

ual who has been elected to either of such offices but has not taken the oath of office.

(f) The term “Clerk” means the Clerk of the House of Representatives of the United States.

(g) The term “committee” means the Committee on House Administration of the House of Representatives of the United States.

(h) The term “State” includes territory and possession of the United States.

(i) The term “write-in vote” means a vote cast for a person whose name does not appear on the official ballot by writing in the name of such person on such ballot or by any other method prescribed by the law of the State in which the election is held.

(Pub. L. 91-138, § 2, Dec. 5, 1969, 83 Stat. 284.)

#### CHANGE OF NAME

Committee on House Administration of House of Representatives treated as referring to Committee on House Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of this title.

#### EFFECTIVE DATE

Section 19 of Pub. L. 91-138 provided that: “The provisions of, and the repeals made by, this Act [enacting this chapter and repealing sections 201 to 226 of this title] shall apply with respect to any general or special election for Representative in, or Resident Commissioner to, the Congress of the United States occurring after the date of enactment of this Act [Dec. 5, 1969].”

#### SHORT TITLE

Section 1 of Pub. L. 91-138 provided that: “This Act [enacting this chapter and repealing sections 201 to 226 of this title] may be cited as the ‘Federal Contested Elections Act’.”

### § 382. Notice of contest

#### (a) Filing of notice

Whoever, having been a candidate for election to the House of Representatives in the last preceding election and claiming a right to such office, intends to contest the election of a Member of the House of Representatives, shall, within thirty days after the result of such election shall have been declared by the officer of Board of Canvassers authorized by law to declare such result, file with the Clerk and serve upon the contestee written notice of his intention to contest such election.

#### (b) Contents and form of notice

Such notice shall state with particularity the grounds upon which contestant contests the election and shall state that an answer thereto must be served upon contestant under section 383 of this title within thirty days after service of such notice. Such notice shall be signed by contestant and verified by his oath or affirmation.

#### (c) Service of notice; proof of service

Service of the notice of contest upon contestee shall be made as follows:

- (1) by delivering a copy to him personally;
- (2) by leaving a copy at his dwelling house or usual place of abode with a person of discretion not less than sixteen years of age then residing therein;
- (3) by leaving a copy at his principal office or place of business with some person then in charge thereof;

(4) by delivering a copy to an agent authorized by appointment to receive service of such notice; or<sup>1</sup>

(5) by mailing a copy by registered or certified mail addressed to contestee at his residence or principal office or place of business. Service by mail is complete upon mailing;<sup>1</sup>

(6) the verified return by the person so serving such notice, setting forth the time and manner of such service shall be proof of same, and the return post office receipt shall be proof of the service of said notice mailed by registered or certified mail as aforesaid. Proof of service shall be made to the Clerk promptly 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.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 383, 394 of this title.

### § 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

<sup>1</sup> So in original. The “or” at the end of cl. (4) probably should appear at the end of cl. (5).

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.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 382, 386 of this title.

**§ 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 relevant 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.