



Memorandum

TO: Members of the New Jersey Press Association (NJPA)

FROM: Thomas Cafferty and Steven Kleinman, Scarinci & Hollenbeck, LLC

DATE: August 15, 2007

RE: Regulation of Political Advertising In New Jersey Newspapers

With election season just around the corner, this memorandum is a brief reminder that New Jersey and Federal election laws require that all newspaper political advertisements contain appropriate disclaimers, better known as the “ordered and paid for” line. The required content and design of these disclaimers varies depending on whether the ad in question pertains to an election on the Federal level (U.S. Senate/U.S. House) or on the State/local level (all other offices).

I. Advertising for State and Local Elections

The New Jersey Election Law Enforcement Commission (ELEC) enforces the disclaimer requirements for State and local elections in New Jersey. ELEC regulations require that political identification statements be included on “any advertising directed towards the electorate that aids or promotes the nomination, election or defeat of a State or local candidate.” Bona fide news items or editorials are excluded.

Most newspaper political ads will be directly paid for or authorized by registered political candidates or political committees, as individual and joint candidate committees; the various Democratic and Republican State, local, and county political organizations; and other entities registered with ELEC as a result of their political activity, such as “continuing political committees” (a.k.a. “PACs”). These entities are required to include the following information in their disclaimer:

- (1) the name registered with ELEC of the entity or organization or person paying for the advertisement;
- (2) language indicating that the advertisement was ordered and paid for by that entity, organization or person;
- (3) the business or residence address of that entity, organization or person as it appears on a registered entity’s ELEC filings.

EXAMPLE: **Ordered and Paid for By:**
Charles F. Kane for Governor
1 Rosebud Way
Trenton, NJ 08628

No other identification information is expressly required by law, but oftentimes, political entities may, and are permitted to include in their ads information such as the name of the entity's treasurer, a phone number, or an Internet address.

If a newspaper political advertisement is paid for by a person or group that is not required to register with ELEC, that is considered to be an "independent expenditure." Such an ad might be taken out by a concerned citizen, for example. For an "independent expenditure" ad, the following information is required in the disclaimer:

- (1) the name of the person paying for the advertisement;
- (2) language indicating that the advertisement was ordered and paid for by that entity, organization or person;
- (3) the business or residence address of that entity, organization or person as it appears in public records or a telephone directory;
- (4) language indicating that the expenditure was not made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of any candidate, or any person or committee acting on behalf of any candidate.

EXAMPLE: **Ordered and Paid for By:**
Cindy Concerned
15 Elm Street
Trenton, NJ 08628

This advertisement is paid for by a private citizen, and was not authorized or approved by any political candidate or committee.

II. Advertising for Federal Elections

The Federal Election Commission (FEC) enforces the disclaimer requirement for all Federal elections in the United States. FEC regulations require that political identification statements be included on "any public communications that expressly advocate the election or defeat of a clearly identified candidate or are paid for by a political committee." These statements must be "clear and conspicuous," in at least 12 point type, have sufficient contrast with the advertisement's background and be located within a printed box set apart from the other contents of the advertisement. The disclaimer must clearly state who paid for the advertisement, but addresses are only necessary in certain circumstances.

EXAMPLE:

| |
|--|
| Paid For By Smith For U.S. Senate |
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If the ad is authorized by a candidate for Federal office, but paid for by another person, the disclaimer must explicitly say so:

EXAMPLE:

Expenditures not authorized for Federal office must

**Paid For By John Doe
Authorized By Smith For U.S. Senate**

by a candidate include a

disclaimer with the full name along with a street address or phone number or web address of the person paying for the communication, as well as a statement that the communication is not authorized by any candidate or candidate's committee.

EXAMPLE:

**Paid For By Cindy Concerned
15 Elm Street, Trenton, NJ 08628
This advertisement is not authorized
by any Federal candidate or committee.**

III. Vendor Records – the “Political File”

Another important provision of the law requires that anyone accepting compensation from a political entity “for the purpose of printing, broadcasting or otherwise disseminating to the electorate a communication subject to political identification statement requirements shall maintain a record of the transaction...” N.J.A.C. 19:25-13.4. These records are commonly known in the communications industry as the “political file.” The records that must be kept include (1) an exact copy of the communication; (2) a statement of the number of copies made or the dates and times the communication was broadcast or otherwise transmitted; (3) the name and address of the committee, group or individual paying for the communication and of the candidate or committee, if any, on whose behalf the individual was acting.

IV. Frequently Asked Questions

If a newspaper runs an advertisement without the required disclaimer, will it be held responsible?

Generally speaking, it is the legal responsibility of the person or entity placing the ad to provide the appropriate disclaimer, not the newspaper. Of course, it is still good practice to ensure that all ads contain the proper disclosure language.

Can a newspaper offer discounts for political advertising?

FEC regulations require that a newspaper selling advertising space to a Federal candidate may not charge an amount for the space which exceeds the comparable rate of the space for non-campaign purposes, including discounts usually and normally available to ordinary advertisers. While this regulation does not apply to State and local elections, a newspaper may still offer such discounts. However, a newspaper should not sell ad space to a political entity at a discount not regularly available to similarly situated customers. Otherwise, that discount could be deemed an “in-kind” political contribution, which would have to be reported to the appropriate regulatory entity, and if large enough, might violate campaign contribution limits.

Can a newspaper reject a political advertisement if it does not contain the required disclosure language, or for some other reason?

Newspapers have the First Amendment right to publish or reject advertisements at they see fit. Thus, if you have any concerns with respect to the failure to include proper disclosure language, you have the right to insist that the error be corrected, or to require a suitable disclosure statement even if not expressly required by law or regulation.

What about Internet advertising?

Both ELEC and the FEC have advised that appropriate disclaimers must appear on any political ad that appears on an Internet web site.

Can political candidates sign contracts?

Yes. Courts have ruled that political candidates can and should be offered the same reduction opportunities as other advertisers. If, however, your newspaper has a separate, "political rate" that is offered to those running for office, you may do so.

Can we make them pay in advance?

Yes. But you should have a consistent policy regarding advertising (not just certain individuals or parties).

Is there a law that prohibits candidates from leveling "new charges" or introducing "new issues" in advertisements just before the election?

There is no law prohibiting such action, however, many of our member newspapers have policies that disallow such activities. Most require the timing to allow the opposition to respond. In the case of weeklies, that might mean two weeks prior to the election, in the case of dailies, certainly a few days. Check with your ad manager.

Please contact NJPA if you have any further questions.