

and in any event within the time during which the contestee must answer the notice of contest. Failure to make proof of service does not affect the validity of the service.

(Pub. L. 91-138, § 3, Dec. 5, 1969, 83 Stat. 284; Pub. L. 104-186, title II, § 211(3), Aug. 20, 1996, 110 Stat. 1744.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-186, § 211(3)(A), struck out “to the House of Representatives” after “for election”.

Subsec. (c)(4), (5). Pub. L. 104-186, § 211(3)(B), struck out “or” at end of par. (4) and inserted “or” at end of par. (5).

§ 383. Response of contestee

(a) Answer

Any contestee upon whom a notice of contest as described in section 382 of this title shall be served, shall, within thirty days after the service thereof, serve upon contestant a written answer to such notice, admitting or denying the averments upon which contestant relies. If contestee is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this shall have the effect of a denial. Such answer shall set forth affirmatively any other defenses, in law or fact, on which contestee relies. Contestee shall sign and verify such answer by oath or affirmation.

(b) Defenses by motion prior to answer

At the option of contestee, the following defenses may be made by motion served upon contestant prior to contestee’s answer:

- (1) Insufficiency of service of notice of contest.
- (2) Lack of standing of contestant.
- (3) Failure of notice of contest to state grounds sufficient to change result of election.
- (4) Failure of contestant to claim right to contestee’s seat.

(c) Motion for more definite statement

If a notice of contest to which an answer is required is so vague or ambiguous that the contestee cannot reasonably be required to frame a responsive answer, he may move for a more definite statement before interposing his answer. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the committee is not obeyed within ten days after notice of the order or within such other time as the committee may fix, the committee may dismiss the action, or make such order as it deems just.

(d) Time for serving answer after service of motion

Service of a motion permitted under this section alters the time for serving the answer as follows, unless a different time is fixed by order of the committee: If the committee denies the motion or postpones its disposition until the hearing on the merits, the answer shall be served within ten days after notice of such action. If the committee grants a motion for a more definite statement the answer shall be served within ten days after service of the more definite statement.

(Pub. L. 91-138, § 4, Dec. 5, 1969, 83 Stat. 285.)

§ 384. Service and filing of papers other than notice of contest

(a) Modes of service

Except for the notice of contest, every paper required to be served shall be served upon the attorney representing the party, or, if he is not represented by an attorney, upon the party himself. Service upon the attorney or upon a party shall be made:

- (1) by delivering a copy to him personally;
- (2) by leaving it at his principal office with some person then in charge thereof; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with a person of discretion not less than sixteen years of age then residing therein; or
- (3) by mailing it addressed to the person to be served at his residence or principal office. Service by mail is complete upon mailing.

(b) Filing of papers with clerk

All papers subsequent to the notice of contest required to be served upon the opposing party shall be filed with the Clerk either before service or within a reasonable time thereafter.

(c) Proof of service

Papers filed subsequent to the notice of contest shall be accompanied by proof of service showing the time and manner of service, made by affidavit of the person making service or by certificate of an attorney representing the party in whose behalf service is made. Failure to make proof of service does not affect the validity of such service.

(Pub. L. 91-138, § 5, Dec. 5, 1969, 83 Stat. 286.)

§ 385. Default of contestee

The failure of contestee to answer the notice of contest or to otherwise defend as provided by this chapter shall not be deemed an admission of the truth of the averments in the notice of contest. Notwithstanding such failure, the burden is upon contestant to prove that the election results entitle him to contestee’s seat.

(Pub. L. 91-138, § 6, Dec. 5, 1969, 83 Stat. 286.)

§ 386. Deposition

(a) Oral examination

Either party may take the testimony of any person, including the opposing party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the contested election case, or for both purposes. Depositions shall be taken only within the time for the taking of testimony prescribed in this section.

(b) Scope of examination

Witnesses may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending contested election case, whether it relates to the claim or defense of the examining party or the claim or defense of the opposing party, including the existence, description, nature, custody, condition and location of any books, papers, documents, or other tangible things and the identity and location of persons having knowledge of rel-

evant facts. After the examining party has examined the witness the opposing party may cross examine.

(c) Order and time of taking testimony

The order in which the parties may take testimony shall be as follows:

(1) Contestant may take testimony within thirty days after service of the answer, or, if no answer is served within the time provided in section 383 of this title, within thirty days after the time for answer has expired.

(2) Contestee may take testimony within thirty days after contestant's time for taking testimony has expired.

(3) If contestee has taken any testimony or has filed testimonial affidavits or stipulations under section 387(c) of this title, contestant may take rebuttal testimony within ten days after contestee's time for taking testimony has expired.

(d) Officer before whom testimony may be taken

Testimony shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(e) Subpena

Attendance of witnesses may be compelled by subpoena as provided in section 388 of this title.

(f) Taking of testimony by party or his agent

At the taking of testimony, a party may appear and act in person, or by his agent or attorney.

(g) Conduct of examination; recordation of testimony; notation of objections; interrogatories

The officer before whom testimony is to be taken shall put the witness under oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. All objections made at the time of examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party served with a notice of deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(h) Examination of deposition by witness; signature of witness or officer; use of deposition

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and the parties. Any changes in the form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the offi-

cer shall sign it and note on the deposition the fact of the waiver or of the illness or the absence of the witness or the fact of refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the committee rules that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(Pub. L. 91-138, § 7, Dec. 5, 1969, 83 Stat. 286.)

§ 387. Notice of depositions

(a) Time for service; form

A party desiring to take the deposition of any person upon oral examination shall serve written notice on the opposing party not later than two days before the date of the examination. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. A copy of such notice, together with proof of such service thereof, shall be attached to the deposition when it is filed with the Clerk.

(b) Testimony by stipulation

By written stipulation of the parties, the deposition of a witness may be taken without notice. A copy of such stipulation shall be attached to the deposition when it is filed with the Clerk.

(c) Testimony by affidavit; time for filing

By written stipulation of the parties, the testimony of any witness of either party may be filed in the form of an affidavit by such witness or the parties may agree what a particular witness would testify to if his deposition were taken. Such testimonial affidavits or stipulations shall be filed within the time limits prescribed for the taking of testimony in section 386 of this title.

(Pub. L. 91-138, § 8, Dec. 5, 1969, 83 Stat. 287.)

§ 388. Subpena for attendance at deposition

(a) Issuance

Upon application of any party, a subpoena for attendance at a deposition shall be issued by:

(1) a judge or clerk of the United States district court for the district in which the place of examination is located;

(2) a judge or clerk of any court of record of the State in which the place of examination is located; or

(3) a judge or clerk of any court of record of the county in which the place of examination is located.

(b) Time, method, and proof of service

Service of the subpoena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpoena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 389 of this title. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.