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Administration, is granted, and the order of the committee is not obeyed by contestant within the time required, the committee may dismiss the action or make such other order as it deems just.[11]

H. TAKING OF TESTIMONY; DEPOSITIONS

§ 27. Generally; Time

Under the Federal Contested Elections Act, either party may take the testimony by deposition of any person, including the opposing party, either for discovery purposes or for use as evidence in the case or for both purposes.[12]

Contestant may take testimony within 30 days after service of the answer, or, if no answer is served, within 30 days after the time for answer has expired. Contestee may take testimony within 30 days after contestant's time for taking testimony has expired. Ten days is permitted for the taking of rebuttal testimony.[13]

The testimony must be taken before an officer authorized by law to administer oaths.[14]

A party desiring to take a deposition must serve written notice on the opposing party not later than two days before the examination, unless the parties stipulate in writing to the contrary.[15]

Where a witness who has been subpenaed under the Federal Contested Elections Act willfully makes default, or refuses to answer a pertinent question, he is subject to both fine and imprisonment.[16]

Except for the time for serving and filing a notice of contest, the Committee on House Administration, for good cause shown, may at any time in its discretion order a period enlarged if request therefor is made before the expiration of the period originally prescribed or ordered; or, on motion made after the expiration of the specified period, it may permit the act to be done where the failure to act was the result of excusable neglect.[17]

11. 2 USC § 383(c).

12. 2 USC § 386(a).

13. 2 USC § 368(c).

14. 2 USC § 386(d).

As for pay of witnesses subpenaed to appear before the House or any of its committees, see Rule XXXV, *House Rules and Manual* § 931 (1973).

15. 2 USC § 387 (a), (b).

16. 2 USC § 390, authorizing a fine of not more than $1,000 or imprisonment of not more than 12 months, or both.

17. 17. 2 USC § 394(c).

Dismissal for Failure to Take Testimony Within Statutory Period

§ 27.1 Failure to take testimony within the time required by law and committee rules governing contested elections results in dismissal by the House of contestant's notice of intention to contest an election.

In 1949, in the Iowa contested election of Browner v Cunningham (§ 55.1, infra), the House agreed without debate to dismiss the contest after more than 90 days had elapsed from the filing of notice and no testimony "of any character, kind, or nature," according to the committee report, had been received by the Clerk in support of the allegations set forth in the notice of intention to contest the election.[18]

§ 27.2 If the testimony is not taken within the time and in the manner required by statute, a motion to dismiss will lie.

In Hicks v Dondero (§ 53.1, infra), a 1945 Michigan contest, the contestant submitted copies of transcripts of testimony taken before a local Michigan canvassing board prior to the initiation of the contest. This material was not received by the Clerk within the time prescribed by law, and had not been properly addressed or transmitted. Contestee's motion to dismiss the contest, and contestant's affidavit in opposition to that motion, were filed. A resolution dismissing the contest was agreed to by voice vote and without debate.

§ 27.3 Contestant, a candidate for the party nomination in the primary but not in the general election, failed to take testimony within the time prescribed by law.

In the 1951 Georgia contested election case of Lowe v Davis (§ 56.3, infr), the Committee on House Administration unanimously recommended the adoption of a resolution, to which the House subsequently agreed, that the contest should be dismissed. The report states that the contestant did not comply with the procedural statutory time requirements for conducting a contest, specifically the taking of testimony pursuant to 2 USC § 203.[19]

§ 27.4 Where no testimony has been taken within the time

18. See also Fuller v Davies (§ 55.2, infra), and Thierry v Feighan (§ 55.4, infra), contests from New York and Ohio, respectively, which were settled by the same resolution for the same reason.

19. Now 2 USC § 386.

prescribed by law and contestee alleges that the notice of contest does not specify with particularity the grounds upon which the contestant relies, the House has agreed to dismissal of a contest without debate.

In Roberts v Douglas (§ 54.4, infra), a 1947 California contest, the Clerk transmitted the notice of contest to the Speaker. (The contest appeared to have abated as neither party had taken testimony within the time prescribed.) The Speaker referred the letter, the notice of contest, a motion for dismissal from the contestee and a letter from her attorney in support thereof, to the Committee on House Administration. Subsequently the House dismissed the contest on a voice vote and without debate.

§ 27.5 A motion to dismiss is available to contestee where the contestant has failed to take testimony within the time prescribed by law, even though contestee's answer to the notice was not filed within the required period.

In Woodward v O'Brien (§ 54.6, infra), a 1947 Illinois contest, the House dismissed the contest after contestee had moved to dismiss on the grounds that no testimony had been taken by contestant, during the prescribed period, though such motion recited that contestee had not filed his answer within the time required by statute.

Failure to Forward Testimony to Clerk

§ 27.6 A failure to forward testimony to the Clerk within the 30-day period was raised in a letter to the House as a bar to prevent contestant from continuing with the contest, but this request was not considered by the elections committee.

In Clark v Nichols (§ 52.1, infra), a 1943 Oklahoma contest, the contestee requested the House to prevent contestant from proceeding with the contest because of his failure to comply with the 30-day period, as required by law (former 2 USC § 231); the committee did not consider the request that contestant be barred from continuing the contest, but nevertheless recommended that the contest be dismissed on other grounds.

Extensions of Time for Taking Testimony

§ 27.7 Where testimony is taken pursuant to a con-

tested elections statute, and the contestee is charged with a wide variety of statutory violations, an elections committee may conclude that it cannot properly decide the contest without the taking of further testimony.

In Lanzetta v Marcantonio (§ 48.1, infra), a 1936 New York contest, contestee was charged with violations of "nearly all of the elections laws including intimidation of voters, violation of the Corrupt Practices Act, illegal and excessive expenditure of money, failure to account for various contributions, and inciting and leading riots." The committee concluded that it could not properly decide the contest without causing further testimony to be taken, and that further testimony could not be taken due to the approach of adjournment *sine die* of the 74th Congress.

§ 27.8 The statutory period during which a contestant is permitted to take testimony is tolled during the time that ballots sought to be subpenaed by his appointed official are in the custody of a court and unavailable.

In Kunz v Granata (§ 46.2, infra), a 1932 Illinois contest, the question arose as to whether the statutory period allowed for the taking of testimony had expired. The contestant had applied for an appointment of a notary public to obtain testimony on his behalf, and he in turn had served a subpena upon the election officials requiring them to produce ballots and certain other materials pertaining to the election. These actions proved ineffective, however, because contestee's counsel had obtained a court order impounding the ballots cast in the election. Under these circumstances, the elections committee majority concluded that the ballots were "in custodia legis" and that the time during which the ballots were so held should not be considered in determining the statutory period in which the contestant was allowed to take testimony.

§ 27.9 An elections committee may give consideration to testimony laid before it by the Clerk pursuant to the election contest law, though not taken within the time required by the statute, where the committee finds justification for the delay.

In Lanzetta v Marcantonio (§ 48.1, infra), a 1936 New York contest, more than 4,000 pages of testimony and exhibits were taken, but the testimony of con-

testant was not taken until after the expiration of the 90-day period prescribed by former section 203, title 2 of the United States Code. The Clerk did not order printed that portion of the testimony taken after the expiration of the required time, but the elections committee, having found some justification for the delay, considered all testimony that was made available to it by the Clerk.

§ 27.10 An extension of time for taking testimony, may be in the form of a resolution granting a total of 65 days, with the contestant to take testimony during the first 30 days, the contestee to take testimony during the succeeding 30 days, and the contestant to take testimony in rebuttal during the remaining five days.

See the 1943 Illinois election contest of Moreland v Schuetz (§ 52.3, infra), where the House agreed to a resolution extending the time allowed for taking testimony to 65 days, based on a showing of "good cause" by the contestant.

Extensions of Time for Good Cause

§ 27.11 An extension of time for the taking of testimony for an election contest will be granted only upon a showing of good cause.

In Moreland v Schuetz (§ 52.3, infra), a 1943 Illinois contest, good cause for an extension of time was shown where contestant alleged certain irregularities in the counting of write-in votes and "split-ticket" ballots, but was unable to establish such allegations within the time required by law, because the election officials involved were unavailable.

§ 27.12 Extensions of time for taking testimony were based on the fact that time was needed to prepare an application for a recount.

In Sullivan v Miller (§ 52.5, infra), a 1943 Missouri contest, contestant, based on time consumed by both parties in preparing a joint application for recount, asked for 40 additional days in which to prepare testimony and for 40 days thereafter for contestee to take testimony. The House adopted a resolution based on a committee's recommendation that each party be given a 30-day extension of time for taking testimony, with an additional five days for contestant to compile rebuttal testimony.

§ 27.13 The sufficiency of reasons shown for granting ad-

ditional time to take testimony may be referred to an elections committee.

In the 1957 Iowa election contest of Carter v LeCompte (§ 57.1, infra), the contestant petitioned the House for an additional 20 days to take testimony. The request was ultimately referred to the Subcommittee on Elections which considered the House precedents on the requested extension before unanimously determining that the contestant had shown insufficient reasons for the extension. The Committee on House Administration unanimously adopted the subcommittee opinion. No formal report on the issue was made to the House.

Subsequent Authorization for Informal Extension

§ 27.14 The Committee on House Administration has informally granted extensions of time to parties in a contest for taking testimony without the House having adopted a resolution to that effect, and has subsequently authorized such extensions in its final report.

In Wilson v Granger (§ 54.5, infra), a 1948 Utah contest, the delay of over a year by the parties in filing the required papers with the Clerk as provided by statute is explained merely by the statement in the report that "the extensions of time heretofore granted in this contest by the Committee on House Administration are hereby authorized and approved."

Stipulation of Parties for Extension of Time

§ 27.15 The parties to a contest may agree to a stipulation ret questing an extension of time for the contestant to compensate for an adjournment taken at the contestee's request.

In the New York contested election case of Macy v Greenwood (§ 56.4, infra), arising out of the 1950 election, the contestant, at the contestee's request, adjourned the calling of two witnesses for six days during the 40-day period allotted for the taking of testimony under 2 USC §§ 201 et seq. Both parties had thus agreed to a compensatory extension of six days, subject to approval by the House. The House agreed by resoltion tn the extension.

§ 28. Examination of Parties and Witnesses

The officer before whom the testimony is taken puts the witness