

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 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.)

§ 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 subpena as provided in section 388 of this title.