentation of the agreement for the salary payments. On June 2, 2005, the Committee filed a miscellaneous statement providing an explanation of the oral agreement to pay a \$50,000 salary to Ms. Free and reiterated information that the amount of the

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overpayment to Ms. Free was offset with expenses that she made on behalf of the Committee. Subsequently, the Committee filed an amendment to the 2004 October Quarterly Report on October 15, 2005 containing memo entries regarding the salary payment, a Committee debt to Ms. Free for the unreimbursed expenses and the debt that Ms. Free owed to the Committee from the overpayment of salary. On December 2, 2005, the Committee made a final amendment to this report, which itemized Ms. Free's expenses that aggregated \$200 or more to specific persons. However, most the expenses itemized in this amended report should have been itemized on previous disclosure reports, such as the 2003 Year-End Report, the 2004 April Quarterly Report and the 2004 12 Day Pre-Primary Report, which was an election-sensitive report since it was filed two weeks before the primary election. In this final amendment, the Committee also included an entry for "petty cash" in the amount of \$1,800, and based on materials presented to the Commission, these funds were apparently paid to several individuals, including some to the same individual, totaling in excess of \$200, without providing documentation of the name, amount and purpose of the disbursement.

11. After offsetting the \$14,659 in expenses that Ms. Free paid on behalf of the Committee with the Committee's overpayment of Ms. Free by \$29,000, Ms. Free refunded \$14,341 to the Committee in installments beginning on May 31, 2005, with the final installment paid on September 25, 2005. Ms. Free later determined that due to an accounting error, the expenses that she paid on behalf of the Committee totaled \$14,634 instead of \$14,659. On September 5, 2006, she refunded an additional \$25 to the Committee.

12. During the Commission's investigation of MUR 5787, the Committee and Ms. Free failed to provide documentation, such as invoices, receipts, and cancelled checks, for \$6,906 of

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the \$14,634 in expenses that the Committee reimbursed her. Ms. Free submitted an affidavit averring that she had paid the vendors, the Committee's volunteers and staff for these campaign expenses, and that she had personal records showing the dates, amounts and recipients of the payments, but she did not have every receipt for which the payments had been made. Various volunteers and campaign staff also submitted affidavits stating that Ms. Free had reimbursed them for various expenses and the purpose for those expenses, but they had no records of the dates, amounts, and no receipts. Under these circumstances, where the advances were not originally reported, and there is inadequate documentation of the reimbursed expenses, the Commission concludes that affidavits are not sufficient to support the Committee's deduction of the \$6,906 from the salary overpayments.

13. Respondents contend that at the time of the salary payment by the Committee to Ms. Free, the Committee believed that Ms. Free was permitted to receive the full \$50,000 payment as salary since Ms. Free had been campaigning for Congress for ten months, from October 2003 through July 27, 2004 and the amount did not exceed her salary for the prior year or the amount paid to a Federal officeholder during the comparable period of time. Ms. Free and the Committee contend they were not aware of provisions in 11 C.F.R. § 113.1(g)(1)(i)(I) that limited the time period her salary payments could be made to the 7 week period from June 9, 2004, the date of Oklahoma's filing deadline for access to the primary election ballot, through July 27, 2004, the date of the primary election that Ms. Free lost. Respondents further contend that in fact, before Ms. Free learned of these provisions, and almost simultaneously with her receipt of salary, she submitted a tax payment to the Internal Revenue Service for the full \$50,000 paid to her as salary. Respondents further contend that upon being informed of the provisions in the regulation, the



Committee amended its reports and sought repayment from Ms. Free for amounts in excess of \$21,000 and other amounts payable to Ms. Free.

V. Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer, committed the following violations:

1. used campaign funds to make an overpayment of salary to Kalyn Free, in violation of 2 U.S.C. § 439a(b)(1) and 11 C.F.R. § 113.1g(1)(i)(I). The Committee will cease and desist from violating 2 U.S.C. § 439a(b)(1) and 11 C.F.R. § 113.1g(1)(i)(I).

2. failed to properly report expenses made by Kalyn Free on behalf of the Committee as in-kind contributions, as advances and as debt, in violation of 2 U.S.C. § 434(b)(2), (3) and (8). The Committee will cease and desist from violating 2 U.S.C. § 434(b)(2), (3) and (8).

VI. 1. Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer, will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand Dollars (\$10,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Kalyn Free agrees to refund to the Committee \$6,906 in advances deducted from the salary overpayment for which there is inadequate documentation.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


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IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

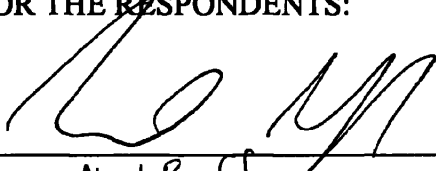
FOR THE COMMISSION:

Thomasenia P. Duncan  
General Counsel

BY:   
Ann Marie Terzaken  
Associate General Counsel  
for Enforcement

9/23/08  
Date

FOR THE RESPONDENTS:

  
Name: Neil Ruff  
Position: Counsel

6/13/08  
Date

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