

Chapter EL 20

COMPLAINT PROCEDURE

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Note: Chapter EL 20 has been superseded by s. 5.05 (2m), Wis. Stat., and is no longer effective, except for complaints alleging a violation of election laws by a local election official under s. 5.06, Wis. Stat.

Note: Chapter ElBd 10 was renumbered chapter GAB 20 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 2., 6. and 12., Stats., Register April 2008 No. 628. Chapter GAB 20 was renumbered Chapter EL 20 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

EL 20.02 Definitions. As used in this chapter:

(1g) “Administrator” means a person duly appointed by the board or any employee of the agency to whom a lawful function has been delegated by the administrator to administer and manage the agency.

(1r) “Commission” means the elections commission.

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

(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 commission on complaint for review under this chapter.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; renum. (1), (2) to (1r), (1g) under s. 13.92 (4) (b) 1., Stats., and correction in (1g), (1r), (2), (5) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.03 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 Commission

The Complaint of _____
_____, Complainant
against _____
_____, Respondent ¹

COMPLAINT

This complaint is under _____ (Insert the applicable section(s) of law in chs. 5 to 10 and 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 _____, 2____

(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.

(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 in-

volved; 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 commission 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 commission and shall certify to the service on the pleading or in a cover letter filed with the pleading.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (6) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.04 Investigations. (1) Any matter brought to the commission shall be reviewed by the administrator 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 administrator 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 administrator'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 s. 5.05, Stats., the administrator shall promptly forward the complaint to the respondent at the respondent's last known post office address. The respondent shall file with the commission a verified, written answer within 10 business days. After receiving the answer, the administrator 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 administrator 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 administrator shall promptly forward the answer to the respondent for a written, verified reply to be filed within 10 business days.

(5) The administrator 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 s. 5.06, Stats., the administrator shall proceed as the commission authorizes by duly adopted motion

and, where no motion is in effect, the administrator shall proceed after consultation with the commission'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 commission, 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 administrator. 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 s. 5.05, Stats., the administrator shall analyze the pleadings, present them, with appropriate recommendations, to the commission 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 commission meeting at which the matter will be considered.

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

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; corrections in (3) and (9) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628; correction in (1) to (10) made under s. 13.92 (4) (b) 6., Stats., and correction in (3), (6), (9), (10) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

EL 20.05 commission meetings. (1) The commission shall review the analysis and recommendations of its administrator with respect to pleadings filed under s. 5.05, Stats., at its next regularly scheduled meeting.

(2) Any party may submit a written statement of facts approved by the administrator for consideration by the commission.

(3) Personal appearances, limited to 10 minutes per party plus additional time to respond to questions from commission members and staff, are permitted at each meeting of the commission. 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 commission.

(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 commission must submit 12 copies to the administrator no later than 3 business days before the commission meeting at which the matter will be considered.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628; corrections in (1) to (4) made under s. 13.92 (4) (b) 6., Stats., and correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

EL 20.06 Hearings. (1) Before issuing a final decision or order on the merits of a complaint filed with the commission under this chapter, the commission or its administrator shall conduct an evidentiary hearing, under ch. 227, Stats., if either of the following occurs:

(a) In the commission's judgement, 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 commission under this chapter, the commission or its administrator may conduct an evidentiary hearing, under ch. 227, Stats., when:

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

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

(3) Except in the case of an emergency, the commission 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 commission, waive the right to notice. Continuances or postponements may be granted by the administrator 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 administrator given at least 3 days before the hearing.

(4) The commission, or the administrator, or a hearing examiner proceeding under ch. 227, Stats., may preside over the hearing. The commission may, by duly adopted motion of the commission or by an order issued before taking any testimony, direct that the administrator's or the hearing examiner's decision be final as to the merits of the matter. Subject to the provisions of this chapter, the administrator 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 commission 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 administrator or hearing examiner may admit all testimony having reasonable 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.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1) (intro.), (2) to (5) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.07 Withdrawal and settlement. (1) At any time before the issuance of a final decision, a complainant may file

with the commission a written request to withdraw his or her complaint, specifying the reasons for the request. Upon receiving such a request, the commission may, but is not required to, issue an order dismissing the matter with or without prejudice. If the commission decides not to dismiss the case, the commission may take any appropriate action, within its authority, that the commission 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 commission, except where the settlement is authorized by law. Upon receiving written notice that settlement has been proposed, the commission may, at its next regularly scheduled meeting, consider the proposal as the commission deems appropriate.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; corrections made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.08 Diligent action; dismissals. (1) The commission shall proceed promptly and diligently to decide cases under this chapter.

(2) If a party fails to appear at a hearing, the commission, the administrator, 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 commission to reconsider its decision if a request for reconsideration is received by the commission within 30 days after the party receives written notice of the commission'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 commission consideration of a matter be postponed. The request shall be in writing and shall be served on the administrator and all other parties at least 3 business days before the date scheduled for commission consideration of the matter.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; corrections made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.09 Temporary orders. The commission may issue a protective order or grant such protective relief as the commission determines is necessary to preserve the rights of any party to a matter subject to this chapter before issuing a final decision or order.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.10 Service. The administrator may accept service of any pleading on behalf of the commission including civil actions commenced against the commission.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.