



**New York State Board of Elections**

**PROPOSED RESOLUTION 25-15**

**Resolution to Amend Part 6201.3 of 9 NYCRR Subtitle V Relating to Fair Campaign Code Proceedings, Pursuant to State Administrative Procedures Act (SAPA) § 202**

**WHEREAS**, Part 6201.3 of 9 NYCRR Subtitle V currently details the administrative procedure for proceedings under the Fair Campaign Code (the “Code”); and

**WHEREAS**, there is a desire to make amendments to these provisions to provide clarity for all parties in relation to required time frames for filings under the Code, as well as to clarify the structure of administrative hearings held in response to a complaint under the Code;

**NOW THEREFORE BE IT RESOLVED:** that the Office of Counsel is hereby authorized and directed to take steps necessary pursuant to SAPA § 202 to provide for the publication of the proposed rulemaking related to the amendment of Part 6201.3 of 9 NYCRR Subtitle V and to provide notice of the public comment period of sixty days thereafter.

**9 NYCRR 6201.3 is amended to read as follows:**

6201.3 Procedure in fair campaign code proceedings.

*(a) Initiation of proceeding.*

(1) A proceeding under the fair campaign code (hereinafter the "code") shall be commenced by the New York State Board of Elections (the "SBOE") when:

(i) ~~¶The board~~SBOE receives a written signed complaint alleging the commission or omission of acts, in violation of the code; ~~the county boards of elections are advised to forward any complaints they may receive to the State Board of Elections;~~ or

(ii) ~~¶The State board~~SBOE staff proposes to the board an investigation of an alleged violation of the code.

(2) A complaint shall be filed by mailing to, or by personally serving, the New York State Board of Elections at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729. A duplicate copy of the complaint shall be mailed to or personally served upon the candidate or the candidate's representative (hereinafter "respondent"). Proof of service of the complaint upon the respondent must be filed with the ~~State Board of Elections~~SBOE not later than three business days after service of the complaint upon the respondent. ~~This requirement is waived when the respondent is unknown.~~

*(b) Form of complaint.*

(1) A complaint shall be based on personal knowledge and belief and be specific as to times, places and names of witnesses to the acts charged as violations of the code. If a complaint is based upon information and belief, the complainant shall state the source of the information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint. Evidence deemed by the complainant to be of a confidential nature need not be sent to the respondent, so long as an explanation is made to the board. The complainant shall designate an e-mail address to which all future service upon the complainant shall be made.

(2) Upon receipt of a complete complaint, as determined by its office of counsel, the SBOE shall accept the complaint for filing, and shall issue a notice of acceptance to the complainant. The SBOE shall notify the complainant of the date upon which the complaint was accepted for filing.

(3) The ~~A~~ respondent ~~shall~~ may file a signed answer, after service upon the respondent of the complaint. ~~The~~ Such an answer shall be based on personal knowledge and belief and be specific as to times, places and names of witnesses to acts relevant to the complaint. Copies of all documentary evidence available to the respondent shall be annexed to the answer. If an answer is based on information and belief, the respondent shall state the source or sources of the information and belief. An answer shall be filed by mail, e-mail or by personally serving the New York State Board of Elections at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729 and the complainant. An answer to the complaint must be filed by the respondent within ~~seventen~~ business days ~~after receipt of the complaint~~ from the date of the notice of acceptance, except if such complaint relates to the release of a poll that occurred within 30 days before an election, an answer must be filed within ~~three~~ five business days ~~after receipt of the complaint~~ from the date of the notice of acceptance. Proof of service of the answer upon the complainant must be filed not later than three business days after service of the answer upon the complainant. The answer shall designate an e-mail address to which all future service upon the complainant shall be made.

(c) *Hearing.*

(1) If after receipt and preliminary review of a complaint and answer alleging a violation of the code, or following commencement of an investigation initiated by the board, where the board determines a hearing shall be held, the ~~board~~ SBOE shall send notice, by mail and e-mail whenever possible, to the complainant and to any person, organization or committee whose conduct is complained of. Such notice shall specify when and where a hearing is held. Such hearing shall be conducted by a hearing officer of the ~~State Board of Elections~~ SBOE. A report with the hearing officer's recommendation

shall be delivered to the office of counsel, and counsel shall provide such report to the board, which shall render a final decision. All steps in this process shall be completed as soon as possible. ~~The board shall be presented with such findings within 48 hours of the hearing officer delivering such report to the co-counsels of the board.~~ Any party to the hearing may purchase a transcript of such hearing.

(2) Hearings shall be conducted at the SBOE offices located at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729. Upon request of either party, the hearing may be conducted by telephone or, where available, interactive video. When such telephonic or video appearances are made, all due effort shall be made to not impose any undue burden upon any party appearing in person.

(3) The complainant shall have an opportunity to present witnesses, documents or other evidence relevant to the allegations in the complaint, and to argue his/her position. The respondent shall also be given an opportunity to present witnesses, documents or other evidence and to argue his/her position in response to the complaint. The hearing officer may ask questions of both parties to elicit information relevant to a determination of the complaint. Any witnesses who testify shall be under oath. The hearing officer can request written materials or oral presentations by persons who are not parties to the matter if the panel determines that such materials or presentations would be helpful in its review of the complaint.

(4) The following rules of evidence shall substantially be followed in the admission of testimony and exhibits in all hearings:

(i) Any oral or documentary evidence may be received, but the hearing officer shall, as a matter of policy, exclude irrelevant, immaterial or unduly repetitious evidence. Subject to these requirements and subject to the right of any party to cross examine, any testimony may be received in written form.

(ii) Documentary evidence in the form of copies may be received at the discretion of the hearing officer, if the original is not found readily

available. Upon request by any party, an opportunity shall be granted to compare the copy with the original, which shall be subject to production by the person offering such copies.

(iii) Cross examination may be conducted as the hearing officer shall find to be required for a full and true disclosure of the facts.

(iv) Any exhibit admitted as evidence by the hearing officer in a prior hearing may be offered as evidence in a subsequent hearing and admitted as an exhibit in such hearing. The hearing officer shall employ his or her experience, technical competence, and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making a finding of facts and arriving at a final determination.

(5) The hearing may be recessed and continued to a later time or day, at the discretion of the hearing officer.

(6) All hearings shall be electronically recorded, and a record of the proceedings shall be compiled by the SBOE. The record of the proceedings shall include:

(i) the electronic recording of the hearing;

(ii) a transcript of the hearing on the record if such a hearing was so requested in writing by the complainant or respondent;

(iii) any documents or other tangible items introduced into evidence at the hearing, and a list of same in the order in which they were introduced;

(iv) the complaint and written response;

(v) all notices and correspondence between the SBOE, the complainant and the respondent; and

(vi) the results of any investigation conducted by SBOE staff in response to the complaint.

*(d) Scope of poll disclosure disputes.*

When there is an allegation that relevant poll questions and results required by section 6201.2 were not disclosed as required, the hearing officer, to resolve such matter, may require the respondent to produce for confidential review by the hearing officer additional poll questions and results. The hearing officer shall recommend in the report to the commissioners whether any additional questions and results must be released to comply with the disclosure requirements of 6201.2. After receiving the hearing officer report, the commissioners may, upon a majority vote, require the public disclosure of additional questions and results. Unless the commissioners vote to release such additional poll questions and results, such information shall be kept confidential. Poll results subject to disclosure pursuant to this subdivision shall be publicly available no later than twenty-four hours after such determination.

*(e) Hearing officer assignment.*

A hearing officer shall be assigned to a complaint made under this Part by the co-executive directors or their designees through a random selection process. All hearing officers appointed by the ~~State Board of Elections~~ SBOE pursuant to 6218.2(b) shall comprise those eligible for assignment.