



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

For Meeting of: 6-25-09

June 18, 2009

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Jessica Selinkoff *JS*
Attorney

Subject: Draft AO 2009-12 (Senator Norman Coleman)

Attached are two proposed alternative drafts of the subject advisory opinion. We have been asked to place these drafts on the agenda for June 25, 2009.

Attachment

1 ADVISORY OPINION 2009-12

2

3 Benjamin L. Ginsberg, Esq.

4

4 William J. McGinley, Esq.

5

5 Kathryn Biber Chen, Esq.

DRAFT A

6

6 Patton Boggs, LLP

7

7 2550 M Street, NW

8

8 Washington, DC 20037

9

10 Dear Messrs. Ginsberg and McGinley and Ms. Chen:

11 We are responding to your advisory opinion request on behalf of Senator Norm
12 Coleman and Coleman for Senate 08 (the “Committee”) concerning the application of the
13 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
14 regulations to the use of campaign funds for the payment of certain legal fees and
15 expenses incurred by Senator Coleman. The Commission concludes that the Committee
16 may use campaign funds to pay some, but not all, of the legal fees identified in the
17 request.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 April 3, 2009, your email of May 8, 2009, and publicly available information.

21 Senator Coleman ran for reelection as Senator from Minnesota in 2008.¹ The
22 Committee is Senator Coleman’s principal campaign committee.

23 ***Texas Lawsuit***

24 Most of the legal fees and expenses for which the Committee and Senator
25 Coleman seek to use campaign funds were incurred in matters relating to facts first

¹ As of the date of this advisory opinion, the results of this election are still being contested. No final winner has been conclusively determined or seated in the Senate.

1 alleged in a lawsuit filed in Texas on October 27, 2008 (the “Texas lawsuit”).² In the
2 complaint in the Texas lawsuit, Mr. McKim asserts that he is the Chief Executive Officer
3 of Deep Marine Technology, Inc. (“DMT”) and Deep Marine Holdings, Inc. (“DMH”).
4 Mr. McKim, individually and derivatively, sued DMT; DMH; DMT and DMH’s
5 controlling shareholder Nasser Kazeminy; and others. The complaint in the Texas
6 lawsuit alleges that Mr. Kazeminy and others “utilized the companies and their assets as
7 their own personal bank account.” Complaint at 8, *McKim v. Kazeminy*, No. 2008-
8 64385. The complaint in the Texas lawsuit alleges that DMT and DMH’s controlling
9 shareholders engaged in multiple acts of self-dealing, siphoning away tens of millions of
10 dollars from DMH and DMT; disregarded corporate formalities; and ordered corporate
11 funds to be paid to individuals and companies who provided no services, products, or
12 benefit to DMT or DMH. This included an alleged payment of \$6,000 to one of Mr.
13 Kazeminy’s relatives and an alleged payment of \$75,000 to the Hays Companies
14 (“Hays”), an insurance brokerage company that allegedly employed Senator Coleman’s
15 wife. Neither Senator Coleman nor his wife is a party to the Texas lawsuit.

16 The Texas lawsuit complaint alleges that payments to Hays were ordered in
17 March, 2007, and were made (or attempted to be made) through December, 2007, “for
18 the stated purpose of trying to financially assist United States Senator Norm Coleman.”
19 *Id.* at 10. The complaint alleges that Mr. Kazeminy told DMT’s Chief Financial Officer
20 “that ‘U.S. Senators don’t make [expletive deleted]’ and that he was going to find a way
21 to get money to United States Senator Norm Coleman of Minnesota and wanted to utilize

² See *McKim v. Kazeminy*, No. 2008-64124 (129th Dist. Ct., Tex. dismissed Oct. 28, 2008). Although that lawsuit was dismissed the day after it was filed, the plaintiffs refiled their complaint on October 30, 2008. See *McKim v. Kazeminy*, No. 2008-64385 (129th Dist. Ct., Tex. filed Oct. 30, 2008).

1 DMT in the process.” *Id.* The complaint in the Texas lawsuit alleges that DMT falsified
2 its books regarding these payments.

3 *Delaware Lawsuit*

4 After the Texas lawsuit was filed, a shareholder derivative action was filed in
5 Delaware on November 3, 2008, against certain officers, directors, and the controlling
6 shareholders of DMH and DMT. *See* Complaint, *FLI Deep Marine LLC v. McKim*, No.
7 4138-VCN (Del. Ch. Nov. 3, 2008), 2008 WL 4843681 (the “Delaware lawsuit”). The
8 Delaware lawsuit was dismissed on April 21, 2009, on procedural grounds. *See FLI*
9 *Deep Marine*, No. 4138-VCN, 2009 WL 1204363 (Apr. 21, 2009). The plaintiffs in the
10 Delaware lawsuit alleged that the controlling shareholders had “exploited and looted
11 [DMT and DMH] for personal economic gain”; ignored corporate formalities and
12 reasonable business practices; and breached their fiduciary duties. *Id.* at *1.

13 The complaint in the Delaware lawsuit, like the one in Texas, raised allegations
14 concerning Senator Coleman. The complaint in the Delaware lawsuit alleged that
15 “Kazeminy is a large donor to Senator Coleman’s campaign and that the two men have
16 vacationed together at Kazeminy’s expense using Kazeminy’s private plane in 2004 and
17 2005.” Complaint at 6, *FLI Deep Marine*, 2008 WL 4843681 (No. 4138-VCN).
18 Additionally, the complaint in the Delaware lawsuit alleged that news articles reported
19 that “Kazeminy may have paid large bills for clothing purchases at Neiman Marcus in
20 Minneapolis by Senator Coleman and his wife.” *Id.* The complaint in the Delaware
21 lawsuit alleged that Mr. Kazeminy instructed DMT’s Chief Financial Officer to have
22 DMT send quarterly payments to Senator Coleman, stating ““We have to get some money

1 to Senator Coleman’ because the Senator ‘needs the money.’” *Id.* The complaint in the
2 Delaware lawsuit alleged that Mr. Kazeminy was informed that such payments to Senator
3 Coleman would be improper and that Mr. Kazeminy then allegedly directed payment
4 from DMT to Hays, the alleged employer of Senator Coleman’s wife. The complaint in
5 the Delaware lawsuit alleged that DMT falsified its books regarding these payments.

6 *Letter to FBI*

7 On November 12, 2008, the Alliance for a Better Minnesota (“ABM”) posted to
8 its website an undated letter it had sent to the FBI asking the FBI to investigate the
9 allegations raised in the Texas lawsuit. ABM asserted that the Texas lawsuit complaint
10 raised possible violations of Federal mail fraud, wire fraud, and money laundering
11 statutes and requested investigation into whether Senator Coleman had “knowledge of the
12 alleged scheme[,] received benefits from it, and properly disclosed and accounted for
13 what might be a substantial gift.” Additionally, ABM requested that the FBI investigate
14 whether Senator Coleman or his family received other undisclosed gifts of clothing,
15 airfare, or other items of value from Mr. Kazeminy.

16 *Senate Ethics Complaints*

17 Also on November 12, 2008, ABM filed a complaint against Senator Coleman
18 with the Senate Select Committee on Ethics (“Senate Ethics Committee”). ABM alleged
19 that Senator Coleman may have violated Senate gift and disclosure rules and the Ethics in
20 Government Act as a result of the alleged payments from DMT to Hays as described in
21 the complaint in the Texas lawsuit. Additionally, ABM alleged that Mr. Kazeminy

1 provided Coleman and his family with a private plane for travel to Paris and the
2 Bahamas” and “funded Coleman’s shopping sprees at Neiman Marcus.”³

3 In addition to the above matters concerning allegations made in the Texas and
4 Delaware lawsuits, Senator Coleman and the Committee also seek to use campaign funds
5 for legal fees and expenses incurred in relation to another complaint filed with the Senate
6 Ethics Committee against Senator Coleman. On July 1, 2008, Citizens for Responsibility
7 and Ethics in Washington (“CREW”) requested that the Senate Ethics Committee
8 investigate whether Senator Coleman had accepted free or discounted lodging for his
9 Washington, D.C. apartment from Jeff Larson, in possible violation of Senate gift rules.

10 *Press*

11 Senator Coleman and the Committee represent that all of the matters described
12 above – the Texas lawsuit, Delaware lawsuit, the FBI investigation, and both Senate
13 Ethics Committee complaints – have generated considerable media interest. Copies of
14 several articles from the Minnesota and national press are attached to the request for an
15 advisory opinion.

16 *Legal Fees and Expenses*

17 Senator Coleman has retained legal counsel to represent him in the above matters.
18 Legal counsel has generated fees in the following capacities: reviewing the CREW and
19 ABM complaints to the Senate Ethics Committee;⁴ reviewing the letter from ABM to the

³ ABM sent a second letter to the Senate Ethics Committee on December 12, 2008, concerning news coverage of the allegations in the Texas lawsuit, possible FBI interest in the allegations, and a report about extensive renovations to Senator Coleman’s home.

⁴ The advisory opinion request does not seek an opinion on whether the Committee may use campaign funds to pay legal fees and expenses incurred in representing Senator Coleman in responding to the Senate Ethics Committee’s investigations.

1 FBI; monitoring, preparing for Senator Coleman’s possible involvement in, and
2 preserving documents for the Texas and Delaware lawsuits; responding to media
3 inquiries concerning the Senate Ethics Committee complaints, the letter to FBI, and the
4 Texas and Delaware lawsuits; and miscellaneous costs. Senator Coleman anticipates
5 incurring additional legal fees and expenses arising from ABM’s letter to the FBI,
6 including, should it be necessary, representation in an FBI inquiry into allegations of
7 receiving improper or undisclosed gifts from Mr. Kazeminy.

8 ***Question Presented***

9 *May the Committee use campaign funds to pay legal counsel for the services*
10 *described above in connection with the Texas and Delaware lawsuits, the FBI*
11 *investigation, and the Senate Ethics Committee complaints?*
12

13 ***Legal Analysis and Conclusions***

14 For the reasons discussed below, the Commission concludes that the Committee
15 may use campaign funds to pay for the following legal services: reviewing the
16 complaints to the Senate Ethics Committee; reviewing ABM’s letter to the FBI;
17 representing Senator Coleman in an FBI investigation of alleged violations of Federal law
18 or rules governing the office of a Senator or the conduct of campaigns; and responding to
19 media inquiries.⁵ For the reasons discussed below, the Commission concludes that the
20 Committee may not use campaign funds to pay for the following legal services:
21 representing Senator Coleman in the Texas or Delaware lawsuits; and representing
22 Senator Coleman in an FBI investigation of allegations unrelated to Senator Coleman’s

⁵ This advisory opinion concerns only the use of campaign funds to pay for the requested legal fees and expenses. The request does not ask about, and this advisory opinion does not address, the use of recount or election contest funds to pay legal fees and expenses related to these lawsuits, investigations, and complaints.

1 campaign or duties as a Federal officeholder. For the reasons discussed below, the
2 Commission concludes that the Committee may use campaign funds to pay for 50% of
3 legal fees for monitoring the two lawsuits.

4 The Act identifies six permissible uses of contributions accepted by a Federal
5 candidate, including otherwise authorized expenditures in connection with the
6 candidate's campaign for Federal office; ordinary and necessary expenses incurred in
7 connection with the duties of the individual as a holder of Federal office; and any other
8 lawful purpose that is not "personal use." *See* 2 U.S.C. 439a(a); *see also* 2 U.S.C.
9 439a(b); 11 CFR 113.2.

10 Contributions accepted by a candidate may not be converted to personal use by
11 any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2(e). "Personal use" is "any use of funds
12 in a campaign account of a present or former candidate to fulfill a commitment,
13 obligation or expense of any person that would exist irrespective of the candidate's
14 campaign or duties as a Federal officeholder." 11 CFR 113.1(g); *see also* 2 U.S.C.
15 439a(b)(2). The Commission analyzes, on a case-by-case basis, whether the use of funds
16 in a campaign account for the payment of legal fees and expenses constitutes personal
17 use. *See* 11 CFR 113.1(g)(1)(ii)(A).

18 The Commission has long recognized that if a candidate "can reasonably show
19 that the expenses at issue resulted from campaign or officeholder activities, the
20 Commission will not consider the use to be personal use." Explanation and Justification
21 for Final Rules on Expenditures; Reports by Political Committees; Personal Use of
22 Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995) ("1995 Personal Use E&J"). Legal

1 fees and expenses, however, “will not be treated as though they are campaign or
2 officeholder related merely because the underlying proceedings have some impact on the
3 campaign or the officeholder’s status.” *Id.* at 7868. The Commission has identified legal
4 expenses associated with a divorce or charges of driving under the influence of alcohol as
5 examples of expenses that are personal, rather than campaign or officeholder related. *Id.*

6 *Reviewing Senate Ethics Committee Complaints*

7 The Committee seeks to use campaign funds for legal fees and expenses incurred
8 in reviewing the Senate Ethics Committee complaints filed against Senator Coleman.
9 The Commission has previously concluded that efforts to respond to the Senate Ethics
10 Committee are directly related to an individual’s duties as a Federal officeholder, and that
11 legal fees and expenses incurred in responding to the Senate Ethics Committee’s inquiries
12 or investigations are ordinary and necessary expenses incurred in connection with the
13 duties of a Federal officeholder. *See* Advisory Opinion 2008-07 (Vitter); *see also*
14 Advisory Opinions 2006-35 (Kolbe) and 1998-01 (Hilliard) (involving inquiries or
15 investigations by the House Committee on Standards of Official Conduct). Accordingly,
16 the Commission concludes that the Committee may use campaign funds to pay legal
17 counsel to review the various Senate Ethics Committee complaints described in the
18 request. Such use would not be a conversion to personal use because these legal fees
19 would not exist irrespective of Senator Coleman’s duties as a U.S. Senator. *See* Advisory
20 Opinions 2008-07 (Vitter), 2006-35 (Kolbe), and 1998-01 (Hilliard).

21

1 *Reviewing Letter to FBI and Representation in Possible FBI Inquiry*

2 The Committee also seeks to use campaign funds to pay legal fees and expenses
3 incurred in reviewing ABM's letter to the FBI as well as, should it be necessary, in
4 representing Senator Coleman in an FBI inquiry.⁶

5 The Commission has previously concluded that a candidate's authorized
6 committee may use campaign funds to pay legal fees and expenses incurred in
7 representing a candidate or Federal officeholder before a non-congressional investigation
8 or legal proceeding when the allegations in that investigation are directly related to a
9 candidate's campaign activity or duties as a Federal officeholder. *See* Advisory Opinions
10 2006-35 (Kolbe), 2005-11 (Cunningham), and 1996-24 (Cooley); *see also* Advisory
11 Opinion 2003-17 (Treffinger) (involving a criminal indictment). In determining the
12 nature of the underlying allegations in those non-Congressional investigations, the
13 Commission has looked to whether the inquiry concerns information known to or
14 acquired by the officeholder in the course of conducting his or her official duties, whether
15 the inquiry concerns actions taken by the individual as an officeholder, and whether the
16 allegations relate to conduct that would have occurred irrespective of the candidacy or the
17 officeholder's duties. *See* Advisory Opinions 2006-35 (Kolbe), 2005-11 (Cunningham),
18 and 2003-17 (Treffinger).

19 The Commission notes that the details of the FBI investigation in the instant
20 inquiry are not public at this time. Indeed, according to press reports, the FBI has neither

⁶ The question of whether the Committee may use campaign funds to pay legal fees and expenses incurred in representing Senator Coleman in "any other inquiries or proceedings that may arise out of the same operative facts" as the FBI investigation requested in ABM's letter is, at this time, hypothetical and does not qualify as an advisory opinion request. *See* 11 CFR 112.1(b).

1 confirmed nor denied whether it is investigating Senator Coleman. Nonetheless, ABM's
2 letter indicates that the FBI could inquire into whether Senator Coleman had knowledge
3 of Mr. Kazeminy's and DMT's alleged scheme to divert money to Hays for Senator
4 Coleman's benefit, whether Senator Coleman received a benefit, and whether Senator
5 Coleman properly disclosed and accounted for any gifts, including clothing, airfare, or
6 other items of value from Mr. Kazeminy. Recent press reports indicate that the FBI has
7 questioned at least one person about whether Mr. Kazeminy had purchased clothing on
8 Senator Coleman's behalf.⁷

9 To the extent that the FBI is investigating or inquiring into allegations that
10 Senator Coleman may have received unreported gifts in violation of Federal law,⁸ the
11 allegations would not exist irrespective of Senator Coleman's duties as a Federal
12 officeholder to comply with the laws and rules governing that office. Accordingly, the
13 Commission concludes that the Committee may use campaign funds to pay counsel for
14 the review of ABM's letter to the FBI and for representing Senator Coleman in the
15 investigation by the FBI into allegations that Senator Coleman violated Federal law or
16 rules governing the office of a Senator or the conduct of campaigns. Such use would not
17 be a conversion to personal use because these legal fees would not exist irrespective of
18 Senator Coleman's duties as a U.S. Senator or candidate for Federal office. *See* Advisory
19 Opinions 2006-35 (Kolbe), 2005-11 (Cunningham), and 2003-17 (Treffinger).

⁷ *See, e.g.*, Sam Stein, *FBI Investigating Coleman in Minnesota*, HUFFINGTON POST, May 13, 2009, http://www.huffingtonpost.com/2009/05/13/fbi-investigating-coleman_n_203204.html.

⁸ *See* 5 U.S.C. 7353 (gratuities); 5 U.S.C. app. 4 secs. 101-11 (gift disclosure); 18 U.S.C. 201 (bribes); *see also Senate Ethics Manual*, S. Pub. No. 108-1, at 22-33, 56, 58-59, and 134-35 (2003 ed.), *available at* <http://ethics.senate.gov/downloads/pdf/manual.pdf>.

1 Nonetheless, the details of the FBI investigation are not public at this time and
2 the investigation could involve allegations not related to Senator Coleman’s campaign or
3 duties as a Federal officeholder. “The use of campaign funds to pay for [Senator
4 Coleman’s] representation in legal proceedings regarding any allegations that are not related
5 to his campaign activity or duties as a Federal officeholder would constitute an impermissible
6 personal use.” Advisory Opinion 2005-11 (Cunningham); *see also* 2003-17 (Treffinger)
7 (determining a percentage approach to representation when some counts are related and
8 some unrelated to campaign activity). Accordingly, the Committee may not use
9 campaign funds to pay for legal representation of Senator Coleman with respect to
10 allegations not directly related to his campaign or duties as a Federal officeholder.

11 *Monitoring of, Representation in, and Document Preservation for Texas and*
12 *Delaware Lawsuits*

13 The Committee also seeks to use campaign funds to pay legal fees for counsel’s
14 monitoring of, possible representation of Senator Coleman in, and document preservation
15 for the Texas and Delaware lawsuits.

16 *Representation in and Document Preservation for the Texas and*
17 *Delaware Lawsuits*

18 The complaints in the Texas and Delaware lawsuits allege corporate malfeasance
19 with respect to DMT and DMH. They do not allege that money was to be paid to Senator
20 Coleman’s campaign, that Senator Coleman or the Committee tried to circumvent the Act
21 or Commission regulations, or that Senator Coleman violated any duties of his office.
22 There is no allegation that Senator Coleman was aware of the alleged payments to Hays

1 or that any action was taken by or expected of Senator Coleman, whether in the course of
2 conducting his campaign, his official duties, or otherwise.

3 Moreover, the allegations in the complaints in the Texas and Delaware lawsuits
4 that Mr. Kazeminy ordered payments to Hays “for the stated purpose of trying to
5 financially assist United States Senator Norm Coleman” do not concern information
6 known to or acquired by Senator Coleman in the course of conducting his official duties,
7 or actions taken by Senator Coleman as an officeholder. Similarly, the allegations that
8 Mr. Kazeminy stated that “Senators don’t make [expletive deleted]” and that he “was
9 going to find a way to get money to United States Senator Norm Coleman of Minnesota
10 and utilize DMT in the process” do not concern information known to or acquired by
11 Senator Coleman in the course of conducting his official duties, or actions taken by
12 Senator Coleman as an officeholder.

13 While these allegations may indicate that Mr. Kazeminy was aware of or even
14 partially motivated by Senator Coleman’s status as an officeholder, the Act and
15 Commission regulations are concerned not with status as, but with the duties of, a Federal
16 officeholder. *See* 2 U.S.C. 439a(b)(2); 11 CFR 113.1(g). Commission regulations
17 require that “the Commission will determine, on a case-by-case basis” whether the use of
18 campaign funds to pay legal expenses is personal use. *See* 11 CFR 113.1(g)(1)(ii)(A);
19 *see also* 1995 Personal Use E&J at 7868. The case-by-case approach, by its own terms,
20 forecloses consideration of an officeholder’s status. Because Federal officeholders have
21 the status of Federal officeholders at all times in which they hold the office, consideration

1 of an officeholder's status negates the case-by-case determination required by the
2 regulation.

3 Senator Coleman is not a party to the Texas lawsuit and was not a party to the
4 now-dismissed Delaware lawsuit. His need for legal representation in the two lawsuits
5 stems from his role as a potential witness. Senator Coleman's obligation to serve as a
6 witness would exist irrespective of his campaign or duties as a Federal officeholder. *Cf.*
7 Advisory Opinion 1996-24 (Cooley) (obligation to comply with legal requirements would
8 exist irrespective of candidacy or officeholding and even if proceeding was based on
9 press attention). Accordingly, the use of campaign funds to pay legal fees and expenses
10 for representing Senator Coleman in the Texas and Delaware lawsuits, including the
11 preservation of documents, would be an impermissible personal use.

12 *Monitoring the Texas and Delaware Lawsuits*

13 Having determined that the Committee may not use campaign funds to pay legal
14 fees and expenses incurred in representing Senator Coleman in the Texas and Delaware
15 lawsuits, the Commission nonetheless concludes that the Committee may use campaign
16 funds to pay legal fees and expenses for a portion of legal counsel's monitoring of the
17 Texas and Delaware lawsuits.

18 The advisory opinion request indicates that counsel has had to devote time and
19 resources to monitoring the Texas and Delaware lawsuits in order to use the information
20 obtained to represent Senator Coleman with regard to the Senate Ethics Committee
21 complaints and the letter to the FBI, which refer to facts alleged in the Texas lawsuit and
22 overlap with facts alleged in the Delaware lawsuit. Thus, the monitoring contributed, in

1 part, to legal fees and expenses that may not be paid with campaign funds and, in part, to
2 legal fees and expenses that may be paid with campaign funds.

3 The Commission has previously concluded that a political committee may use
4 campaign funds to pay a portion of the legal fees and expenses incurred in monitoring a
5 third party's trial. *See* Advisory Opinion 1997-12 (Costello) (may use campaign funds to
6 pay 50% of legal expenses that include monitoring a third party's criminal trial, because
7 of political necessity to respond substantively to press on the matter). Similarly, the
8 Committee here may use campaign funds to pay 50% of the legal fees and expenses
9 incurred in monitoring the Texas and Delaware lawsuits.

10 *Responding to Media Inquiries*

11 The Committee also wishes to use campaign funds to pay legal fees and expenses
12 incurred in responding to press inquiries regarding the Texas and Delaware lawsuits,
13 Senate Ethics Committee complaints, and possible FBI investigation.

14 The Commission has recognized that "the activities of candidates and
15 officeholders may receive heightened scrutiny and attention in the news media."
16 Advisory Opinion 2008-07 (Vitter) (quoting Advisory Opinion 1998-01 (Hilliard)). The
17 Commission has found that a candidate's or officeholder's need to respond to intense
18 media scrutiny would not exist irrespective of the candidate's campaign or officeholder
19 duties. Advisory Opinion 2008-07 (Vitter); *see also* Advisory Opinion 1998-01
20 (Hilliard) (citing Advisory Opinions 1997-12 (Costello) and 1996-24 (Cooley)). Thus,
21 the Commission has determined that a candidate's authorized committee may use
22 campaign funds to pay certain legal fees and expenses incurred in responding to press

1 inquiries regarding allegations both related and unrelated to campaign activities and
2 duties as an officeholder. *See* Advisory Opinions 2008-07 (Vitter), 2006-35 (Kolbe),
3 1998-01 (Hilliard), 1997-12 (Costello), and 1996-24 (Cooley).

4 The request indicates that the media has shown considerable interest in the
5 various allegations against Senator Coleman. Senator Coleman's need to respond to the
6 media's demands for public discussion of the allegations would not exist irrespective of
7 his campaign or officeholder duties. The Commission concludes that the Committee may
8 use campaign funds to pay Senator Coleman's legal fees and expenses incurred in
9 responding to the press regarding the FBI investigation, Senate Ethics Committee
10 complaints, and Texas and Delaware lawsuits.

11 *Miscellaneous Costs and Expenses*

12 The Committee also seeks to use campaign funds to pay certain miscellaneous
13 expenses, including copying and phone calls. To the extent that Senator Coleman
14 incurred the miscellaneous expenses in connection with legal fees the Commission has
15 determined may be paid with campaign funds, the miscellaneous expenses also may be
16 paid with campaign funds. To the extent that Senator Coleman incurred the
17 miscellaneous expenses in connection with legal fees the Commission has determined
18 may not be paid with campaign funds, however, the miscellaneous expenses may not be
19 paid with campaign funds.

20 *Documentation and Reporting*

21 The Committee must maintain appropriate documentation of any disbursements
22 made to pay permissible legal expenses in accordance with this advisory opinion. *See*

1 2 U.S.C. 432(c)(5); *see also* 11 CFR 102.9(b), 104.3(b)(2), 104.3(b)(4), and 104.11.

2 The Commission expresses no opinion regarding the application of Federal tax
3 law, other law, or the rules of the U.S. Senate to the proposed activities, because those
4 questions are not within the Commission's jurisdiction.

5 This response constitutes an advisory opinion concerning the application of the
6 Act and Commission regulations to the specific transaction or activity set forth in your
7 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
8 of the facts or assumptions presented, and such facts or assumptions are material to a
9 conclusion presented in this advisory opinion, then the requestor may not rely on that
10 conclusion as support for its proposed activity. Any person involved in any specific
11 transaction or activity which is indistinguishable in all its material aspects from the
12 transaction or activity with respect to which this advisory opinion is rendered may rely on
13 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
14 conclusions in this advisory opinion may be affected by subsequent developments in the
15 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
16 All cited advisory opinions are available on the Commission's website at
17 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

Steven T. Walther
Chairman

1 ADVISORY OPINION 2009-12

2

3 Benjamin L. Ginsberg, Esq.

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William J. McGinley, Esq.

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DRAFT B

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Washington, DC 20037

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10 Dear Messrs. Ginsberg and McGinley and Ms. Chen:

11 We are responding to your advisory opinion request on behalf of Senator Norm
12 Coleman and Coleman for Senate 08 (the “Committee”) concerning the application of the
13 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
14 regulations to the use of campaign funds for the payment of certain legal fees and
15 expenses incurred by Senator Coleman. The Commission concludes that the Committee
16 may use campaign funds to pay some, but not all, of the legal fees identified in the
17 request.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 April 3, 2009, your email of May 8, 2009, and publicly available information.

21 Senator Coleman ran for reelection as Senator from Minnesota in 2008. The
22 Committee is Senator Coleman’s principal campaign committee.

23 *Texas Lawsuit*

24 Most of the legal fees and expenses for which the Committee and Senator
25 Coleman seek to use campaign funds were incurred in matters relating to facts first

1 alleged in a lawsuit filed in Texas on October 27, 2008 (the “Texas lawsuit”).¹ In the
2 complaint in the Texas lawsuit, Mr. McKim asserts that he is the Chief Executive Officer
3 of Deep Marine Technology, Inc. (“DMT”) and Deep Marine Holdings, Inc. (“DMH”).
4 Mr. McKim, individually and derivatively, sued DMT; DMH; DMT and DMH’s
5 controlling shareholder Nasser Kazeminy; and others. The complaint in the Texas
6 lawsuit alleges that Mr. Kazeminy and others “utilized the companies and their assets as
7 their own personal bank account.” Complaint at 8, *McKim v. Kazeminy*, No. 2008-
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9 shareholders engaged in multiple acts of self-dealing, siphoning away tens of millions of
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11 funds to be paid to individuals and companies who provided no services, products, or
12 benefit to DMT or DMH. This included an alleged payment of \$6,000 to one of Mr.
13 Kazeminy’s relatives and an alleged payment of \$75,000 to the Hays Companies
14 (“Hays”), an insurance brokerage company that allegedly employed Senator Coleman’s
15 wife. Neither Senator Coleman nor his wife is a party to the Texas lawsuit.

16 The Texas lawsuit complaint alleges that payments to Hays were ordered in
17 March, 2007, and were made (or attempted to be made) through December, 2007, “for
18 the stated purpose of trying to financially assist United States Senator Norm Coleman.”
19 *Id.* at 10. The complaint alleges that Mr. Kazeminy told DMT’s Chief Financial Officer
20 “that ‘U.S. Senators don’t make [expletive deleted]’ and that he was going to find a way
21 to get money to United States Senator Norm Coleman of Minnesota and wanted to utilize

¹ See *McKim v. Kazeminy*, No. 2008-64124 (129th Dist. Ct., Tex. dismissed Oct. 28, 2008). Although that lawsuit was dismissed the day after it was filed, the plaintiffs refiled their complaint on October 30, 2008. See *McKim v. Kazeminy*, No. 2008-64385 (129th Dist. Ct., Tex. filed Oct. 30, 2008).

1 DMT in the process.” *Id.* The complaint in the Texas lawsuit alleges that DMT falsified
2 its books regarding these payments.

3 *Delaware Lawsuit*

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5 Delaware on November 3, 2008, against certain officers, directors, and the controlling
6 shareholders of DMH and DMT. *See* Complaint, *FLI Deep Marine LLC v. McKim*, No.
7 4138-VCN (Del. Ch. Nov. 3, 2008), 2008 WL 4843681 (the “Delaware lawsuit”). The
8 Delaware lawsuit was dismissed on April 21, 2009, on procedural grounds. *See FLI*
9 *Deep Marine*, No. 4138-VCN, 2009 WL 1204363 (Apr. 21, 2009). The plaintiffs in the
10 Delaware lawsuit alleged that the controlling shareholders had “exploited and looted
11 [DMT and DMH] for personal economic gain”; ignored corporate formalities and
12 reasonable business practices; and breached their fiduciary duties. *Id.* at *1.

13 The complaint in the Delaware lawsuit, like the one in Texas, raised allegations
14 concerning Senator Coleman. The complaint in the Delaware lawsuit alleged that
15 “Kazeminy is a large donor to Senator Coleman’s campaign and that the two men have
16 vacationed together at Kazeminy’s expense using Kazeminy’s private plane in 2004 and
17 2005.” Complaint at 6, *FLI Deep Marine*, 2008 WL 4843681 (No. 4138-VCN).
18 Additionally, the complaint in the Delaware lawsuit alleged that news articles reported
19 that “Kazeminy may have paid large bills for clothing purchases at Neiman Marcus in
20 Minneapolis by Senator Coleman and his wife.” *Id.* The complaint in the Delaware
21 lawsuit alleged that Mr. Kazeminy instructed DMT’s Chief Financial Officer to have
22 DMT send quarterly payments to Senator Coleman, stating ““We have to get some money

1 to Senator Coleman’ because the Senator ‘needs the money.’” *Id.* The complaint in the
2 Delaware lawsuit alleged that Mr. Kazeminy was informed that such payments to Senator
3 Coleman would be improper and that Mr. Kazeminy then allegedly directed payment
4 from DMT to Hays, the alleged employer of Senator Coleman’s wife. The complaint in
5 the Delaware lawsuit alleged that DMT falsified its books regarding these payments.

6 *Letter to FBI*

7 On November 12, 2008, the Alliance for a Better Minnesota (“ABM”) posted to
8 its website an undated letter it had sent to the FBI asking the FBI to investigate the
9 allegations raised in the Texas lawsuit. ABM asserted that the Texas lawsuit complaint
10 raised possible violations of Federal mail fraud, wire fraud, and money laundering
11 statutes and requested investigation into whether Senator Coleman had “knowledge of the
12 alleged scheme[,] received benefits from it, and properly disclosed and accounted for
13 what might be a substantial gift.” Additionally, ABM requested that the FBI investigate
14 whether Senator Coleman or his family received other undisclosed gifts of clothing,
15 airfare, or other items of value from Mr. Kazeminy in the “alleged scheme [] purportedly
16 to provide an unlawful benefit to a United States Senator.”

17 *Senate Ethics Complaints*

18 Also on November 12, 2008, ABM filed a complaint against Senator Coleman
19 with the Senate Select Committee on Ethics (“Senate Ethics Committee”). ABM alleged
20 that Senator Coleman may have violated Senate gift and disclosure rules and the Ethics in
21 Government Act as a result of the alleged payments from DMT to Hays as described in
22 the complaint in the Texas lawsuit. Additionally, ABM alleged that Mr. Kazeminy

1 provided Coleman and his family with a private plane for travel to Paris and the
2 Bahamas” and “funded Coleman’s shopping sprees at Neiman Marcus.”²

3 In addition to the above matters concerning allegations made in the Texas and
4 Delaware lawsuits, Senator Coleman and the Committee also seek to use campaign funds
5 for legal fees and expenses incurred in relation to another complaint filed with the Senate
6 Ethics Committee against Senator Coleman. On July 1, 2008, Citizens for Responsibility
7 and Ethics in Washington (“CREW”) requested that the Senate Ethics Committee
8 investigate whether Senator Coleman had accepted free or discounted lodging for his
9 Washington, D.C. apartment from Jeff Larson, in possible violation of Senate gift rules.

10 *Press*

11 Senator Coleman and the Committee represent that all of the matters described
12 above – the Texas lawsuit, Delaware lawsuit, the FBI investigation, and both Senate
13 Ethics Committee complaints – have generated considerable media interest. Copies of
14 several articles from the Minnesota and national press are attached to the request for an
15 advisory opinion.

16 *Legal Fees and Expenses*

17 Senator Coleman has retained legal counsel to represent him in the above matters.
18 Legal counsel has generated fees in the following capacities: reviewing the CREW and
19 ABM complaints to the Senate Ethics Committee;³ reviewing the letter from ABM to the

² ABM sent a second letter to the Senate Ethics Committee on December 12, 2008, concerning news coverage of the allegations in the Texas lawsuit, possible FBI interest in the allegations, and a report about extensive renovations to Senator Coleman’s home.

³ The advisory opinion request does not seek an opinion on whether the Committee may use campaign funds to pay legal fees and expenses incurred in representing Senator Coleman in responding to the Senate Ethics Committee’s investigations.

1 FBI; monitoring, preparing for Senator Coleman's possible involvement in, and
2 preserving documents for the Texas and Delaware lawsuits; responding to media
3 inquiries concerning the Senate Ethics Committee complaints, the letter to FBI, and the
4 Texas and Delaware lawsuits; and miscellaneous costs. Senator Coleman anticipates
5 incurring additional legal fees and expenses arising from ABM's letter to the FBI,
6 including, should it be necessary, representation in an FBI inquiry into allegations of
7 receiving improper or undisclosed gifts from Mr. Kazeminy.

8 ***Question Presented***

9 *May the Committee use campaign funds to pay legal counsel for the services*
10 *described above in connection with the Texas and Delaware lawsuits, the FBI*
11 *investigation, and the Senate Ethics Committee complaints?*
12

13 ***Legal Analysis and Conclusions***

14 For the reasons discussed below, the Commission concludes that the Committee
15 may use campaign funds to pay for the following legal services: reviewing the
16 complaints to the Senate Ethics Committee; reviewing ABM's letter to the FBI;
17 representing Senator Coleman in an FBI investigation of alleged violations of Federal law
18 or rules governing the office of a Senator or the conduct of campaigns; monitoring and
19 representing Senator Coleman in the Texas and Delaware lawsuits; and responding to
20 media inquiries.⁴ The Committee may not, however, use campaign funds to pay for legal
21 services representing Senator Coleman in an FBI investigation of allegations unrelated to
22 Senator Coleman's campaign or duties as a Federal officeholder.

⁴ This advisory opinion concerns only the use of campaign funds to pay for the requested legal fees and expenses. Although Senator Coleman is involved in a continuing recount of the 2008 election, the request does not ask about, and this advisory opinion does not address, the use of recount or election contest funds to pay legal fees and expenses related to these lawsuits, investigations, and complaints.

1 The Act identifies six permissible uses of contributions accepted by a Federal
2 candidate, including otherwise authorized expenditures in connection with the
3 candidate’s campaign for Federal office; ordinary and necessary expenses incurred in
4 connection with the duties of the individual as a holder of Federal office; and any other
5 lawful purpose that is not “personal use.” *See* 2 U.S.C. 439a(a); *see also* 2 U.S.C.
6 439a(b); 11 CFR 113.2.

7 Contributions accepted by a candidate may not be converted to personal use by
8 any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2(e). “Personal use” is “any use of funds
9 in a campaign account of a present or former candidate to fulfill a commitment,
10 obligation or expense of any person that would exist irrespective of the candidate’s
11 campaign or duties as a Federal officeholder.” 11 CFR 113.1(g); *see also* 2 U.S.C.
12 439a(b)(2). The Commission analyzes, on a case-by-case basis, whether the use of funds
13 in a campaign account for the payment of legal fees and expenses constitutes personal
14 use. *See* 11 CFR 113.1(g)(1)(ii)(A).

15 The Commission has long recognized that if a candidate “can reasonably show
16 that the expenses at issue resulted from campaign or officeholder activities, the
17 Commission will not consider the use to be personal use.” Explanation and Justification
18 for Final Rules on Expenditures; Reports by Political Committees; Personal Use of
19 Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995) (“1995 Personal Use E&J”). Legal
20 fees and expenses, however, “will not be treated as though they are campaign or
21 officeholder related merely because the underlying proceedings have some impact on the
22 campaign or the officeholder’s status.” *Id.* at 7868. The Commission has identified legal

1 expenses associated with a divorce or charges of driving under the influence of alcohol as
2 examples of expenses that are personal, rather than campaign or officeholder related. *Id.*

3 *Reviewing Senate Ethics Committee Complaints*

4 The Committee seeks to use campaign funds for legal fees and expenses incurred
5 in reviewing the Senate Ethics Committee complaints filed against Senator Coleman.
6 The Commission has previously concluded that efforts to respond to the Senate Ethics
7 Committee are directly related to an individual's duties as a Federal officeholder, and that
8 legal fees and expenses incurred in responding to the Senate Ethics Committee's inquiries
9 or investigations are ordinary and necessary expenses incurred in connection with the
10 duties of a Federal officeholder. *See* Advisory Opinion 2008-07 (Vitter); *see also*
11 Advisory Opinions 2006-35 (Kolbe) and 1998-01 (Hilliard) (involving inquiries or
12 investigations by the House Committee on Standards of Official Conduct). Accordingly,
13 the Commission concludes that the Committee may use campaign funds to pay legal
14 counsel to review the various Senate Ethics Committee complaints described in the
15 request. Such use would not be a conversion to personal use because these legal fees
16 would not exist irrespective of Senator Coleman's duties as a U.S. Senator. *See* Advisory
17 Opinions 2008-07 (Vitter), 2006-35 (Kolbe), and 1998-01 (Hilliard).

18 *Reviewing Letter to FBI and Representation in Possible FBI Inquiry*

19 The Committee also seeks to use campaign funds to pay legal fees and expenses
20 incurred in reviewing ABM's letter to the FBI as well as, should it be necessary, in
21 representing Senator Coleman in an FBI inquiry.⁵

⁵ The question of whether the Committee may use campaign funds to pay legal fees and expenses incurred in representing Senator Coleman in "any other inquiries or proceedings that may arise out of the same

1 The Commission has previously concluded that a candidate’s authorized
2 committee may use campaign funds to pay legal fees and expenses incurred in
3 representing a candidate or Federal officeholder before a non-congressional investigation
4 or legal proceeding when the allegations in that investigation are directly related to a
5 candidate’s campaign activity or duties as a Federal officeholder. *See* Advisory Opinions
6 2006-35 (Kolbe), 2005-11 (Cunningham), and 1996-24 (Cooley); *see also* Advisory
7 Opinion 2003-17 (Treffinger) (involving a criminal indictment). In determining the
8 nature of the underlying allegations in those non-Congressional investigations, the
9 Commission has looked to whether the inquiry concerns information known to or
10 acquired by the officeholder in the course of conducting his or her official duties, whether
11 the inquiry concerns actions taken by the individual as an officeholder, and whether the
12 allegations relate to conduct that would have occurred irrespective of the candidacy or the
13 officeholder’s duties. *See* Advisory Opinions 2006-35 (Kolbe), 2005-11 (Cunningham),
14 and 2003-17 (Treffinger).

15 The Commission notes that the details of the FBI investigation in the instant
16 inquiry are not public at this time. Indeed, according to press reports, the FBI has neither
17 confirmed nor denied whether it is investigating Senator Coleman. Nonetheless, ABM’s
18 letter indicates that, in its efforts to investigate the “alleged scheme [] purportedly to
19 provide an unlawful benefit to a United States Senator,” the FBI could inquire into
20 whether Senator Coleman had knowledge of Mr. Kazeminy’s and DMT’s alleged scheme
21 to divert money to Hays for Senator Coleman’s benefit, whether Senator Coleman

operative facts” as the FBI investigation requested in ABM’s letter is, at this time, hypothetical and does not qualify as an advisory opinion request. *See* 11 CFR 112.1(b).

1 received a benefit, and whether Senator Coleman properly disclosed and accounted for
2 any gifts, including clothing, airfare, or other items of value from Mr. Kazeminy. Recent
3 press reports indicate that the FBI has questioned at least one person about whether Mr.
4 Kazeminy had purchased clothing on Senator Coleman's behalf.⁶

5 To the extent that the FBI is investigating or inquiring into allegations that
6 Senator Coleman may have received unreported gifts in violation of Federal law or
7 violated campaign finance law,⁷ the allegations would not exist irrespective of Senator
8 Coleman's campaign or duties as a Federal officeholder to comply with the laws and
9 rules governing that office. Accordingly, the Commission concludes that the Committee
10 may use campaign funds to pay counsel for the review of ABM's letter to the FBI and for
11 representing Senator Coleman in the investigation by the FBI into allegations that Senator
12 Coleman violated Federal law or rules governing the office of a Senator or the conduct of
13 campaigns. Such use would not be a conversion to personal use because these legal fees
14 would not exist irrespective of Senator Coleman's duties as a U.S. Senator or candidate
15 for Federal office. *See* Advisory Opinions 2006-35 (Kolbe), 2005-11 (Cunningham), and
16 2003-17 (Treffinger).

17 Nonetheless, the details of the FBI investigation are not public at this time and
18 the investigation could involve allegations not related to Senator Coleman's campaign or
19 duties as a Federal officeholder. "The use of campaign funds to pay for [Senator

⁶ *See, e.g.,* Sam Stein, *FBI Investigating Coleman in Minnesota*, HUFFINGTON POST, May 13, 2009, http://www.huffingtonpost.com/2009/05/13/fbi-investigating-coleman_n_203204.html.

⁷ *See* 5 U.S.C. 7353 (gratuities); 5 U.S.C. app. 4 secs. 101-11 (gift disclosure); 18 U.S.C. 201 (bribes); *see also* 11 CFR 113.1(g)(6) (third party payments for personal expenses such as clothing); *Senate Ethics Manual*, S. Pub. No. 108-1, at 22-33, 56, 58-59, and 134-35 (2003 ed.), *available at* <http://ethics.senate.gov/downloads/pdf/manual.pdf>.

1 Coleman’s] representation in legal proceedings regarding any allegations that are not
2 related to his campaign activity or duties as a Federal officeholder would constitute an
3 impermissible personal use.” Advisory Opinion 2005-11 (Cunningham); *see also* 2003-
4 17 (Treffinger) (determining a percentage approach to representation when some counts
5 are related and some unrelated to campaign activity). Accordingly, the Committee may
6 not use campaign funds to pay for legal representation of Senator Coleman with respect
7 to allegations not directly related to his campaign or duties as a Federal officeholder.

8 *Monitoring of, Representation in, and Document Preservation for Texas and*
9 *Delaware Lawsuits*

10 The Committee also seeks to use campaign funds to pay legal fees for counsel’s
11 monitoring of, possible representation of Senator Coleman in, and document preservation
12 for the Texas and Delaware lawsuits.

13 The complaints in the Texas and Delaware lawsuits allege corporate malfeasance
14 with respect to DMT and DMH in the form of, among other allegations, corporate
15 payments to Hays in the alleged scheme to divert money to Hays for Senator Coleman’s
16 benefit. Although the corporate malfeasance causes of action in the Texas and Delaware
17 lawsuits do not, on their face, relate to Senator Coleman’s campaign or his duties as a
18 Federal officeholder, the alleged facts are directly related to Senator Coleman’s campaign
19 activity or duties as a Federal officeholder.

20 As discussed above, the Texas and Delaware lawsuit complaints include factual
21 allegations that DMT’s controlling shareholder, Mr. Kazeminy, is “a large donor to
22 Senator Coleman’s campaign” who wanted “to financially assist United States Senator

1 Norm Coleman.” Additionally, the complaint in the Delaware lawsuit alleges that Mr.
2 Kazeminy and Senator Coleman “have vacationed together at Kazeminy’s expense using
3 Kazeminy’s private plane” and that Mr. Kazeminy “may have paid large bills for clothing
4 purchases at Neiman Marcus in Minneapolis by Senator Coleman and his wife.” Thus,
5 these factual allegations relate to Senator Coleman’s campaign or duties as a Federal
6 officeholder.

7 Accordingly, the Commission concludes that Senator Coleman’s need to incur
8 legal fees to monitor, preserve documents for, and prepare for possible involvement in
9 the Texas and Delaware lawsuits would not exist irrespective of his campaign or duties as
10 a Federal officeholder. *See, e.g.*, Advisory Opinions 2005-11 (Cunningham), 2003-17
11 (Treffinger), and 1997-12 (Costello). The Committee may use campaign funds to pay the
12 legal fees and expenses incurred in monitoring, preserving documents for, and
13 representing Senator Coleman in the Texas and Delaware lawsuits.

14 *Responding to Media Inquiries*

15 The Committee also wishes to use campaign funds to pay legal fees and expenses
16 incurred in responding to press inquiries regarding the Texas and Delaware lawsuits,
17 Senate Ethics Committee complaints, and possible FBI investigation.

18 The Commission has recognized that “the activities of candidates and
19 officeholders may receive heightened scrutiny and attention in the news media.”
20 Advisory Opinion 2008-07 (Vitter) (quoting Advisory Opinion 1998-01 (Hilliard)). The
21 Commission has found that a candidate’s or officeholder’s need to respond to intense
22 media scrutiny would not exist irrespective of the candidate’s campaign or officeholder

1 duties. Advisory Opinion 2008-07 (Vitter); *see also* Advisory Opinion 1998-01
2 (Hilliard) (citing Advisory Opinions 1997-12 (Costello) and 1996-24 (Cooley)). Thus,
3 the Commission has determined that a candidate's authorized committee may use
4 campaign funds to pay certain legal fees and expenses incurred in responding to press
5 inquiries regarding allegations both related and unrelated to campaign activities and
6 duties as an officeholder. *See* Advisory Opinions 2008-07 (Vitter), 2006-35 (Kolbe),
7 1998-01 (Hilliard), 1997-12 (Costello), and 1996-24 (Cooley).

8 The request indicates that the media has shown considerable interest in the
9 various allegations against Senator Coleman. Senator Coleman's need to respond to the
10 media's demands for public discussion of the allegations would not exist irrespective of
11 his campaign or officeholder duties. The Commission concludes that the Committee may
12 use campaign funds to pay Senator Coleman's legal fees and expenses incurred in
13 responding to the press regarding the FBI investigation, Senate Ethics Committee
14 complaints, and Texas and Delaware lawsuits.

15 *Miscellaneous Costs and Expenses*

16 The Committee also seeks to use campaign funds to pay certain miscellaneous
17 expenses, including copying and phone calls. To the extent that Senator Coleman
18 incurred the miscellaneous expenses in connection with legal fees the Commission has
19 determined may be paid with campaign funds, the miscellaneous expenses also may be
20 paid with campaign funds. To the extent that Senator Coleman incurred the
21 miscellaneous expenses in connection with legal fees the Commission has determined

1 may not be paid with campaign funds, however, the miscellaneous expenses may not be
2 paid with campaign funds.

3 *Documentation and Reporting*

4 The Committee must maintain appropriate documentation of any disbursements
5 made to pay permissible legal expenses in accordance with this advisory opinion. *See*
6 2 U.S.C. 432(c)(5); *see also* 11 CFR 102.9(b), 104.3(b)(2), 104.3(b)(4), and 104.11.

7 The Commission expresses no opinion regarding the application of Federal tax
8 law, other law, or the rules of the U.S. Senate to the proposed activities, because those
9 questions are not within the Commission's jurisdiction.

10 This response constitutes an advisory opinion concerning the application of the
11 Act and Commission regulations to the specific transaction or activity set forth in your
12 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
13 of the facts or assumptions presented, and such facts or assumptions are material to a
14 conclusion presented in this advisory opinion, then the requestor may not rely on that
15 conclusion as support for its proposed activity. Any person involved in any specific
16 transaction or activity which is indistinguishable in all its material aspects from the
17 transaction or activity with respect to which this advisory opinion is rendered may rely on
18 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
19 conclusions in this advisory opinion may be affected by subsequent developments in the
20 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
21 All cited advisory opinions are available on the Commission's website at
22 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

Steven T. Walther
Chairman