



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 29, 1999

Paul J. Feiner  
c/o Philip A. Feiner  
15 Parkfield Road  
Scarsdale, NY 10583

RE: MUR 4838

Dear Mr. Feiner:

On October 30, 1998, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

On April 16, 1999, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated any provision of the Act in this matter. Accordingly, the Commission closed its file in this matter as it pertains to you.

This matter will become part of the public record within 30 days after it has been closed with respect to all other respondents involved. The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

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If you have any questions, please contact Donald E. Campbell, the staff member assigned to this matter at (202) 694-1650.

Sincerely,

Lawrence M. Noble  
General Counsel



By: Lois G. Lerner  
Associate General Counsel

Enclosure:  
Factual and Legal Analysis

OFFICE OF THE ATTORNEY GENERAL

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Paul J. Feiner

MUR 4838

**I. GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission by Bernard Gomberg on October 26, 1998. The complaint alleges that Paul J. Feiner and his principal campaign committee, Citizens for Paul Feiner and Philip A. Feiner, as treasurer ("Committee"), failed to include disclaimer notices on public political advertising during the 1998 election for U.S. Representative in New York's 20<sup>th</sup> Congressional District.<sup>1</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

**A. The Law**

Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate, or expenditures to solicit any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, must include a disclaimer. 2 U.S.C. § 441d(a). The Commission's regulations further specify that disclaimers are required on "posters" and "yard signs."

11 C.F.R. § 110.11(a)(1). In Advisory Opinion 1995-9, the Commission stated that the use of a web site by a political committee "should be viewed as a form of general public political

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<sup>1</sup> Mr. Feiner lost the election to incumbent Benjamin A. Gilman, 58% to 39%.

advertising under 11 C.F.R. § 110.11.”

If the communication was paid for and authorized by a candidate, an authorized committee of a candidate or an agent thereof, the disclaimer shall clearly state that the communication was paid for by the authorized political committee. 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(a)(1)(i). According to 11 C.F.R. § 110.11(a)(1), the disclaimer shall be presented in a clear and conspicuous manner. The Act and regulations do not provide for “disclaimers by inference.” See, e.g., *FEC v. National Conservative Political Action Committee*, No. 85-2898 (D.D.C. April 29, 1987) (unpublished opinion).

#### **B. Complaint and Response**

The complaint alleges that “[Paul] Feiner (or his agents) has violated federal law by failing to include disclaimer notices on public political advertising.” The complaint first identifies an advertisement appearing in the October 1998 edition of the *Nyack* (N.Y.) *Villager*. The advertisement contains such statements as “Paul Feiner for Congress” and “Elect Paul Feiner For Congress, 20<sup>th</sup> CD,” along with the campaign’s web site address, <www.feiner.org>. The advertisement does not state who paid for it. Second, the complaint alleges that numerous yard signs advocating the election of Paul Feiner were posted in the district, and includes a photograph of one of the signs. The sign says “Paul Feiner – Congress – Time for a Change” without stating who paid for it. Finally, the complaint alleges that a web site expressly advocating the election of Paul Feiner and soliciting funds for his committee fails to include a disclaimer. Attached to the complaint are two web pages dated October 17, 1998, containing the phrase “Paul Feiner for Congress” in large type and suggesting to readers that if they “want to make a contribution, send a check to ‘Paul Feiner for Congress’” at a given address. The pages do not state who paid for the web site.

In a response to the complaint, the candidate acknowledges that the disclaimer omissions alleged in the complaint occurred, describing them as "an unintentional oversight." The candidate states that the failure to include disclaimers was "due to the fact that I have never run for Congress before and due to the fact that the ads and signs were ordered by campaign volunteers -- rather than professionals." The candidate adds that he has "already remedied [his] internet site to include any disclosure." The candidate has attached to the response copies of his campaign literature: "As you will note . . . I included the disclaimer in all my campaign literature, stationary [sic] and fundraisers, as required by law." All of the items attached to the response state that they were paid for by the Committee.

### C. Analysis

The three campaign items referred to in the complaint all appear to constitute public communications containing express advocacy or solicitations for contributions, and also appear to have been paid for and authorized by the Committee. Accordingly, pursuant to 2 U.S.C. § 441d(a)(1), the items required a disclaimer stating that they had been paid for by the Committee. However, the available information does not indicate any personal involvement in the above-described activities on the part of the candidate. Therefore, there is no reason to believe that Paul J. Feiner violated any provision of the Act in this matter.