



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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COMMISSION
SECRETARIAT

2009 JUL 15 P 5:34

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Chairman *Stw*

DATE: July 15, 2009

RE: Modification of Agency Procedure for Probable Cause Hearings

AGENDA ITEM
For Meeting of: 07-16-09

SUBMITTED LATE

Attached is a proposed modification of agency procedure for probable cause hearings.

I have asked to place this draft on the agenda for July 16, 2009.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 [Notice 2009—XX]

3 **Modification of Agency Procedure for Probable Cause Hearings**

4 **AGENCY:** Federal Election Commission

5 **ACTION:** Notice of Modification of Agency Procedure

6 **SUMMARY:** The Commission is modifying its procedures to provide that the
7 Commissioners may ask questions of the General Counsel and the
8 Staff Director, and their staff, during probable cause hearings.

9 **DATES:** The modified hearing procedures will be in effect immediately upon
10 publication in the FEDERAL REGISTER.

11 **FOR FURTHER
12 INFORMATION**

13 **CONTACT:** _____, Assistant General Counsel, or _____,
14 Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694-1650
15 or (800) 424-9530.

16 **SUPPLEMENTARY INFORMATION:** The Federal Election Commission is modifying its
17 procedures to provide that Commissioners may ask questions of the General Counsel and the
18 Staff Director, and their staff, during probable cause hearings.

19 **I. Background**

20 On October 25, 2007, the Commission adopted an agency procedure that made
21 permanent a program that allows respondent in enforcement proceedings under the Federal
22 Election Campaign Act (“FECA”), to have a hearing before the Commission prior to the
23 Commission’s consideration of the General Counsel’s recommendation on whether to find
24 probable cause to believe that a violation has occurred. See Procedural Rules for Probable Cause

1 Hearings, 72 FR 64919 (Nov. 19, 2007) (“PC Hearing Procedures”). In PC Hearing Procedures,
2 the Commission indicated that during probable cause hearings, “[r]espondents (or their counsel)
3 will have the opportunity to present their arguments, and Commissioners, the General Counsel,
4 and the Staff Director will have the opportunity to pose questions to the respondent, or
5 respondent’s counsel, if represented.” PC Hearing Procedures at 64920. The PC Hearing
6 Procedures did not specifically address whether Commissioners could pose questions to the
7 General Counsel and the Staff Director during probable cause hearings.

8 On June 25, 2009, based in part upon its experience with the probable cause hearing
9 program, the Commission adopted a new agency procedure providing committees that are
10 audited by the Commission, pursuant to the FECA, with the opportunity to have a hearing before
11 the Commission prior to the Commission’s adoption of a Final Audit Report. See Procedural
12 Rules for Audit Hearings, 74 FR 33140 (July 10, 2009) (“Audit Hearing Procedures”). In Audit
13 Hearing Procedures, the Commission indicated that during audit hearings, “Commissioners will
14 have the opportunity to pose questions to the audited committee, and Commissioners may ask
15 questions designed to elicit clarification from the Office of General Counsel or Office of the
16 Staff Director.” Audit Hearing Procedures at 33142.

17 **II. Modification of Agency Procedures for Probable Cause Hearings**

18 Consistent with the recently adopted agency procedures for audit hearings, the
19 Commission is modifying its procedures for probable cause hearings to specifically provide that
20 Commissioners may ask questions during probable cause hearings designed to elicit clarification
21 from the Office of General Counsel or Office of the Staff Director. The Commission is not
22 making any other changes to its procedures for probable cause hearings.

23

1 **III. Conclusion**

2 This notice modifies an agency practice or procedure. This notice does not constitute an
3 agency regulation requiring notice of proposed rulemaking, opportunities for public comment,
4 prior publication, and delay effective under 5 U.S.C. § 553 of the Administrative Procedures Act
5 (“APA”). The provisions of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), which apply
6 when notice and comment are required by the APA or another statute, are not applicable.

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On behalf of the Commission,

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Steven T. Walther
Chairman
Federal Election Commission

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DATED: _____

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BILLING CODE: 6715-01-P