

## **Title 7. Elections**

### **Chapter III. State Board of Election Commissioners**

#### **Subchapter C. Complaints**

#### **Part 61. Help America Vote Act Administrative Complaint Procedure**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Rules for Help America Vote Act Administrative Complaint Procedure[, ] Effective July 10, 2003".

#### **Subpart 1. Generally**

##### **7 CAR § 61-101. Scope of rules.**

This part sets forth the procedures for providing uniform and nondiscriminatory resolution of any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002, 52 U.S.C. §§ 21081-21102, Pub. L. No. 107-252, 116 Stat. 1666 (2002), including a violation that has occurred, is occurring, or is about to occur.

**Authority.** Arkansas Code § 7-4-101.

##### **7 CAR § 61-102. Definitions.**

As used in this part:

(1) "Complainant" means any person who:

(A) Believes that a violation of any provision of Title III:

(i) Has occurred;

(ii) Is occurring; or

(iii) Is about to occur; and

(B) Files a complaint with the State Board of Election Commissioners;

(2) "Respondent" means any state or local election official whose actions are asserted, in a complaint filed with the State Board of Election Commissioners, to be in violation of Title III; and

(3) "Title III" means Title III of the Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (2002), codified at 52 U.S.C. §§ 21081-21102.

**Authority.** Arkansas Code § 7-4-101.

**7 CAR § 61-103. Who may file.**

Any person who believes that a violation of any provision of Title III has occurred, is occurring, or is about to occur may file a complaint.

**Authority.** Arkansas Code § 7-4-101.

**7 CAR § 61-104. Form of complaint.**

A complaint shall be in writing, notarized, signed, and sworn by the complainant.

**Authority.** Arkansas Code § 7-4-101.

**7 CAR § 61-105. Filing a complaint.**

(a) **Place for filing.** A complaint shall be filed with the State Board of Election Commissioners.

(b) **Time for filing.** A complaint shall be filed within thirty (30) days after the occurrence of the actions or events that form the basis for the complaint, including the actions or events that form the basis for the complainant's belief that a violation is about to occur, or, if later, within thirty (30) days after the complainant knew or, with the exercise of reasonable diligence, should have known of those actions or events.

(c) **Copy for respondent.** The complainant shall mail or deliver a copy of the complaint to each respondent.

**Authority.** Arkansas Code § 7-4-101.

**7 CAR § 61-106. Processing a complaint.**

(a) **Consolidation.** The State Board of Election Commissioners may consolidate complaints if they relate to the same actions or events or if they raise common questions of law or fact.

(b) **Record.**

(1) The State Board of Election Commissioners shall compile and maintain an official record in connection with each complaint filed in accordance with 7 CAR §§ 61-104 and 61-105 of this part.

(2) The official record shall contain:

(A) A copy of the complaint, including any amendments made with the permission of the State Board of Election Commissioners;

(B) A copy of any written submission by the complainant;

(C) A copy of any written response by any respondent or other interested person;

(D) A written report of any investigation conducted by members or employees of the State Board of Election Commissioners or of any local board of election commissioners, who may not be directly involved in the actions or events complained of and may not directly supervise or be directly supervised by any respondent;

(E) Copies of all notices and correspondence to or from the State Board of Election Commissioners in connection with the complaint;

(F) Originals or copies of any tangible evidence produced at any hearing conducted under subsection (c) of this section;

(G) The original tape recording produced at any hearing conducted under subsection (c) of this section, and a copy of any transcript obtained by:

(i) The State Board of Election Commissioners;

(ii) Any local board of election commissioners; or

(iii) Any other party; and

(H) A copy of any final determination made by the State Board of Election Commissioners under subsection (d) or (e) of this section.

(c) **Hearing.**

(1) At the request of the complainant, there shall be a hearing on the record.

(2) The complainant must submit within thirty (30) days of filing the complaint a written request for a hearing.

(3) The hearing shall be conducted no later than sixty (60) days after the State Board of Election Commissioners receives the complaint.

(4) The Director of the State Board of Election Commissioners shall give at least five (5) business days' advance notice of the date, time, and place of the hearing:

(A) By mail to:

(i) The complainant;

(ii) Each named respondent; and

(iii) Any other interested person who has asked in writing to be

advised of the hearing;

(B) By posting in a prominent place, available to the general public, at the office of the State Board of Election Commissioners.

(5) The director or the director's designee shall act as hearing officer.

(6) The complainant, any respondent, or any other interested member of the public may:

(A) Appear at the hearing and testify; or

(B) Present tangible evidence in connection with the complaint.

(7) Each witness shall be sworn.

(8) The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views.

(9) The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing.

(10) A complainant, respondent, or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.

(11)(A) There shall be no right of cross-examination.

(B) A person may testify or present evidence to contradict any other testimony or evidence.

(C) If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence subsequently presented, that person is not entitled to be heard again, but may make a written presentation to the hearing officer.

(12)(A) The proceedings shall be tape-recorded by the director.

(B) The recording shall not be transcribed as a matter of course, but the State Board of Election Commissioners, a local board of election commissioners, or any party may obtain a transcript at its own expense.

(C) If a local board of election commissioners or other party obtains a transcript, the board or party shall file a copy as part of the record, and any other interested person may examine the record copy.

(13)(A) Any party to the proceedings may file a written brief or memorandum within five (5) business days after the conclusion of the hearing.

(B) No responsive or reply memoranda will be accepted, except with the specific authorization of the hearing officer.

**(d) Final determination.**

(1) If the complaint is not filed timely or in proper form, the State Board of Election Commissioners, acting through the director or the director's designee, shall dismiss the complaint.

(2)(A) If there has been no hearing under subsection (c) of this section, the director or the director's designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established.

(B) The determination of the director or the director's designee shall be the determination of the State Board of Election Commissioners.

(3)(A) At the conclusion of any hearing under subsection (c) of this section, the hearing officer shall determine, under a preponderance of the evidence standard, whether a violation of Title III has been established.

(B) The determination of the hearing officer shall be the determination of the State Board of Election Commissioners.

(4)(A) If the director or the director's designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the State Board of Election Commissioners, acting through the director or director's designee, shall provide the appropriate remedy.

(B) The remedy may include, but is not limited to, a determination directing the respondent to take specified action with respect to a past or future election.

(C) The remedy may not include an award of money damages or attorney's fees.

(5) If the director or the director's designee, whether acting as hearing officer or otherwise, determines that a violation has not occurred or that there is insufficient evidence to establish a violation, the State Board of Election Commissioners, acting through the director or director's designee, shall dismiss the complaint.

(6) The director or the director's designee shall explain in a written decision the reasons for the determination and for any remedy selected.

(7)(A) Either the complainant or the respondent may appeal the decision of the director or the director's designee by submitting a written request to the director within three (3) days of receipt of the decision.

(B) The members of the State Board of Election Commissioners may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence.

(C) In exceptional cases, the State Board of Election Commissioners may request that the parties present additional briefs or memoranda.

(D) The State Board of Election Commissioners shall issue a written decision affirming, reversing, or modifying the decision being appealed within five (5) days of the State Board of Election Commissioners' review.

(8)(A) Except as specified in subdivision (d)(9) of this section, the final determination shall be issued within ninety (90) days after the complaint was filed, unless the complainant consents in writing to an extension.

(B) The final determination shall be mailed to:

- (i) The complainant;
- (ii) Each respondent; and
- (iii) Any other interested person who has asked in writing to be

advised of the final determination.

(C) The final determination shall be:

- (i) Published on the State Board of Election Commissioners' website;

and

- (ii) Made available on request to any interested person.

(9)(A) If a final determination is not made within ninety (90) days after the complaint was filed, or within any extension to which the complainant consents, the complaint shall be referred for final resolution under subsection (e) of this section.

(B) The record compiled under subsection (b) of this section shall be made available for use under subsection (e) of this section.

**(e) Alternate dispute resolution.**

(1) If, for any reason, the director or the director's designee does not render a final determination within ninety (90) days after the complaint was filed, or within any extension to which the complainant consents, the complaint shall be resolved under this subsection.

(2)(A) On or before the fifth business day after a final State Board of Election Commissioners' determination was due, the State Board of Election Commissioners shall designate in writing to the complainant the name of an arbitrator to serve on a panel to resolve the complaint.

(B) Within three (3) business days after the complainant receives this designation, the complainant shall designate in writing to the State Board of Election Commissioners the name of a second arbitrator.

(C) Within three (3) business days after the complainant's designation, the two (2) arbitrators so designated shall select a third arbitrator to complete the panel.

(3) The arbitrator shall be selected from the certified list published by the Arkansas Alternative Dispute Resolution Commission.

(4)(A) The arbitration panel may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence.

(B) In exceptional cases, the panel may request that the parties present additional briefs or memoranda.

(5) The arbitrators shall determine the appropriate resolution of the complaint by a majority vote.

(6)(A) The arbitration panel must issue a written resolution within sixty (60) days after the final State Board of Election Commissioners determination was due under subsection (d) of this section.

(B) This sixty (60) day period may not be extended.

(C) The final resolution of the panel shall:

- (i) Be transmitted to the State Board of Election Commissioners; and
- (ii) Be the final resolution of the complaint.

(D) The final resolution shall be mailed to:

- (i) The complainant;
- (ii) Each respondent; and
- (iii) Any other interested person who has asked in writing to be advised of the final resolution.

(E) The final resolution shall be:

- (i) Published on the State Board of Election Commissioners' website;
- and
- (ii) Made available on request to any interested person.

**Authority.** Arkansas Code § 7-4-101.