

How to Respond to an FEC Complaint

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It's election time again. The season in a two-year cycle when industrious and energetic people, working for upright candidates and political action committees (PACs) and taking advantage of First Amendment rights, may get hit between the eyes—with a complaint filed with the Federal Election Commission (FEC).

Often there is no substance to these complaints, but, nevertheless, they must be dealt with in order to clear one's name. As the election approaches and passes, the FEC processes the complaint and sends it on to the accused party (or respondent) for a response. Below are some guidelines to assist respondents in this unpleasant endeavor.

Relax

If the complainant is mistaken or making charges without any substantiation or if the error was an honest mistake, the filing of a complaint is not the end of the world. Any individual with a notary, no matter how partisan or misinformed, can file a complaint. Usually, a complaint is for the press hit a few days before the election. The FEC's forwarding of the complaint to the respondent does not mean that the agency thinks the complaint has substance.

Confidentiality

After the complainant gets his or her anticipated press hit, the whole process becomes confidential. Until the administrative process ends (either by dismissal, negotiated conciliation agreement or federal suit), the complainant will not learn of anything about the case. The complainant will have no idea about the response, the FEC's analysis or possible conciliation agreements. Unless the respondent makes statements to the public, there will be no public information about the case until it is finalized.

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Responding

The FEC gives respondents 15 days to respond to a complaint, and respondents may ask for some additional time. Even if one takes additional time, he or she should make sure to respond directly to the complaint (although figuring out what the complaint actually asserts as a legal issue often takes some time and head scratching). The response should be made with the assistance of legal counsel and should address both factual and legal issues. Simplistic responses that focus on the partisan nature of the complaint or the fact that the FEC should butt out are little more than useless.

Waiting

Unless the respondent opts to use the Alternate Dispute Resolution process, it may take awhile for the FEC to respond. Although the agency has increased its efficiency lately, the process can still take years. The FEC response is determined based on the complaint, other information it has gathered and the respondent's response. If the FEC has a reason to believe a violation of federal campaign finance laws exists, then the process will move toward negotiating a conciliation agreement or to the probable cause stage. If not, then the case will be dismissed.