

## Federal Election Commission

## § 111.18

or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

[45 FR 15120, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

### **§ 111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).**

(a) Upon completion of the investigation, the General Counsel shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether or not the Commission should find probable cause to believe that a violation has occurred or is about to occur.

(b) The General Counsel shall notify each respondent of the recommendation and enclose a copy of his or her brief.

(c) Within fifteen (15) days from receipt of the General Counsel's brief, respondent may file a brief with the Commission Secretary, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, setting forth respondent's position on the factual and legal issues of the case. If possible, ten (10) copies of such brief should be filed with the Commission Secretary and three (3) copies should be submitted to the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(d) After reviewing the respondent's brief, the General Counsel shall advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

[45 FR 15120, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

### **§ 111.17 The probable cause to believe finding; notification (2 U.S.C. 437g(a)(4)).**

(a) If the Commission, after having found reason to believe and after following the procedures set forth in 11 CFR 111.16, determines by an affirmative vote of four (4) of its members that there is probable cause to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, the Commission shall

authorize the General Counsel to so notify the respondent by letter.

(b) If the Commission finds no probable cause to believe or otherwise orders a termination of Commission proceedings, it shall authorize the General Counsel to so notify both respondent and complainant by letter.

### **§ 111.18 Conciliation (2 U.S.C. 437g(a)(4)).**

(a) Upon a Commission finding of probable cause to believe, the Office of General Counsel shall attempt to correct or prevent the violation by informal methods of conference conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(b) A conciliation agreement is not binding upon either party unless and until it is signed by the respondent and by the General Counsel upon approval by the affirmative vote of four (4) members of the Commission.

(c) If the probable cause to believe finding is made within forty-five days prior to any election, such conciliation attempt shall continue for at least fifteen (15) days from the date of such finding. In all other cases such attempts by the Commission shall continue for at least thirty (30) days, not to exceed ninety (90) days.

(d) Nothing in these regulations shall be construed to prevent the Commission from entering into a conciliation agreement with a respondent prior to a Commission finding of probable cause if a respondent indicates by letter to the General Counsel a desire to enter into negotiations directed towards reaching such a conciliation agreement. However, the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe. Any conciliation agreement reached under this subsection is subject to the provisions of subsection (b) of this section and shall have the same force and effect as a conciliation agreement reached after a Commission finding of probable cause to believe.

(e) If a conciliation agreement is reached between the Commission and the respondent, the General Counsel

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shall send a copy of the signed agreement to both complainant and respondent.

### § 111.19 Civil proceedings (2 U.S.C. 437g(a)(6)).

(a) If no conciliation agreement is finalized within the applicable minimum period specified by 11 CFR 111.18(c) the General Counsel may recommend to the Commission that the Commission authorize a civil action for relief in an appropriate court of the United States.

(b) Upon recommendation of the General Counsel, the Commission may, by an affirmative vote of four (4) of its members, authorize the General Counsel to commence a civil action for relief in an appropriate court of the United States.

(c) The provisions of 11 CFR 111.18(c) shall not preclude the Commission upon request of a respondent, from entering into a conciliation agreement even after a recommendation to file a civil action has been made pursuant to this section. Any conciliation agreement reached under this subsection is subject to the provisions of 11 CFR 111.18(b) and shall have the same force and effect as a conciliation agreement reached under 11 CFR 111.18(c).

### § 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

(a) If the Commission makes a finding of no reason to believe or no probable cause to believe or otherwise terminates its proceedings, it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(b) If a conciliation agreement is finalized, the Commission shall make public such conciliation agreement forthwith.

(c) For any compliance matter in which a civil action is commenced, the Commission will make public the non-exempt 2 U.S.C. 437g investigatory materials in the enforcement and litigation files no later than thirty (30) days from the date on which the Commission sends the complainant and the respondent(s) the required notification of the final disposition of the civil action. The final disposition may consist of a

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judicial decision which is not reviewed by a higher court.

[45 FR 15120, Mar. 7, 1980, as amended at 65 FR 31794, May 19, 2000]

### § 111.21 Confidentiality (2 U.S.C. 437g(a)(12)).

(a) Except as provided in 11 CFR 111.20, no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

(b) Except as provided in 11 CFR 111.20(b), no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to 11 CFR 111.18, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission.

(c) Nothing in these regulations shall be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to the Federal Rules of Evidence or Federal Rules of Civil Procedure.

### § 111.22 Ex parte communications.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to 11 CFR part 111, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested 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 relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of any Commissioner's staff make or entertain any such ex parte communications.

(b) The prohibition of this regulation shall apply from the time a complaint