AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

§ 22. Form and Contents of Notice

Under the Federal Contested Elections Act, the notice of contest must state with particularity the grounds on which the contestant relies. The notice must also state that an answer to it must be served on contestant within 30 days after service of the notice.[13] The Act further requires that the notice of contest be signed and verified.[14]

The notice of contest should also claim right to the contestee's seat, as the contestee may, at his option, assert the failure to claim right to the seat as a defense under the provisions of 2 USC § 383(b)(4). Similarly, while the act does not specify what constitutes grounds that the contestant may assert to contest the election, the contestee may, at his option, raise as a defense the failure of the notice of contest to state grounds "sufficient to change result of election" under 2 USC § 383(b)(3). Therefore, the notice of contest should state with particularity the grounds upon which the contestant contests the election and such grounds should be sufficient to change the result of the election.

13. 2 USC § 382(b).

14. 2 USC § 382(b).

Failure to State Grounds With Particularity

§ 22.1 A contestee may request dismissal where the allegations in the notice are "vague and uncertain and lacking in the necessary particulars."

In Gormley v Goss (§ 47.9, infra), a 1934 Connecticut contest, contestant alleged that through "fraud, irregularities, corruption, and deceit" on the part of contestee's agents at a voting booth he was deprived of "many votes far in excess" of the number of votes necessary to overcome his opponent's majority. Contestee sought dismissal on the ground that such allegations were "vague and uncertain and lacking in the necessary particulars." The committee heard argument as to the sufficiency of notice, and while deciding the contest on other grounds, agreed that contestant's motion did not meet the statutory requirements.

§ 22.2 A contestee may move to dismiss on the ground that the contestant has failed to state with particularity the grounds on which he relies in his notice of contest.

In Chandler v Burnham (§ 47.4, infra), a 1934 California contest, contestant served notice alleging

that "he had received a majority of all the lawful votes cast"; that election officials had rejected as void certain ballots that had been cast for him; that there were deviations in the number of ballots delivered to and the number accounted for in certain precincts; that many ballots were unaccountably missing from the ballot boxes; and "that by reason of frauds, irregularities, and substantial errors, many votes counted for the contestee should have been counted for the contestant." The committee, while not dismissing the contest for failure of contestant to state his case with particularity, declared that contestant's notice of contest had been insufficient in this respect and would under other circumstances afford grounds for sustaining contestee's motion to dismiss.

§ 22.3 Where contestant's notice does not specify with particularity the grounds upon which he relies in the contest, and no testimony is taken within the prescribed time, the House may sustain the contestee's dismissal motion based on those grounds.

In Roberts v Douglas (§ 54.4, infra), a 1947 California contest, contestant's notice recited only:

> Contest of your right to hold said seat is entered upon the grounds of failure to meet residence requirements under both the Constitution of the United States and the State of California.
>
> Additional grounds for contest of your right to hold said congressional seat is to be found in many fraudulent practices alleged in the election of November 5, 1946, which justify congressional investigation.

There was no testimony taken within the prescribed period. The Speaker referred the Clerk's letter, together with a letter from the contestee's attorney and contestee's motion to dismiss to the Committee on House Administration, and ordered all the papers printed as a House document. The committee, through a resolution offered by Mr. Ralph A. Gamble, of New York, then recommended dismissal of the contest, with which resolution the House agreed.[15]

Necessity of Signature

§ 22.4 A notice of contest is not sufficient if it does not bear the original signature of the contestant.

In the 1957 Iowa election case of Dolliver v Coad (§ 57.2, infra), the House agreed to a resolution without debate providing that it

15. See also Michael v Smith, § 54.3, infra.

would not recognize an unsigned paper as valid notice of contest and that the contestant's unsigned notice of contest was not in the form required by the applicable statute (2 USC § 201).[16]

G. PLEADING

§ 23. Generally

The pleadings in an election contest include the response of contestee to contestant's notice. This response must be made within 30 days after the service of the notice.[17]

Certain defenses, at the option of contestee, may be raised by motion prior to answer. They are: (1) insufficiency of service of notice of contest, (2) lack of standing of contestant, (3) failure of the notice to state grounds sufficient to change the result of the election, and (4) failure of contestant to claim a right to contestee's seat.[18]

A motion for more definite statement is permitted under the Federal Contested Elections Act.[19]

If a motion to dismiss is entered and denied, or if its disposition is postponed until a hearing on the merits, the answer is to be served within 10 days after notice of such action. If a motion for more definite statement is granted, the answer is to be served within 10 days after service of the more definite statement.[20]

Except for the notice of contest, every paper required to be served is to be served on the attorney representing the party, or, if he is not so represented, on the party himself, in the manner specified by the controlling statute.[1]

Proof of service, while not affecting the validity of such service, is a necessary procedural step under the Federal Contested Elections Act. Papers filed subsequent to the notice of contest are to be accompanied by proof of service by affidavit showing the time and manner thereof.[2]

A motion to suppress a deposition may be sought on the ground that the reasons given for a re-

16. The requirement as to contestant's signature is presently embodied in 2 USC § 382(b).

17. 2 USC § 383.

Notice of contest, see §§ 20, et seq., supra.

18. 2 USC § 383(b).

19. 2 USC § 383(c).

20. 2 USC § 383(d).

1. 2 USC § 384.

2. 2 USC § 384(c).