

Part 6201.2 and 6201.3 of 9 NYCRR are amended to read as follows:

§ 6201.2 Use of public opinion polls No candidate, political party or committee shall attempt to promote the success or defeat of a candidate by, directly or indirectly, disclosing or causing to be disclosed, the results of a poll relating to a candidate for such office or position, unless within 48 hours after such disclosure, they provide the following information concerning the poll to the board or officer with whom statements or copies of statements of campaign receipts and expenditures are required to be filed by the candidate to whom such poll relates:

(a) The name of the person, party or organization that contracted for or who commissioned the poll and/or paid for it.

(b) The name and address of the organization that conducted the poll.

(c) The numerical size of the total poll sample, the geographic area covered by the poll and any special characteristics of the population included in the poll sample.

(d) The exact wording of the questions asked in the poll and the sequence of such questions to the extent results of such questions were disclosed or to the extent such questions were preparatory to the questions asked that were released and could have influenced poll respondents answers to the poll questions released.

(e) The method of polling—whether by personal interview, telephone, mail or other.

(f) The time period during which the poll was conducted.

(g) The number of persons in the poll sample; the number contacted who responded to each specific question; the number of persons contacted who did not so respond.

(h) The results of the poll relative to the questions required to be disclosed pursuant to paragraph d of this subdivision.

§ 6201.3 Procedure in fair campaign code proceedings

(a) Initiation of proceeding.

(1) A proceeding under the fair campaign code (hereinafter “code”) shall be commenced by the New York State Board of Elections when:

(i) the board receives a written signed complaint alleging the commission or omission of acts, in violation of the code; the county boards of elections are advised to forward any complaints they may receive to the State Board of Elections; or

(ii) the State Board staff proposes to the board an investigation of an alleged violation of the code.

(2) A complaint shall be filed by mailing to, or by personally serving, the State Board of Elections at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729. A duplicate copy of the complaint shall be mailed to or personally served upon the candidate or the candidate’s representative (hereinafter “respondent”). Proof of service of the complaint upon the respondent must be filed not later than three

days after service of the complaint upon the respondent. This requirement is waived when the respondent is unknown.

(b) Form of complaint.

(1) A complaint shall be based on personal knowledge and belief and be specific as to times, places and names of witnesses to the acts charged as violations of the code. If a complaint is based upon information and belief, the complainant shall state the source of the information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint. Evidence deemed by the complainant to be of a confidential nature need not be sent to the respondent, so long as an explanation is made to the board. The complainant shall designate an e-mail address to which all future service upon the complainant shall be made.

(2) A respondent shall file a signed answer, after service upon the respondent of the complaint. Such an answer shall be based on personal knowledge and belief and be specific as to times, places and names of witnesses to acts relevant to the complaint. Copies of all documentary evidence available to the respondent shall be annexed to the answer. If an answer is based on information and belief, the respondent shall state the source or sources of the information and belief. An answer shall be filed by [certified] mail, e-mail or by personally serving the State Board of Elections at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729 and the complainant. An answer to the complaint must be made by the respondent within [10] 7 days after receipt of the complaint, except if such complaint relates to the release of a poll that occurred within thirty days before an election, an answer must be made within 3 days after receipt of the complaint. Proof of service of the answer upon the complainant must be filed not later than three days after service of the answer upon the complainant. The Answer shall designate an e-mail address to which all future service upon the complainant shall be made.

(c) [Answer] Hearing.

[(1)] If after receipt and preliminary review of a complaint and answer alleging a violation of the code, or following commencement of an investigation initiated by the board, where the board determines a hearing shall be held, the board shall send notice, by [certified] mail and e-mail whenever possible, to the complainant and to any person, organization or committee whose conduct is complained of [or whose conduct is under investigation]. Such notice shall specify when and where a hearing is held. Such hearing shall be conducted by [enforcement counsel] a hearing officer of the State Board of Elections. A report with [counsel's] the hearing officer's recommendation shall be [made] delivered to the office of counsel, and counsel shall provide such report to the Board, which shall render a final decision. All steps in this process shall be completed as soon as possible. The Board shall be presented with such findings within forty-eight hours of the hearing officer delivering such report to the co-counsels of the Board.

[(2)] A respondent shall file an answer, sworn to or affirmed (within seven days or such shorter period as the board may for good reason require) after service upon him of the notice of hearing. Such an answer shall, if possible, be based on the personal knowledge and belief and be specific as to times, places and names of witnesses to acts relevant to the complaint. Copies of all documentary evidence available to the respondent shall be annexed to the answer. If an answer is based on information and belief, the respondent shall state the source or sources of his information and belief. An answer shall be

filed by certified mail, or by personally serving the State Board of Elections at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729.]

(d) Scope of poll disclosure disputes.

When there is an allegation that relevant poll questions and results required by section 6201.2 were not disclosed as required, the hearing officer, to resolve such matter, may require the respondent to produce for confidential review by the hearing officer additional poll questions and results. The hearing officer shall recommend in the report to the commissioners whether any additional questions and results must be released to comply with the disclosure requirements of 6201.2. After receiving the hearing officer report, the commissioners may, upon a majority vote, require the public disclosure of additional questions and results. Unless the commissioners vote to release such additional poll questions and results, such information shall be kept confidential. Poll results subject to disclosure pursuant to this subdivision shall be publicly available no later than twenty-four hours after such determination.

(e) Hearing officer assignment.

A hearing officer shall be assigned to a complaint made under this Part by the co-executive directors or their designees through a random selection process. All hearing officers appointed by the state board of elections pursuant to 6218.2 (b) shall comprise those eligible for assignment.