F. NOTICE OF CONTEST

§ 20. Generally; Time

Under the Federal Contested Elections Act, a defeated candidate has 30 days in which to initiate a contest; that is, the notice of contest must be filed within 30 days after the result of the election has been declared by the properly authorized officer or Board of Canvassers.[8]

Necessity of Filing Notice of Contest

§ 20.1 An election dispute that is not instituted by notice of contest as required by law is subject to dismissal.

In the 1934 disposition of the Michigan contested election of Bowles v Dingell (§ 47.1, infra), the summary report of the Committee on Elections related that "there was no notice of contest ever filed in said matter, as provided by law." The contest was dismissed. The report accompanied a resolution, which was adopted by the House by voice vote and without debate, providing that the contestant was not entitled to a seat and that the contestee was entitled to a seat in the House.

8. 2 USC § 382(a).

Notice of Contest Filed Late

§ 20.2 The House may, by resolution, permit a contestant to initiate a contest within a certain period of time notwithstanding the expiration of the time permitted by law for the filing of such a contest.

In Brewster v Utterback (§ 47.2, infra), a 1933 Maine contest, the House, by resolution, authorized the Speaker to administer the oath of office to the Member-elect from Maine, and permitted contestant Brewster to contest the seat under the contested elections law notwithstanding the expiration of the time fixed for bringing such contests, provided such contest would be filed within 60 days.

§ 20.3 An elections committee may consider testimony taken pursuant to an amended notice of contest, though such notice was not filed until after the time permitted by law.

In Lovette v Reece (§ 47.11, infra), a 1934 Tennessee contest, contestant filed timely notice of contest on Dec. 17, 1932, to which contestee filed timely answer and motion to dismiss on Jan. 15, 1933. Then, in April of 1933, con-

testant filed an amended and supplemental notice of contest. Although the notice was not filed until after the time prescribed by law for the filing of notice of contest, the committee granted contestant's request that testimony of certain witnesses, taken pursuant to such notice, be printed. The committee found that such evidence failed to support the charges.

§ 20.4 A motion to dismiss an election contest may be brought on the grounds that contestant failed to file notice of contest within the 30-day period required by law.

In McClandless v King (§ 48.2, infra), a 1936 Hawaii contest, contestee moved to dismiss the contest as not having been timely commenced, in that notice of contest was not filed within 30 days after the result of the election had been determined by the official authorized to do so. The Governor of the Territory of Hawaii issued a certificate of election on Nov. 10, 1934. Subsequently, on Nov. 27, 1934, the secretary of the territory canvassed the vote and issued certification thereof. Contestant's notice of contest was filed on Dec. 15, 1934. The general election laws of the Territory of Hawaii in effect at the time of the election provided that the secretary was to declare and certify all election results. Accordingly, the committee reported that the certificate issued by the Governor was without legal effect, and the proper certification was that issued by the secretary, and that the contestant had therefore filed his notice of contest within the 30-day period. Contestee's motion to dismiss was denied.

Commencement of Statutory 30-day Period

§ 20.5 The statutory requirement that the contestant file notice of contest within 30 days after the result of such election shall have been determined has been construed to run from the actual issuance of a certificate of election to the contestee, and not from the date of an official canvass of votes under state law.

In the Maine election contest of Oliver v Hale (§ 57.3, infra), arising from the Sept. 10, 1956, election, the contestee claimed in his answer that the contestant's notice of contest, which notice had been filed on Jan. 2, 1957, was not timely as it was not "within 30 days after the result of such election shall have been determined . . ." as required by 2 USC

§ 201.[9] In deciding against the contestee's claim that the determination date should have been considered as Sept. 26, 1956, the date of the official canvass, the committee ruled that there was no determination under the federal statute until the actual issuance of the certificate to the contestee on Dec. 5, 1956.

§ 21. Service of Notice

Under the Federal Contested Elections Act, the notice of contest must be served on contestee in the manner specified. The notice may be served on contestee by delivery of a copy to him personally or to his authorized agent, by leaving a copy at his home or place of business, or by mailing a copy to him by registered or certified mail.[10]

Service by mail is complete on mailing, and the return receipt from the post office is proof thereof. Proof of service must be made to the Clerk promptly and within the time allowed for contestee's answer, but the failure to do so does not affect the validity of the service.[11]

9. Under the Contested Elections Act of 1969, this section is now 2 USC § 382(a).

10. 2 USC § 382(c), (1)–(5).

11. 2 USC § 382(c), (5), (6).

Substituted Service

§ 21.1 Subsequent valid service of notice of contest renders moot any question of the efficacy of prior attempted "substituted service."

In the 1957 Iowa election contest of Carter v LeCompte (§ 57.1, infra), the official result of the election was not determined until Dec. 10, 1956, but the contestant had earlier served the contestee by "substituted service." The election committee majority decided that the contestant's subsequent personal service on the contestee on Dec. 17, rendered "moot any question as to the sufficiency of the service contemplated by 2 USC § 201."[12]

In the 1957 Iowa election contest of Dolliver v Coad (§ 57.2, infra), the issue arose as to whether "substituted service," as provided under Rules 4(d)(1) and 56(a) of the Federal Rules of Civil Procedure, complied with the requirements of proper service under 2 USC § 201, but the election committee did not decide the issue. Under the present 2 USC 382(c), however, "substituted service" is permissible.

12. This is now 2 USC § 382(a).