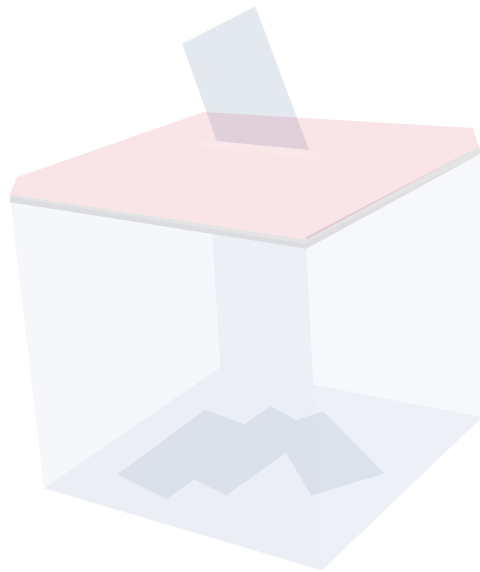




Republic of Liberia
National Elections Commission



HEARING PROCEDURES

October 7, A.D. 2022
Monrovia, Liberia



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§ 1-0. Authority

The National Elections Commission, pursuant to authority granted it by the Liberian Constitution as well as the Elections Law, hereby adopts and issues the following Hearing Regulations.

§ 2-0. Applicability & Citation

2.1. These Regulations shall apply to all hearings or investigations that the National Elections Commission by law or regulations is authorized to conduct.

2.2. These Regulations shall not be construed to limit additional requirements imposed by any provisions of the Elections Law and/or relevant decisional law.

2.3. These regulations may be cited as the "NEC 2022 Hearing Procedures".

§ 3-0. Definitions

3.1. The following words, terms and phrases shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning.

- a) "NEC" means the National Elections Commission of the Republic of Liberia;
- b) "Complainant" or "Plaintiff" means the named party that files a formal complaint with the NEC which forms the basis for the administrative proceeding;
- c) "Respondent" or "Defendant" means the person against whom the allegations in the complaint have been filed;
- d) "Complaint" or "Petition"- the document that initiates the action, setting forth the claims or allegations against the Respondent;
- e) "Hearing Officer" means the person or persons assigned by the NEC to preside over and hear a complaint; contested election case; or other matter assigned;

f) "Continuance" means a postponement of a hearing to a later date;

g) "Date of receipt" means the date on which the NEC receives and files a pleading;

h) "Hearing" or "Investigation" means a proceeding at which evidence and arguments may be presented on the matter at issue to be decided by the assigned Elections Magistrate, Hearing Officer, or Board of Commissioners;

i) "Contested Election Case" means a proceeding in which the manner or result of a public election conducted by the NEC is being challenged;

j) "Affirmation" – solemn undertaking to tell the truth;

k) "Party" – means any party to a proceeding before the Elections Magistrate, Hearing Officer, or Board of Commissioners;

l) "Parties" mean the complainant(s) and respondent(s) collectively;

m) "Service" means the delivery of a notice of assignment or other document to a party or person who is thereby officially notified of some proceeding or matter at the NEC in which the party or person is concerned;

n) "Business day" means any Monday, Tuesday, Wednesday, Thursday and Friday that is not a national holiday;

o) "Ex Parte Communication" means direct or indirect communication in connection with an issue of fact or law between the Elections Magistrate or Hearing Officer and one party only;

p) "Summary Determination" means a final ruling entered on the merit of the case/investigation without a full trial;

§ 4-0. Computation of Time

4.1. Except as otherwise provided herein, computation of any period of time prescribed in these Regulations shall be as follows:

DONE UNDER OUR HANDS AND SEAL OF THE NATIONAL ELECTIONS COMMISSION (NEC), IN THE CITY OF MONROVIA, THIS 17th DAY OF OCTOBER, 2022.

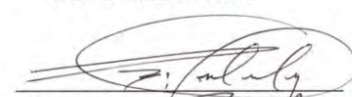
Signed:



Hon. Josephine Kou Gaye
COMMISSIONER



Hon. Floyd Oxley Saylor
COMMISSIONER



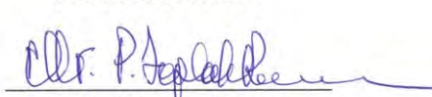
Boakai Amadu Dukuly, Esq.
COMMISSIONER



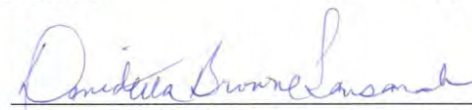
Hon. Barsee Leo Kpangbai
COMMISSIONER



Cllr. Ernestine Morgan-Awar
COMMISSIONER



Cllr. P. Teplah Reeves
CO-CHAIR



Hon. Davidetta Browne Lansanah
CHAIRPERSON

that the decisional process would not be significantly aided by oral argument.

29.9. Members of the Board of Commissioners may ask questions at any time during oral argument. Board member questions apply to the time allotted to a party.

29.10. At the conclusion of the hearing, the Board may uphold, modify or reverse the final ruling of the Elections Magistrate or Hearing Officer, which is the subject of the appeal.

§ 30. Conflict Provision

30.1. In the event of any conflict between a section in these Regulations and another previously adopted and published by the NEC, the sections, terms, requirements in these Regulations shall control.

§ 31. Entry into Force

31.1. These Regulations shall take effect immediately upon publication by the NEC on its website at: www.necliberia.org

a) The calculation of day one, begins on the day of the action.

b) If the last day in the period falls on a Sunday or a National Holiday, the period is extended to the next business day.

§ 5-0. Complaint(s), Filing and Service

5.1. A complaint must be in writing, accompanied by all documentary evidence.

5.2. The complaint shall contain such material fact and necessary particulars so as to give the respondent notice of the particular violations being alleged.

5.3. All complaints shall be signed by the person with legal standing to bring the complaint, and shall include the person's name, telephone number and address where applicable. By signing the complaint, the signer certifies that he or she has read the complaint, and is not filing same for any improper purpose.

5.4. A complaint must be filed at the NEC's headquarters in Sinkor, Montserrado County where applicable, or with the local Elections Magisterial Office (or assigned Hearing Officer) in the County where the occurrence, violation, or claim is alleged to have occurred.

5.5. An intraparty complaint, or any other complaint unrelated to a contested election, shall be accompanied by proof of payment of a non-refundable filing fee of US\$200.00 (Two Hundred United States Dollars) or its Liberian dollars equivalent deposited into the Government of Liberia Revenue account at the Central Bank of Liberia;

5.6. Other than the initial complaint, a party must serve all subsequent pleadings it filed on all parties of record prior to the hearing and keep its proof of service. If a question concerning proper service is raised, the person shall submit proof of service to the presiding.

5.7. Pleadings shall not be served at the bar of the hearing.

§ 6-0. Notice of Hearing

6.1. As soon as practicable after a complaint is filed with the NEC, the assigned Elections Magistrate or Hearing Officer shall issue an initial notice to the parties setting forth the date, time, location, and the purpose of the hearing. A copy of the complaint should be attached to the Notice.

§ 7-0. Answer

7.1. The respondent, after receipt of the complaint, may file an answer prior to the date set forth in the initial notice of hearing.

7.2. A respondent who fails to file an answer or to specifically deny allegations in the complaint shall be deemed to admit only those averments relating to the identity of the parties. All other averments shall be deemed to be denied.

§ 8-0. Amendment of Pleadings

8.1. A party may amend its pleading once at any time before the commencement of hearing/investigation. Commencement of hearing or investigation, means as follows:

(a) Amendment of a complaint: Hearing is deemed to commence when a notice of assignment has been issued for the recording or taking of evidence.

(b) Amendment of a motion, bill of information, or other pleadings: Hearing is deemed to commence when a notice of assignment has been issued for argument/hearing of the said pleading.

8.2. If an amendment introduces new facts, the opposing party may file an amended pleading. If an amended pleading is not filed, the answer or resistance previously on record shall be treated as the response to the amendment.

§ 9-0. Representation

9.1. Any person entitled to participate in a proceeding before the NEC may appear in his or her own behalf; or by and through a lawyer who is in good standing with the Liberia National Bar Association (LNBA).

§ 29. Appearance Before the Board

29.1 All persons attending oral argument before the Board of Commissioners must respect the dignity of the proceedings.

29.2 Any party may challenge a Board Member's impartiality by filing a written statement with the Board, setting forth the specific grounds for recusal. General and unsupported claims of bias, prejudice, or other interest shall not form a basis for recusal. A ruling denying a motion for recusal, being interlocutory, becomes part of the settled records, reviewable by the Honorable Supreme Court on appeal.

29.3. Oral argument is an opportunity for a party to expand upon, and not merely to repeat, its written arguments.

29.4. No more than two lawyers will be heard for each party, unless the Board otherwise determines.

29.5. Parties are allowed time not to exceed 30 minutes each. During oral argument, the Board of Commissioners may direct counsel to conclude prior to the time allotted if the Board understands the issues and determines that further argument is not necessary. The Board may, at the conclusion of the time allotted, permit additional time if necessary.

29.6. The appellant is entitled to open and conclude the argument.

29.7. If counsel for a party fails to appear to present argument, the Board may hear argument on behalf of a party whose counsel is present, and decide the case on the argument heard and all matters of record in the case. If no counsel appears for any party, the case may be decided on the legal memorandums/briefs and all matters of record, unless the Board otherwise determines.

29.8. The Board may dispense with oral argument when the facts and legal arguments are adequately presented in the parties' legal memorandum and record on appeal, and the Board determines

§ 28. Appeal from final ruling;

Time for appeals

28.1. Failure to timely file an appeal is jurisdictional, without which the reviewing tribunal cannot hear the appeal on the merit. Hence, an untimely-filed appeal is deemed to be a waiver of the right of appeal, and as a result the decision or action appealed from is deemed to have been confirmed.

28.2. A party wishing to appeal an Elections Magistrate's or Hearing Officer's final ruling must, in open hearing, take an exception to the ruling and announce an appeal to the Board of Commissioners; and within forty-eight (48) hours from receipt of the said final ruling file its bill of exceptions with the Board of Commissioners.

28.3. A party wishing to appeal a final ruling of the Board of Commissioners in a non-contested election case must first take an exception to the ruling; announce an appeal to the Honorable Supreme Court of Liberia; and within forty-eight (48) hours from receipt of the said final ruling file its bill of exceptions with the Supreme Court.

28.4. If the final ruling of the Board of Commissioners concerns a complaint challenging the manner/result of a public election conducted by the NEC, a party wishing to appeal said final ruling must first take an exception to the ruling; announce an appeal to the Honorable Supreme Court; and within seven (7) days from receipt of the said ruling file its bill of exceptions with the Honorable Supreme Court.

28.5. In all appeals before the NEC, the appealing party's bill of exceptions must contain a concise statement of the case, a specification of the issues upon which the appeal is based, including the precise findings of fact, conclusion, or procedure to which exception is taken.

28.6. The appealing party must serve a copy of the filed bill of exceptions on all parties of record.

9.2. The lawyer must enter a notice of appearance, containing his or her name; LNBA issued license number; office address; and telephone number. A pleading, motion, or other document signed and filed by the lawyer on behalf of the client is deemed the appearance of the lawyer.

9.3. After a notice of appearance has been filed, service of all papers in a proceeding shall be made upon the lawyer whose name appears on the notice of appearance, or at the address indicated on the pleading, and same shall be effective as service on the party represented.

9.4. In a contested election case, a lawyer who has entered an appearance may withdraw from the case, or be substituted for another lawyer only by approval of the Elections Magistrate, Hearing Officer, or the Board of Commissioners where applicable.

9.5. The lawyer's signature on a pleading constitutes a certificate by him or her to the following:

(a) That he or she has read the pleading and that to the best of his or her knowledge, information and belief, there is good ground to support the pleading;

(b) That the pleading is not being presented for any improper purpose;

(c) That the claims, defenses, and other legal contentions are warranted by existing law or jurisprudence;

(d) That the factual contentions have evidentiary support;

(e) That the denials of factual contentions are warranted by evidence, or reasonably based on belief or lack of information.

9.7. Lawyers appearing before the NEC are expected to observe the professional code of conduct, rules and regulations governing their legal profession.

§ 10-0. Consolidation

10.1. In cases involving common issues of law or fact, the assigned Elections Magistrate, Hearing Officer, or Board of Commissioners may order a joint hearing to expedite or simplify consideration of any or all of the issues in such cases.

§11-0. Continuances.

11.1. A request for continuance, made prior to the scheduled hearing, shall be in writing and received by the assigned Elections Magistrate, assigned Hearing Officer, or the Board of Commissioners at least **one (1)** business day prior to the hearing the requesting party is seeking continuance of. All such requests must be supported by information, documentation or both justifying the need for the request, and the requesting party shall serve a copy of the request on all parties of record.

11.2. No request shall be deemed granted unless specifically approved by the presiding; and no proceedings in a contested election case may be continued for more than **two (2)** business days.

11.3. Agreement of counsels is not of itself sufficient cause for the granting of a continuance.

11.4. Conflicting engagements of counsel, whether by reason of an assignment from a trial court, may not constitute sufficient grounds for a continuance of any contested election proceedings, unless the date for the appearance of the lawyer in the conflicting engagement was fixed before receipt of notice of the proceeding before the NEC.

11.5. Where a party is represented by a law firm, unavailability of a lawyer because of engagement in a judicial or administrative proceeding shall not constitute sufficient grounds for a continuance of any contested election case;

Officer may proceed with the investigation, accept evidence relevant to the matter, and rule as in keeping with law. If the ruling is against the respondent, the Elections Magistrate or Hearing Officer shall, sua sponte, enter an appeal on behalf of the absent respondent.

25.3. If the respondent in a non-contested election case fails to appear at the scheduled hearing time, the Elections Magistrate or Hearing Officer may proceed with the investigation, accept evidence relevant to the matter, rule and where applicable sua sponte enter an appeal on behalf of the absent respondent.

§ 26. DECISION IN GENERAL

26.1. The assigned Elections Magistrate or Hearing Officer may issue a ruling orally --on the minutes -- or in writing.

26.2. Other than an interlocutory ruling made on a motion for recusal or change of venue, no other interlocutory ruling of the Elections Magistrate or Hearing Officer shall be brought before the Board of Commissioners for intermediary review.

26.3. A ruling denying a motion for recusal or change of venue may be taken by the dissatisfied party to the Board of Commissioners for review within 48 hours after the dissatisfied party receives the said ruling.

26.4. In a contested election case, the Board of Commissioners may dispense with oral argument and issue an interlocutory decision on the question of recusal or a change of venue based on its review of the pleadings and whatever else is on the record.

§ 27. Closure of Hearing Record

Except as otherwise provided in these Regulations, the record shall be closed at the issuance of the final ruling. Should a dissatisfied party excepts to the final ruling and file its bill of exceptions, the record shall be deemed closed upon receipt of the said bill of exceptions.

23.3. No party may act abusively or disrespectfully during the hearing toward any other party, witness, the Elections Magistrate, Hearing Officer, or to any other individual participating in the hearing;

23.4. Lawyers may not yell, scream, badger, or physically lean-in to another party's or witness's personal space, and may not approach the other party or witness without first obtaining permission from the Elections Magistrate or Hearing Officer;

23.5. The assigned Elections Magistrate or Hearing Officer shall have discretion to determine if the rules of decorum have been violated. Based on the magnitude of the violation, the Elections Magistrate or Hearing Officer may warn the offending person; have him or her removed; or impose a fine in keeping with Section 2.9(w)(iii) of the Elections Law.

§ 24.0. RECORDING OF THE HEARING

24.1 The Clerk shall cause an audio and/or video recording of the hearing/investigation to be made.

24.2. The pleadings, the transcription of the hearing, all exhibits received in evidence, all legal memorandums submitted by the parties, and rulings of the Elections Magistrate or Hearing Officer shall constitute the hearing record. A party of record, requesting a copy of the hearing record, shall superintend the process.

§ 25. Failure to Appear

25.1. If the complainant, having been duly served and returned served, fails to appear at the scheduled hearing time without prior excuse, the assigned Elections Magistrate or Hearing Officer may dismiss the Complaint for abandonment.

25.2. If the respondent in a contested election case fails to appear at the scheduled hearing time, the Elections Magistrate or Hearing

11.6. Before any continuance is granted, the assigned Elections Magistrate, Hearing Officer, or Board of Commissioners must consider:

(a) The public interest in the expeditious disposal of the case, especially in contested election cases; and

(b) Any inconvenience or prejudice to the parties and/or witnesses where applicable.

§ 12.0. Presiding; Powers and Duties

12.1. Hearings/Investigations before the NEC shall be conducted without a jury.

12.2. The assigned Elections Magistrate or Hearing Officer(s) shall have all powers necessary to conduct the hearing including, but not limited to, the following:

a) To rule upon offers of proof and receive evidence;

(b) To regulate the course of the hearing and the conduct of the parties and their lawyer(s);

(c) To hold conferences for simplification of issues, or any other proper purpose;

(d) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(e) To cause each witness to be sworn or to make affirmation;

(f) To limit the number of times any witness may testify; limit repetitious examination or cross-examination of witnesses or the extent to which corroborative or cumulative testimony shall be accepted;

(g) To disallow irrelevant, immaterial or unduly repetitious evidence;

(h) To call witnesses;

(i) To grant continuances;

(j) To rule on matters before him or her in keeping with these Regulations and the Law controlling;

(k) To require legal memorandum and oral arguments to the extent determined necessary;

(l) To impose a fine on a party and/or its lawyer(s) for violations of an order issued by the presiding; for disruptive behaviors; and for any other violation of these Regulations;

(m) To take any other necessary and proper action so as to maintain order at the hearing and ensure an expeditious, fair, and impartial hearing;

(n) To correct clerical mistakes in rulings, orders, decisions or other parts of the record and errors arising from oversight or omission with notice to the Parties.

§ 13.0. Recusal

13.1 Any party, during the pre-trial stage, may challenge the assigned Elections Magistrate's or Hearing Officer's impartiality by filing a written statement before the said Magistrate or Hearing Officer, setting forth the specific grounds for recusal. General and unsupported claims of bias, prejudice, or other interest shall not form a basis for recusal.

13.2. A ruling denying a motion for recusal may be reviewed by the Board of Commissioners as stated herein under Section 26.

§ 14.0. Ex Parte Communications

14.1. An assigned Elections Magistrate or Hearing Officer shall not initiate, permit, or consider ex parte communications, or consider other communications made to him or her outside the presence of all parties or their lawyers, concerning a pending or impending matter.

14.2. If the Elections Magistrate or Hearing Officer inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, he or she shall make provision promptly to

(k) Misconduct of an aggravated character, when engaged in by a lawyer, shall be ground for referral to the Honorable Supreme Court.

§ 21.0. Evidence

21.1. The hearing need not be conducted in accordance with the technical rules of evidence, and strict adherence to courtroom formality is not required;

21.2. 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 action.

21.3. At the request of any party, or on his or her own accord, the assigned Elections Magistrate or Hearing Officer may take administrative notice of any fact that may be judicially noticed by the courts of the Republic of Liberia.

§ 22.0. Burden of Proof

22.1 In a contested election case, the burden of proof shall be on the complainant to show by clear and convincing evidence that but for the alleged irregularity, claim, allegation, or fraud, the outcome of the election would have been different.

22.2. In all other cases, the burden of proof shall be on the complainant to prove its case by a preponderance of the evidence. A preponderance of the evidence means that, based on the relevant and reliable evidence submitted, it is more likely than not that the allegation occurred.

§ 23.0. Decorum, Demeanor

23.1. The assigned Elections Magistrate or Hearing Officer shall require order in the proceedings.

23.2. Parties and/or their lawyers must refer to other parties, their lawyers and witnesses using the name and gender used by the person and shall not intentionally misname or misgender any person in communication or questioning;

Magistrate/Hearing Officer on his or her own initiative, or upon request of a party;

(c) The Complainant shall present its case-in-chief; the Respondent shall be permitted to cross-examine each of the Complainant's witnesses; and the Complainant shall be permitted to re-direct the witness only in respect of matters raised for the first time in cross-examination;

(d) The Respondent may present its case-in-chief, if any; the Complainant shall be permitted to cross-examine each of the Respondent's witnesses; and the Respondent shall be permitted to re-direct the witness only in respect of matters raised for the first time in cross-examination;

(e) The Complainant may give notice to call witness in rebuttal to an issue raised for the first time by the Respondent during the presentation of its case-in-chief; and the Respondent shall be permitted to cross-examine any such rebuttal witnesses called by the Complainant;

(f) In addition to any questions asked during the examination or cross-examination of a witness, the assigned Elections Magistrate or Hearing Officer may ask questions of the witness;

(g) Where there are two or more Respondents separately represented, the order of presentation shall be as directed by the Presiding;

(h) The party calling the witness is not permitted to ask leading questions (i.e., questions which invite a witness to give a particular response) to the witness, unless they are on introductory matters or facts that are not in dispute;

(i) Objections must be timely;

(j) The refusal of a witness to answer questions which have been ruled to be proper shall be ground for striking out all testimony previously given by the witness on related matters.

notify all parties of the substance of the communication and provide the parties with an opportunity to respond.

§ 15.0. Motions in General

15.1. Unless made during the hearing, motions shall be in writing; shall state specifically the grounds therefor; shall describe the action or order sought; and shall be filed as soon as the need or opportunity for the motion becomes reasonably foreseeable.

15.2. A copy of all written motions shall be served on the opposing party prior to the hearing; they may not be served at the bar of the hearing.

15.3. The assigned Elections Magistrate or Hearing Officer shall rule upon motions promptly.

§ 16.0. Motion to Dismiss

16.1. At the time of filing its responsive pleading, the party may file a motion to dismiss on one or more of the following grounds:

(a) Lack of jurisdiction over a claim or the entire action;

(b) Lack of jurisdiction over the respondent;

(c) Lack of capacity to sue;

(d) Lis pendens;

(e) Cause of action or claim barred by the statute of limitations;

(f) Failure to exhaust a political party's, coalition's or alliance's internal procedures/remedies.

16.2. Lack of subject matter jurisdiction; Lack of capacity to sue; or claim that an action is barred by the statute of limitations can be raised at any stage of the proceedings.

§ 17.0. Contested Election;

Summary Determination

17.1. In a matter which challenges the manner and/or result of an election for elective public office, a responding party may move for summary determination in its favor on any issue being investigated on the basis that an allegation, irregularity, fraud, or all of the allegations in a complainant's complaint, even if accepted as true, will not change the outcome of the election.

17.2. The party opposing the motion for summary determination may not rest upon mere allegations or denials, but must show by probative evidence that the alleged claim, irregularity, allegation, or fraud in question is of the magnitude to change the outcome of the election.

17.3. If a timely complaint is filed to the conduct of an election or to conduct affecting the results of the election, and the assigned Elections Magistrate or Hearing Officer determines that the alleged claim, irregularity, allegation, or fraud described in the complainant's complaint, even if true, would not constitute grounds for setting aside the election or change the outcome of the election, the assigned Elections Magistrate or Hearing Officer shall grant the motion for summary determination.

§ 18.0. Subpoenas:

18.1 Both before and during the hearing/investigation, at the request of any party the assigned Elections Magistrate or Hearing Officer may, for good cause shown, issue subpoena for the attendance of witnesses and/or the production of relevant documents in the custody of the NEC.

18.2. The requesting party must specify the materials/ documents it seeks with reasonable particularity; and the material/document sought must be relevant to the party's case as that case is pleaded.

18.3. Once issued, a subpoena may be quashed by the Elections Magistrate or Hearing Officer if it appears that the subpoena is unreasonable or oppressive, or that the testimony, documents, or objects sought are irrelevant, immaterial, or cumulative and

unnecessary to a party's preparation and presentation of its position at the hearing; or that basic fairness dictates that the subpoena should not be enforced. A subpoena shall remain in effect until the close of the hearing or until the witness is excused, whichever comes first.

18.4. Any party requesting a subpoena shall be required to superintend the process.

18.5. The assigned Elections Magistrate or Hearing Officer shall have the power to enforce subpoenas through the imposition of a fine, pursuant to Section 2.9(w)(iii) of the Elections Law.

§ 19.0. Party's Witness

19.1. Prior to the taking of evidence, a party shall provide the assigned Elections Magistrate or Hearing Officer and every other party with:

(a) The list of witness(es) the party intends to call during its case-in-chief; and

(b) A brief statement of the substance of the evidence the witness is expected to testify to at the hearing;

19.2. Before testifying, a witness must take an oath; or make an affirmation to testify truthfully as follows: "I solemnly swear or affirm that the testimony I am about to give shall be the truth, the whole truth, and nothing but the truth."

§ 20.0. Party's Participation During the Hearing

20.1. The order of presentation at the hearing is as follows:

(a) The complainant may make an opening statement and the Respondent may either make an opening statement immediately following the Complainant's opening statement or prior to presenting its case;

(b) The testimony of all witnesses shall be upon oath or affirmation. Witnesses shall be sequestered by the assigned Elections