



# Campaign Finance Complaint Policy

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Adopted by the State Board  
of Elections on \_\_\_\_\_

## Statutory Authority

### N.C.G.S. § 163-278.22. Duties of State Board.

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(7) To make investigations to the extent the State Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of [this Chapter of] the General Statutes and, upon complaint, signed and sworn under oath or affirmation, by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of [this Chapter of] the General Statutes. All investigations shall be confidential, and no investigation shall be initiated more than four years from the earliest of the following dates:

- a. The facts constituting the violation are known to the State Board or county board with jurisdiction.
- b. The facts constituting the violation can be determined from the public record.
- c. The complainant knew or should have known of the conduct upon which the complaint is based.

## Introduction

The State Board of Elections (State Board) may investigate, to the extent it deems necessary, violations of Chapter 163, Article 22A (regulating contributions and expenditures in political campaigns) and Chapter 163, Article 22M (legal expense funds).<sup>1</sup>

All campaign finance complaints must be submitted to the State Board office. Any complaints submitted to a county board of elections will be forwarded to the State Board office by county staff.

Investigations may be initiated by either (1) receipt of a written complaint, or (2) as a result of staff examining campaign finance reports or other information made available to the State Board office.

This document outlines the policies and procedures used by staff to review and advance written complaints received by the agency or investigations initiated by the agency.

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<sup>1</sup> N.C.G.S. § 163-278.22(7).

## Disclaimer

This policy is intended as an informational guide for complainants (individuals who file complaints), respondents (the individuals and entities that are the subject of complaints), members of the public and the press. The State Board maintains the authority to amend its policy at any time.

## Form of Complaints

Only a North Carolina registered voter may file a campaign finance complaint.<sup>2</sup> Other individuals and entities may submit information to the State Board; however, these submissions are not subject to the complaint process unless State Board staff decides to open an investigation.

All complaints must be signed and sworn under oath or affirmation.<sup>3</sup>

A complaint form is available on the State Board's website. Complainants are not required to submit complaints on this form. However, all complaints must have a notarial certificate showing that the complaint was signed and sworn.

The complaint should include all potentially relevant facts known to the complainant. This includes the names and contact information of relevant witnesses, dates, pertinent page numbers for campaign finance disclosure reports, pictures or copies of advertisements, and any other information that may assist State Board staff in reviewing the allegations.

The State Board cannot initiate an investigation if the facts constituting the violation were known to the State Board, to a county board, or to the complainant more than four years ago, or if the facts constituting the violation can be determined from a public record dated more than four years ago.<sup>4</sup> If a complaint involves disclosures on campaign finance reports dated more than four years ago, the complaint will be closed. This includes prohibited contributors, excess contributions, lobbyist contributions, contributions during regular session, inaccurate contributor information, or unauthorized uses disclosed on campaign finance reports.

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<sup>2</sup> N.C.G.S. § 163-278.22(7).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## Intake Process

Upon receipt of a signed and sworn complaint, a campaign finance case number will be assigned. All signed and sworn complaints will be reviewed to ensure statutory compliance, including that the complaint alleges a violation of North Carolina's campaign finance laws that may be investigated by the State Board.<sup>5</sup> The complainant will be notified if the complaint is closed due to an improper form or a lack of authority to investigate.

If the complaint meets all requirements, a request for a response and a copy of the complaint, including any exhibits or attachments to the complaint, will be provided to the individual or entity that is the subject of the complaint ("respondent"). N.C.G.S. § 163-278.23(2) mandates that the respondent be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The contact for each complaint will occur as follows:

- For a committee registered with the State Board, a request for a response and a copy of the complaint will be provided to the treasurer listed on the most recent Statement of Organization.
- For a candidate committee registered with the State Board, in addition to the treasurer, a copy of the request for a response and the complaint will be provided to the candidate.
- If the complaint alleges that the treasurer of a political party committee has intentionally violated Article 22A, in addition to the treasurer, a copy of the complaint will be provided to the Chair or Vice-Chair known to the State Board or the Chair or Vice-Chair as identified by the State or county executive committee.
- For unregistered entities that file with the State Board, a request for a response and a copy of the complaint will be sent to the mailing address on the most recently filed report.

The response is an opportunity to clarify or correct any facts or circumstances set forth in the complaint and to explain why a violation has not occurred. While a respondent is not required to answer, all respondents are strongly encouraged to provide a written response. Respondents are encouraged to provide copies of any documents necessary to answer the allegations in the complaint.

The due date for a response will be set in the request. In general, a respondent will be given 30 calendar days to respond. However, a shortened timeline is required for

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<sup>5</sup> If the complaint involves a violation of Chapter 163 that is not a violation of Article 22A or 22M, the complainant will be informed of the correct process to submit the complaint, or of any referral of the complaint within the agency.

any alleged violation of N.C.G.S. § 163-278.39 (disclosure requirements for political advertisements) and for complaints filed within 90 days of an election if directly related to contributions, expenditures, independent expenditure, or electioneering communications made in the current election cycle and involving a candidate or ballot issue in that election.

### **Confidentiality**

Effective December 27, 2018, all campaign finance investigations are confidential.<sup>6</sup> The State Board cannot share or discuss any complaint with the media or members of the public.

While the State Board staff will confirm receipt of a complaint and may share information about the current status of a complaint with the complainant and respondent (whether the complaint is in the intake process, is under investigation, or closed), the State Board cannot share any information gathered by agency staff during an investigation with any parties or the public.

### **Initial Investigation**

Investigations are guided by the following North Carolina State Board of Elections staff: General Counsel, Campaign Finance Director, Chief Investigator, and any other staff identified by the General Counsel. These staff members will meet regularly to evaluate and discuss pending investigations. The Executive Director shall be consulted as needed.

Facts and circumstances made known to campaign finance staff as a result of an audit, or obtained by staff through other means, may also result in an investigation of an individual or entity. These facts and circumstances shall be reviewed by the staff identified in the previous paragraph to determine whether an investigation should be opened. If they determine that an investigation should be opened, a campaign finance case number will be assigned.

After a response has been received, or the due date for a response has passed, State Board staff will review the complaint and response.

During an initial investigation, State Board staff may gather additional documents, including:

- Contacting the complainant or respondent to clarify any information provided or to request additional documents. These inquiries may be by telephone or in writing;
- Gathering written authorizations from media outlets; and

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<sup>6</sup> 2018 N.C. Sess. Laws 146, Sec. 4.2(b) (amending re-recodified N.C.G.S. § 163-278.22(7)).

- Gathering documents from county board offices.

Initial investigatory steps may also include:

- An audit of a registered committee or an audit of reports filed by a non-registered entity;
- Inspecting accounts kept by the treasurer<sup>7</sup>; and
- Preliminary interviews.

A complainant who becomes aware of new facts that were not known at the time the complaint was filed may supplement the original complaint at any time. If the new facts result in additional allegations, the complainant must file a new complaint.

### Initial Review

If, after the initial investigation, staff determines that there has been no violation of Article 22A or Article 22M, the complaint will be closed, and both the complainant and the respondent will receive notice of the closure. A complainant who receives notice that the complaint has been closed may file a new complaint if he or she becomes aware of new facts that were not known at the time the original complaint was filed.

If the complaint is not closed, staff will review the initial investigation and categorize the complaint as either an enforcement action, meriting further investigation, or a compliance action.

### Enforcement Priorities

Enforcement actions proceed anticipating that the investigation could result in a criminal referral to a prosecutorial authority or civil penalty issued by the State Board. Priority matters will be designated as enforcement actions. Priority matters include:

- Intentional violations of Article 22A or Article 22M that result in an individual, person or entity making or accepting a prohibited contribution;<sup>8</sup>
- Late or missing reports that constitute a willful attempt to conceal contributions or expenditures;<sup>9</sup>
- Intentional violations of Article 22A or Article 22M that involve a substantial amount of activity, or a high level of complexity; and
- Intentional violations of Article 22A that involves priority enforcement areas.

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<sup>7</sup> N.C.G.S. § 163-278.8(b).

<sup>8</sup> N.C.G.S. § 163-278.34(b).

<sup>9</sup> *Id.*

## **Compliance Actions**

All remaining complaints will be handled as compliance actions. Staff will work with the respondent to file or amend reports or take other corrective action to bring the individual or entity into compliance with North Carolina's campaign finance laws.

In a compliance action, once all corrective actions have been taken, both the complainant and the respondent will receive notice that the complaint has been closed. Due to confidentiality, State Board staff cannot directly communicate corrective actions taken with regards to the respondent and/or any other parties. However, new reports, amended reports, and payments by the committee become part of the public record.

Whether a complaint is handled as compliance action or an enforcement action is confidential.

### **Violations of N.C.G.S. § 163-278.39 (disclosure requirements for political advertisements)**

Violations of N.C.G.S. § 163-278.39 are uniquely time sensitive. When a complaint alleges a violation of N.C.G.S. § 163-278.39, an expedited process is used to ensure timely disclosure of an advertisement's correct sponsor and authorization.

The individual or entity that is the subject of the complaint alleging a violation of N.C.G.S. § 163-278.39 is contacted immediately and given an abbreviated timeline in which to respond.

Simultaneously, campaign finance staff will contact any known media outlets to obtain written authorizations or contact any known vendors to gather further information.

If an advertisement lists no sponsor, after identifying the correct sponsor, campaign finance staff will notify the individual or entity of the need to take all the following corrective actions:

- Immediately add the correct disclosure legend to all future advertisements;
- Notify the population targeted by the advertisement of the sponsor and authorization (this can be accomplished by a subsequent advertisement in the newspaper, subsequent mailer, etc.); and
- Sign a statement of understanding acknowledging the requirements of N.C.G.S. § 163-278.39 and committing to future compliance.

If the disclosure legend is found after the initial investigation to misrepresent the sponsorship or authorization, the complaint will proceed as an enforcement action.

## Enforcement Actions

The State Board enforcement actions are handled by a combination of campaign finance staff, investigation staff and legal staff, in consultation with the Executive Director.

In an enforcement action, staff obtains evidence by informal means when possible. However, the Chair of the State Board has the power to issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence.<sup>10</sup> Subpoenas may also be issued at the request of two or more members of the State Board.<sup>11</sup>

At the conclusion of an investigation, staff may take one of the following actions to resolve the complaint without further action by the State Board:

- If staff determines that there has been no violation of Article 22A or Article 22M, the complaint will be closed, and both the complainant and the respondent will receive notice of the closure.
- If staff determines that there is insufficient evidence to establish a violation of Article 22A or Article 22M, the complaint will be administratively closed, and both the complainant and respondent will receive notice of the closure.
- If the staff determines that there has been no intentional violation of North Carolina campaign finance laws, the complaint may be reclassified as a compliance action. Campaign finance staff may continue to work with the respondent to amend reports or take other corrective actions.

If the evidence substantiates an apparent criminal or civil violation, staff will prepare a detailed memorandum for the State Board. The memorandum will summarize relevant campaign finance laws, the results of the investigation, and possible next steps.

If the State Board finds evidence of an apparent criminal violation, a criminal referral to the appropriate prosecuting authority shall be initiated.<sup>12</sup> The State Board must refer apparent criminal violations to the State Ethics Commission (“Ethics Commission”). The Ethics Commission investigates and makes confidential recommendations to the State Board regarding the appropriateness of a criminal referral for those alleged violations. Once an apparent criminal violation is referred, the State Board shall allow the Ethics Commission 90 days to complete their investigation and recommendations. After receiving and considering the recommendations from the State Ethics Commission, if the Board has knowledge of or reason to believe there has been

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<sup>10</sup> N.C.G.S. § 163-23.

<sup>11</sup> *Id.*

<sup>12</sup> N.C.G.S. § 163-278.27.



a violation, it shall refer the details and the recommendation of the State Ethics Commission to the appropriate prosecuting authority. During this process, State Board staff may also notify and consult with the appropriate prosecuting authority who would be responsible for bringing a criminal prosecution concerning the violation.

If the State Board finds sufficient evidence to proceed with a civil penalty or other civil remedy, the State Board shall proceed with administrative hearing procedures outlined in N.C.G.S. § 150B-38. Prior to the hearing, parties will be given notice and an opportunity to provide a written response. A hearing for a civil penalty is open to the public. In accordance with N.C.G.S. § 150B-22, the State Board may direct staff to seek a settlement through informal procedures at any point in the process.