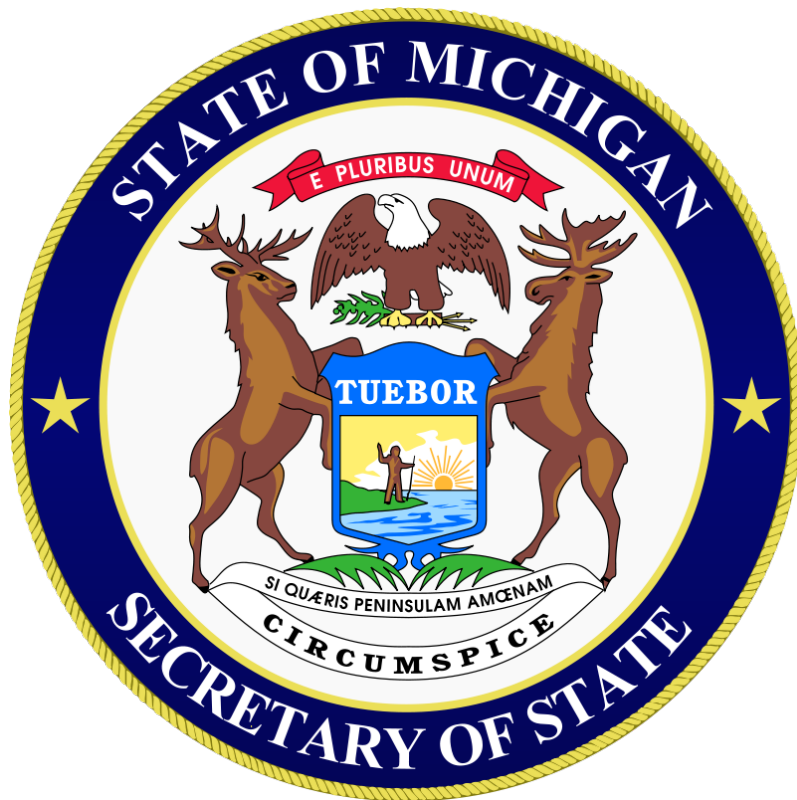


Guidebook for Complainants and Respondents on the
Campaign Finance Complaint Process



Bureau of Elections

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Introduction

The purpose of this guidebook is to assist complainants and respondents and educate the public concerning enforcement matters filed under Section 15 of the Michigan Campaign Finance Act (MCFA or Act) with the Michigan Department of State (Department). This guidebook summarizes the Department's general enforcement policies and procedures and provides a step-by-step guide through filing a complaint with the Bureau and the complaint process as a whole.

This guidebook does not replace the law, change its meaning, or create any rights for or against any person. Nor does it bind the Department in a specific manner. It is intended to provide guidance and be a general reference guide through the process. It is not intended to be an exhaustive list of procedures and does not attempt to address every situation that may arise during the complaint process.

In addition to the MCFA, everyone should consult the Department's [administrative rules](#) that have been promulgated, the [Declaratory Rulings and Interpretive Statements](#) issued by the Department, [previously resolved complaints](#), and relevant case law.

From the outset, please note:

- Except as noted under section 57 of the Act, there is no private right of action under the Act and the remedies for potential violations are specifically outlined in the Act. The Department has the exclusive authority over compliance matters under the Act unless specifically noted in section 17.
- The designation of “complainant” and “respondent” are based upon who files the complaint (complainant) and the person the complaint is filed against (respondent).
- The Department's investigative process is carried out through the Bureau of Elections and is governed by [Section 15](#) of the Michigan Campaign Finance Act (MCFA or Act) along with part 5 of the Department's [administrative rules](#).
- All documents – including emails – sent or received by the Department may become part of the Department's permanent public record and posted on the Department's website.

I. Complaint Requirements

Section 15 governs the filing and processing of complaints. The complaint must include all of the following:

- The complainant’s name, address and telephone number
- Respondent’s name and address
- A description of how the MCFA was violated
- Evidence supporting the allegation
- The certification statement as outlined in Section 15(6)
- The complainant’s signature

The failure to submit a complaint that furnishes all of the above must result in a dismissal. In the dismissal, the complainant will be notified of which required elements are missing, be provided a copy of the Department’s created form, and provided the opportunity to correct the missing information.

Use of the Department’s form is not mandatory, but it helps ensure compliance with the Act’s requirements.

II. Submitting the Complaint

Pursuant its authority under the Act, the Department has developed a form for the filing of campaign finance complaints. This section walks through the forms requirements and how to fill out the form. Copies of the form are available on the Department’s [website](#).

Section 1: Complainant Information

First, the person filing the complaint must fill out section 1.

This section requests the complainant provide his or her name, mailing address, and contact information. An email address is requested but is not mandatory.

Should an email address be provided, the Department will communicate via email.

Section 1. Complainant		
Your Name	Daytime Telephone Number	
Mailing Address		
City	State	Zip
Email (optional)		

Except for an email address, these sections are mandatory. MCL 169.215(6)(a)-(c). Failure to fill out the required information may result in a dismissal. Please note the Department cannot investigate anonymous complaints.

Section 2: Respondent Information

Section 2 requires the complainant fill out the alleged violator’s information. At a minimum, this section should contain the respondent’s name and mailing address. These sections are required, and the failure to include any of this required information **will** result in a dismissal of the complaint.

If a phone number and email are known, they should also be provided.

Section 2. Alleged Violator		
Name		
Mailing Address		
City	State	Zip
Email (optional)		

Section 3: Allegations

Section 3 requires the complainant provide evidence supporting the allegations in the complaint. If more space is needed, you may use additional sheets.

Section 3. Allegations (Use additional sheets if more space is needed.)

Section(s) of the MCFA alleged to be violated: _____

The first question asks the filer to indicate which section of the MCFA is alleged to be violated. While not required, this assists the Department in identifying potential violations. The answer to this question should cite a provision of the [Michigan Campaign Finance Act](#). The Department cannot investigate claims brought under any other act (e.g. Michigan Election Law).

Explain how those sections were violated:

The second section provides space for the complainant to explain how the section(s) of the MCFA identified in the first question has been violated. In this section, the complainant should describe in reasonable

detail the alleged violation and identify any and all legal arguments that support his or her position. The Department must provide the allegations to the respondent, and allegations that were available at the time of the complaint but not submitted at the time of filing may not be considered in later stages of the complaint process. Complaints should be as factually specific as possible.

Evidence included with the submission of the complaint that supports the allegations:

The final question asks the complainant to identify the evidence that is being submitted that supports the allegations in

the complaint. All available evidence is required to be identified and submitted per the Department’s administrative rules. R. 169.52(2).

If the allegations in the complaint are based in whole or in part upon information contained in an advertisement, news article, or website, the complaint should provide a copy of the relevant advertisement, news article, or link to the website, if possible. If the complaint is about specific campaign material, photocopies or pictures of the material should be provided. Complaints should be filed as soon as possible after the alleged violation becomes known to the complainant in order to preserve evidence as committees are only required to retain records for five years.

In order to be investigated, the burden is placed on the filer to submit any and all available evidence. The Department cannot investigate complaints that do not contain sufficient evidence or complaints that are based upon speculation. If the filer is unable to obtain evidence but is able to make the certification statement contained within section 5 of the complaint, the Department may investigate the complaint.

Sections 4 & 5: Certification

Once the complainant has completed sections 1-3, the complainant must sign the verification statement contained within either section 4 or 5. If evidence is being submitted with the complaint, the complainant should sign the verification statement in section 4.

Section 4. Certification (Required)

I certify that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this complaint is supported by evidence.

X

Signature of Complainant

Date

Section 5. Certification without Evidence (Supplemental to Section 4)

If, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence as indicated above, you may make the following certification:

If, after a reasonable inquiry under the circumstances, the complainant is unable to obtain evidence, the complainant should sign the verification statement in section 5 providing enough factual allegations to warrant investigation.

I certify that to the best of my knowledge, information, or belief, there are grounds to conclude that the following specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. Those specific contentions are:

A person that files a complaint with a false certification is responsible for a civil violation of the MCFA. MCL 169.215(8). The person may be required to pay a civil fine of up to \$1,000.00 and some, or all, of the expenses incurred by the Michigan Department of State and the alleged violator as a direct result of the filing of the complaint.

X _____
Signature of Complainant Date

Section 6: Submission

Upon the completion of the form, the complainant should mail, or hand deliver the complaint form and all evidence to the Bureau of Elections at the following address:

Michigan Department of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 West Allegan Street
Lansing, Michigan 48918

Complaints are considered filed on the date the Bureau receives the submitted form and the evidence. Complaints **must** be submitted to the Bureau and may not be accepted by county or local clerks.

III. The Investigation

Upon the submission to the Department of the complaint, the Department will conduct a preliminary review to determine whether there is sufficient information to warrant an investigation or whether the complaint should be summarily dismissed.

Summary dismissal

If the Department determines that complaint does not warrant an investigation, the complaint will be dismissed. R. 169.53. Some reasons where a complaint would not warrant an investigation include (but are not limited to):

- The complaint is frivolous, illegible, unsigned, or does not contain a verification statement. R 169.53.
- There is no evidence submitted with the complaint. R. 169.52(2).
- The complaint does not contain the form requirements under MCL 169.215(6).
- The violations are brought under other provisions of Michigan law and not the Michigan Campaign Finance Act. R. 169.53.
- The activity alleged in the complaint does not constitute a violation of the MCFA. R. 169.53.

If a complaint is summarily dismissed, the complainant will be notified in writing with the reasons for the dismissal. If the complainant addresses the reasons for dismissal (i.e., by providing new evidence to corroborate the allegation), the complaint may be resubmitted. The Department may dismiss the complaint in its entirety or portions. Alternatively, the Department may issue a warning letter in lieu of investigating.

Successive complaints

If the Department receives multiple complaints which allege the same violation(s) against the same persons regarding the same evidence or activity, the Department may investigate only the first complaint filed and may dismiss any successive complaints. Upon the conclusion of the investigation, any complainant that filed a successive complaint that was summarily dismissed as duplicative will be notified of the resolution.

If the complaints are distinct enough to warrant investigation, the Department may merge complaints and render one determination for the purpose of administrative efficiency. If the complaints are merged, notice of the merger will be provided to all parties involved.

Notice to respondent

If the Department determines the complaint warrants an investigation, the Department will assign the complaint an identification number and mail a written Notice of the Complaint to the respondent. The notice will include the written notice, a copy of the complaint, all submitted evidence, information describing the Department's complaint procedures, and the contact information for the Bureau. MCL 169.215(5). A copy of the notice will also be provided to the complainant. *Id.*

The notice of the complaint alerts the respondent of the Department's intent to investigate the allegations contained within the notice. The Department may dismiss a portion of the claims raised in the complaint. Any claims dismissed, will be described in the notice.

Answering the complaint

The answer is the respondent's opportunity to clarify, correct, or supplement the information contained within the complaint or to otherwise demonstrate to the Department why the Department should not pursue compliance action. There is no prescribed format for answers. While not required, providing documentation or additional evidence or sworn affidavits from persons with first-hand knowledge of the facts, is helpful. It is also helpful for the respondent to directly answer every allegation in the complaint that has not been dismissed by the Department.

The respondent must respond to the notice of the complaint within **15 business days of the date of the notice of the complaint**. MCL 169.215(5). The answer should be submitted to the Department through the Bureau of Elections via mail, or hand delivery at the address provided above. The answer may also be emailed directly to the person investigating the complaint as identified in the Notice of the Complaint.

The respondent may request one 15-business day extension upon a showing of good cause. Requests for an extension should be sent to the Bureau and may be submitted via mail or email. Regardless of the way the extension is requested, the Department will respond via writing.

Failure to respond to the complaint will force the Department to render a determination based solely upon the allegations contained within the complaint.

Representation by counsel

Respondents have a right to be represented by counsel during all or any portion of the complaint process and may designate or change counsel at any point. A respondent who obtains legal representation must inform the Department by providing counsel's mailing address, telephone number, and email address.

This notification is most often done via the filing of the answer, but if counsel is obtained after the answer has been filed, the respondent or counsel must notify the Department as soon as practicable. Once counsel has been obtained, the Department will cease communicating directly with the respondent absent permission from counsel.

Rebuttal

Upon receipt of an answer, the Department will mail an Answer Notice which provides a copy of the answer and all evidence to the complainant. A copy of this notice will also be sent to the respondent. MCL 169.215(5).

The complainant has the final opportunity to respond to the Department via a rebuttal statement. If a complainant elects to file a rebuttal statement, the rebuttal statement should counter any arguments presented in the answer to the complaint. The purpose of the rebuttal is not to present new allegations or evidence.

The rebuttal statement should be submitted via mail, email, or hand delivery to the Bureau of Elections. The rebuttal statement is due **10 business days after the date contained at the top of the Answer Notice**. If a rebuttal is received, it will be mailed to the respondent, with a copy sent to the complainant.

The Department may extend this deadline once by an additional 10 business days upon a showing of good cause. Requests for an extension should be sent to the Bureau and may be submitted via mail or email. Regardless of the way the extension is requested, the Department will respond via writing.

IV. Making a Determination

Upon receipt of the rebuttal statement (or after time has elapsed for the filing of a rebuttal), the Department has 45 business days to determine whether there is reason to believe a violation of the Act has occurred. During this stage of the process, the Department will typically only correspond with the respondent.

Requests for additional information

In order to make a determination, the Department will review all documents submitted with the complaint, response, and rebuttal. The Department may also conduct in-person or telephone interviews with persons, including respondents or third-party witnesses, and make informal requests for information and documents from the parties or third-party witnesses. Staff may also examine relevant information from publicly available sources such as campaign finance reports filed with the Department or county clerks.

Informal resolution

If the Department determines that there is reason to believe a violation of the Act has occurred, the Department is required to endeavor to correct the violation or prevent a further violation through informal methods. MCL 169.215(10).

Informal resolutions include a conference, formal warning letter, or a conciliation agreement. Generally, an offer to informally resolve the complaint will be sent with the initial determination and will only be sent to the respondent.

Conciliation agreements

One method of informal resolution is entering into a conciliation agreement. If the Department enters into a conciliation agreement, the agreement is a complete bar to further action for four years unless the agreement is violated. MCL 169.215(10).

When a determination is made and the respondent receives a conciliation agreement, the respondent should sign the conciliation agreement if he or she accepts the Department's offer to resolve the complaint. The original copy must be mailed back to the Department. The conciliation agreement is considered received upon the receipt of the original by the Bureau of Elections.

Upon receipt of the conciliation agreement, the Department's authorized representative will sign the agreement. The agreement becomes effective upon the Department's signing. A copy of the fully executed agreement will be mailed to all parties and is required to be posted on the Department's website within 30 days of being signed.

Formal resolution

If the Department is unable to reach an informal resolution after 90 business days, the Department is required to either: (1) refer the matter to the Attorney General for enforcement of criminal penalties under the Act; or (2) commence an administrative hearing for enforcement of any civil violation.

If the Department commences an administrative hearing, the Department is authorized to seek a civil fine triple the amount of the improper contribution or expenditure plus up to \$1,000 for each violation of the Act. MCL 169.215(11). Hearings are conducted by an administrative hearings officer in accordance with the procedures set forth in chapter 4 of the [Administrative Procedures Act](#) (APA), 1969 PA 306, MCL 24.271 to 24.287.

A final decision and order issued by the Department after an administrative hearing is subject to judicial review as outlined under the APA. If a civil fine is imposed after a hearing, the Department may commence an action in circuit court to recover the fine.

Posting of file

Upon making a determination, the Department is required to post on its [website](#) whether there may be reason to believe a violation did or did not occur. MCL 169.215(10). Within 30 days of this determination, the Department must post the file. *Id.* At the conclusion of the process, all records that have been gathered during the course of the investigation will be posted online

unless they are exempt under the Michigan Freedom of Information Act. Offers to resolve the complaint and general negotiations **will not** be sent to the complainant and **will not** be posted online.

V. Additional Resources

Summary of Deadlines

<u>Action Item</u>	<u>Due date</u>
Complaint	5 years from date of incident
Notice of complaint or summary dismissal	5 business days from date of receipt
Answer to complaint	15 business days from date of the notice of the complaint (absent extension)
Rebuttal	10 business days from the date of the notice of answer (absent extension)
Determination & online notification	45 business days from date of receipt of rebuttal statement or date rebuttal statement was due if none received.
Posting of entire file	30 days from date of determination
Informal resolution period	90 business days from date of determination
Posting of conciliation agreement	30 days from date of signing

Summary of compliance proceedings (flow chart)

