OFFICE OF
CAMPAIGN
and
POLITICAL
FINANCE

Commonwealth
of Massachusetts

Campaign Finance Regulations 970 CMR

3.0 Rules of Procedure

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970 CMR 3.00: RULES OF PROCEDURE

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3.01: Scope and Purpose

The Director of the Office of Campaign and Political Finance has the power and authority to investigate the legality, validity, completeness and accuracy of all reports and actions required to be filed and taken by candidates, treasurers, political committees, and any other person pursuant to M.G.L. c. 55 and any other laws of the commonwealth pertaining to campaign contributions and expenditures.

970 CMR 3.00 governs investigations and hearings conducted by the Office. They have been adopted to guide the Office in fulfilling its statutory responsibilities in a fair and effective manner. They are also intended to protect the rights of candidates, treasurers, witnesses and all others involved in any hearings or investigations conducted by the Office. The Director may, in his discretion, permit certain activities and procedures relative to the conduct of investigations and hearings which are not covered by 970 CMR 3.00 but which are not inconsistent with 970 CMR 3.00, M.G.L. c. 55 or any other law. The Office may also adopt internal guidelines to enable it to effectively and efficiently fulfill its statutory mandate.

3.02: General Provisions

(1) Authority. 970 CMR 3.00 is promulgated under authority of M.G.L. c. 55, § 3 and M.G.L. c. 30A.

(2) Effective Date. 970 CMR 3.00 is effective upon publication in the Massachusetts Register in accordance with M.G.L. c. 30A.

(3) Amendments. 970 CMR 3.00 may be amended at any time, and such amendments shall take effect in accordance with M.G.L. c. 30A.

3.03: Representation

(1) An individual may appear in his own behalf.

(2) A duly authorized officer or employee may represent a corporation, an authorized member may represent a partnership or joint venture and an authorized trustee may represent a trust.

(3) A witness shall have the right to be represented by counsel. Such counsel shall file a written notice of appearance with the presiding officer before representing a witness at any hearing.

(4) The Director may determine that representation by a counsel of more than one witness is not in accordance with 970 CMR 3.00 and may therefore not permit such dual representation.

3.04: Reviews and Investigations

(1) Initiation of Reviews and Investigations.

(a) The Director may initiate reviews or investigations of any and all matters relative to all reports and actions required to be filed and taken by candidates, treasurers, political committees and any other person pursuant to M.G.L. c. 55 and any other laws of the commonwealth pertaining to campaign contributions and expenditures.

(b) The initiation of any particular investigation or review shall be within the discretion of the Director or any employee or agent to whom he delegates that discretion.

(2) Conduct of Reviews and Investigations.

(a) In conducting a review or investigation, the Director or his employees or agents may interview persons, examine or audit books, records, files, documents or other materials, issue summonses in accordance with 970 CMR 3.05, or take any other action necessary which is permitted by law;

(b) Interviews:

1. Interviews may be conducted with any individual(s) whom it is determined may have information relevant to any matter under review or investigation;

2. A request by a person to have counsel present at an interview shall be honored;

3. Interviews may be taken under oath or affirmation and may be recorded by hand, sound recording or a stenographer.

(c) The scope, duration, conduct and disposition of any investigation or review shall be within the discretion of the Director or any employee or agent to whom he may delegate that discretion.

3.05: Summonses

(1) Summonses for Books and Papers.

(a) The Director may issue summonses requiring the production of any books, papers, records, documents, correspondence or any other material relevant to any matter under review or investigation by him;

(b) A person summoned to produce books and papers pursuant to 970 CMR 3.05(1) shall do so at the time and place specified in the summons unless another time and place is mutually agreed upon by the Office and the person summonsed;

(c) All books, papers and records obtained pursuant to a summons issued under 970 CMR 3.05(1) shall be retained by the office for so long as needed for an investigation. A person who has produced records pursuant to such a summons may request the Director to provide access to the records for inspection or copying at the party's expense. Such access shall be permitted provided it does not unduly interfere with the work of the Office;

(d) The person to whom a summons is issued pursuant to 970 CMR 3.05(1) may seek modification of the scope or terms for compliance with the summons by filing with the Director an Application for Modification of the Summons. Such application must be filed no later than five calendar days after the date of issuance of the summons. It must state with particularity the requests for modification and the reasons and any argument in support of such modification. The Director may approve or deny, in whole or in part, such application for modification, or otherwise modify the scope and terms of the summons.

(2) Summonses for Attendance and Testimony of Witnesses and Production of Books and Papers.

(a) The Director may issue summonses requiring any person to attend and testify under oath at a private hearing, and also to produce books and records, if the Director has reason to believe that such person may have information relative to any matter under investigation by the Office. Witnesses shall testify under oath only at private hearings, and the same secrecy provisions which govern grand jury proceedings shall govern all such private hearings.

(b) A witness required by summons to attend and testify, or attend and testify and produce books and papers, pursuant to 970 CMR 3.05(2), shall do so at the time and place specified in the summons, unless another time and place is mutually agreed upon by the Office and the person summoned;

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(c) A request by a witness for a change of the date or time of his or her appearance to attend and testify, or to attend and testify and produce books and papers, at a private hearing must be received by the Office no later than 24 hours before the witness is scheduled to testify. The request must be in writing and must state the reasons for the requested change. The granting of such a request shall be at the discretion of the Director. A request will ordinarily be allowed if it is not made for purposes of delay and if allowing the request will not interfere with the conduct of the investigation;

(d) Any objections of a witness to a summons issued pursuant to 970 CMR 3.05(2), must be made in writing, must state the reasons for the objections and must be received by the Office no later than 24 hours before the witness is scheduled to attend and testify, or to attend and testify and produce books and records. The Director shall rule upon the objections at the time of the hearing, or give reasons at that time for not ruling upon the objections;

(e) A witness who is required by summons issued pursuant to 970 CMR 3.05(2) to attend and testify, or to attend and testify and produce books and records, may file a sworn written statement with the Director. Such statement may be filed prior to the hearing, during the time of the testimony of the witness, or within five calendar days after the hearing has been concluded or adjourned;

(f) A witness required by summons to attend and testify, or to attend and testify and produce books and papers, shall be provided with the following:

1. No less than 48 hours notice of the time and place of the private hearing, unless such notice will unduly interfere with the conduct of the investigation;
2. Notification of the general matter under investigation concerning which the witness will be asked to testify;
3. A copy of 970 CMR 3.00;
4. Notification that his or her testimony will be taken at a private hearing;
5. Notification that the witness has a right to consult with and have an attorney present at the time his or her testimony is taken.

(3) Provisions Relative to all Summonses Issued Pursuant to 970 CMR 3.00.

(a) Any summons issued pursuant to 970 CMR 3.05 shall be served in the same manner as summonses for witnesses in criminal cases issued on behalf of the Commonwealth;

(b) All provisions of law relative to summonses for witnesses in criminal cases issued on behalf of the Commonwealth shall apply to summonses issued under 970 CMR 3.05; so far as applicable;

(c) Any justice of the supreme judicial court or of the superior court may, upon application by the director, enforce any summons issued pursuant to 970 CMR 3.05 in the same manner and to the same extent as before said courts.

3.06: Hearings

(1) Hearings may be held for the following reasons:

(a) In furtherance of any investigation conducted by the Office pursuant to 970 CMR 3.04, and may include the taking of testimony of witnesses pursuant to summonses issued under 970 CMR 3.05 or those who are invited to testify before the Director;

(b) Upon request by any person or political committee after receiving notification by registered mail, return receipt requested, by the Director of his intention to present to the attorney general evidence of any alleged violation of M.G.L. c. 55 or regulations promulgated thereunder, to permit the alleged violator to present evidence to the contrary, provided the request is received by the Director within ten days of receipt of notification by the alleged violator.

(2) The testimony of all witnesses shall be heard only at private hearings which shall be governed by all provisions of secrecy applicable to grand jury proceedings.

(3) The testimony of a witness shall be taken under oath administered by the presiding officer, a notary public or other Person authorized by the laws of the Commonwealth to administer oaths. Witnesses shall be sworn before testifying.

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(4) 970 CMR 3.00 shall be made available in printed form to each witness prior to his or her testimony.

(5) A witness shall have the right to be represented at a hearing by counsel. Counsel shall file a written Notice of Appearance with the Office before representing a witness at a hearing.

(6) All provisions with reference to secrecy which govern proceedings of a grand jury shall govern proceedings before the director.

(7) There shall be a Presiding Officer at all hearings, who shall be the Director or his designee, who shall conduct said hearing.

(8) A witness shall be informed, prior to his or her testimony, of the privilege against self-incrimination.

(9) Testimony at all hearings shall be recorded by a stenographer or a mechanical recording device.

(10) Witnesses, counsel and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any court. Where such decorum is not observed, the Director may take appropriate action.

(11) The examination and cross-examination of witnesses shall be subject to the following:

(a) At any hearing conducted in furtherance of any investigation as provided by 970 CMR 3.06(1)(a):

1. Witnesses may be examined and cross-examined by the Director, Legal Counsel and Office staff at the discretion of the Presiding Officer;

2. Counsel for the witness shall not be permitted to examine or cross-examine the witness, but the witness shall have the right to consult with his or her counsel;

3. At any time prior to the close of questioning of the witness, the witness or his or her counsel may submit to the Presiding Officer written questions which the Presiding Officer may, in his or her discretion, ask of the witness.

(b) At any hearing conducted as the result of a Request for Hearing, as provided by 970 CMR 3.06(1)(b):

1. Witnesses may be examined and cross-examined by Counsel for the requesting party;

2. Witnesses may be examined and cross-examined by the Director, Legal Counsel, and Office staff;

3. Counsel for a witness, other than a witness who is the requesting party, shall not be permitted to examine or cross-examine the witness, but the witness shall have the right to consult with his or her counsel;

4. The Presiding Officer shall have the discretion to require that any such examination or cross-examination be modified in any manner.

(12) A witness or his or her counsel may object to a question on the ground of privilege against self-incrimination. A witness may refuse to answer a question on the ground of this privilege. If a witness claims the privilege, he or she shall not be required to answer the question at that time.

(13) Strict rules of evidence applicable in a judicial proceeding shall not be applied.

(14) The order of proceedings shall be as follows:

(a) At any hearing conducted in furtherance of any investigation, as provided by 970 CMR 3.06(1)(a):

1. A witness called to testify shall be permitted to make a brief opening statement, after being sworn;

2. The witness may be examined and cross-examined in accordance with 970 CMR 3.06(11)(a);

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3. At the close of his or her testimony, a witness may make a brief closing statement. A witness may be asked additional questions after his or her closing statement.

(b) At any hearing conducted as the result of any Request for Hearing, as provided by 970 CMR 3.06(1)(b):

1. The requesting party, or his or her counsel, may make a brief opening statement for the purpose of highlighting issues to be addressed and summarizing evidence to be adduced during the presentation of evidence;

2. Witnesses may be examined and cross-examined in accordance with 970 CMR 3.06(11)(b);

3. At the close of all evidence presented, the requesting party, or his or her counsel may make a brief closing statement.

(15) A witness, or requesting party may file a sworn statement for inclusion in the record of the private hearing, which may be filed prior to the hearing, during the hearing, but no later than five calendar days after the hearing has been concluded or adjourned.

(16) Transcript of Proceeding.

(a) All hearings shall be recorded by a stenographer or a mechanical recording device.

(b) Transcripts of a witness' testimony may be prepared upon request of and at the expense of the witness. The transcript shall be made available to the witness and his counsel for inspection at the Office.

(c) The witness or counsel for the witness shall be notified when such transcript is available for inspection. The witness shall then have seven days (excluding Saturdays, Sundays and legal Holidays) to indicate to the Office any alleged inaccuracies in the transcript. Requests to correct alleged inaccuracies shall be submitted in writing to the office to the attention of the Presiding Officer, who shall agree or disagree to amend the transcript to reflect the change. If the Presiding Officer disagrees, the witness proposed list of alleged inaccuracies shall be appended to the transcript.

(d) It shall be within the discretion of the Presiding Officer to provide a transcript of a witness' testimony to that witness, upon written request by the witness or his counsel, and at the expense of the witness.

(e) Transcripts of private hearings shall be kept confidential subject to the same restrictions on use as those applying to grand jury transcripts.

(17) Nothing contained in 970 CMR 3.06 shall be construed to limit the manner and extent to which the Office may interview persons while conducting reviews or investigations, as provided by 970 CMR 3.04(2)(b).

3.07: Disposition of Matters

(1) The director may, in his discretion, dispose of any matter before him through any administrative disposition. This may include, but shall not be limited to, entering into Disposition Agreements with candidates, treasurers and any other person or entity. If the director requires a candidate, treasurer or any other person to submit an affidavit or statement attesting to certain facts in order to dispose of a matter before him, the affidavit or statement must be signed under the pains and penalties of perjury. Affidavits may also be required in matters that are ultimately referred to the Office of the Attorney General.

(2) Referral to the Attorney General. The Director may refer to the attorney general evidence of any violation of M.G.L. c. 55 and any regulations promulgated thereunder.

(a) Such referral may not be made until the Director has notified the alleged violator, by registered mail, return receipt requested, of his intention to present such evidence to the attorney general;

(b) Within ten days of receipt of such notice, an alleged violator may request a hearing before the Director, for the purpose of presenting any evidence to the contrary, in accordance with 970 CMR 3.06(1)(b);

(c) The Director shall not refer any such evidence until after the hearing, if requested, is held;

(d) Evidence shall be presented by the Director to the Attorney General only after the relevant election involved, but within two years after said election.

3.08: Delegation by the Director

The Director may delegate any power, authority, or function granted to him by statute, rule or regulation to any employee or agent of the Office as he deems appropriate for the effective performance of his duties and responsibilities.

REGULATORY AUTHORITY

970 CMR 3.00: M.G.L. c. 55, § 3.