

9 NYCRR part 6203 is amended to read as follows:

Section 6203.1. Administration of oaths, examination of witnesses and issuance of subpoenas for the purpose of conducting investigations pursuant to chapter 233 of the Laws of 1976 and chapter 55, part H, subpart B of the Laws of 2014

In addition to all duties and powers relating to the administration of the election process, election campaign processes and campaign finance practices:

(a) Any commissioner of the State Board of Elections may designate in writing any employee to administer oaths or affirmations, examine witnesses in public or private hearings, receive evidence and preside at or conduct any hearing or study.

(b) Pursuant to a delegation of its subpoena power by the State Board of Elections, each co-executive director, co-counsel and co-deputy counsel are authorized to issue subpoenas in the name of the State Board of Elections to compel the attendance of any person before the board or any employee designated pursuant to subdivision (a) of this section or to require the production of any books, records, documents or other evidence that the board or any such employee may deem relevant to any hearing or study.

(c) The chief enforcement counsel may at any time ask that the board authorize him or her to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law. Any such authorization shall be made pursuant to the provisions of section 6203.2 of this part.

~~The board shall vote on whether to grant or refuse to grant such authority no later than twenty days after the chief enforcement counsel makes such request. For purposes of considering and voting on such request, the chief enforcement counsel shall be entitled to participate in all matters related thereto and~~

~~shall vote on the board's granting or refusal to grant such request only when there is a tie. Should the board not vote on such request within twenty days of its submission, or grant the chief enforcement counsel's request, the chief enforcement counsel shall be so empowered to act pursuant to subdivisions five and six of section 3-102 of the Election Law.~~

Section 6203.2 Provisions related to granting the chief enforcement counsel authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law.

When granting authority to the chief enforcement counsel to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law, the following provisions shall apply:

- (a) Vote within twenty days. The board shall vote on whether to grant or refuse to grant such authority no later than twenty days after the chief enforcement counsel makes a request for such authority. A request shall be deemed made when the memorandum and proposed subpoena(s) required by paragraph (d) of this section are received by the commissioners.
- (b) Participation in determinations. For purposes of considering and voting on such request, the chief enforcement counsel shall be entitled to participate in all matters related thereto and shall vote on the board's granting or refusal to grant such request only when there is a tie vote.
- (c) No vote within twenty days or granting of authority. Should the board not vote on such request within twenty days of its submission, or grant the chief enforcement counsel's request, the chief enforcement counsel shall be so empowered to act pursuant to subdivisions five and six of section 3-102 of the Election Law. Any such action by the Chief Enforcement Counsel shall comply with the requirements of this section.

(d) Request for subpoena authority. An application by the chief enforcement counsel seeking authority from the board to issue a subpoena, shall be sent to the commissioners and co-executive directors whenever possible at least one week prior to a vote and shall include: (1) a memorandum explaining the circumstances surrounding the investigation, reciting the section(s) of the Election Law that have allegedly been violated, and how any documents, testimony or other materials returned pursuant to a subpoena issued in the matter would be relevant and material to the investigation; (2) the name(s) of the person(s) and/ or entity(ies) that will be served the proposed subpoena(s); and, (3) a copy of the proposed subpoena(s) to be issued should the authority to issue be granted. Nothing in this subsection shall limit the chief enforcement counsel's ability to limit the scope of an issued subpoena or extend the response date of an issued subpoena at the request of a person or entity named therein.

(e) Scope of Authority. (1) A request for subpoena authority shall be directly related to a particular investigation. A grant of subpoena authority shall not include authority to issue subpoenas other than to those persons or entities identified in the application for such subpoena unless the board specifically grants such blanket authority.

(2) When the chief enforcement counsel applies for authority to issue a subpoena, the Board may authorize the chief enforcement counsel to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with and reasonably related to a lawful investigation.

(3) As a condition of granting subpoena authority to the chief enforcement counsel, the board reserves the right, upon the motion of any one Commissioner, to rescind or further condition subpoenas or subpoenas duces tecum, by a majority vote of the board. When the board considers whether to rescind or further condition a subpoena or subpoena duces

tecum, the chief enforcement counsel shall be entitled to participate in any discussion and may vote only if there is a tie vote.

(4) As a condition of granting authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of the Election Law to the chief enforcement counsel, such authority to so act shall expire six months after the date authority is granted by the board unless the resolution approving such authority provides for a longer duration, and any subpoenas or subpoenas duces tecum shall be deemed expired six months after authority is granted by the board unless the resolution approving such subpoenas provides for a longer duration; provided, further, that if the board did not vote within twenty days of its submission, then the chief enforcement counsel's initial authority to act without a vote, shall expire ninety days after the chief enforcement counsel was empowered to exercise such authority, and any subsequent subpoenas or subpoenas duces tecum involved in that matter shall be brought to the Board for action pursuant to the above provisions after the expiration of the ninety day period.

(5) For any authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law granted to the chief enforcement counsel prior to the effective date of this section, such authority and any subpoenas issued pursuant to such authority shall expire six months after the effective date of this regulation.

(6) Nothing in this section shall prohibit the chief enforcement counsel from making an application to renew authority to exercise powers with respect to any ongoing matter, which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law.

6203.3 Provisions related to subpoena authority oversight.

(a) Any person to whom a subpoena is directed pursuant to section 6203.1 of this part, may, prior to the time specified therein for compliance, but in no event more than seven business days after the date of receipt of such subpoena, apply to the state board to quash or modify such subpoena authority delegated to the chief enforcement counsel, accompanying such application with a brief statement of the reasons therefor. Applications to quash shall be filed with the State Board of Elections, Counsel's Office, 40 North Pearl Street, Suite 5, Albany, NY 12207 or by email sent to the co-executive directors. Any such application shall be deemed sufficiently stated for consideration if it reasonably sets forth in general terms the grounds the application is based upon and a copy of the subpoena itself.

(b) Upon receiving an application to quash or modify, Counsel's Office shall send notice, by mail and e-mail whenever possible, to the movant and the chief enforcement counsel. Such notice shall specify when and where a hearing shall be held. Such hearing shall be conducted by a hearing officer of the State Board of Elections appointed pursuant to part 6218. A report with the hearing officer's recommendation shall be delivered to the office of counsel, and counsel shall provide such report to the board. The board shall render a final determination, where the board may: (i) deny the application, or (ii) rescind, amend or modify the subpoena. 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. Until a decision is issued with regard to any application made under this section, all requirements to comply with the subpoena shall be stayed and the expiration of the subpoena shall be likewise tolled. A decision by the board shall be issued within thirty days after an application is made unless such time period is extended by a majority vote of the commissioners.

6203.4 Enforcement Reporting

The chief enforcement counsel shall provide a written report to the commissioners and co-executive directors at least once in each calendar quarter that shall include the following information with respect to the preceding calendar quarter:

(a) Total number of complaints received by the Enforcement Division by mail, email, phone, fax or any other means, and the number of such complaints:

- (1) examined and found on their face to not warrant any further investigation
- (2) still pending review
- (3) under active investigation
- (4) closed
- (5) referred to the commissioners for further action

(b) Total number of hearing officer proceedings initiated, and the number of such proceedings:

- (1) for failure to file reports
- (2) for failure to cure a deficiency
- (3) involving other matters

(c) Total number of settlements entered into and the number of such settlements entered into:

- (1) before any hearing officer proceeding is initiated
- (2) after a hearing officer proceeding but before a hearing officer's determination is made
- (3) after a hearing officer determination

(d) Total number of special proceedings commenced in pursuant to article sixteen of the election law, and the number of such proceedings:

- (1) related to failure to file
- (2) failure to cure deficiency
- (3) other matters

(e) Total sum of money collected, and with respect to such sum, the amount derived from:

- (1) judgments entered before creation of the division of election law enforcement
- (2) judgments entered after creation of the division of election law enforcement settlements

(f) Total number of deficiency referrals from the Compliance Unit received, and with respect to such referrals the number

- (1) referred to a hearing officer
 - (2) chief enforcement counsel determined not to refer to hearing officer
 - (3) pending review
 - (4) a decision has been made that no further action will be taken and the reasons therefor.
- (g) For failure to file required disclosures under article fourteen of the election law, the number of such
- (1) referred to hearing officer
 - (2) chief enforcement counsel determined not to refer to hearing officer
 - (3) pending review
 - (4) a decision has been made that no further action will be taken and the reason therfor.

6203.5 Closed Enforcement Matters

(a) When the chief enforcement counsel determines no further action will be taken on a complaint or matter and the matter was not referred for possible prosecution or to a hearing officer, the matter is thereby deemed closed, and the chief enforcement counsel shall provide notice to the commissioners and co-executive directors.

(b) If no action is taken on a complaint within two years after it was received, it shall be deemed closed for purposes of providing notice to the commissioners; provided, however, if the chief enforcement counsel determines any such matters should not be deemed closed because future action is reasonably anticipated, the chief enforcement counsel shall report the number of such continued matters to the commissioners.

(c) Notice to the board of closed matters may be satisfied by a written report or by the chief enforcement counsel providing copies of complaints and any correspondence to complainants indicating a matter is closed.

(d) A copy of any settlement agreement entered into in which the chief enforcement counsel or the division of election law enforcement is a party or signatory, shall be provided to the commissioners and co-executive directors within five days of execution.

6203.6 Notification of Failure to File

The division of election law enforcement shall send the letters required to be sent by Election Law § 14-108 (5).

6203.7 Special Investigators and Peace Officer Status Reporting

(a) A request to the commissioners to appoint a special investigator shall set forth in detail the reason such appointment is needed.

(b) At no time shall any firearm be possessed in the offices of the State Board of Elections other than the space designated for the Division of Election Law Enforcement.

(c) For each person designated by the board as a special investigator having peace officer status, the chief enforcement counsel shall provide notice to the commissioners and co-executive directors in January and June of each year as to the status of each peace officer's certifications and training compliance required by section 2.30 of the criminal procedure law.

6203.8 Enforcement Internal Controls

The division of election law enforcement shall annually complete the required internal controls report by the first day of April, and shall provide same to the co-executive directors. Such report shall be filed by the co-executive directors with the Division of Budget and/or the Office of the State Comptroller as required by law with such reports from all other units or divisions comprising the state board of elections.