



## Ohio Administrative Code Rule 3517-1-11 Preliminary review and hearing.

Effective: May 2, 1996

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### (A) Preliminary review.

All cases not subject to the provisions of rule 3517-1-10 of the Administrative Code shall be subject to the following provisions. A preliminary review of the allegations shall be held by a probable cause panel or the full commission, at the discretion of the staff attorney to the commission. At the preliminary review stage, the body hearing the case shall review all pleadings, evidence, and motions before it to determine jurisdiction, sufficiency of the complaint, and whether probable cause exists for the full commission to determine whether a violation of Ohio election law has occurred.

(1) At the preliminary review stage of the proceedings, the body hearing the case shall not hear arguments, receive evidence or take testimony unless:

(a) All parties (whether pro se or through counsel) have filed a stipulation agreeing to such procedure and a majority of members present, in their sole discretion, agree to do so; or

(b) Any member wishes to request specific information which will aid in a proper determination of the matter at the preliminary review stage.

(2) If the preliminary review is held before a probable cause panel, the panel may:

(a) Dismiss the matter, or any part thereof, upon request of the complainant, or if commission jurisdiction, sufficiency of the complaint, or probable cause are not found; or

(b) Find that sufficient probable cause exists such that the panel may recommend to the full commission that there was a violation of Ohio election law under the jurisdiction of the commission, by the applicable standard of proof, as to any or all of the allegations brought before it, and to recommend that the full commission:



- (i) Impose a penalty as outlined in rule 3517-1-14 of the Administrative Code; or
  - (ii) Find that there is good cause not to impose a fine or refer the matter for prosecution; or
  - (iii) Refer the matter to the appropriate prosecuting attorney as outlined in paragraph (C) of rule 3517-1-14 of the Administrative Code.
- (3) If the preliminary review is held before the full commission, the commission may:
- (a) Continue the preliminary review for good cause shown; or
  - (b) Amend the complaint or referral, sua sponte, to include additional parties and/or allegations and continue the preliminary review to permit proper joinder and notice pursuant to these rules, if it finds additional apparent violations sufficiently alleged against any party or other person; or
  - (c) Request that an investigatory attorney be appointed, if it finds that the evidence is insufficient but that further review is necessary. Such investigatory attorney shall be selected by the staff attorney to the commission upon recommendation by the chair and vice-chair of the commission. If such request is made, the panel shall also refer the matter for a timely hearing before the full commission.
  - (d) Set the matter for a hearing by the full commission, if it finds that a significant factual dispute exists or there is uncertainty as to a material fact necessary to determine whether there is a violation, as to any or all of the allegations; or
  - (e) Make a final disposition in the case and do one of the following:
    - (i) Dismiss the case, or any part thereof, upon request of the complainant, or if commission jurisdiction, sufficiency of the complaint, or probable cause are not found; or
    - (ii) Find good cause not to impose a fine or refer the matter for prosecution; or
    - (iii) Impose a penalty in accordance with the Revised Code and the schedule included in paragraph (B) of rule 3517-1-14 of the Administrative Code; or



(iv) Refer the matter to the appropriate prosecuting attorney as outlined in paragraph (C) of rule 3517-1-14 of the Administrative Code.

(B) Hearings:

(1) Commission staff shall establish a date for all cases which have been set for hearing before the full commission. Such hearing shall be set at the first available date on the commission's schedule

(2) At the hearing:

(a) The chair shall call the case by caption and case number and request that the parties, and any counsel for the respective parties, identify themselves and indicate their presence;

(b) The parties shall identify any and all witnesses expected to be called, which witnesses will be sworn to give truthful testimony by the chair. A party may then request separation of witnesses;

(c) Parties may make opening statements, as directed by the chair, briefly outlining their cases;

(d) The chair shall direct the testimony of witnesses and presentation of evidence by the parties. Parties shall examine and cross-examine witnesses who shall then be subject to questioning by the members of the commission. Re-direct and re-cross examination of each witness shall continue at the direction of the chair and a manner which assures fairness and equity to all parties;

(e) At the conclusion of the complainant's case, a respondent may move to dismiss some or all of the allegations for which the respondent asserts that the complainant did not produce sufficient evidence. The commission will consider such motion and take action consistent with the evidence presented;

(f) At the conclusion of the respondents case, a complainant may request an opportunity to present rebuttal witnesses and evidence, which presentation shall be at the reasonable discretion of the chair;

(g) Parties may make closing statements briefly summarizing their cases and the evidence presented;



(h) At the conclusion of the presentation of witnesses and evidence by the parties, the commission may:

(i) Leave the record open and continue its deliberations for the purpose of securing documents or testimony as the commission determines to be necessary in order to effect a just result;

(ii) Continue the matter for additional time to allow members to consider the record established by the parties as the commission determines to be necessary in order to effect a just result;

(iii) Announce its finding based on the proper standard of proof as outlined in rule 3517-1-15 of the Administrative Code. If the commission finds that no violation has occurred, the case is complete and the parties shall be dismissed. If the commission finds that a violation has occurred, it shall either impose a penalty in accordance with paragraph (B) of rule 3517-1-14 of the Administrative Code, refer the matter to the appropriate county prosecutor in accordance with paragraph (C) of rule 3517-1-14 of the Administrative Code, or find that good cause has shown not to impose a penalty or refer the matter for prosecution;

(3) Subpoenas.

(a) A party may file a request for issuance of subpoenas and subpoenas duces tecum and shall do so in a timely manner. All subpoenas shall be issued by the staff attorney to the commission unless a timely motion to quash is filed with the commission. If, in the reasonable judgment of the staff attorney to the commission, the request for subpoena is considered to be overly burdensome or requested solely for the purpose of harassment or delay, the subpoena shall not be issued. A request for appointment of a suitable process server may be filed with the commission. In such case, it shall be the responsibility of the requesting party to ensure service and proper return of service of the subpoena.

(b) The commission may issue a subpoena to any person in the state compelling the attendance of such person and the production of relevant papers, books, reports, and other documents at any proceeding of the commission, whether by a panel or the full commission, or at any deposition which shall aid the commission in assuring a just, fair, and equitable disposition by the commission. Section 101.42 of the Revised Code governs the issuance of subpoenas insofar as applicable. The



fees and mileage of the sheriff and subpoenaed witnesses shall be the same as that allowed in the court of common pleas in civil cases in the Franklin county court of common pleas. Fees and mileage shall be paid in the same manner as other expenses of the commission are paid. In order to receive payment for fees and mileage, a subpoenaed witness must submit an application on a form which may be obtained from commission staff.

(4) Rules of evidence.

(a) Prior to the hearing, the parties and/or their counsel are expected to file with the staff attorney to the commission a joint, written stipulation as to all matters not at issue and all exhibits which may be introduced without objection.

(b) A respondent or witness may refuse to answer questions based on the right against self-incrimination guaranteed by the fifth amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

(c) The commission shall take into account all reliable, probative and substantial evidence submitted by the parties. The commission may exclude evidence which is cumulative, duplicative or irrelevant and hearsay evidence which lacks indices of reliability.

(d) The commission may accept affidavits into the record. Affidavits offered at a hearing may be excluded by the commission if a party's case will be seriously prejudiced by the absence of an opportunity for cross-examination of the affiant. An affiant's address must be included in or accompany the affidavit.

(e) The commission may accept into the record documents prepared by or file-stamped by the secretary of state, a board of elections, or any other Ohio governmental body, without the necessity for formal certification by such body. Documents which lack the proper certification may be excluded by the commission if a party's case will be seriously prejudiced by the absence of such certification or the documents lack the necessary indices of reliability without such certification. Such determination will be made by the staff attorney prior to a hearing or by the chair at such hearing.



(f) All exhibits shall be consecutively lettered or numbered by the commission's staff as they are received in the office of the commission or at a hearing. Exhibits in support of the allegations shall be lettered. Exhibits submitted by respondents shall be numbered. Exhibits in any preliminary proceeding are carried forward to any hearing in the same case and need not be re-offered at the hearing. The commission may accept copies of documents in lieu of originals.

(g) Unless specifically excluded by the commission, exhibits are made a part of the record. A party may proffer any exhibit or testimony excluded by the commission. A proffer of testimony shall be made to the court reporter at the conclusion of the hearing. A proffer of an exhibit shall be made at the time of its exclusion or at the conclusion of the hearing.

(5) Conduct of hearing.

All parties and counsel shall observe usual decorum as would be expected in a courtroom. The chair shall rule as to admissibility of evidence and/or other matters subject to objection or regarding the conduct of the hearing.