

# Filing a Complaint

Federal Election Commission

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## Introduction

The Federal Election Commission frequently receives questions about how to file a complaint concerning possible violations of federal election campaign laws.<sup>1</sup> This brochure explains how to file a complaint with the Commission and describes how complaints are processed.<sup>2</sup>

## Filing a Complaint

Any person may file a complaint if he or she believes a violation of the federal election campaign laws or Commission regulations has occurred or is about to occur. The complaint must be made in writing and sent to the Office of General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. The original must be submitted along with three copies, if possible. Facsimile or e-mail transmissions are not acceptable. A complaint must comply with certain requirements. It **must**:

- Provide the full name and address of the person filing the complaint (called the complainant); and
- Be signed, sworn to and notarized. This means that the notary public's certificate must say "...signed and sworn to before me...", or words that connote the complaint was affirmed by the complainant, (such as "under penalty of perjury").

Furthermore, in order for a complaint to be considered complete and proper, it **should**:

- Clearly recite the facts that show specific violations under the Commission's jurisdiction (citations to the law and regulations are not necessary);
- Clearly identify each person, committee or group that is alleged to have committed a violation (called the respondent);

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<sup>1</sup> See [2 U.S.C. §437g](#) and [11 CFR 111](#).

<sup>2</sup> Enforcement proceedings originate in other ways as well. For example, other federal agencies sometimes refer an enforcement matter to the Commission; and the Commission itself may initiate enforcement proceedings based on information gathered in the normal course of its supervisory functions, such as reviewing reports or conducting field audits. In addition, a matter may enter the enforcement process through a self-reporting or sua sponte letter, that is, a letter sent by an entity who violates the law and notifies the Commission of the facts of the violation. In some cases, filing sua sponte may serve as a mitigating circumstance when the Commission considers the matter depending upon a number of factors, such as whether the self-reporting was timely; whether the complaint was complete; whether other agencies (including the Reports Analysis Division and the Audit Division of the Federal Election Commission) are already investigating the facts surrounding the underlying violations; and the type of controls that were in place at the time of the violations and those controls that are to be implemented to avoid future violations.

- Include any documentation supporting the allegations, if available; and
- Differentiate between statements based on the complainant's (the person who files the complaint) personal knowledge and those based on information and belief. Statements not based on personal knowledge should identify the source of the information.

For self-reported complaints (called “sua sponte” submissions), the submission should include an admission of the violation(s), a complete recitation of the facts along with all relevant documentation that explains how the violation was discovered, the internal actions that were taken in response to the violation and what other agencies, if any, are investigating the violation (or facts surrounding the violation).

The Commission seeks to increase the number of self-reported submissions in order to expedite enforcement of the law. To encourage self-reporting, the Commission will generally negotiate penalties between 25 and 75 percent lower than those for matters arising by other means, such as through complaints or the Commission’s own review of reports. In certain circumstances, the Commission may allow committees who voluntarily report their violations and make a complete report of their internal investigation to proceed directly into conciliation before the Commission makes a finding as to whether there is reason to believe the committee violated campaign finance laws or Commission regulations.<sup>3</sup>

## **Early Stages of the Complaint Process**

### **Receipt of Complaint**

The Office of General Counsel (OGC) reviews each complaint to determine whether it states a violation within the jurisdiction of the Commission and satisfies the above criteria for a proper complaint. If the complaint does not meet these requirements, OGC notifies the complainant of the deficiencies. Once a complaint is deemed sufficient, OGC assigns it a Matter Under Review (MUR) number, acknowledges receipt of the complaint and informs the complainant that the Commission will notify him or her when the entire case is resolved. Until then, the Commission is required by law to keep its actions regarding the MUR confidential.

### **Notice to Respondent**

Within 5 days after receiving a proper complaint, OGC sends each respondent a copy of the complaint and a description of the Commission's compliance procedures. The respondent has 15 days from the date of receipt to respond in writing, explaining why no action should be taken. In the case of a complaint that does not satisfy the requirements (see above), the respondent nevertheless receives a copy of the complaint and a letter explaining that the complainant has 15 days to correct the complaint. If the complainant corrects and refiles the complaint, the respondent is sent a copy of the corrected complaint and is given 15 days to submit a response to the Commission.

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<sup>3</sup> In April 2007, the FEC issued a Policy Statement regarding self-reporting of campaign finance violations. The policy statement on the self-reporting of campaign finance violations can be viewed at [http://www.fec.gov/law/cfr/ej\\_compilation/2007/notice\\_2007-8.pdf](http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-8.pdf).

## **Respondent's Counsel**

A respondent who wants to be represented by legal counsel must inform the Commission by sending a "statement of designation of counsel." This document, signed by the respondent, must include a statement authorizing the counsel to receive all communications from the Commission on behalf of the respondent and include the counsel's name, address and telephone number. Once the Commission receives the "statement of designation of counsel," the agency will communicate only with the counsel unless otherwise authorized by the respondent.

## **Commission Action**

### **Case Processing**

After the 15-day response period has elapsed, OGC evaluates the case using objective criteria approved by the Commission under its enforcement priority system. Cases are prioritized and maintained in the Office of Complaints Examination & Legal Administration or in some instances are referred to either the Alternative Dispute Resolution Office or the Administrative Fine Program. Cases warranting further OGC examination are assigned to attorneys in the Enforcement Division. Cases not warranting the further use of Commission resources are recommended for dismissal.

### **Initial Vote to Proceed (Reason to Believe)**

With regard to each case that is assigned to an attorney, the General Counsel reports to the Commission and recommends whether or not there is "reason to believe" the respondent has committed or is about to commit a violation of the law. The Commissioners, however, make the final decision by voting for or against a "reason to believe" recommendation (four affirmative votes are required to go forward with any enforcement action).<sup>4</sup> In casting their votes, the Commissioners consider the complaint, the respondent's reply, relevant committee reports on the public record, other available information on the public record and the General Counsel's analyses and recommendations.<sup>5</sup>

In the initial stages of the process, the Commission will take one of the following actions:

- Find reason to believe;
- Dismiss the matter;
- Dismiss the matter, but send an admonishment letter; or
- Find no reason to believe.<sup>6</sup>

If the Commission decides there is "no reason to believe" a violation has occurred or is about to occur with respect to all of the allegations, or if the Commission dismisses the matter, the case is closed and the parties involved are notified. If, on the other hand, the Commission

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<sup>4</sup> A complaint may allege several violations, in which case the Commission votes on each allegation separately.

<sup>5</sup> At any point during the complaint process, however, the Commission has the discretion to take no further action in a particular matter.

<sup>6</sup> In March 2007, the FEC issued a Policy Statement regarding Commission action in matters at the initial stage in the enforcement process to clarify the various actions the Commission may take when beginning the enforcement process. This policy statement can be viewed at [www.fec.gov/law/cfr/ej\\_compilation/2007/notice\\_2007-6.pdf](http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-6.pdf).

finds that there is "reason to believe" the respondent has violated or is about to violate the law, the Commission may either open an investigation or enter directly into conciliation discussions (see "Early Resolution of Complaint" below).

### **Early Resolution of Complaint (Pre-Probable Cause Conciliation)**

Prior to, or in lieu of, investigation and before the Commission mails the respondent the General Counsel's brief containing probable cause recommendations, the respondent may submit a written request that the matter be resolved through pre-probable cause conciliation negotiations.<sup>7</sup> The respondent must reply to the General Counsel's invitation to enter into such negotiations within seven days of the receipt of the offer. Pre-probable cause discussions, which are limited to 60 days (absent an extension), may result in a conciliation agreement between the respondent and the Commission, thereby resolving the matter. (See "Resolution of Complaint" section for description.)

If negotiations do not resolve the matter, however, the Commission sends the respondent a probable cause brief. The respondent has 15 days to submit a reply brief. (See "General Counsel's Brief" section for description.)

### **Investigation**

At the beginning of an investigation, the Commission sends a letter notifying the respondent of the "reason to believe" finding.<sup>8</sup> The letter informs the respondent of the opportunity to submit a written reply and may include questions for the respondent to answer. As part of its investigation, the Commission may issue orders requiring sworn written answers and subpoenas requiring a person to testify or to produce documents. If necessary, the Commission may ask a federal district court to enforce these orders and subpoenas. The investigation may also include less formal procedures, such as investigative interviews, and it may involve parties other than the respondent(s) who may have information pertinent to the complaint. The investigation may also include an audit of the respondent.

### **General Counsel's Brief**

After the investigation is completed, the General Counsel prepares a brief that explains the factual and legal issues of the case and recommends whether the Commission should find there is "probable cause to believe" a violation has occurred or is about to occur. The respondent is sent a copy of the brief and has 15 days to file a reply brief explaining the respondent's position.

### **Probable Cause Hearing**

In October 2007, the Commission made permanent a program under which respondents in enforcement matters may request a hearing to present oral arguments directly to the Commission prior to a finding of probable cause. Such a hearing may be requested by the respondent in his or

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<sup>7</sup> In some cases, where sufficient information is already known, the Commission proposes a written conciliation agreement (see "Resolution of Complaint" section for description) to resolve the matter at the same time it notifies the respondent of the "reason to believe" finding.

<sup>8</sup> In certain circumstances, the Commission will take the initiative to offer a written pre-probable cause agreement to the respondent.

her reply brief. The request for a hearing is optional, and the respondent's decision to request one will not influence the Commission's decision regarding a probable cause finding.<sup>9</sup>

### **Vote on Violations (Probable Cause to Believe)**

After reviewing the briefs of both the General Counsel and the respondent, the Commission votes on whether there is "probable cause to believe" that a violation has occurred or is about to occur (four affirmative votes are required).<sup>10</sup> If the Commission decides there is "no probable cause to believe," the case is closed and the parties are notified. If the Commission determines that there is "probable cause to believe" the law has been violated, the General Counsel attempts (for at least 30 days but not more than 90) to correct or prevent the violation through informal methods of conciliation, i.e., by entering into a written conciliation agreement with the respondent.

### **Resolution of Complaint (Conciliation Agreement)**

If the General Counsel and the respondent negotiate a conciliation agreement, the written agreement becomes effective once it is approved by the affirmative vote of four Commissioners and signed by the respondent and the General Counsel. Generally, the agreement includes a description of the facts and the law, admissions of the violations by the respondent, restrictions on future conduct or remedial actions the respondent must take and a provision for the payment of a civil penalty by the respondent. The General Counsel sends a copy of the signed agreement to the respondent and, when the case is closed, to the complainant as well. If conciliation does not result in an agreement within the 90-day period, the Commission may file suit against the respondent in federal district court.

## **Complainant's Recourse**

A complainant who disagrees with the Commission's dismissal of a complaint or who believes the Commission failed to act in a timely manner may file a petition in the U.S. District Court for the District of Columbia. In the case of a Commission dismissal, the petition has to be filed within 60 days after the date of the dismissal. 2 U.S.C. §437g(a)(8).

## **Confidentiality**

To protect the interests of those involved in a complaint, the law requires that any Commission action on a MUR be kept strictly confidential until the case is resolved. These provisions do not, however, prevent a complainant or respondent from disclosing the substance of the complaint itself or the response to that complaint or from engaging in conduct that leads to the publication of information contained in the complaint.<sup>11</sup> Nevertheless, information about a

<sup>9</sup> The procedural rule regarding Probable Cause Hearings can be viewed at [http://www.fec.gov/law/cfr/ej\\_compilation/2007/notice\\_2007-21.pdf](http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-21.pdf).

<sup>10</sup> If several violations are alleged, the Commission votes on each one separately.

<sup>11</sup> See Advisory Opinions [1994-32](#) and [1995-1](#).

Commission notification of findings or about a Commission investigation may not be disclosed, unless the respondent waives his or her right to confidentiality in writing.

Because the public has the right to know the outcome of any enforcement proceeding, a redacted case file is made available to the public in the Press Office and the Office of Public Records within 30 days after the parties involved have been notified that the entire case has been closed. Closed case files are also available for review on the Commission’s web site ([www.fec.gov](http://www.fec.gov)).

## Overview of Process and Applicable Timeframes

Stage	Number of Days
Complaint Received	
Complaint Notification	5 Days
Response to Complaint	15 Days
Reason to Believe Finding Investigation	
Pre-Probable Cause Conciliation	60 Days
General Counsel’s Brief	
Response to General Counsel’s Brief	15 Days
Probable Cause to Believe	
Probable Cause to Believe Conciliation	30-90 Days
Disposition	

## For More Information

For more information on how to file a complaint, call the Office of Complaints Examination & Legal Administration Division (202/694-1650). All media inquiries and questions concerning the status of a complaint should be directed to the Press Office (202/694-1220). Both offices can also be reached, toll free, at 800/424-9530.

*This publication provides guidance on certain aspects of federal campaign finance law. This publication is not intended to replace the law or to change its meaning, nor does this publication create or confer any rights for or on any person or bind the Federal Election Commission (Commission) or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*), Commission regulations (Title 11 of the Code of Federal Regulations), Commission advisory opinions, and applicable court decisions. For further information, please contact:*

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Washington, DC 20463  
(800) 424-9530; (202) 694-1100  
[info@fec.gov](mailto:info@fec.gov)*