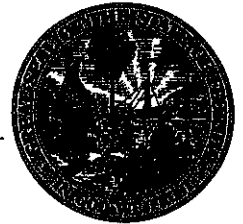




Florida Elections Commission



Frequently Asked Questions

Who can file a complaint with the Florida Elections Commission?

Any person having personal information or information other than hearsay regarding alleged violations of Chapters 104 and 106, Florida Statutes, can file a complaint. The Commission cannot investigate an alleged violation until it receives a legally sufficient sworn complaint. See Section 106.25(2), Florida Statutes.

How do I file a complaint with the Florida Elections Commission?

You can download a copy of the Commission's complaint form from its website. Pursuant to Rule 2B-1.0025, Florida Administrative Code, your complaint must meet the following criteria in order to be considered sufficient:

- a. The Commission's complaint form has been used, and all information requested by the form has been provided on the form;
- b. A single respondent has been named in the complaint. A complaint cannot be filed against more than one person;
- c. The complaint has not been submitted anonymously;
- d. All exhibits or attachments referenced in the complaint have been included with the complaint;
- e. The complaint was signed by the complainant under oath in the presence of a notary public or other person authorized by law to administer oaths;
- f. The complaint contains the original signature of the complainant;
- g. The complaint alleges a violation of Chapter 104 or 106, Florida Statutes;
- h. The complaint contains specific facts upon which the complainant bases the allegation of a violation of law;
- i. The complaint alleges a violation that occurred within two years of the date the complaint is filed with the Commission; and
- j. The complaint is based on personal information or information other than hearsay.

When completed, mail the complaint with your original signature to the Florida Elections Commission at 107 West Gaines Street, Suite 224, Collins Building, Tallahassee, FL 32399-1050. The Commission will *not* accept faxed or emailed complaints because an original signature is required.

May I file more than one complaint?

Yes. However, if you file more than one complaint against the same person, the Commission is barred from investigating the second complaint if it is based upon facts or allegations that were raised or could have been raised in the first complaint. See Section 106.25(2), Florida Statutes.

When a complaint is filed, what are the restrictions concerning the confidentiality of the complaint?

Every sworn complaint filed with the Commission, and every investigation and investigative report, or other paper of the Commission, and every proceeding of the Commission with respect to a violation of Chapter 104 or Chapter 106, Florida Statutes, is exempt from the public records and open meetings laws until the Commission determines whether there is probable cause or no probable cause that a violation occurred. See Section 106.25(7) and Chapter 119, Florida Statutes.

Confidentiality provisions do not bind the person who filed the complaint. However, confidentiality provisions do bind the person against whom the complaint is filed, unless he or she files a written waiver with the Agency Clerk. See Section 106.25(7), Florida Statutes.

Automatic fine cases are not confidential.

Will the person named in a complaint be told that the complaint has been filed?

Yes. Within five working days of receiving the complaint, Commission staff will review the complaint to ensure that it meets all of the requirements of Rule 2B-1.0025(1), Florida Administrative Code. If the complaint does not comply with any of those requirements or is otherwise incomplete, Commission staff will return it to the complainant and identify the defect(s), which the complainant may then attempt to cure by resubmitting the complaint. See Rule 2B-1.0025(1), Florida Administrative Code.

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If the complaint is not returned, to the complainant as indicated above, within five working days of receiving the complaint, the Commission will mail a copy of the complaint to the personal against whom the complaint is filed. The respondent shall have 14 days after receipt of the complaint to file an initial response, and a determination of legal sufficiency of the complaint may not be made during that time period. If the complaint is determined to be legally insufficient, the complainant and the respondent will be notified. The complainant will have 14 days to correct the stated ground of insufficiency using Form 2, which can be found on the "Forms" tab of the agency web site. If the complainant does not respond or does not provide information that corrects the stated ground of insufficiency, the case will be closed. If the complaint is determined to be legally sufficient, the respondent shall be notified of such finding by letter. See section 106.25(2), Florida Statutes, and Rule 2B-1.0025(2)-(5), Florida Administrative Code.

How long does it take a Florida Elections Commission investigator to complete the investigation of the complaint?

The length of an investigation varies depending on the complexity of the complaint, the number of other cases assigned to the investigator, the cooperation of the person under investigation and other witnesses, and the meeting schedule of the Commission. In addition, the Commission's procedures allow the person under investigation time to respond to the complaint. The investigation of complaints alleging violations of Section 104.271(2) or 104.2715, Florida Statutes, is expedited pursuant to Rule 2B-1.0041, Florida Administrative Code.

Will the person under investigation receive a copy of the report of the investigation?

Yes. After the report of investigation is completed, the Agency Clerk will mail the person under investigation a copy of the report. The person has 14 days to file a response to the report. If the person timely files a response to the investigator's report, the Commission will consider the response when determining probable cause. In addition, the Agency Clerk will mail the person under investigation a copy of the staff recommendation on probable cause, the person under investigation has 14 days to file a response to the staff recommendation. If the person timely files a response to the staff's probable cause recommendation, the Commission will consider the response when determining probable cause. See Section 106.25, Florida Statutes.

In addition to investigating sworn complaints and hearing appeals of automatic fines, does the Florida Elections Commission handle other types of cases?

Yes. The Commission hears cases referred from filing officers where a candidate or committee has failed to file a report or statement, including campaign reports, waivers of campaign reports, annual reports, office account reports, and statements appointing a registered agent. Infrequently, the Commission hears appeals from committees that have been dissolved by its filing officer, and from members of county canvassing boards appealing fines imposed by the Department of State for late certification of election results.

Where can I get an advisory opinion concerning election laws?

For advice concerning the election laws, review the publications of the Division of Elections at its website, <http://election.dos.state.fl.us>, or telephone the Division at (850) 245-6200 and ask for the General Counsel's Office. While the Commission has authority to investigate and adjudicate sworn complaints, it is not authorized to issue advisory opinions. See Section 106.26(13), Florida Statutes.

Can the Florida Elections Commission arrest someone for violating an election law?

An election law violation is a civil, not a criminal, matter. The Commission may impose a civil fine if the Commission finds that a violation has occurred, but the Commission has no authority to arrest someone or send someone to jail or prison. However, there are criminal violations within the Florida Election Code that may be prosecuted by a state attorney.

Why does the Commission investigate some election law violations and fail to investigate others in the same race or community?

The Commission can only investigate alleged violations when a person files a legally sufficient complaint with the Commission or when the Division of Elections refers a matter to the Commission. The Commission has no authority to investigate without a sworn legally sufficient complaint or referral from the Division regardless of how serious the offense.

2B-1.0025 Complaints.

(1) Any complaint alleging violations of the Florida Election Code over which the Florida Elections Commission has jurisdiction may be filed with the Commission.

(a) Within 5 days after receipt of a complaint, Commission staff shall conduct a technical and clerical review of the complaint to ensure that:

1. FEC Form 1, entitled "Complaint," (5/17), which is hereby adopted and incorporated by reference and can be obtained from <http://www.flrules.org/Gateway/reference.asp?No=Ref-08573>, or from the Commission's website at www.fec.state.fl.us, has been used to file the complaint,

2. All information required by FEC Form 1 has been provided, and all instructions on the complaint form have been followed,

3. A single respondent has been named in the complaint,

4. The complaint has not been submitted anonymously,

5. Any exhibits or attachments referenced in the complaint have been included with the complaint, and if multiple complaints have been submitted together, separate copies of exhibits or attachments referenced in each complaint have been attached to the complaint that references those exhibits or attachments,

6. The complaint has been properly signed by the complainant under oath in the presence of a notary public or other person authorized by law to administer oaths; and,

7. The complaint contains the original signature of the complainant.

(b) If a complaint does not comply with any of the requirements of paragraph (1)(a), of this rule, or is otherwise incomplete, Commission staff shall return the complaint to the complainant and identify the defect(s). Commission staff shall provide assistance or information to persons seeking to file a complaint, but shall not encourage, solicit, or discourage the filing of a complaint. Complaints that are returned in accordance with this subsection remain confidential in accordance with Section 106.25(7), F.S.

(c) Commission staff shall assign a case number to each complaint which is not returned to the complainant, and Commission staff shall then deliver the complaint to the executive director in order for the executive director to determine whether the complaint is legally sufficient.

(2) Upon receipt of a complaint from Commission staff after the completion of the technical and clerical review required by subsection (1), of this rule, the executive director shall determine whether the complaint is legally sufficient. A complaint is legally sufficient if it meets the following criteria:

(a) The complaint alleges a violation of Chapter 104 or 106, F.S.;

(b) The complaint contains specific facts upon which the complainant bases the allegation of a violation of law;

(c) The complaint alleges a violation that occurred within two years of the date the complaint is filed with the Commission;

(d) The complaint is based on personal information or information other than hearsay; and,

(e) The complaint otherwise complies with the requirements of paragraph (1)(a), of this rule.

(3) If a person files a second complaint against the same person, the executive director shall determine that the second complaint is legally insufficient, if the second complaint alleges violations that are based upon the same facts or allegations that were raised or could have been raised in the first complaint.

(4) In determining the legal sufficiency of a complaint, the executive director shall consider any document referred to in the complaint and any material Commission staff has obtained in prior Commission investigations. In determining the legal sufficiency of a complaint alleging a violation of the campaign finance laws, the executive director shall also consider documents on file with the filing officer.

(5) When the executive director determines that a complaint is legally insufficient, the complainant and the respondent shall be notified. The notice shall include the reason the complaint is legally insufficient and notify the complainant that he has 14 days to correct the stated ground of insufficiency by filing FEC Form 2, entitled "Additional Complaint Information," (5/17), which is hereby adopted and incorporated by reference and can be obtained from <http://www.flrules.org/Gateway/reference.asp?No=Ref-08574> or from the Commission's website at www.fec.state.fl.us. If the complainant does not respond within 14 days, the executive director shall close the case. If the complainant responds but does not provide information that corrects the stated ground of insufficiency, the case shall be closed. A corrected complaint must also be sworn as required by Section 106.25(2), F.S.

COMPLAINT

The Commission's records and proceedings in a case are confidential until the Commission rules on probable cause. A copy of the complaint will be provided to the person against whom it is brought.

1. PERSON BRINGING COMPLAINT:

Name: _____ Work Phone: (____) _____
Address: _____ Home Phone: (____) _____
City: _____ County: _____ State: _____ Zip Code: _____

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

If you intend to name more than one individual or entity, please file multiple complaints. A person can be an individual, political committee, political party, electioneering communication organization, club, corporation, partnership, company, association, or other type of organization.

Name of individual or entity: _____
Address: _____ Phone: (____) _____
City: _____ County: _____ State: _____ Zip Code: _____

If individual is a candidate, list the office or position sought: _____

Have you filed this complaint with the State Attorney's Office? (check one) Yes No

Are you alleging a violation of Section 104.271(2), F.S.? (check one) Yes No

Are you alleging a violation of Section 104.2715, F.S.? (check one) Yes No

3. ALLEGED VIOLATION(S):

Please attach a **concise** narrative statement in which you list the provisions of the Florida Election Code that you believe the person named above may have violated. The Commission has jurisdiction only to investigate provisions of Chapter 104 and Chapter 106, Florida Statutes. Please include the following items as part of your attached statement:

- The facts and actions that you believe support the violations you allege;
- The names/telephone numbers of persons whom you believe may be witnesses to the facts;
- A copy or picture of any political advertisement(s) you mention in your statement;
- A copy of each document you mention in your statement;
- An explanation of why you believe information you reference from websites is relevant; and
- Any other evidence supporting your allegations.

SEE REVERSE SIDE OF DOCUMENT FOR ADDITIONAL INFORMATION

Any person who files a complaint while knowing that the allegations are false or without merit commits a misdemeanor of the first degree, punishable as provided in Sections 775.082 and 775.083, Florida Statutes.

4. OATH:

STATE OF FLORIDA
COUNTY OF _____

I swear or affirm that the above information is true and correct to the best of my knowledge.

Original Signature of Person Bringing Complaint

Sworn to and subscribed before me this _____ day of
_____, 20 _____

Signature of Officer Authorized to Administer Oaths or Notary Public

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ Or Produced Identification _____

Type of Identification Produced _____

5. IMPROPERLY COMPLETED COMPLAINT FORMS MAY BE RETURNED:

- You **MUST submit this** completed complaint **form** in order to file a complaint.
- You **MUST** complete **ALL FOUR** of the above sections of this form. **DO NOT** leave any blanks.
- You **MUST** submit the **ORIGINAL** complaint form. Copied/faxed/emailed forms are returned.
- Each complaint can only be filed against **ONE PERSON** or **ENTITY**. If you wish to file against multiple parties, you **MUST** submit a complaint form **for each party** you wish to file against.
- **DO NOT** submit multiple complaint forms with one set of attachments applying to multiple complaints. You **MUST** attach **copies** of attachments **to each complaint** to which they apply.
- **MAKE SURE** the alleged violation(s) of **Chapters 104 or 106** occurred within the last **2 years**.
- **MAKE SURE** your complaint is **sworn** and there is **no defect** to the **notarization** in Section 4.