

(\$10,000,000), the Hyer campaign determined that the new proportionality provision amount was \$11,000,000, calculated as follows:

$$1.10 \times \$10,000,000 = \$11,000,000$$

Accordingly, the Hyer campaign determined that it could receive another \$10,600,000 (\$11,000,000 limit – \$400,000 already received) in contributions under the increased limit without violating the proportionality provision.

#### *Withdrawal of Opposing Candidate*

As summer turned into fall and fall faded into winter, the polls consistently showed Miller with a double-digit lead over Rogers. The Hyer campaign polled in the single digits.

Rogers had already spent \$10 million of his personal funds and, although willing to spend more, he did not want to do so unless there was a real chance that he might make some headway against Miller. Rogers figured that he could not gain ground against Miller. So, on December 20, 2003, Rogers held a press conference and announced his decision to quit the race.

Once the initial shock of Rogers's withdrawal from the race wore off, both Miller and Hyer realized that his departure might have a significant impact on their ability to raise funds for the last seven months of the primary campaign. Under 11 CFR 400.32, Rogers ceased to be a candidate on December 20, 2003, the date he publicly announced his withdrawal from the race. From that day forward, Miller was prohibited from accepting that portion of contributions made under the increased limits that exceeded the applicable limit (\$2,000 per person) because it was Rogers's expenditures from personal funds that had allowed her to receive contributions above the applicable limit in the first place. While her campaign was permitted to continue accepting contributions up to the applicable limit (\$2,000 per individual), it would have to refuse any portion of any contribution above the applicable limit. Any amount above the applicable limit would have to be refunded to the contributor.

#### *Calculating the New Opposition Personal Funds Amount for the Hyer Campaign*

Rogers's withdrawal from the race affected the Hyer campaign differently than the Miller campaign. With Rogers out of the race, Hyer must now consider Miller to be his "opposing candidate" for purposes of calculating the opposition personal funds amount and the increased contribution limits. To

determine the new opposition personal funds amount as of December 20, 2003, Hyer used the same formula he had used on July 16, 2003 ( $a - b - ((c - d) \div 2)$ ), substituting Miller for Rogers, where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Miller) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Hyer in the same election;

(c) Represented the aggregate amount of the gross receipts of Hyer's authorized committee, minus any contributions by Hyer from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Miller's authorized committee, minus any contributions by Miller from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

#### *Variable (a)—Hyer Campaign*

Considering each variable in turn, as of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of \$3,000,000. So, as of that date, variable (a) in the formula for the Hyer campaign equaled \$3,000,000.

#### *Variable (b)—Hyer Campaign*

As of June 30, 2003, Hyer had not made any expenditures from personal funds. Accordingly, as of that date, variable (b) in the formula for Hyer's campaign equaled \$0.

#### *Variable (c)—Hyer Campaign*

As of June 30, 2003, Hyer's authorized committee had received contributions in connection with the primary election totaling \$1,000,000 and Hyer's aggregate contributions from personal funds totaled \$0. Accordingly, as of June 30, 2003, variable (c) in the formula for the Hyer campaign equaled \$1,000,000 – \$0, or \$1,000,000.

#### *Variable (d)—Hyer Campaign*

As of June 30, 2003, Miller's authorized committee had received contributions in connection with the primary election totaling \$4,000,000 and Miller's aggregate contributions from personal funds totaled \$3,000,000. Accordingly, as of June 30, 2003, variable (d) in the formula for the Hyer

campaign equaled

$$\$4,000,000 - \$3,000,000, \text{ or } \$1,000,000.$$

Inserting the above numbers into the applicable formula ( $a - b - ((c - d) \div 2)$ ), the opposition personal funds amount for the Hyer campaign as of December 20, 2003, was \$3,000,000, calculated as follows:

$$\$3,000,000 - \$0 - ((\$1,000,000 - \$1,000,000) \div 2) = \$3,000,000$$

Hyer notified his national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

#### *Calculating the New Increased Contribution Limit for the Hyer Campaign*

Hyer was optimistic that he would still be able to receive contributions above the applicable limit. Hyer performed the following calculations and determined that with the new opposition personal funds amount of \$3,000,000, the new contribution limit applicable to his campaign was three times the applicable limit, or \$6,000:

Opposition personal funds amount of \$3,000,000 was more than \* \* \*

$$\$2,284,000 = (\$0.08 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$300,000$$

But less than or equal to \* \* \*

$$\$4,568,000 = (\$0.16 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$600,000$$

#### *Calculating the New Proportionality Provision Amount for the Hyer Campaign*

Before calling to solicit contributions under the new increased limit, however, the Hyer campaign sought to determine the maximum amount he could accept before being in danger of exceeding 110 percent of the new opposition personal funds amount in violation of the proportionality provision (11 CFR 400.31).

As of December 20, 2003, the Hyer campaign had received \$1,200,000 in contributions, \$750,000 of which was received under the increased limits. Taking into account the new opposition personal funds amount (\$3,000,000), the Hyer campaign determined that the new proportionality provision amount was \$3,300,000, calculated as follows:

$$1.10 \times \$3,000,000 = \$3,300,000$$

Accordingly, the Hyer campaign determined that it could receive \$2,550,000 (\$3,300,000 limit – \$750,000 already received) in contributions under the increased limit without violating the proportionality provision.