

32 KAR 2:030. Complaints; internally-generated matters.

RELATES TO: KRS 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish the procedure to be followed by the Registry of Election Finance in processing complaints of alleged violations of campaign finance law or administrative regulations promulgated by the registry. This administrative regulation also repeals 32 KAR 2:010, Processing complaints; hearings because the provisions of that administrative regulation do not comply with the registry's current statutory authority.

Section 1. Filing Requirements.

(1) A person who believes that a violation of any campaign finance statute or administrative regulation may have occurred or is about to occur may file a complaint in writing with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(2) A complaint alleging a violation shall be filed within time prescribed by KRS 500.050. If the alleged practice is of a continuing nature, the date of the occurrence of the practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice has ceased, or the date on which the complaint is filed.

(3) A complaint filed with the general counsel shall comply with the following requirements:

(a) The complaint shall provide the full name and address of the complainant.

(b) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be duly notarized.

(c) Statements contained in the complaint shall be made under penalty of perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.

(d) The complaint shall clearly identify as a respondent each person or entity who is alleged to have committed a violation or is about to commit a violation.

(e) Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of the statements contained in the complaint.

(f) The complaint shall contain a clear and concise recitation of the facts which support the allegation of a violation of a campaign finance statute or administrative regulation.

(g) The complaint shall be accompanied by documentation supporting the allegations if the documentation is known by and available to the complainant.

Section 2. Initial Complaint Processing; Notification.

(1) Upon receipt of a complaint, the general counsel shall review the complaint for substantial compliance with the technical requirements of Section 1 of this administrative regulation. If the complaint complies with those requirements, the general counsel shall, within five (5) days after receipt of the complaint, notify each respondent that the complaint has been filed, advise them of registry procedures, and enclose a copy of the complaint and supporting documentation.

(2) If a complaint fails to comply with the requirements of Section 1 of this administrative regulation, the general counsel shall notify the complainant and person or entity identified as respondents, within the five (5) day period specified in subsection (1) of this section, that no action shall be taken on the basis of that complaint. A copy of the complaint shall be enclosed with the notification to each respondent. The notification shall include an explanation of the reasons the complaint fails to comply.

Section 3. Opportunity to Demonstrate that no Action Should be Taken on Complaint-Generated Matters.

(1) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the registry should take no action.

(2) The registry shall not take any action, or make any finding against a respondent other than action dismissing the complaint, unless it has considered the respondent's letter or memorandum or unless no response has been served upon the registry within the fifteen (15) day period prescribed in subsection (1) of this section.

Section 4. Reason to Believe Finding.

(1) Following either the expiration of the fifteen (15) day period prescribed by Section 3 of this administrative regulation, or receipt of a response from the respondent, whichever occurs first, the general counsel shall determine whether there is reason to believe that a respondent may have violated or is about to violate a campaign statute or administrative regulation.

(2) If the general counsel determines that there is reason to believe that a violation may have occurred or is about to occur, an investigation shall commence as provided in Section 2 of 32 KAR 2:040.

(3) If the general counsel determines that there is no reason to believe that a violation may have occurred or is about to occur, he shall recommend to the registry that the complaint be dismissed. The registry shall determine whether to accept or reject the general counsel's recommendation.

Section 5. Referrals.

(1) On the basis of information ascertained by the registry in the normal course of performing its enforcement duties, or on the basis of referral from an agency of the United States or of any state, the general counsel may find reason to believe that a person or entity may have committed or is about to commit a violation of campaign finance statutes or administrative regulations, and an investigation shall commence as provided in Section 2 of 32 KAR 2:040.

(2) If the general counsel finds reason to believe that a violation may have occurred or is about to occur, the notification to the respondent required by Section 2 of this administrative regulation shall include a copy of a staff report setting forth the legal basis for and the alleged facts which support the general counsel's finding.

(3) No later than four (4) days preceding each primary and general election, the registry shall publish the names of all candidates appearing on the ballot who have failed to timely file any report required by KRS 121.180(3)(a) for any reporting period since the date of the last election.

Section 6. Reopening of Proceedings. After a hearing and the issuance of a final order as provided in Acts 1992, Chapter 288, Section 46, the registry may, upon its own motion or upon application of any party or intervening party, for good cause shown, or whenever justice so requires, reopen any closed proceeding upon notice to all parties and intervenors, and may take the action it deems necessary.

Section 7. Certification. The chairman or the executive director may certify all documents or records which are a part of the files of the registry.

(19 Ky.R. 1233; 1525; eff. 1-4-1993; Crt eff. 9-27-2019.)