



Campaign Finance Complaint Policy

Adopted by the State Board
of Elections on _____

Statutory Authority

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

...
(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).¹

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.

¹ 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.² 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.³

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.⁴ 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.

² N.C.G.S. § 163-278.22(7).

³ *Id.*

⁴ *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.⁵ 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

⁵ 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.⁶ Complaints, responses and any information or materials generated or gathered by the State Board during an investigation cannot be produced or shared.

However, a copy of the complaint and all attachments will be provided to the respondent or the respondent's counsel in accordance with N.C.G.S. § 163-278.23(2).

In furtherance of its investigation, State Board staff may communicate with the complainant or complainant's counsel with respect to any information or materials submitted by or on behalf of the complainant as evidence of a violation. The State Board staff may solicit additional information or materials from the complainant when necessary.

The confidentiality provision does not prevent a complainant or a respondent from publishing or otherwise disclosing the complaint, substance of the complainant, the response, or any substance of the response to members of the media or the public.

After an investigation has concluded, penalty assessments, State Board orders, and any documents or materials admitted into evidence at a State Board hearing shall be made public, unless otherwise exempted under North Carolina law.

Initial Investigation

Investigations are guided by the following North Carolina State Board of Elections staff: General Counsel, Campaign Finance Director, Investigations Attorney, and any other staff identified by the General Counsel. These staff members, or their designees, shall 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

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

be opened. If they determine that an investigation should be opened, staff will provide notice and a short summary of the staff determination to all members of the State Board. After notice is provided to the State Board, 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
- 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 treasurer⁷; 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

⁷ N.C.G.S. § 163-278.8(b).

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;⁸
- Late or missing reports that constitute a willful attempt to conceal contributions or expenditures;⁹
- 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.

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.

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;

⁸ N.C.G.S. § 163-278.34(b).

⁹ *Id.*

- 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.¹⁰ Subpoenas may also be issued at the request of two or more members of the State Board.¹¹

For each enforcement action, there may be one of the following resolutions at the conclusion of the investigation:

1. If staff determines that there has been no violation of Article 22A or Article 22M, the enforcement action will be closed, and both the complainant and the respondent will receive written notice of the closure.
2. If staff determines that there is insufficient evidence to establish a violation of Article 22A or Article 22M, the enforcement action will be administratively closed, and both the complainant and respondent will receive written notice of the closure.
3. If staff determines there has been a violation of North Carolina campaign finance laws, but that there is insufficient evidence that the violation was intentional, staff will work with the respondent to amend reports or take other corrective action. Once all corrective action has been taken, the complaint will be administratively closed, and both the complainant and respondent will receive written notice of the closure.
4. If there is sufficient evidence of a criminal violation, the State Board shall refer the apparent violation to the State Ethics Commission as described in N.C.G.S. § 163-278.27.

¹⁰ N.C.G.S. § 163-23.

¹¹ *Id.*

5. If there is sufficient evidence to warrant a civil penalty as described in N.C.G.S. § 163-278.34, the State Board shall proceed with a hearing.

For each enforcement action resulting from a complaint, at the conclusion of the investigation where staff determines that closure is appropriate, staff shall prepare a closure report for the State Board. The report will identify each statute alleged to have been violated and summarize any staff determination as to: (1) no violation of the statute, (2) insufficient evidence that a violation occurred or (3) insufficient evidence of an intentional violation. The closure report may also note whether staff will request an amended report or any other corrective action from the respondent. The closure report shall provide enough detail to understand the resolution of the enforcement action and to provide transparency and guidance to the regulated community on what is and what is not a violation of North Carolina Campaign Finance Law.

The State Board shall be provided a copy of the draft closure report at least five business days prior to staff finalizing the report and closing the enforcement action. If any substantive change is made to the draft closure report after distribution to the State Board, all members shall be provided a copy of the amended draft at least five business days prior to staff finalizing the report. The draft may be provided in person or via email.

While it may be informed by information or materials gathered or generated during an investigation, the closure report is not a record of the investigation, and therefore is not confidential.

If an enforcement action is closed without further action by the State Board, the complainant and respondent shall receive written notice of the closure. Staff shall attach a copy of the final closure report to the written notice.

If there is sufficient evidence of a criminal violation, the State Board shall refer the apparent violation to the State Ethics Commission.¹² The State Ethics Commission investigates and makes a confidential recommendation to the State Board regarding the appropriateness of a criminal referral for the alleged violation. Once an apparent criminal violation is referred, the State Board shall allow the State Ethics Commission 90 days to complete their investigation and recommendation. After receiving and considering the recommendation from the State Ethics Commission, if the Board has knowledge of or reason to believe there has been 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.

¹² N.C.G.S. § 163-278.27.

If there is sufficient evidence to warrant a civil penalty as described in N.C.G.S. § 163-278.34, prior to ordering a penalty assessment or forfeiture, the State Board shall hold a hearing. A hearing for a civil penalty or other civil remedy is open to the public. The State Board may direct staff to seek a settlement through informal procedures at any point in the process.