Michael E. Toner
Partner
Direct: (202) 508-6175
michael.toner@bryancave.com

Bryan Cave LLP
1155 F Street N.W.
Washington, D.C. 20004
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Bryan Cave Offices
Atlanta
Charlotte
Chicago
Dallas
Hamburg
Hong Kong
Irvine
Jefferson City
Kansas City
London
Los Angeles
Milan
New York
Paris
Phoenix
San Francisco
Shanghai
St. Louis
Washington, DC

Bryan Cave International Trade
A TRADE CONSULTING SUBSIDIARY OF NON-LAWYER PROFESSIONALS
www.bryancavetrade.com
Bangkok
Beijing
Jakarta
Kuala Lumpur
Manila
Shanghai
Singapore
Tokyo

Bryan Cave Strategies
A GOVERNMENT RELATIONS AND POLITICAL AFFAIRS SUBSIDIARY
www.bryancavestrategies.com
Washington, DC
St. Louis

July 21, 2009

Mr. Robert Hickey
Staff Director
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Website and Internet Communications Improvement Initiative

Mr. Hickey:

We appreciate the opportunity to provide comments in response to the Federal Election Commission's recent Notice of Public Hearing and Request for Comments regarding the Commission's website. See 74 Fed. Reg. 31430 (July 1, 2009). We submit these comments in our personal capacities and not on behalf of any clients of the Bryan Cave Election Law and Government Ethics practice group.

In the past several years, the Commission has made many significant and positive improvements to its website. This current initiative is a valuable opportunity for the Commission to build upon the progress that has been made recently and further streamline and enhance the agency's website.

In its request for comments, the Commission asked numerous questions on how its website could be further improved. Our comments will focus on six specific areas in which the Commission could improve its website to allow users to access relevant information in the most efficient and effective way possible.

I. Availability of Enforcement Case Documents

The Commission recently announced that it has launched the final phase of a project to make all closed enforcement cases available online. It is crucial that the Commission complete this project as soon as possible. We recommend that the Commission publicly announce a date by which it seeks to complete this important project and provide the public with periodic updates of the progress it is making on the project.

Currently, documents related to MURs closed between January 1, 1976 and December 31, 1998 may only be accessed by visiting the Commission in person. However, many political committees are based outside of the Washington, D.C. area and may not be able to visit the Commission in person to obtain these documents. Moreover, many of these committees may not have the resources to retain attorneys or consultants in the Washington area who could assist with identifying documents from past enforcement cases that could be helpful in enforcement cases. This project is an important opportunity for the Commission to level the legal research playing field for all political committees across the country.

II. Functionality of MUR Document Database

In our experience, the MUR document search database can produce search results that are incomplete and/or inaccurate. For example, searching for MUR documents related to 11 C.F.R. § 104.3(d)(4) using different methods of searching appears to produce different results. A search for the "word/phrase" "104.3(d)(4)" yields no results, while a search for an "exact match" of the "word/phrase" "104.3(d)(4)" yields documents from seven closed MURs, some of which do not actually contain the text "104.3(d)(4)." In addition, a search for the "regulatory citation" "104.3(d)(4)" yields documents from only one closed MUR.

It is unclear whether these issues relate to problems with the text search of each document or to problems with the method of searching. The Commission should consider making improvements to the functionality of the MUR database in order to ensure that search results are complete and accurate. If the differences noted above are to be expected based on the search method, the Commission should provide the public with more detailed instructions on each search method, including identifying the best search methods to employ to achieve comprehensive search results.

III. Advisory Opinion Documents

In its request for comments in this proceeding, the Commission notes that additional documents related to Advisory Opinions issued prior to 1999, such as Advisory Opinion requests, public comments, and concurring and dissenting opinions, are not available online. We note that the Commission's website does include some of these documents. For example, concurring and dissenting opinions related to some Advisory Opinions issued in 1995 and 1996 are listed on the Commission's website.

We recommend that the Commission make all of the documents relating to Advisory Opinions available online as soon as practicable, particularly concurring and dissenting opinions.

IV. Searchable Database of Audit Reports

The Commission's website includes PDF files of Title 2 and Title 26 audit reports from the 2000 election cycle forward. The Commission should consider making copies of older audit reports available as well. Additionally, while users can open a specific audit report and search for text, the Commission's website does not allow users to search all available audit reports at the same time. We recommend that the Commission create a searchable database similar to the MUR database that would allow users to search by committee, date, word or phrase in the document, statutory citation, and regulatory citation.

Making additional audit reports available in a searchable format would allow all political committees that are audited by the Commission to have complete information on findings from past audits in responding to potential audit findings. We recommend that the Commission seek to create a complete, searchable database of audit reports by a publicly announced date certain and provide the public with updates on the progress that is being made.

V. Searchable Database of Operating Expenditures

The Commission's website currently includes a disclosure database which allows website users to search for contributions made to or by political committees. However, the disclosure database does not allow users to search for operating expenditures or other disbursements that are not contributions to federal candidates or political committees.

We recommend that the Commission consider expanding the disclosure database to include a search engine for operating expenditures. The database could allow users to search by vendor, purpose of disbursement, amount, date, or other criteria. Although creating a database that includes operating expenditures made by committees that file reports on paper would be potentially onerous, the Commission could consider creating a partial database which includes expenditures made by electronic filers only.

VI. Conference and Roundtable Materials

In its notice requesting comments in this proceeding, the Commission asked whether it should make audio or video recordings of Commission conferences and roundtables available on its website. We believe that posting audio or video recordings as well as other conference materials on the Commission's website would be extremely valuable for representatives of those political committees that are not able to attend the conferences.

Thank you very much for the opportunity to submit these comments in connection with this important proceeding. We respectfully request that Michael Toner be given an opportunity to testify at the Commission's July 29-30 hearing on these issues.

Sincerely,

Michael E. Toner
Karen E. Trainer