

When Words Are Not Enough: FEC Fines Candidate Committee for Omitting Disclaimer Box in Mailings

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Disclaimers for Candidates; Specific Problems

On February 27, the FEC announced that former Congressman Martin Frost's campaign committee would pay a \$6,000 civil penalty for failing to include the proper disclaimers on printed communications. The mailings to 100,000 individuals discussed various campaign themes raised during the 2004 election, including airline security and Republican efforts to outsource American jobs.

The FEC began its analysis of the campaign literature by noting that each mailing contained a disclaimer, "Paid for by the Martin Frost Campaign Committee," that properly identified the sponsor. Second, the Commission observed that each of the three mailings complied with the requirement that the disclaimer "be printed with a reasonable degree of color contrast between the background and the printed statement." According to the Commission's regulations, this requirement may be satisfied if the disclaimer is written in black text on a white background or "if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication." Third, the FEC determined that the communications were "clearly readable by the recipient," despite allegations that the disclaimers were too small and difficult to read. In particular, the FEC noted that the "safe harbor" font size (12-point) contemplated by the Commission's regulations was not required in this case because the mailings here were done on an 8 ½" x 11" piece of paper rather than the 24" x 36" materials that the "safe harbor" regulation contemplated.

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Finally, the Commission's regulations provide that disclaimers on printed, public communications must be contained in "a printed box set apart from the other contents of the communication." Because the disclaimer in the Frost committee's mailings was not set apart in such a box, the FEC found that the committee had violated the law.

In a separate disclaimer-related matter publicized on the same day, the Commission exercised its prosecutorial discretion and dismissed a complaint against Senator Jim Talent's campaign. The complaint alleged that a newspaper advertisement advocating the senator's reelection failed to contain the appropriate disclaimer, but in response, the Talent campaign denied any knowledge, authorization or coordination of the ad.

Corporate and Non-connected PAC Disclaimers for Public Communications

Many of the requirements that are applicable to disclaimers on public communications issued by candidates also apply to *public* communications by corporate and non-connected PACs. The one key difference, however, is in the language of the disclaimer. If the public communication is authorized by a candidate, his or her authorized committee or an agent thereof but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by the candidate, committee or agent. An example of this disclaimer, which must be in the printed box, is as follows:

"Paid for by [name of PAC] and authorized by [name of candidate or candidate's committee]."

If the communication is not authorized by a candidate, his or her committee or an agent thereof, the disclaimer must state the full name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee. An example of this disclaimer, which must be in the printed box, is as follows:

"Paid for by [name of PAC] and not authorized by any candidate or candidate's committee. [Street address of PAC] [or] [Telephone number of PAC] [or] [World Wide Web address of PAC]."