

Agency # 108.00

RULES OF PROCEDURE FOR CITIZEN COMPLAINTS REGARDING VIOLATIONS OF STATE ELECTION AND VOTER REGISTRATION LAWS

(Effective February 6, 2004; Revised October 28, 2017)



**State Board of Election Commissioners
501 Woodlane, Suite 401N
Little Rock, AR 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec**

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Scope of Rules

These rules set forth the procedures for providing uniform and nondiscriminatory resolution of any complaint alleging a violation of election and voter registration laws under the jurisdiction of the State Board of Election Commissioners in accordance with Arkansas Code Annotated § 7-4-120.

§ 600 Definitions

(a) “Complainant” means any person who files a complaint with the State Board of Election Commissioners, hereinafter referred to as the “State Board” alleging that a violation of any election or voter registration law under the State Board of Election Commissioners’ jurisdiction has occurred.

(b) “Election laws” means the Arkansas statutes concerning elections conducted by county boards of election commissioners and the rules promulgated by the State Board of Election Commissioners under § 7-4-101 concerning elections conducted by county boards of election commissioners¹.

(c) “Frivolous” means clearly lacking any basis in fact or law.²

(d) “HAVA” is the federal Help America Vote Act of 2002 that established the Election Assistance Commission to assist in the administration of federal elections and allocated federal funds to states for election administration improvements, including replacing punch card and lever voting machines, improving accessibility for voters with disabilities, implementing a statewide voter registration system, voter and election official training, and other improvements.

(e) “Letter of Caution” means a written disposition of an allegation against any person which is advisory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of law.

(f) “Letter of Instruction” means a written disposition of a complaint of an allegation against an election official or county clerk issued in furtherance of the State Board of Election Commissioner’s responsibility to provide training for election officials. A letter of instruction may be issued when the State Board lacks authority to adjudicate a complaint, when the board makes no finding that an election law violation occurred, or when the board determines that a letter of instruction is preferable to a statutory sanction.

(g) “Letter of Reprimand” means a written disposition of an allegation against any person which is condemnatory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of the law. The reprimand will require the respondent to refrain from engaging in the same activity again. A reprimand shall be considered more severe than a caution or warning.

¹ A.C.A. § 7-4-120 as amended by Act 1253 of 2015

² A.C.A. § 7-4-120 as amended by Act 1253 of 2015

(h) “Letter of Warning” means a written disposition of an allegation against any person which is condemnatory in nature, expressing strong disapproval for the respondent’s misconduct and expressing the view that the misconduct undermines public confidence in the integrity of the election process.

(j) “Public Hearing” means a hearing on a complaint by the State Board, open to the public, to adjudicate a complaint.

(k) “Respondent” means any person whose actions are asserted, in a complaint filed with the State Board, to be in violation of any election or voter registration law under the board’s jurisdiction.

(l) “Statutory Sanction” means a letter of caution, warning, or reprimand, or a fine that can be imposed pursuant to the State Board’s statutory authority to sanction violations of election and voter registration laws.

(m) “Voter registration laws” means those laws under Arkansas Constitution, Amendment 51 and the rules promulgated pursuant to Arkansas Constitution, Amendment 51.³

§601 Who May File

Any person alleging that a violation of any election or voter registration law under the State Board’s jurisdiction has occurred may file a complaint. The State Board may file a complaint of its own volition.

§ 602 Form of Complaint

To be considered, a complaint must be in writing, signed, and sworn by the Complainant under penalty of perjury, and must clearly state the alleged election irregularities or illegalities, when and where the alleged activities occurred, and supporting facts surrounding the allegations.⁴

§ 603 Filing a Complaint

A written complaint must be filed with the State Board within thirty (30) days of an alleged voter registration violation or the election associated with the complaint.⁵

³ A.C.A. § 7-4-120 as amended by Act 1253 of 2015

⁴ A.C.A. § 7-4-120(b)(2), (3) as amended by act 1253 of 2015

⁵ A.C.A. § 7-4-120(b)(1) as amended by act 1253 of 2015

§ 604 Processing a Complaint

A. Receipt of Complaint

Upon receipt, every written complaint shall be stamped with the current date, filed, entered upon the complaint docket and a copy forwarded to the director. The director shall determine if the written complaint meets the requirements of a complaint as set forth in §§ 602 and 603.

B. Notice to Respondent

Upon receipt of a complaint, the director shall notify the respondent(s) listed in the complaint that a complaint has been filed against him.

C. Director's Determination of Sufficiency

Insufficient complaint

If the director determines that the written complaint is not timely filed, not in proper form or that the allegations are insufficient to establish a violation of election or voter registration laws under the State Board's jurisdiction, then the director shall make a report stating those findings and summarizing the complaint and any additional evidence known to the director. The director shall send a copy of the complaint and the report to each commissioner by email and, if requested in advance by a commissioner, by first class mail. The director's determination shall be considered to be adopted by the State Board on the seventh business day after the date that the director's determination was sent by email unless, before the seventh business day, any commissioner requests that the board further consider the complaint at a meeting of the board. If the State Board so adopts the director's determination that the complaint fails to meet the requirements of these rules, then the director shall notify the complainant of that determination and the complaint shall be closed.⁶

Desired resolution

If the complaint is otherwise timely filed and proper but does not state a desired resolution, the director shall provide to the complainant notice of the deficiency by letter (regular United States mail) and instruct the complainant that he or she may provide the desired resolution to the State Board by letter (regular mail or overnight delivery service) or email.⁷

Proper complaint

If the director determines that the written complaint is timely, in proper form, and that the allegations, if true, establish a violation of election or voter registration laws under the State Board's jurisdiction, then the director shall make a report stating those findings and summarizing the complaint and any additional evidence known to the director. The report may include a recommendation by the director that the complaint be addressed through documentary

⁶ A.C.A. § 7-4-120(b)(4) as amended by act 1253 of 2015

⁷ A.C.A. § 7-4-120(b)(3)(B)(ii) as amended by act 1253 of 2015

submissions⁸, that it be further investigated⁹, or that it be provided to the proper authority¹⁰. The director shall send a copy of the complaint and the report to each commissioner by email and, if requested in advance by a commissioner, by first class mail. If the director recommends that the complaint be further investigated, that the complaint be addressed through documentary submissions without statutory sanctions, or that the complaint be forwarded to the proper authority, such recommendation shall be considered to be adopted by the board on the seventh business day after the date that the director's determination was sent by email unless, before the seventh business day, any commissioner requests that the board further consider the complaint at a meeting of the board. If the director recommends that the complaint be addressed through documentary submissions with statutory sanctions, the State Board shall consider the director's recommendation in a meeting of the board.

§ 605 Investigations; Determination of Probable Cause;

A. Notice to Respondent

Upon determination that a complaint should be investigated, the director shall notify the respondent of the investigation and nature of the investigation and provide a copy of the complaint or pertinent parts of the complaint to the respondent, along with instructions regarding the opportunity to respond to the complaint.¹¹

B. Director's Investigation Report

Upon completing an investigation, the director shall prepare a report of the investigation for submission to the State Board. The report may include a recommendation by the director that the complaint be addressed through documentary submissions without statutory sanctions, that a letter of instruction be issued, that the complaint be forwarded to the proper authority, or that the State Board meet to consider issuing an Offer of Settlement.

After receipt of the director's report, the director's recommendation shall be considered to be adopted by the State Board on the seventh business day after the date that the director's determination was sent by email unless, before the seventh business day, any commissioner requests that the State Board further consider the complaint at a meeting of the board. Upon further consideration, the State Board may either further investigate the complaint or:

1. Find that probable cause of an election law violation exists;
2. Determine that the complaint be dismissed;
3. Issue a letter of instruction;
4. Refer the complaint to the proper authority; or ¹²
5. Take other appropriate action.

⁸ A.C.A. § 7-4-120(d)(1) as amended by act 1253 of 2015

⁹ A.C.A. § 7-4-120(d) as amended by act 1253 of 2015

¹⁰ A.C.A. § 7-4-120(c)(3), 7-4-120(d)(1) as amended by act 1253 of 2015

¹¹ A.C.A. §§ 7-4-120(b)(6)(B); 7-4-120(d)(2) as amended by act 1253 of 2015

¹² A.C.A. § 7-4-120(d)(1) as amended by act 1253 of 2015

C. Offer of Settlement

If the State Board finds that probable cause exists for a finding of a violation, the board shall issue a written Offer of Settlement to the respondent, stating its findings and the proposed sanctions. The respondent may accept the State Board's Offer of Settlement in writing within ten calendar days of the issuance of the Offer. If the Offer is not accepted, the State Board may call for a full public hearing.¹³

If the State Board does not find probable cause, it shall dismiss the complaint. The State Board may issue a letter of instruction when the complaint and other evidence indicate that such a letter is necessary and proper. Also, the State Board may refer the complaint and any evidence in its possession related to the complaint to the proper authority.

§ 606 Oaths and Subpoenas

The State Board may administer oaths for the purpose of taking sworn statements from any person thought to have knowledge of any facts pertaining to the complaint.¹⁴

The State Board may request that the respondent answer allegations in writing, produce relevant evidence, or appear in person before the board.¹⁵

The State Board may subpoena any person, books, records, or other documents relevant to the complaint investigation by the board.¹⁶

The State Board shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.¹⁷

§ 607 Public Hearing

If a public hearing is called, the director shall notify the respondent and the complainant in writing of the date, time, and place of the meeting at which the complaint will be considered. The notice shall also include a statement of the legal authority and jurisdiction under which the hearing is to be held and a short and plain statement of the matters of fact and law asserted. The respondent may attend in person or by counsel, and have the right to representation by counsel in all matters related to the complaint. The respondent may offer testimony and present tangible evidence in connection with the complaint. The complainant also has the right to attend the public hearing and be represented by counsel, but the complainant shall not be responsible for presenting any evidence. Such responsibility lies with staff. If a respondent fails to appear after proper service of notice, the

¹³ A.C.A. § 7-4-120(b)(6)(C) as amended by act 1253 of 2015

¹⁴ A.C.A. § 7-4-120(d)(3)(A) as amended by act 1253 of 2015

¹⁵ A.C.A. § 7-4-120(d)(3)(B) as amended by act 1253 of 2015

¹⁶ A.C.A. § 7-4-120(d)(3)(C) as amended by act 1253 of 2015

¹⁷ A.C.A. § 7-4-120(d)(4)(A) as amended by act 1253 of 2015

State Board may proceed with the public hearing and render a decision in the absence of the respondent.

Any attorney representing a respondent or complainant shall file a notice of appearance as soon as possible. Service on counsel of record is equivalent of service on the person represented.

Either the State Board, the chair of the board, a board member designated by the chair or a hearing officer designated by the board shall preside at the hearing. A member of the staff shall appear at the hearing to present evidence of the asserted violation of election law by respondent.

Matters before the State Board for hearing that are similar in issues of fact or law or have identical parties may be consolidated if the board finds that consolidation would promote the just, speedy and inexpensive resolution of the proceedings and not unduly prejudice the rights of a respondent.

All requests for relief must be made in writing by motion filed with the State Board stating the action requested and the grounds relied upon. The presiding officer may conduct hearings on the motion and enter such orders as he/she deems necessary to address issues raised by the motion. However, the presiding officer will not issue dispositive orders.

The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings. However, any presiding officer other than the State Board shall not enter a dispositive order.

The respondent has the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to the case, and has the right to introduce evidence of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the presiding officer, may submit briefs and engage in oral argument.

The hearing will be conducted in the following manner:

1. The hearing officer will give an opening statement, briefly describing the nature of the proceedings;
2. The staff and respondent will be given the opportunity to present opening statements;
3. The staff and the respondent will present their cases in the sequence decided by the presiding officer;
4. Each witness must be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination or cross-examination and questioning by the State Board. The presiding officer may limit questioning in a manner consistent with the law.
5. At the close of evidence, staff and respondent may present final arguments.

The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with applicable laws.

Stipulation of facts is encouraged and the State Board may make a decision based on stipulated facts.

Evidence in the proceeding must be confined to the issues set forth in the notice of the hearing sent to the respondent unless the respondent and staff waive the right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Either the respondent or staff may be granted a continuance to allow for time to prepare for the additional issue.

When the respondent and staff seek admission of an exhibit nine copies of the exhibit must be provided. Each party must be allowed to examine the exhibit prior to the ruling on its admission. All exhibits admitted into evidence must be marked and entered into the record.

The respondent or staff may object to specific evidence or may request limits on the scope of the examination or cross-examination of a witness. The objection, the ruling on the objection and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and included in the record.

Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

The State Board shall be responsible for recording the testimony heard at the hearing. Upon filing a petition for judicial review, the State Board will provide a verbatim transcript of testimony taken before the agency.

The decision of the State Board shall be reduced to a final order signed by the chair of the board, containing written findings of fact and conclusions of law stated separately. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. A copy of the final order shall be served on the respondent along with any order by the State Board. The State Board shall also provide a copy of the findings and order to the complainant.

§ 608 Imposition of Fines and Other Sanctions

If the State Board finds a violation of election or voter registration laws under its jurisdiction, then the board may render one (1) or more of the following sanctions:

- (1) Issue a public letter of caution, warning, or reprimand;
- (2) Impose a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) for each negligent, knowing or intentional violation;
- (3) Report its findings and other evidence to the proper law enforcement authorities along with recommendations; and

(4) Order payment of the costs for the investigation and hearing.¹⁸

The State Board may issue one or more of the above sanctions for a violation.¹⁹

In lieu of imposing the statutory sanctions set out above, the State Board may issue a letter of instruction or refer the complaint and related evidence to the proper authority when the board determines that the circumstances warrant.

In determining the imposition of fines upon a finding of a violation, the State Board may consider all surrounding circumstances including, but not limited to, the seriousness of the violation, whether the violation was intentional or negligent, whether the respondent demonstrated good faith by consulting the State Board staff or the local county board of election commissioners, whether the violation was isolated or part of a pattern, and whether the respondent showed good cause for the violation.

For violators who have not previously received a statutory sanction, fines will range from not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each negligent or intentional violation. Fines for violators who have previously received a statutory sanction will range from not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$1,000) and will be determined on a case-by-case basis depending upon the nature and degree of the negligent or intentional violation.²⁰

In the event a fine is not paid by the specified time, the State Board may file suit in the Pulaski County Circuit Court or in the circuit court or the small claims division of the appropriate district court of the county in which the debtor resides to obtain a judgment for the amount of any fine imposed according to its authority.²¹

The fee normally charged for the filing of a suit in any of the circuit or district courts in the State of Arkansas shall be waived on behalf of the State Board.²²

All moneys received by the State Board in payment of fines shall be deposited in the State Treasury as general revenues.²³

¹⁸ A.C.A. § 7-4-120(e)(1-4) as amended by act 247 of 2017

¹⁹ A.C.A. § 7-4-120(e)(5) as amended by act 1253 of 2015

²⁰ A.C.A. § 7-4-120(h)(1) as amended by act 1253 of 2015

²¹ A.C.A. § 7-4-120(h)(2) as amended by act 1253 of 2015

²² A.C.A. § 7-4-120(h)(3) as amended by act 1253 of 2015

²³ A.C.A. § 7-4-120(h)(4) as amended by act 1253 of 2015

§ 609 Final Determination

The State Board shall complete its investigation of a complaint filed according to Arkansas Code Annotated § 7-4-120 and take final action within one hundred eighty (180) days of the filing of the complaint, except if a public hearing is conducted all action on the complaint by the board shall be completed within two hundred forty (240) days.²⁴

The State Board shall advise in writing the complainant and the respondent of the finding of the board, final action taken, including sanctions, if any, and the reasons for the finding, final action, and sanctions, if any.²⁵

Any final action of the State Board shall constitute an adjudication for purposes of judicial review under Arkansas Code Annotated § 25-15-212.

§ 610 Records

The State Board shall keep a record of all inquiries, investigations, and proceedings.²⁶

Records relating to investigations by the State Board are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a hearing is set or the director's investigation is closed.²⁷

The State Board may disclose, through its members or staff, otherwise confidential information to proper law enforcement officials, agencies, and bodies as may be required to conduct its investigation.²⁸

²⁴ A.C.A. § 7-4-120(i) as amended by act 1253 of 2015

²⁵ A.C.A. § 7-4-120(f) as amended by act 1253 of 2015

²⁶ A.C.A. § 7-4-120(g) as amended by act 1253 of 2015

²⁷ A.C.A. § 7-4-120(c)(2) as amended by act 1253 of 2015

²⁸ A.C.A. § 7-4-120(c)(3) as amended by act 1253 of 2015