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In Woodward v O'Brien (§ 54.6, infra), a 1947 Illinois contest, contestant submitted a letter stating that contestee had not answered the notice of contest within the required period, and that a default should be entered against contestee by the House. This letter was referred to the appropriate committee, but the committee took no action on it and indeed recommended that the notice be dismissed for failure to take testimony within the required period.

§ 24. Answer

The Federal Contested Elections Act provides that when a notice of contest is served in the manner prescribed, contestee must respond with a written answer, and that such answer must be served on contestant within 30 days. The answer must admit or deny the averments relied on by contestant. If contestee is without knowledge or information sufficient to form a belief as to the truth of an averment, he must so state, such statement having the effect of a denial. This answer must set forth affirmatively any other defenses, in law or fact, relied on by contestee.[6]

Contestee must sign and verify his answer by oath or affirmation.[7] Under the controlling statute, the failure of contestee to answer the notice of contest is not to be deemed an admission of the truth of the averments in the notice.[8]

Failure to Make Timely Answer

§ 24.1 Contestee's failure to file an answer within the requisite 30 days did not prevent him from ultimately prevailing and having the contest dismissed.

In Mankin v Davis (§ 54.2, infra), a 1947 Georgia contest, a contestant who had not been a candidate in the general election, but only during the primary, timely filed an election contest notice and brief. The contest was dismissed, the contestee's reply having been given due consideration even though not filed within the requisite time period.

Answer Filed for Information Only

§ 24.2 Contestee's answer, filed with the Clerk for information only, can be included in

6. 2 USC § 383.

7. 2 USC § 383.

8. 2 USC § 385.

the Clerk's communication to the Speaker relating that no testimony has been filed in the contest.

In Browner v Cunningham, a 1949 Iowa contested election case (§ 55.1, infra), the contestee's answer was transmitted by the Clerk to the Speaker along with the Clerk's letter relating that no testimony had been received and stating the opinion of the Clerk that the contest had abated.

§ 25. Motion to Dismiss

Today, a failure of the contestant to allege grounds for an election contest is raised by motion to dismiss.[9] Under the new statute, the burden of proof is upon contestant in the first instance to present sufficient evidence, even prior to the formal submission of testimony under the statute, to overcome the motion to dismiss,[10] since exhaustive hearings and investigations should be avoided where contestant cannot make a prima facie case.

Failure to Properly Forward Evidence

§ 25.1 A motion to dismiss will lie where the contestant has not adduced evidence or forwarded testimony to the Clerk's office in the manner prescribed by law.

In the 1945 Michigan election contest of Hicks v Dondero (§ 53.1, infra), the Clerk transmitted a letter to the Speaker relating that his office had received packets of material which had not been addressed to the Clerk or adduced in the "manner contemplated by the provisions of the statutes." The election committee's report stated that the contestant had not taken any testimony in support of his notice of contest within the time prescribed by law. Contestee having entered a motion to dismiss, the House adopted a resolution dismissing the contest and declaring the contestee to be entitled to his seat.

Failure to Produce Evidence

§ 25.2 An elections committee may dismiss an election contest for failure of the contestant to transmit evidence taken by him in the matter to the Clerk, as required by law.

In Shanahan v Beck (§ 47.15, infra), a 1934 Pennsylvania con-

9. 2 USC § 383(b)(3).

10. See Tunno v Veysey, discussed in §§ 35.7, 64.1, infra.