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AGENDA ITEM

For Meeting of: 11-21-02

CONTINUED ON 11-25-02

MEMORANDUM FOR THE COMMISSION

FROM: CHAIRMAN DAVID M. MASON *DM*

DATE: NOVEMBER 25, 2002

RE: PROPOSED E & J LANGUAGE RE DEFINITION OF
"CANDIDATE'S FAMILY"

SUBMITTED LATE

The Commission is revising the provision in this regulation that includes as a member of the candidate's family a person who shares a household with the candidate. This change was not addressed in the NPRM, but is being included to clarify the intent of the regulation and to eliminate any potential conflict with the Defense of Marriage Act, 1 U.S.C. § 7. While the personal use prohibition applies to "any person," the regulations apply special scrutiny to members of a candidate's family as potential conduits for evasion of the personal use prohibition. At the same time, the regulations recognize that a joint account shared with one or more family members may be used to pay a candidate's personal living expenses without the role of the family members in such payments being treated as a contribution. 11 CFR 113.1(g)(6)(ii).

The revised regulation recognizes that any payments to a person sharing a residence with a candidate could serve as a means of supporting the candidate's personal living expenses and thus bans gifts from the campaign to family members or persons residing with the candidate, 11 CFR 113.1(g)(4), subjects salary payments by the campaign to such persons to certain conditions, 11 CFR 113.1(g)(1)(H), and limits payments for real or personal property owned by family members and used for campaign purposes. 11 CFR 113.1(g)(1)(E)(2). Use of campaign funds for mortgage, rent or utility payments for the residence of a candidate or of a member of the candidate's family is also prohibited, 11 CFR 113.1(g)(1)(E)(1), but would not operate any differently in the case of a family member who resides with the candidate. Similarly, anyone actually residing with a candidate could pay a share of living expenses without having those payments be deemed contributions to the candidate's campaign. Finally, personal funds of candidates would include the candidate's share of any joint accounts held by the candidate and a person residing with the candidate. 11 CFR 113.1(g)(6)(ii).

The revised regulation includes any person residing with the candidate within the definition of "Members of the candidate's family." The provision formerly included "a person who has a committed relationship with the candidate, such as sharing a household and having mutual responsibility for each other's personal welfare or living expenses." The "committed relationship" condition could have been read as an approximation of marriage, especially as the 1995 Explanation and Justification for this provision, 60 Fed. Reg. 7872 (Feb. 29, 1995), stated

that persons in this committed relationship category "will be treated as the equivalent of the candidate's spouse." This rendering of the statute appears to be prohibited by the Defense of Marriage Act, 1 U.S.C. § 7, which provides that "[i]n determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

In addition, the Commission was concerned that a committed relationship does not represent a generally-recognized legal test (for instance, most states do not recognize non-marital relationships contemplated by the "committed relationship" provision) and thus would be difficult for the Commission to ascertain and enforce if called upon to do so. The question of residence or domicile on the other hand is a factual matter which does not call upon the Commission to inquire into or make judgments about the nature of the relationship between a candidate and persons residing with the candidate