GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(Amendment)

32 KAR 2:020. General provisions.

RELATES TO: KRS 121.120, 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY, FUNCTION, AND CONFORMITY: The Registry of Election Finance is charged with the responsibility of enforcing campaign finance laws contained in KRS Chapter 121.~~[Chapters 121 and 121A.]~~ This administrative regulation establishes~~[The function of this administrative regulation is to establish]~~ procedures for processing possible violations of campaign finance law~~[statutes and administrative regulations promulgated by the Registry of Election Finance.]~~ and establishes general provisions that~~[The purpose of this administrative regulation is to establish general provisions which]~~ shall apply throughout this chapter governing practice and procedure.

Section 1. Definitions.

(1) "Campaign finance law" means statutes in KRS Chapter 121 and administrative regulations in KAR Title 32. ~~["Chairman" means the Chairman of the Registry of Election Finance.]~~

(2) "Complainant" means any person who files a complaint with the Registry of Election Finance alleging a violation of campaign finance law.~~[laws or administrative regulations.]~~

(3) "Complaint" means an allegation filed with the Registry of Election Finance charging that a violation of campaign finance law~~[statutes or administrative regulations]~~ has occurred or is about to occur.

(4) "Conciliation agreement" means an agreement offered by the Registry of Election Finance to an alleged violator of campaign finance law~~[laws or administrative regulations]~~ as provided in KRS 121.140.

(5) "Hearing officer" means the retired or former justice or judge selected by the process described in KRS 121.140(4). ~~["General counsel" means the general counsel of the Registry of Election Finance.]~~

(6) "Registry" means the Registry of Election Finance.

(7) "Respondent" means any person against whom a complaint has been filed with the Registry of Election Finance or against whom action is taken by the registry based upon information ascertained through its normal enforcement activity.

~~[(8)] ["Three (3) judge panel" means a panel of three (3) active or retired justices or judges of the Court of Justice appointed by the Chief Justice of the Kentucky Supreme Court to conduct a hearing as provided in KRS 121.140.]~~

Section 2. Computation of Time.

(1) General provision. In computing any period of time prescribed or allowed by this administrative regulation, the provisions of KRS 446.030 shall govern, except as provided in subsection (2) of this section.

(2) Special provision for service by mail. When the registry or a~~[any]~~ person serves a document by mail, the prescribed period for the registry or any person to take the next subsequent action that is permitted or required shall include~~[has the right or is required to do some act within a prescribed period of time after the service of any document by or upon the registry or a person, and the document is served by mail,]~~ three (3) additional days.~~[days shall be added to the prescribed period.]~~

Section 3. ~~[Initiation of]~~Enforcement Matters.

(1) Enforcement matters may be initiated by a written complaint or on the basis of information ascertained by the registry in the normal course of the performance of its[conducting its enforcement] duties.

(2)

[Section 4.] [Ex Parte Communications.]

[(1)] In order to avoid the possibility of prejudice, real or apparent, in derogation of the public interest in enforcement actions pending before the registry, [except to the extent required during an investigation or conciliation negotiations,]interested persons outside the agency shall not make or cause to be made to any registry board member [or employee]any [ex parte]communication relative to the factual or legal merits of an enforcement action, nor shall a registry board member [or employee]make or entertain any communications relating to registry enforcement actions[ex parte communications.]

[(2)] [This prohibition against ex parte communications shall apply from the time a complaint is filed with the registry or from the time that the registry determines on the basis of information ascertained in the normal course of its duties that it has reason to believe that a violation has occurred or may occur, and shall remain in effect] until the registry has concluded all action with respect to the enforcement matter in question.

(3) This section shall not be construed to prohibit contact between a respondent or respondent's attorney and a registry employee in the performance of the registry's[his] duties. Statements made by a registry employee during these communications shall not bind or estop the registry in any way.

Section 4. [Section 5.] Representation by Counsel; Notification.

[(1)] If a respondent wishes to be represented by counsel with regard to any matter pending before the registry, the respondent's counsel shall file an Entry of Appearance identifying[respondent shall so advise the registry by sending a letter of representation signed by the respondent, which shall contain] the name, address, email address, and telephone number of the counsel and a statement signed by the respondent, identifying the subject of the representation, and authorizing the counsel to receive all notifications and other communications from the registry on the respondent's behalf.[behalf of the respondent.]

[(2)] [Upon receipt of a letter of representation, the registry shall have no contact with respondent except through the designated counsel unless requested in writing by respondent.]

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023, at 10:00AM, at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2023, at 11:59PM. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Leslie Saunders, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation provides general provisions for actions involving the Registry and the public, particularly in regard to enforcement actions. The administrative regulation provides definitions and sets rules related to time computation, communications between the registry and those involved in enforcement actions, and the entry of counsel.

(b) The necessity of this administrative regulation:
This administrative regulation is necessary because, while KRS 121.140 contemplates a complaint process for campaign finance violations and KRS 121.120(4)(m) contemplates the registry initiating these actions in the course of its normal duties, neither statute describes the procedures for doing so with any detail.

(c) How this administrative regulation conforms to the content of the authorizing statutes:
KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter[.]"

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
It sets procedures for the regular handling of enforcement actions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:
This amendment recognizes that the "three-judge panel" originally described in KRS 121.140 was amended to be one former or retired justice or judge. Thus, the regulation no longer reflects the statute and this amendment will make it conform. It also removes definitions that are not needed or are obvious in context, cleans up some unnecessarily convoluted language, makes slight changes to the entry of appearance to make that process reflect that the respondents' counsel (and not the respondents themselves) enter the document, and removes much of the language relating to "ex parte communications" to reflect that there are many reasons that the respondent might need to get in touch with the registry during the pendency of an enforcement action, thus should not be barred from direct contact with registry staff about matters not related to that action. It keeps in place, however, the idea that those against which an enforcement action is pending should not contact members of the registry's board, nor should board members contact them.

(b) The necessity of the amendment to this administrative regulation:
The main necessity for the amendment is because of statutory changes that make the current regulation an incorrect statement of the law. Much of the other language is clean-up language or reflects a description of the current procedure.

(c) How the amendment conforms to the content of the authorizing statutes:
The amendment reflects a change to a single judge used as a hearing officer instead of a three-judge panel in KRS 121.140. It also adds concrete procedures or calculations in matters for which the statute is silent.

(d) How the amendment will assist in the effective administration of the statutes:
This amendment answers questions of how to file an entry of appearance, how to calculate time for actions the registry or those involved in enforcement actions before the registry take, and who the respondent can contact at the registry during the pendency of the action.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
Anyone regulated by the registry is affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
Regulated entities will use these rules for computing time, entering appearance of counsel,

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
The entities will incur no costs in complying.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Compliance will allow for the orderly processing and resolution of actions pending before the registry.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:
There will be no initial cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis:
There will be no cost on a continuous basis to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:
While no additional funding will be required for the implementation and enforcement of this administrative regulation, the administrative body operates solely on General Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:
It will not be necessary to increase fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:
No.

(9) TIERING: Is tiering applied?
This administrative regulation does not apply tiering because these general provisions apply equally to anyone who has an action pending before the registry. The statutes do

not allow for a separate process for “small” respondents, because the process afforded to all the respondents is the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Kentucky Registry of Election Finance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 121.120 and KRS 121.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate revenue for subsequent years.

(c) How much will it cost to administer this program for the first year?

This program will not cost any additional amount to administer for the first year.

(d) How much will it cost to administer this program for subsequent years?

This program will not cost any additional amount to administer for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will not generate any cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will not generate any cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year?

This administrative regulation will not cost the regulated entities anything for the first year.

(d) How much will it cost the regulated entities for subsequent years?

This administrative regulation will not cost the regulated entities anything for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

, "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars ($500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact.