

Agency # 108.00

**RULES FOR
CITIZEN COMPLAINTS OF NON-HAVA
(HELP AMERICA VOTE ACT)
VIOLATIONS OF ELECTION AND VOTER
REGISTRATION LAWS**

(Effective February 6, 2004; Revised September 25, 2009)



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Scope of Rules

These rules set forth the procedures for providing uniform and nondiscriminatory resolution of any non-HAVA (Help America Vote Act) related complaint alleging a violation of election and voter registration laws in accordance with Arkansas Code Annotated § 7-4-118, except as to Arkansas Code Annotated § 7-1-103(a)(1)-(4), (6), and (7), and except for any matters relating to campaign finance and disclosure laws that the Arkansas Ethics Commission shall have the power and authority to enforce according to Arkansas Code Annotated §§ 7-6-217 and 7-6-218.

§ 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) “Frivolous” means clearly lacking any basis in fact or law.¹

(c) “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.

(d) “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.

(e) “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.

(f) “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.

(g) “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 State Board’s jurisdiction.

¹ A.C.A. §7-4-118(a)(6)(B)

§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.²

§ 602 Form of Complaint

To be considered, a complaint must be in writing, notarized, 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, supporting facts surrounding the allegations, and the desired resolution.³

Filing of a frivolous complaint is considered a violation of Arkansas Code Annotated § 7-4-118.⁴

§ 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

§ 604 Processing a Complaint

Upon receipt, every written complaint shall be stamped with the current date and forwarded to the Deputy Director. The Deputy Director, under the direction of the Director and on behalf of the State Board, shall determine if the written complaint meets the requirements of a complaint as set forth in §§ 602 and 603.

If determined that the written complaint is not timely filed or in proper form, or that there is insufficient evidence to establish a violation, the State Board acting through the Director shall dismiss the complaint and advise the complainant in writing as to why the complaint was dismissed.⁶

If determined that the written complaint meets the requirements of §§ 602 and 603 and that there is sufficient evidence to establish a violation of election or voter registration laws under the State Board's jurisdiction, the State Board may proceed to investigate the alleged violation⁷ or forward the complaint, along with the information and documentation as deemed appropriate, to the proper authority.⁸

² A.C.A. § 7-4-118(a)(2)

³ A.C.A. § 7-4-118(a)(4), (5)

⁴ A.C.A. § 7-4-118(a)(6)(A)

⁵ A.C.A. § 7-4-118(a)(3)

⁶ A.C.A. § 7-4-118(b)(2)

⁷ A.C.A. § 7-4-118(b)(1)

⁸ A.C.A. § 7-4-118(b)(3)

§ 605 Investigations

Upon determination that an investigation is necessary, the State Board shall provide a copy of the complaint to the party against whom the complaint is lodged, hereinafter referred to as the “respondent,” along with instructions regarding the opportunity to respond to the complaint.⁹

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.¹⁰

The State Board may request that the respondent answer allegations in writing, produce relevant evidence, or appear in person before the State Board.¹¹

The State Board may subpoena any person, books, records, or other documents relevant to the complaint investigation by the State Board.¹²

The State Board shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.¹³

§ 606 Hearing

Upon completing its investigation, staff shall prepare a final report of the investigation for submission to the State Board for determination as to whether or not probable cause exists for a finding of a violation of election or voter registration laws under its jurisdiction.

If the State Board finds that probable cause exists for a finding of a violation, the State Board may call for a full public hearing.¹⁴

If a public hearing is called, staff 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 respondent and complainant may attend and offer testimony and present tangible evidence in connection with the complaint.

If the State Board does not find probable cause, it shall dismiss the complaint.

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

- (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 or intentional violation,

⁹ A.C.A. § 7-4-118(b)(4)(A)

¹⁰ A.C.A. § 7-4-118(b)(4)(B)

¹¹ A.C.A. § 7-4-118(b)(4)(C)

¹² A.C.A. § 7-4-118(b)(4)(D)

¹³ A.C.A. § 7-4-118(b)(4)(E)

¹⁴ A.C.A. § 7-4-118(c)

- (3) Report its findings and other evidence to the proper law enforcement authorities along with recommendations, or
- (4) Assess costs for the investigation and hearing.¹⁵

§ 607 Imposition of Fines

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.

Fines for first offense violations 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 second offense violations will range from not less than five hundred dollars (\$500) 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.

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.¹⁶

The action by the court shall not involve further judicial review of the State Board's actions.¹⁷

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.¹⁸

All moneys received by the State Board in payment of fines shall be deposited in the State Treasury as general revenues.¹⁹

§ 608 Final Determination

The State Board shall complete its investigation of a complaint filed according to Arkansas Code Annotated § 7-4-118 and take final action within one hundred eighty (180) days of the filing of the complaint, except if a hearing is conducted, all action on the complaint by the State Board shall be completed within two hundred forty (240) days.²⁰

¹⁵ A.C.A. § 7-4-118(d)

¹⁶ A.C.A. § 7-4-118(e)(2)(A)

¹⁷ A.C.A. § 7-4-118(e)(2)(B)

¹⁸ A.C.A. § 7-4-118(e)(2)(C)

¹⁹ A.C.A. § 7-4-118(e)(3)

²⁰ A.C.A. § 7-4-118(f)(1), (2)

The State Board shall advise in writing the complainant and the respondent of the final action taken.²¹

Any final action of the State Board shall constitute an adjudication for purposes of judicial review under Arkansas Code Annotated § 25-15-212.²²

§ 609 Records

The State Board shall keep a record of all inquiries, investigations, and proceedings.²³

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.²⁴

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.²⁵

²¹ A.C.A. § 7-4-118(b)(4)(F)

²² A.C.A. § 7-4-118(f)(3)

²³ A.C.A. § 7-4-118(g)(1)

²⁴ A.C.A. § 7-4-118(g)(2)

²⁵ A.C.A. § 7-4-118(g)(3)