

UNIVERSITY ELECTIONS COMMISSION
RULES OF PRACTICE & PROCEDURE

Winter 2017

The University Elections Commission is a nonpartisan, independent administrative body within the University of Michigan Central Student Government. Commission Members are appointed by the Student General Counsel with the advice and consent of the University Council.

AUTHORITY

BY ITS AUTHORITY *under CSG Compiled Code § F(2)(e)(i), (ii) and (iii) to assist in the execution of Central Student Government elections, to hear and decide complaints filed under the Election Code, and issue advisory opinions pertaining to election or campaigning activities and rules, the Commission hereby adopts, with immediate effect, the following Rules of Practice and Procedure to govern all matters within its jurisdiction.*

~Adopted by the Commission on February 13, 2017

~ Revised by the Commission on March 9, 2017

MEMBERS OF THE COMMISSION

Election Director: Jacob Pearlman (Ford)

Backup Election Director: Joe Moses (Law)

Commissioners: Marisa Bannon (Law)
Ciara Davis (Law)
Whit Froehlich (Medicine)
Jorge Mancillas (Law)

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PART I – GENERAL PROVISIONS

RULE 1.01 – DEFINITIONS

As used in these Rules:

(a) “Commission” refers to the University Elections Commission.

(b) “Election Code” refers to Article VI of the Central Student Government Compiled Code.

(c) “Party” refers to a complainant or respondent; as used in these Rules it encompasses both complainants and respondents and both individuals and political parties unless otherwise stated.

(d) “Presiding Officer” refers to –

(1) the Election Director if present;

(2) the Backup Election Director if the Elections Director is not present; or

(3) if neither the Election Director, nor the Backup Elections Director is present, a member of the Commission chosen before the start of a hearing by a majority of the members present.

RULE 1.02 – PURPOSE OF THE RULES

These Rules are intended to promote the fair, orderly, and efficient resolution of claims before the Commission. To the extent possible, they shall be construed in accordance with that purpose.

RULE 1.03 – SCOPE OF THE RULES

(a) These Rules –

(1) Shall apply to all proceedings within the Commission’s statutory jurisdiction; and

(2) Supersede and replace any and all rules of procedure, guidance, or practices previously in effect within that jurisdiction.

(b) These Rules shall not be construed to create, reduce, or modify any substantive rights under the Election Code.

(c) To the extent that any Rule—or any portion of any Rule—may be found to violate the Election Code, other provisions of the Compiled Code, or the Constitution of the Student Body of the Ann Arbor Campus of the University of Michigan, the remainder of these Rules shall continue in full force and effect.

RULE 1.04 – EQUITABLE EXCEPTIONS

(a) The Commission may, in its sole discretion, waive the requirements of these Rules (except subdivisions (b) and (c) of this Rule), where –

(1) A party makes a request for such a waiver;

(2) The requesting party has acted in good faith in attempting to abide by these Rules; and

(3) The interests of fair play and substantial justice would be substantially furthered by the exception.

(b) In no case shall the Commission grant a waiver under this Rule without providing the party disadvantaged by such waiver with notice and an opportunity to be heard.

(c) The Commission shall not consider a waiver request filed after a hearing has been held on the matter to which it is related unless failure to do so would result in a manifest injustice.

PART II - PLEADINGS

RULE 2.01 – TIME AND MANNER OF FILING

(a) Any pleading shall be considered filed upon its receipt by the Election Director via email. The Commission shall not accept pleadings filed in any other manner.

(b) Complainant's Brief on the Merits, if one is filed, must be submitted with the Complaint; Respondent's Reply Brief is due 24 hours after being informed of the filing of the Complaint.

(c) Briefs in Support of Motions filed under Rules 2.03 and 2.04 must be filed no later than 12 hours prior to the time scheduled for hearing; Briefs in Opposition to such Motions must be filed no later than 6 hours prior to the time scheduled for hearing.

RULE 2.02 – COMPLAINTS

All complaints must meet the minimum requirements of the Election Code. Complaints failing to meet those requirements may be dismissed under Rule 5.05.

RULE 2.03 – MOTIONS: PERMISSIBLE GROUNDS

(a) A party may move under these Rules to –

- (1) Dismiss, for failure to state a claim, a complaint that does not meet the requirements of the Election Code;
- (2) Exclude evidence propounded by the opposing party;
- (3) Obtain a preliminary ruling as to the admissibility of its own evidence;
- (4) Obtain a continuance under Rule 3.02; or
- (5) Exclude the press or members of the public under Rule 3.08.

(b) A non-party may move to intervene in any proceeding before the Commission, where –

- (1) that non-party has a significant interest in the outcome of the litigation as a whole or the Commission's decision as to any Motion; and
- (2) that non-party's interest is not adequately represented by the parties to the litigation.

(c) Admission of non-party interveners under subdivision (b) of this Rule, and the time allotted to that party for the presentation of their views, are matters of the Presiding Officer's discretion. The Presiding Officer's decision on

these points may be overruled by a majority of the Commission.

RULE 2.04 – MOTIONS: MEANS OF MAKING

(a) Motions may be made on any grounds permissible under Rule 2.03 –

(1) Prior to a hearing, by submitting a written Motion to the Election Director by email; or

(2) At hearing, by–

(A) Objecting to the testimony, argument, or evidence of the opposing party; or

(B) Making an affirmative oral Motion during the time allotted for the presentation of one’s case.

(b) Written Motions must –

(1) Be submitted in writing at least twelve hours prior to the hearing scheduled on the related matter;

(2) Set forth –

(A) The names of the parties to the action;

(B) A short and plain statement of the relief or procedural action requested; and

(C) The grounds for said relief or action in sufficient detail to allow the Commission to make an informed decision.

(c) Regardless of the manner in which a Motion is made, the opposing party must be given notice and an opportunity to be heard on the Motion. Any dispute as to whether a Motion should be granted shall be resolved according to Rule 5.01.

RULE 2.05 – REQUESTS FOR COUNSEL

(a) Parties wishing to be appointed Counsel for any proceeding must affirmatively request Counsel by contacting the Election Director.

(b) Requests for Counsel must be made at the time that a party files a complaint—if that party is the Complainant—or replies to a complaint—if the party is a Respondent.

(c) The filing of a complaint before the Commission shall constitute consent to continuances for the appointment of counsel to the parties.

(d) Nothing in this Rule shall be construed as preventing the parties from retaining counsel on their own initiative.

RULE 2.06 – COUNTERCLAIMS

(a) Any Respondent wishing to assert a counterclaim against allegedly frivolous claims must do so in his/her/its Reply Brief under Rule 3.01.

(b) A Respondent failing to assert a counterclaim in his/her/its Reply Brief—or to file such a brief—shall be deemed to have waived the claim. Waivers under this subdivision shall have preclusive effect under the doctrine of *res judicata*.

(c) Counterclaims may not –

(1) Be asserted against counterclaims; or

(2) Assert any claim other than a contention that the Complaint filed in the related matter is frivolous.

(d) Upon the filing of a counterclaim, the original Complainant in the action shall be given 24 hours to file a Reply.

(e) The filing of a complaint by a Complainant and subsequent filing of a counterclaim by the Respondent shall be considered a consensual waiver of the ordinary requirement that the Commission schedule a hearing within 48 hours of the filing of a complaint.

(f) As counterclaims generally arise out of the same general set of facts, a counterclaim shall be automatically joined with the original action under Rule 5.04.

(g) A party may move to sever a counterclaim from the original action, but such a Motion will only be granted for good cause shown and after providing the opposing side with notice and an opportunity to be heard.

(h) Hearings on matters in which a counterclaim has been asserted shall be extended by one hour to provide each party with thirty minutes to address the counterclaim.

(i) The Commission shall render decisions as to counterclaims in the same written opinion which renders its decision on the underlying complaint unless the counterclaim is severed from the original action under subdivision (g) of this Rule.

PART III - HEARING PROCEDURE

RULE 3.01 – PRE-HEARING BRIEFS

(a) Parties, in their discretion, may file briefs as to their positions in litigation before the Commission.

(b) Briefs filed under this Section may accompany or be part of their Complaint or Reply, or may be standalone documents filed with the Commission.

(c) Briefs filed with the Commission must be simultaneously served on opposing parties or, if applicable, their counsel.

(d) Briefs filed under this Rule, which are not a part of the complaint or reply, must be filed and served on opposing parties no later than six hours prior to the time scheduled for hearing.

RULE 3.02 – CONTINUANCE OR WAIVER OF HEARING

(a) With the consent of all opposing parties, a party may move for and the Commission may grant a continuance of a hearing where the moving party has demonstrated that the date and time scheduled for hearing would cause substantial inconvenience. Moving for or consenting to a continuance under this subdivision shall be considered a waiver of the ordinary 48-hour scheduling requirement in the Election Code.

(b) If any opposing party will not consent to a continuance, a party may move for and the Commission may grant a continuance only where –

(1) Rescheduling the hearing would not violate the 48-hour scheduling requirement in the Election Code;

(2) A party cannot attend the hearing because of an academic commitment or university-sponsored athletic event;

(3) Counsel for any party cannot attend the hearing and –

(A) Alternative counsel is not available for appointment; or

(B) Substituting counsel would cause substantial prejudice to his/her client's case; or

(4) A witness vital to the presentation of the party's case has an unavoidable conflict caused by an academic commitment or university-sponsored athletic event.

(c) With the consent of all opposing parties, a party may move to waive the right to a hearing on a Complaint. The Commission may grant such a Motion if it believes the briefs filed are sufficient to effectively decide the case.

RULE 3.03 – WITNESSES

(a) Any party may call as a witness any person or persons with personal knowledge relevant to the facts at issue in the case at bar so long as their testimony is consistent with the Rules in Part IV.

(b) A party may not call any witnesses to testify as to a question of law.

(c) The Presiding Officer shall swear in all witnesses using the following oath: “Do you swear to tell the truth, the whole truth and nothing but the truth?” Any witnesses refusing to answer this question in the affirmative shall not be permitted to testify unless his or her refusal is based upon sincerely held religious beliefs.

(d) Opposing counsel—or the opposing party if the party is pro se—may recall a witness during his or her affirmative case for the purpose of cross-examination. But the Presiding Officer in his or her discretion may allow said party to conduct that portion of their case immediately following the other party’s direct examination.

RULE 3.04 – OTHER EVIDENCE

A party may present tangible evidence or documents or any other form of evidence so long as it is consistent with the Rules contained in Part IV.

RULE 3.05 – TIMING

(a) As a general matter, a party shall have thirty minutes of presentation time, which may include an optional opening and closing statement, each of which may not exceed five minutes.

(b) As a general matter, the Complainant may reserve as much of his or her time for the presentation of his or her case for rebuttal as he or she desires. The Complainant does not need to state their intention to reserve time for rebuttal; any unused time of the allotted thirty minutes may be used for a rebuttal.

(c) The Presiding Officer may alter the general order of proceedings set forth in this Rule where doing so would increase the efficiency or clarity of proceedings.

RULE 3.06 – QUESTIONING BY THE COMMISSION

Any member of the Commission may question witnesses, parties, or counsel during the presentation of argument or evidence in any case. The time elapsing during the asking of and response to such questions shall count against the time of the party questioned.

RULE 3.07 – RECORD OF PROCEEDINGS

The Commission shall make reasonable efforts to make sure that a record shall be made of every hearing before the Commission either through the use of audio-recording equipment, written transcription, or both.

RULE 3.08 – PUBLIC NATURE OF PROCEEDINGS

(a) Any hearing or proceeding before the Commission shall be open to the public and the press, including the *Michigan Daily*, unless it is demonstrated by clear and convincing evidence that the testimony or argument presented will cause severe embarrassment, prejudice, or inconvenience to an innocent third party (including witnesses).

(b) If the burden of proof required by subdivision (a) is met, the Commission may close the proceeding with the unanimous consent of all voting and non-voting Members.

PART IV – RULES OF EVIDENCE

RULE 4.01 – RELEVANCE

Evidence is relevant if –

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence;
and
- (b) The fact is of consequence in determining the case.

RULE 4.02 – RELEVANT EVIDENCE ADMISSIBLE

Relevant evidence is admissible unless prohibited by these Rules or any other governing provision of law. Irrelevant evidence shall not be admitted.

**RULE 4.03 – UNDUE PREJUDICE; REPETITIVE OR
CONFUSING EVIDENCE**

(a) Evidence shall not be admitted if its probative value is substantially outweighed by a danger of undue prejudice.

(b) The Presiding Officer may exclude evidence that is relevant but is –

- (1) Confusing;
- (2) A waste of time; or
- (3) Unnecessarily repetitive.

RULE 4.04 – CHARACTER EVIDENCE PROHIBITED

No party shall be permitted to offer evidence of a person's character or of that person's character trait(s) as a means of demonstrating that the person acted in accordance therewith.

RULE 4.05 – HEARSAY

Hearsay evidence may be admitted at the discretion of the Presiding Officer, subject to the following principles:

- (a) Documents, including written statements, whose authenticity has been shown or which is plainly apparent shall be presumptively admissible;
- (b) Out of court statements of a party shall be presumptively admissible;
- (c) Other hearsay shall be viewed with skepticism when admitted and should only be allowed if–
 - (1) No other means of presenting the evidence is reasonably available; and
 - (2) The Presiding Officer is persuaded as to its reliability.

RULE 4.06 – MANDATORY DISCLOSURE

(a) A party in any matter before the Commission must, no later than four hours prior to a hearing scheduled in that matter, serve on opposing parties—or opposing parties’ counsel if represented—and the Commission—

(1) Copies of all documents which that party intends to adduce at hearing; and

(2) A list of all witnesses which a party intends to examine at hearing as well as a brief, but complete, description of the facts to which that witness will testify.

(b) Evidence not disclosed under this Rule shall not be admitted at hearing.

PART V – DISPOSITIONS

RULE 5.01 – EVIDENTIARY RULINGS; MOTIONS

(a) Prior to the beginning of the campaign period as defined in the Election Code, the Commission will designate one member of the Commission to rule on any Motions made in writing prior to hearing under Rules 2.03 and 2.04. A non-voting Member of the Commission may be designated under this Rule.

(b) A party may move for en banc consideration of any ruling made under subdivision (a) of this Rule or any evidentiary ruling or ruling on a Motion made by the Presiding Officer at hearing.

(c) A motion made under subdivision (b) of this Rule shall be automatically granted and the Commission may overturn the initial decision of the Member appointed under subdivision (a) of this Rule or the Presiding Officer by a majority vote. Nonvoting members of the Commission shall not vote on reconsiderations under subdivision (b) of this Rule.

RULE 5.02 – FULL OPINIONS

(a) Unless the Commission decides to issue a per curiam opinion under Rule 5.03 or summary dismissal under Rule 5.03, it shall issue an opinion setting out in detail its findings of facts, conclusions of law, and final judgment on any complaint filed.

(b) Opinions issued under this Rule shall be authored by one or more members of the Commission, the author(s) to be assigned by the Presiding Officer. The Opinion issued shall indicate the names of the author and any Member of the Commission, voting or non-voting, joining the opinion. Non-voting Members may be assigned to author opinions for the Commission.

(c) Members not joining the Opinion of the majority of the Commission, whether voting or non-voting, may write a concurring or dissenting Opinion or join such an opinion written by another Member. Such Opinions shall be published and distributed along with the Opinion of the majority.

RULE 5.03 – PER CURIAM DISPOSITIONS

(a) The Commission may issue an abbreviated opinion setting forth only general findings of fact and conclusions of law where a party has failed to file a Reply Brief or appear at hearing or the Commission, in its discretion, determines that more detailed explication is unnecessary.

(b) Opinions issued under this Rule shall be designated as Per Curiam and no author shall be identified.

(c) Opinions shall not be issued under this Rule unless the Commission is unanimous as to the disposition to be ordered and the reasoning for it.

RULE 5.04 – CONSOLIDATION

The Commission may, in its own discretion, consolidate cases or dispositions into a single hearing or opinion where the facts, evidence, and arguments are substantially similar in nature. All parties shall be provided the statutory time to present arguments where matters are consolidated for hearing.

RULE 5.05 – DISMISSAL FOR FAILURE TO STATE A CLAIM

After warning a Complainant and providing time for remedying the issue, the Commission may—either *sua sponte* or on Motion from an opposing party—dismiss a Complaint which fails to meet the requirements of the Election Code by failing to state a claim.

RULE 5.06 – PRECEDENTIAL FORCE

(a) Within an election cycle, any holding of the Commission expressed in a Full Opinion—including Full Opinions on complaints consolidated under Rule 5.04—issued by the Commission shall be binding in all cases before the Commission filed after the date of issuance.

(b) Full Opinions issued in a preceding election cycle shall be persuasive precedent in cases before the Commission.

(c) Decisions issued under Rules 5.01, 5.03 and 5.05 shall be considered persuasive precedent, regardless of whether or not they were issued in the current or a preceding election cycle. The amount of weight given to such Opinions is a matter reserved to the discretion of the Commission.

(d) Any Opinion issued by the Commission—except those issued under Rule 5.01—resolving a complaint on its merits shall render any dispute between the parties to that complaint arising out of the same nucleus of operative facts precluded under the doctrine of *res judicata*.

RULE 5.07 – PUBLICATION OF OPINIONS

All Opinions of the Commission and any written Opinions on Motions filed before hearing shall be distributed to the parties as soon as they are ready for distribution and published on the Commission’s website within a reasonable time thereafter.

PART VI – ADVISORY OPINIONS

RULE 6.01 – WHEN APPROPRIATE

(a) The Commission may, in its discretion, issue an Advisory Opinion–

(1) In response to a petition from a Candidate, Political Party, or any other person authorized to file a complaint by the Election Code made pursuant to Rule 6.03; or

(2) *Sua sponte* if it believes that issuance of an Advisory Opinion would provide useful guidance to Candidates or Parties in an ongoing or future Election.

(b) The Commission may only issue an Advisory Opinion between the confirmation of its Members and the official release of election results in any given semester.

RULE 6.02 – BINDING FORCE

(a) Within an election cycle, an Advisory Opinion issued by the Commission shall be binding in all cases before the Commission filed after the date of issuance, unless a subsequent Advisory Opinion reversed or modified its directives before the conduct complained of in the complaint occurred.

(b) Advisory Opinions issued in a preceding election cycle shall be persuasive precedent in cases before the Commission unless the Commission, by written Order, adopts one or more of them for the current cycle, in which case the adopted Opinions shall have the effect directed by subdivision (a) of this Rule.

(c) Advisory Opinions considered persuasive precedent under subdivision (b) of this Rule shall be given the same precedential weight as Full Opinions issued in preceding cycles under Rule 5.06(b).

(d) An Advisory Opinion may be appealed to the Central Student Judiciary by any affected party in the same manner as any other decision of the Commission.

RULE 6.03 – PETITIONS FOR ADVISORY OPINIONS

(a) Advisory Opinions may be requested under Rule 6.01(a)(1) by filing a Petition with the Election Director setting forth—

(1) The particular question of law within the Commission’s statutory jurisdiction that the petitioner wishes resolved; and

(2) If necessary, sufficient factual information—whether hypothetical or otherwise—to allow the Commission to understand the context of the question.

(b) The Commission shall respond—either with an Advisory Opinion or a Denial—to any Petition under subdivision (a) of this Rule within 36 hours of its filing.

RULE 6.04 – FORM

(a) An Advisory Opinion shall be substantially similar in form to Full Opinions issued under Rule 5.02, except that they need not include any Findings of Fact. They shall be assigned to Members of the Commission for drafting in the same way as Full Opinions, and concurring and dissenting opinions shall be allowed in the same manner as Full Opinions.

(b) An Advisory Opinion shall be styled “*In Re* Petition of [Name of Petitioner]” if it is issued in response to a Petition under Rule 6.03; it shall be styled “An Opinion Concerning Section [Election Code Provision Interpreted] of the Election Code” if it is released by the Commission *sua sponte*.

(c) Denials of a Petition under Rule 6.03 may be issued summarily and need not provide any reason for the Denial.

PART VII – ETHICAL RULES

RULE 7.01 – PARTISAN ACTIVITIES BY COMMISSIONERS

(a) No sitting Member of the Commission, voting or non-voting, shall–

(1) Run for office in a Central Student Government election;

(2) Endorse a candidate or party in a Central Student Government election;

(3) Volunteer or campaign for any candidate or party;

(4) Publically attack or disparage any party or candidate; or

(5) Engage in any activity that would give the appearance of allegiance or support to any party or candidate.

(b) This Rule shall not be construed as prohibiting a Member of the Commission from voting in a Central Student Government Election.

RULE 7.02 – RECUSAL

A Member of the Commission shall recuse him or herself from any proceeding in which –

(a) He or she has a prior relationship with a party or witness in a proceeding that would either–

(1) Prevent the Member from being impartial; or

(2) Give the appearance of partiality or impropriety;

(b) He or she has a financial or other interest in the outcome of the proceeding; or

(c) Any other circumstance might prevent the Member from serving as a neutral and impartial arbitrator or give the appearance of impropriety.