

the Clerk's communication to the Speaker relating that no testimony has been filed in the contest.

In *Browner v Cunningham*, a 1949 Iowa contested election case (§55.1, *infra*), the contestee's answer was transmitted by the Clerk to the Speaker along with the Clerk's letter relating that no testimony had been received and stating the opinion of the Clerk that the contest had abated.

§ 25. Motion to Dismiss

Today, a failure of the contestant to allege grounds for an election contest is raised by motion to dismiss.⁽⁹⁾ Under the new statute, the burden of proof is upon contestant in the first instance to present sufficient evidence, even prior to the formal submission of testimony under the statute, to overcome the motion to dismiss,⁽¹⁰⁾ since exhaustive hearings and investigations should be avoided where contestant cannot make a *prima facie* case.

^{9.} 2 USC § 383(b)(3).

^{10.} See *Tunno v Veysey*, discussed in §§ 35.7, 64.1, *infra*.

Failure to Properly Forward Evidence

§ 25.1 A motion to dismiss will lie where the contestant has not adduced evidence or forwarded testimony to the Clerk's office in the manner prescribed by law.

In the 1945 Michigan election contest of *Hicks v Dondero* (§53.1, *infra*), the Clerk transmitted a letter to the Speaker relating that his office had received packets of material which had not been addressed to the Clerk or adduced in the "manner contemplated by the provisions of the statutes." The election committee's report stated that the contestant had not taken any testimony in support of his notice of contest within the time prescribed by law. Contestee having entered a motion to dismiss, the House adopted a resolution dismissing the contest and declaring the contestee to be entitled to his seat.

Failure to Produce Evidence

§ 25.2 An elections committee may dismiss an election contest for failure of the contestant to transmit evidence taken by him in the matter to the Clerk, as required by law.

In *Shanahan v Beck* (§47.15, *infra*), a 1934 Pennsylvania con-

test, the committee dismissed the contest for failure to transmit evidence to the Clerk, noting that there was no evidence before the committee of the matters charged in the notice of contest, and no briefs filed, as provided by law.

§ 25.3 Where the Clerk of the House receives contestee's motion to dismiss a contest, no evidence having been submitted by either party within the time permitted by law, the Clerk communicates that fact to the Speaker together with the motion to dismiss. This motion may be ordered printed by the Speaker and referred to the Committee on Elections.

In the 1940 Tennessee election contest of Neal v Kefauver (§ 50.1, *infra*), the Speaker laid before the House on Mar. 1, 1940, a communication from the Clerk relating that no testimony on behalf of either party had been submitted within the time permitted by law. Accompanying the Clerk's letter was a motion by the contestee to dismiss the contest. The Clerk's communication and motion by the contestee were referred by the Speaker to an elections committee and ordered printed. The House later agreed to a resolution dismissing the contest and declaring

the contestee to be entitled to the seat.

§ 25.4 A contestee may move to dismiss a contest for failure of the contestant to take testimony after the expiration of the contestant's time for taking testimony, and may renew the motion after the expiration of all time permitted by law.

In the 1951 Missouri contested election case of Karst v Curtis (§ 56.2, *infra*), the contestee moved to dismiss for failure of the contestant to take testimony within 40 days after service of the contestee's answer; and he renewed that motion after expiration of the 90-day statutory period. This, along with the contestant's letter informing the committee of his desire to discontinue further action after a recount failed to disclose any alleged discrepancies in the voting was cited in the committee report recommending the adoption of a resolution, which the House agreed to, that the contest be dismissed.

§ 25.5 Where the contestant fails to take testimony within the statutory time limits for taking such testimony in a contested election, an elections committee may dismiss the contest upon motion by the contestee.

In the 1963 Minnesota contested election case of Odegard v Olson (§60, *infra*), the contestee moved to dismiss, claiming that the 40-day period for gathering evidence by contestant had expired and that no evidence had been obtained and forwarded to the Clerk as provided under 2 USC: §§203, 223, and that therefore no contest existed. The elections committee found that the contestant "had abandoned the statutory procedure which established a specific time within which to develop evidence. . . ." By majority vote, the committee concluded that the contestee's contention should be sustained on the grounds that the contestant "failed to comply with the statutes in that he did not take testimony as provided by law and that the time limit for taking such testimony has now expired."

Motion to Dismiss as Premature

§ 25.6 Contestee's motion to dismiss will be denied as premature although made at a time when there is no evidence actually before the election committee, where it appears that testimony adduced under the election contest statute has not yet been printed or transmitted

by the Clerk to the committee.

In the 1959 Kansas contested election case of Mahoney v Smith (§58.2, *infra*), the Committee on House Administration concurred in the election subcommittee's denial of contestee's motion to dismiss the contest "for the reason that it was impossible at that early date to evaluate the merits of the case or rule on the testimony." There was no evidence before the committee because the testimony adduced under the contest statute had not yet been printed or transmitted by the Clerk to the committee.

§ 26. Motion for More Definite Statement

A motion for more definite statement is permitted under the Federal Contested Elections Act. It provides that 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 must point out the defects complained of and the details desired. If the motion, which is heard by the Committee on House