

Federal Election Commission

§ 201.3

SOURCE: 58 FR 59645, Nov. 10, 1993, unless otherwise noted.

§ 201.1 Purpose and scope.

This part prescribes procedures for handling *ex parte* communications made in connection with public funding, Commission audits, litigation, rulemaking proceedings and the advisory opinion process. Rules governing such communications made in connection with Commission enforcement actions are found at 11 CFR 111.22, while provisions setting forth employee responsibilities under the Commission's Standards of Conduct rules are found at 11 CFR 7.15.

§ 201.2 Definitions.

As used in this part:

(a) *Ex parte communication* means any written or oral communication by any person outside the agency to any Commissioner or any member of a Commissioner's staff which imparts information or argument regarding prospective Commission action or potential action concerning:

(1) Any candidate or committee applying for or participating in the public funding process, or

(2) Any ongoing audit, or

(3) Any pending litigation matter, or

(4) Any pending rulemaking, or

(5) Any pending advisory opinion request.

(b) *Ex parte communications* does not include the following communications.

(1) Statements by any person publicly made in a public forum; or

(2) Statements or inquiries by any person limited to the procedural status of an open proceeding involving an application for public funding, a rulemaking, an advisory opinion request, an audit being conducted pursuant to 26 U.S.C. 9007 (a) and (b), 9008 (g) and (h), or 9038 (a) and (b), or a litigation matter.

(c) *Commissioner* means an individual appointed by the President to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

(d) *Commissioner's staff* means all individuals working under the personal supervision of a Commissioner including executive assistants and executive secretaries.

§ 201.3 Public funding, audits and litigation: *Ex parte* contacts prohibited.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in Commission decision-making during the public funding process, in audits undertaken by the Commission, and in any litigation to which the Commission is a party, no person outside the agency shall make or cause to be made to any Commissioner or any member of any Commissioner's staff any *ex parte* communication regarding any candidate or committee's eligibility for or entitlement to public funding; any audit; or any pending or prospective Commission decision regarding litigation, including whether to initiate, settle, appeal, or seek certiorari, or any other decision concerning a litigation matter; nor shall any Commissioner or member of any Commissioner's staff entertain any such *ex parte* communications.

(b) The requirements of this section apply:

(1) In the case of public funding, from the time a primary election candidate submits to the Commission the letter required by 11 CFR 9033.1(a), Presidential and Vice Presidential candidates submit to the Commission the letter required by 11 CFR 9003.1, or a committee seeking convention funding registers with the Commission as required by 11 CFR 9008.12(a)(1) or 9008.12(b)(1), until the start of the audit process.

(2)(i) In the case of an audit undertaken pursuant to 26 U.S.C. 9007 (a) and (b), 9008 (g) and (h), or 9038 (a) and (b), from the date of the Commission's letter to a presidential campaign committee, a convention committee, or a host committee asking that it make a pre-inventory check of its records, prior to the commencement of audit fieldwork by the Commission, through the end of the audit process; and

(ii) In the case of an audit undertaken pursuant to 2 U.S.C. 438(b), from the date the Commission's staff circulates a document for Commission approval containing a proposed referral to undertake an audit, until the Commission publicly issues the final audit report.