

ORDER  
OF  
STATE ELECTIONS BOARD

To create Chapter ElBd 10 relating to filing complaints with the State Elections Board

ANALYSIS:

Statutory Authority: ss.5.05(1)(f) and 227.11(2)(a)

Statutes Interpreted: ss. 5.06, 11.60(5), and 11.66

The rule prescribes the procedures requisite to the filing and processing of complaints with the State Elections Board. The rule prescribes that all complaints and responsive pleadings must be sworn to before a person authorized to administer oaths. The rule also prescribes that all complaints and other pleadings shall contain a certification that a copy of the pleading has been served upon the other parties to the complaint. The rule requires the Executive Director of the Board to determine, within 10 days of the receipt of the complaint, whether the complaint alleges facts which constitute probable cause to believe that the respondents have violated Wisconsin's election laws and to return, to the complainant, those complaints which do not establish probable cause. The rule also excepts from its application complaints to challenge nomination papers filed pursuant to ElBd 2.07 and complaints to challenge petitions filed pursuant to ElBd 2.11.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f) and 227.11(2)(a), Stats., the Elections Board hereby creates Chapter ElBd 10 interpreting ss.5.06,11.60(5) and 11.66, Stats., as follows:

SECTION 1. Chapter ElBd 10 PROCEDURES FOR COMPLAINTS is created to read:

ElBd 10.01 APPLICABILITY. This chapter applies to complaints filed with the State Elections Board pursuant to ss. 5.05(3), 5.06,

ElBd 10 PROCEDURES FOR COMPLAINTS

ElBd 10.01 APPLICABILITY. This chapter applies to complaints filed with the state elections board pursuant to ss. 5.05(3), 5.06, 11.60(5) and 11.66, Stats., requesting the elections board to enforce the election and campaign finance laws. This chapter does not apply to complaints to challenge to nomination papers or petitions which are filed under ElBd 2.05 or ElBd 2.11.

E1Bd 10.02 DEFINITIONS. As used in this chapter:

(1) "Board" means the state elections board.

(2) "Complainant" means an elector, a committee or a group filing a matter with the board under this chapter.

(3) "executive director" means a person duly appointed by the board or any employee of the agency to whom a lawful function has been delegated by the executive director to administer and manage the agency.

(4) "Probable cause" means the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.

(5) "Respondent" means a person, committee, or a group whose decisions or actions may be brought before the board on complaint for review under this chapter.

E1Bd 10.03 FILING. (1) All complaints, answers and replies shall be in writing and shall be sworn to before a person authorized to administer oaths.

(2) The form of the complaint, answer or reply should, but is not required to follow the format prescribed herein:

State of Wisconsin  
Before the Elections Board

The Complaint of

, Complainant

against

, Respondent

COMPLAINT

(1)

This complaint is under (Insert the applicable section(s) of law in chs.5-12, Stats., if known).2

I (Insert the complainant's name), allege that \_\_\_\_\_  
(Set forth in detail the facts that establish probable  
cause to believe that a violation occurred. Use as many separate pages  
as needed.)

Date: \_\_\_\_\_

\_\_\_\_\_  
(complainant's signature)

I (complainant's name), being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

\_\_\_\_\_  
(complainant's signature)

STATE OF WISCONSIN )

) ss.

County of \_\_\_\_\_ )  
(county of notarization)

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

\_\_\_\_\_  
(Signature of person authorized to administer oaths)

My commission expires \_\_\_\_\_, or is permanent  
Notary Public , or (official title if not notary)

1. Substitute complaint, answer or reply, as the case may be, and make the appropriate changes throughout the document.
2. A statutory basis is not required for an answer or reply.

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(3) The complaint shall specify the statutory basis for the complaint and shall set forth the facts which are alleged to establish probable cause. Information which may establish probable cause includes allegations that set forth which persons are involved; what those persons are alleged to have done; where the activity is believed to have occurred; when the activity is alleged to have occurred and who are the witnesses to the events. The complaint shall be signed by the complainant or by an individual acting as the complainant's representative.

(4) The complaint shall state the name and last known post office address of the complainant and the respondent.

(5) The complainant, not the complainant's representative, shall verify the allegations of the complaint. The complainant verifies the complaint by signing a statement under oath before a notary public or other person authorized to administer oaths. The verification statement, or a statement to the same effect, shall state as follows:

"I, (complainant's name), being first duly sworn upon oath, state that I personally read the above complaint and that the above allegations are true and correct based on my personal knowledge and, as to those allegations stated on information and belief, I believe them to be true."

The verification shall be placed at the bottom of the complaint.

(6) The complainant shall mail to, or personally serve on, the respondent a copy of the complaint no later than the time of filing the complaint with the Board and shall certify to that service on the complaint or in a cover letter filed with the complaint. Each party shall mail to, or personally serve on, each other party any subsequent pleading before filing the pleading with the board and shall certify to the service on the pleading or in a cover letter filed with the pleading.

ElBd 10.04 INVESTIGATIONS. (1) Any matter brought to the board shall be reviewed by the executive director who shall determine within 10 business days whether the complaint is timely, is sufficient as to form and states probable cause.

(2) If the complaint does not meet the standards under sub.(1), the executive director shall promptly return the complaint to the complainant, without prejudice unless otherwise provided by law, specifying both the defect in the complaint and the information appropriate to cure the defect. A copy of the executive director's letter to the complainant shall be provided to the respondent.

(3) If the complaint meets the standards under sub.(1) as applied to complaints under ss.5.05(3) and 11.60(5), Stats., the executive director shall promptly forward the complaint to the respondent at the respondent's last known post office address. The respondent shall file with the board a verified, written answer within 10 business days. After receiving the answer, the executive director shall promptly forward the answer to the complainant at the complainant's last known post office address. The complainant may file a written, verified reply to the answer within 10 business days.

(4) After receiving an answer that makes any counterclaim against the complainant, the executive director shall promptly forward the counterclaim to the complainant. The complainant shall file a written, verified answer to the counterclaim within 10 business days. After receiving the complainant's answer, the executive director shall promptly forward the answer to the respondent for a written, verified reply to be filed within 10 business days.

(5) The executive director has the discretion to extend by not more than an additional 10 business days, the time for the complainant or respondent to file any responsive pleading. A business day is any day that the agency is open for business.

(6) If the complaint meets the standards under sub.(1), as applied to complaints under ss.5.06 and 11.66, Stats., the executive director shall proceed as the board authorizes by duly adopted motion and, where no motion is in effect, the executive director shall proceed after consultation with the board's chair.

(7) A party that fails to obtain an extension of time to respond pursuant to sub.(2), or who fails to respond within 10 business days to a pleading mailed to the party's last known post office address that is not returned to the board, may be deemed to have admitted each allegation contained in the pleading, and to have accepted any other consequences for failing to respond to a pleading.

(8) The time period for filing an answer or reply begins 3 business days after the date of the transmittal letter from the executive director. An answer or reply will be treated as filed based on the postmark of the envelope transmitting the pleading.

(9) After all pleadings are filed under ss.5.05(3) and 11.60(5), Stats., the executive director shall analyze the pleadings, present them, with appropriate recommendations, to the Board at its next regularly scheduled meeting, or at the most immediate meeting thereafter at which the matter can be heard if the matter cannot be heard at the next regularly scheduled meeting, and forward a copy of the analysis and recommendations to the complainant and respondent within a reasonable time before the board meeting at which the matter will be considered.

(10) After all pleadings are filed under ss.5.06 and 11.66, Stats., the executive director shall proceed as the board authorizes by duly adopted motion or, where no motion is in effect, the executive director shall proceed after consultation with the board's chair. Where the board has delegated to the executive director the authority to resolve complaints, the executive director shall issue an order making findings and resolving the complaint.

ElBd 10.05 BOARD MEETINGS. (1) The board shall review the analysis and recommendations of its executive director with respect to pleadings filed under ss.5.05(3) and 11.60(5), at its next regularly scheduled meeting.

(2) Any party may submit a written statement of facts approved by the executive director for consideration by the board.

(3) Personal appearances, limited to 10 minutes per party plus additional time to respond to questions from Board members and staff, are permitted at each meeting of the board. A complainant shall make the first presentation and the respondent shall make the second presentation. No rebuttal or extension of time will be allowed unless specifically provided by the board.

(4) Parties may provide a written argument or brief in support of their positions. Such arguments or briefs are limited to 5 pages, single spaced on one side of a sheet of paper. Parties submitting written material to the board must submit 12 copies to the executive director no later than 3 business days before the board meeting at which the matter will be considered.

E1Bd 10.06 HEARINGS. (1) Before issuing a final decision or order on the merits of a complaint filed with the board under this chapter, the board or its executive director shall conduct an evidentiary hearing, under ch.227, Stats., if either of the following occurs:

(a) In the board's judgment, a hearing is necessary in the interest of justice and a material question of fact exists.

(b) A hearing is expressly required by statute.

(2) Before issuing a final decision or order on the merits of a complaint filed with the board under this chapter, the board or its executive director may conduct an evidentiary hearing, under ch.227, Stats., when:

(a) The board concludes that facts exist which have not been presented and which may tend to resolve the dispute.

(b) The board, in its discretion, determines that an evidentiary hearing is appropriate.

(3) Except in the case of an emergency, the board shall provide the parties with at least 10 days written notice of a hearing stating the date, the time, and the place of the hearing, the nature of the case, and a general statement of the issues to be heard. The parties may, with the consent of the board, waive the right to notice. Continuances or postponements may be granted by the executive director only in the case of exceptional circumstances entirely beyond the control of the party requesting the continuance or postponement and only upon notice to the director given at least 3 days before the hearing.

(4) The board, or the executive director, or a hearing examiner proceeding under ch.227, Stats., may preside over the hearing. The board may, by duly adopted motion of the board or by an order issued before taking any testimony, direct that the executive director's or the hearing examiner's decision be final as to the merits of the matter. Subject to the provisions of this chapter, the executive director or hearing examiner shall have the powers specified in s.227.46(1), Stats.

(5) Based upon the law applicable to the type of proceeding the board is required to conduct, the parties appearing at the hearing shall be afforded reasonable opportunity to be represented by counsel, to call witnesses, to present evidence, and to confront and cross examine adverse witnesses. The statutory and common law rules of evidence shall

not be binding as to issues of admissibility. The executive director or hearing examiner may admit all testimony having reasonably probative value, but shall exclude irrelevant, immaterial or unduly repetitious testimony. No material finding of fact shall be made unless supported by competent evidence in the record.

(6) All testimony at the hearing shall be given under oath and shall be recorded by a stenographer or a recording machine, but need not be transcribed unless a party requests a transcript and pays any costs required to prepare a transcript.

(7) All decisions following a hearing shall be in writing and shall set forth, in relevant detail, the findings of fact and conclusions of law. A decision shall be served on the parties by mailing a copy to each party's last known post office address.

ElBd 10.07 WITHDRAWAL AND SETTLEMENT. (1) At any time before the issuance of a final decision, a complainant may file with the board a written request to withdraw his or her complaint, specifying the reasons for the request. Upon receiving such a request, the board may, but is not required to, issue an order dismissing the matter with or without prejudice. If the board decides not to dismiss the case, the board may take any appropriate action, within its authority, that the board determines will serve the public interest.

(2) The parties to proceedings under this chapter may not settle disputed matters by compromise and conciliation without the consent of the board, except where the settlement is authorized by law. Upon receiving written notice that settlement has been proposed, the board may, at its next regularly scheduled meeting, consider the proposal as the board deems appropriate.

ElBd 10.08 DILIGENT ACTION; DISMISSALS. (1) The board shall proceed promptly and diligently to decide cases under this chapter.

(2) If a party fails to appear at a hearing, the board, the executive director, or the hearing examiner may proceed with the hearing, provided that due notice of the hearing was mailed to the party's last known post office address.

(3) A party may request the board to reconsider its decision if a request for reconsideration is received by the board within 30 days after the party receives written notice of the board's decision by filing a written request with supporting information showing that an obvious mistake of fact or law which materially affects the outcome of the decision has occurred; or showing newly discovered evidence that was not obtainable with due diligence during the course of the hearing.

(4) A party may request that board consideration of a matter be postponed. The request shall be in writing and shall be served on the executive director and all other parties at least 3 business days before the date scheduled for board consideration of the matter.

E1Bd 10.09 TEMPORARY ORDERS. The board may issue a protective order or grant such protective relief as the board determines is necessary to preserve the rights of any party to a matter subject to this chapter before issuing a final decision or order.

E1Bd 10.10 SERVICE. The executive director may accept service of any pleading on behalf of the board including civil actions commenced against the board.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

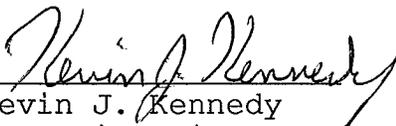
The creation of this rule does not affect business.

**FISCAL ESTIMATE**

The creation of this rule has no fiscal effect.

The creation of this rule takes effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated November 23, 1993

  
Kevin J. Kennedy  
Executive Director  
State Elections Board





State of Wisconsin \ ELECTIONS BOARD

BRENT SMITH  
CHAIRMAN

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Kevin J. Kennedy  
Executive Director

November 23, 1993

Gary L. Poulson, Assistant Revisor  
Revisor of Statutes Bureau  
119 Martin Luther King Jr. Blvd., 2nd Floor  
Madison, WI 53703

Dear Mr. Poulson:

This letter is to inform you of the status of the promulgation of Elections Board rules chapter ElBd 10., contained within Clearinghouse Rule 93-138. Chapter ElBd 10 was promulgated pursuant to the 30 day notice procedure.

No petition under ch.227, Stats., was filed with the Board within 30 days to request a public hearing on the proposed action regarding any of these rules. The legislative Council reviewed and commented about each rule. After submitting these rules to both houses of the legislature on October 5, 1993, both houses took no action on these rules within the appropriate 30 day period. The Board through its Executive Director, Kevin J. Kennedy, has ordered the appropriate action on these rules. The original and a copy of the Board's order for the chapter are enclosed.

Please publish these at your earliest convenience to become effective according to their terms.

If you have any questions about the rules or the order, please contact me.

Thank you for your assistance.

Sincerely,

STATE ELECTIONS BOARD

George A. Dunst  
Legal Counsel

GAD/jp  
glp.rvsr

