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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~~)



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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~~ 601 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) “Dismissed” means a resolution to an allegation within a complaint in which the allegation is resolved without the imposition of a statutory sanction.

(b c) “Election laws” includes provisions of law from the following sources which concern elections conducted by county boards of election commissioners in conjunction with the county clerk:

(1) The Constitution of the United States;

(2) The Constitution of the State of Arkansas;

(3) Statutory provisions enacted by the United States or the State of Arkansas;

(4) Final court decisions of general applicability in State or Federal Court; and

(5) Rules promulgated by the United States or the State of Arkansas

~~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 commissioners<sup>1</sup>.~~

(d) Election Official - a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.

(2) Election Official - includes a person who serves as:

(A) A member of the county board of election commissioners;

(B) A person who is appointed by the county board of election commissioners to serve as:

(i) an election coordinator;

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

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- (ii) a person appointed to preform tasks related to the election which require the handling of ballots or other election materials or equipment;
- (iii)an election clerk;
- (iv)an election judge;
- (v) an election sheriff; or
- (vi)an absentee ballot clerk; or

(C) A person assigned by a county clerk to conduct early voting administered by the county clerk.

(e) “Federal election cycle” under this rule means the preferential primary, general primary, general election, and general election runoff.

(e f) “Frivolous” means clearly lacking any basis in fact or law.<sup>2</sup>

(d g) “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.

(h) “Institute Corrective Actions” – A resolution to a complaint in which the State Board of Election Commissioners directs the respondent to take an action or to refrain from an action so as to cause the respondent to comply with the requirements of an election or voter registration law or to prevent the violation of an election or voter registration law in the future.

(e-i) “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-j) “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-k) “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.

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<sup>2</sup> A.C.A. §7-4-120(k)(1) as amended by Act 1253 of 2015

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

(n) “Refer to the Proper Authority” means to dismiss from the administrative process and to forward all information relating to the complaint to another law enforcement entity when the SBEC determines that the available information indicates a violation of a criminal law or of a civil law enforced by another agency and the allegations either do not fall within the jurisdiction of the SBEC or further administrative action may damage a future criminal case.

(k-o) “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-p) “Statutory Sanction” means a letter of caution, warning, or reprimand, a corrective action, a decertification, direct administration of a county’s election, 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-q) “Voter registration laws” includes provisions of law from the following sources which concern voter registration:

- (1) The Constitution of the United States;
- (2) The Constitution of the State of Arkansas;
- (3) Statutory provisions enacted by the United States or the State of Arkansas;
- (4) Final court decisions of general applicability in State or Federal Court; and
- (5) Rules promulgated by the United States or the State of Arkansas.<sup>3</sup>

~~Means those laws under Arkansas Constitution, Amendment 51 and the rules promulgated pursuant to Arkansas Constitution, Amendment 51~~

## **§~~601~~ 602 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~~ 603 Form of Complaint**

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<sup>3</sup> A.C.A. §7-4-120(k)(3) as amended by Act 1253 of 2015

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(a) A procedurally sufficient complaint must:

- (1) be in writing;
- (2) be signed;
- (3) include an affirmation that facts articulated in the complaint are true and correct to the best of the complainant's knowledge under penalty of perjury;
- (4) clearly describe the alleged incident, election irregularities, or illegalities;
- (5) state approximately when the alleged violation or incident occurred;
- (6) state the location or locations where the alleged activities occurred; and
- (7) provide any supporting facts surrounding the allegations

~~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.~~<sup>4</sup>

## **§ 603 ~~604~~ Filing a Complaint**

A written complaint must be filed no sooner than forty-six (46) with the State Board within thirty (30) days prior to of an alleged voter registration violation or the election affected by or associated with the alleged violation of law and no later than 30 days after the certification of the election in the county where the violation is alleged to have occurred ~~complaint.~~<sup>5</sup>

## **§ 604 ~~605~~ Processing a Complaint**

A. (a) Receipt of Complaint

- (1) Upon receipt, every of a written complaint, it 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 ~~603 and 604.~~

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~~

- (2) ~~Insufficient Complaint~~ If the director determines that the written complaint is deficient in that it is not timely filed, not in proper form, or that the allegations, taken as true, are insufficient to establish a violation of election or voter registration laws under the State

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

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

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Board’s jurisdiction, the Director shall notify the complainant that the complaint is deficient, describe the nature of the deficiency, and inform the complainant that the complaint may be corrected within ten (10) calendar days of this notice being issued. Failure of the Complainant to cure the procedurally deficient complaint within ten (10) calendar days shall result in the complaint being dismissed if the State Board agrees that the complaint is deficient. The Director shall use all information provided with the complaint to deliver notice of a deficient complaint but shall not be required to provide notice if no contact information or mailing address is provided with the complaint. A complaint filed after the deadline to file a complaint cannot be cured by this process.

~~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.<sup>6</sup>~~

## *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.<sup>7</sup>~~

## *Proper complaint*

### (b) Staff Report – Sufficient Complaint

(1) If the director determines that the a 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 concise report stating those findings, analyzing the legal issues raised by the complaint, and summarizing the complaint and including any additional evidence known to the director. Additional evidence known to the director may include the review, the receipt, or the examination of any publicly available information or document that bears on an allegation. A procedurally and substantively sufficient complaint that alleges an election or voter registration law violation within the jurisdiction of the SBEC shall be investigated.

~~The report may include a recommendation by the director that the complaint be addressed~~

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

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

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(2) The director may recommend that the complaint be further investigated through either documentary submissions<sup>8</sup>; or through a formal investigation. ~~that it be further investigated<sup>9</sup>; or that it be provided to the proper authority<sup>10</sup>.~~ 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, either formally or informally, or referred ~~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~~ fifth (5) business day after the date that the director's determination was sent by email unless, before the ~~seventh~~ fifth (5) 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.~~

## (c) Staff Report – Insufficient Complaint –

(1) If the allegations are found to be procedurally or substantively insufficient the director shall send a copy of the complaint and make a concise report stating those findings to each commissioner by email and, if requested in advance by a commissioner, by first class mail.

(2) The director's determination that the complaint is insufficient shall be considered adopted by the State Board on the fifth business day after the date that the director's determination was sent by email unless, before the fifth 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 is insufficient and fails to meet the requirements of these rules, then the director shall notify the complainant that the complaint has been dismissed.<sup>11</sup>

(d) Additional Steps Adopted with the Staff Report - In addition to the steps addressed above, the following action may be recommended by the Director or adopted by the SBEC without a recommendation by the Director in a meeting of the SBEC regardless of whether the complaint is found to be sufficient:

(A) The SBEC may issue a letter of instruction;

(B) The SBEC may refer the complaint to the proper authority; or

(C) The SBEC may issue a letter of instruction and refer the complaint to the proper authority.

## **§ ~~605~~ 606 Investigations; ~~;~~ - Determination of Probable Cause;**

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

<sup>9</sup>— A.C.A. § 7-4-120(d) as amended by act 1253 of 2015

<sup>10</sup>— A.C.A. § 7-4-120(e)(3), 7-4-120(d)(1) as amended by act 1253 of 2015

<sup>11</sup>— A.C.A. § 7-4-120(b)(4) as amended by act 1253 of 2015



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~~A.~~ (a) Notice to Respondent - Upon determination that a complaint should be investigated, either through a formal investigation or through documentary submissions, the director shall notify the respondent of the complaint, the investigation, and the nature of the investigation. ~~and~~ The Director shall 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.<sup>12</sup>

## (b) Investigation through Documentary Submissions

(1) The director may request documents from the identified respondents, third parties, or from sources with documents that are otherwise publicly available to determine the facts either supporting or disproving the allegations of the complaint. Investigations through documentary submission may also include informal communications or interviews with relevant parties including a respondent.

(2) An investigation based upon documentary submissions may transition into a formal investigation if the Director determines that a formal investigation is necessary to obtain sufficient information to resolve the complaint.

## (c) Formal Investigation

(1) In a formal investigation the director shall submit interrogatories to the respondent and may take additional investigative action utilizing subpoenas or testimony obtained under oath.

(2) Interrogatory questions may request the respondent or another person to provide written statements bearing on the facts, circumstances, or information relevant to the investigation.

(3) The Director may also ask the respondent or another person to produce relevant evidence, or to appear to answer questions in person during an interview or deposition.

(4) Written responses to interrogatory questions shall be answered under penalty of perjury.

(5) As part of a formal investigation, the director or his or her designee may interview any respondent, complainant, witness, or other third party, or may take the formal deposition of any respondent, complainant, witness, or other third party. Oral statements by respondents taken during a formal investigation will be provided under oath administered by the director or his or her designee, or in the case of a deposition, by a certified court reporter.

(6) The director or his or her designee may subpoena any document or record that may be relevant to the allegations of the complaint. The director may gather and use as part of the investigation any document or record that may be relevant to the allegations of the Complaint.

## ~~B.~~ (d) Director's Investigation Report

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<sup>12</sup> A.C.A. §§ 7-4-120(b)(6)(B); 7-4-120(d)(2) as amended by act 1253 of 2015

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(1) 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 dismissed, ~~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 including a statutory sanction.

(2) After receipt of the director's report, the director's recommendation shall be considered to be adopted by the State Board on the ~~seventh~~ fifth (5) business day after the date that the director's determination was sent by email unless, before the ~~seventh~~ fifth (5) 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~~<sup>13</sup>
- ~~5. Take other appropriate action.~~

(A) Determine that the complaint be dismissed;

(B) Issue a letter of instruction;

(C) Refer the complaint to the proper authority;

(D) Direct the director to further investigate the complaint;

(E) Find that probable cause of an election or voter registration law violation exists, based upon the investigation report and its findings; or

(F) Take other appropriate action.

## C. (e) Offer of Settlement

(a) 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.<sup>14</sup> The offer may state that the hearing is set as of the tenth calendar day after the offer was issued if the offer is not accepted.

(b) 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.

<sup>13</sup> ~~A.C.A. § 7-4-120(d)(1) as amended by act 1253 of 2015~~

<sup>14</sup> ~~A.C.A. § 7-4-120(b)(6)(C) as amended by act 1253 of 2015~~

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## § ~~606~~ 607 Oaths and Subpoenas

- (a) The State Board, its director, or the director's designee may administer oaths for the purpose of taking sworn statements from any person thought to have knowledge of any facts pertaining to the complaint.<sup>15</sup>
- (b) The State Board, its director, or the director's designee may request that the respondent answer allegations in writing, produce relevant evidence, or appear in person before the board.<sup>16</sup>
- (c) The State Board, its director, or the director's designee may subpoena any person, books, records, or other documents relevant to the complaint investigation by the board.<sup>17</sup>
- (d) The State Board, its director, or the director's designee shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.<sup>18</sup>
- (e)(1) The State Board, its director, or the director's designee may subpoena any person, book, or record for testimony or presentation at any public hearing called by the State Board.
- (2) Respondents may request the director of the State Board to issue a subpoena on his or her behalf for any witness, book, or other document relevant to the issues identified in the notice of hearing.
- (A) Respondent must make his or her request to the director for a subpoena no less than five business days before a public hearing identified in the notice of hearing.
- (B) Respondent must provide:
- (i) the full name,
  - (ii) address, and
  - (iii) any additional contact information the respondent may possess and is necessary for the issuance of a subpoena by the director on behalf of that respondent.
- (C) Respondent or his or her counsel shall be responsible for ensuring service of any subpoena prepared by the director at respondent or his or her counsel's request.
- (D) A Respondent or his or her counsel may not issue their own subpoena, as only the State Board, its director, or the director's designee has the authority to issue a subpoena as part of this complaint process.

## § ~~607~~ 608 Public Hearing

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<sup>15</sup> ~~A.C.A. § 7-4-120(d)(3)(A) as amended by act 1253 of 2015~~

<sup>16</sup> ~~A.C.A. § 7-4-120(d)(3)(B) as amended by act 1253 of 2015~~

<sup>17</sup> ~~A.C.A. § 7-4-120(d)(3)(C) as amended by act 1253 of 2015~~

<sup>18</sup> ~~A.C.A. § 7-4-120(d)(4)(A) as amended by act 1253 of 2015~~

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- (a) If an Offer of Settlement is rejected and the State Board sets 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.
- (b) 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.
- (c) The respondent may attend in person or by counsel. The respondent has,~~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 of the State Board.
- (d) If a respondent fails to appear after proper service of notice, the State Board may proceed with the public hearing and render a decision in the absence of the respondent.
- (e) 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.
- (f) 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 or voter registration law by the respondent.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) The respondent has the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to the case. The respondent or respondent's counsel,~~and~~ has the right to introduce evidence of material fact, cross-examine witnesses as necessary for a full

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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.

(k) 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; -

(5) The presiding officer may limit questioning in a manner consistent with the law; ~~-and~~

(5- 6) At the close of evidence, staff and respondent may present final arguments.

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

(m) Stipulation of facts is encouraged and the State Board may ~~make a decision~~ decide the issue or issues based on stipulated facts.

(n) 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~~ any additional issues.

(o) 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.

(p) 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.

(q) 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.

(r) 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.

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- (s) 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.
- (t) The decision of the State Board shall be reduced to a final order ~~signed~~ adopted by the ~~chair of the board,~~ State 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~~ 609 Imposition of Fines and Other Sanctions

- (a) 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) Issue conditional directives that corrective actions be taken which, if not satisfied based on the terms of that directive, will result in additional sanctions;
  - (4) Decertify a county election official;
  - (5) Institute the direct administration of the county's election pursuant to Ark. Code Ann. §7-4-120(e)(6);
  - ~~(3-6)~~ Report its findings and other evidence to the proper law enforcement authorities along with recommendations; ~~and or~~
  - ~~(4-7)~~ Order payment of the costs for the investigation and hearing.<sup>19</sup>
- (b) The State Board may issue one or more of the above sanctions for a violation of election or voter registration laws within the State Board's jurisdiction.<sup>20</sup>
- (c) In lieu of, or in addition to, 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.
- (d) 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.
- (e) 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

<sup>19</sup> A.C.A. § 7-4-120(e)(1-4) as amended by act 247 of 2017

<sup>20</sup> A.C.A. § 7-4-120(e)(5) as amended by act 1253 of 2015

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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.<sup>21</sup>

(f) 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.<sup>22</sup>

(g) 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.<sup>23</sup>

(h) All moneys received by the State Board in payment of fines shall be deposited in the State Treasury as general revenues.<sup>24</sup>

## **§ ~~609~~ 610 Final Determination**

(a) 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 then all action on the complaint by the board shall be completed within two hundred forty (240) days.<sup>25</sup>

(b) The State Board shall advise ~~in writing~~ the complainant and the respondent in writing 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.<sup>26</sup>

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

## **§ ~~610~~ 611 Records**

(a) The State Board shall keep a record of all inquiries, investigations, and proceedings.<sup>27</sup>

(b) 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.<sup>28</sup>

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<sup>21</sup> A.C.A. § 7-4-120(h)(1) as amended by act 1253 of 2015

<sup>22</sup> A.C.A. § 7-4-120(h)(2) as amended by act 1253 of 2015

<sup>23</sup> A.C.A. § 7-4-120(h)(3) as amended by act 1253 of 2015

<sup>24</sup> A.C.A. § 7-4-120(h)(4) as amended by act 1253 of 2015

<sup>25</sup> A.C.A. § 7-4-120(i) as amended by act 1253 of 2015

<sup>26</sup> A.C.A. § 7-4-120(f) as amended by act 1253 of 2015

<sup>27</sup> A.C.A. § 7-4-120(g) as amended by act 1253 of 2015

<sup>28</sup> A.C.A. § 7-4-120(e)(2) as amended by act 1253 of 2015

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(c) 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.<sup>29</sup>

## **§ 612 Corrective Action**

(a) A statutory sanction imposed by the State Board of Election Commissioners which includes instituting a corrective action shall be governed by the following provisions:

(1) A corrective action may require a respondent to comply with any election or voter registration law;

(2) A corrective action may require the respondent to take steps, which are reasonably calculated, to ensure the future compliance with election or voter registration laws;

(3)(A) The State Board of Election Commissioners may make an Offer of Settlement for a complaint contingent on the implementation of corrective actions so long as:

(i) The corrective action is within the authority and ability of the respondent to implement within the 180 days of the date the complaint was filed;

(ii) The offer defines the sanctions that will be imposed if the respondent fails to satisfy the requirements of the offer; and

(iii) The offer provides clear requirements which the respondent must satisfy and clear instructions explaining how the respondent is required to certify the satisfaction of the offer to implement corrective action to the SBEC.

(B) In the event a contingent offer is made to a member of the County Board of Election Commissioners which requires an act of the county board of election commissioners as a body, an individual member will have satisfied their obligation to accept the offer by voting consistent with the corrective action or making a motion to implement the correction action regardless of whether the motion in question is adopted or fails for want of a second.

(C) If the SBEC makes an offer pursuant to §611(a)(3), the complaint shall have the lesser of 180 days from the date the complaint was filed or 30 days from the date the offer was made to comply with the requirements of the offer. The failure to comply with the requirements of the offer shall constitute a rejection of the offer and results in the complaint being set for an administrative hearing at a date and time to be determined by the State Board.

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<sup>29</sup> A.C.A. § 7-4-120(c)(3) as amended by act 1253 of 2015



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(4) The SBEC may issue a directive to a county to implement corrective action which is not contingent on acceptance, but which includes a warning of the sanction which the SBEC will consider appropriate should a future complaint come before the Board alleging the issues addressed by the corrective action.

(b) The failure to implement the corrective action prescribed by an offer made by the State Board under this rule shall not be considered evidence of the truthfulness of the underlying allegation should an administrative hearing be held for that complaint.

## **§ 613 Decertification of a County Election Official**

(a) In the event that the State Board of Election Commissioners resolves a complaint with the decertification of an election official under A.C.A. § 7-4-120(e)(5), the implementation of this sanction shall be governed by the following provisions:

(1) The board may only decertify an election official who is a respondent in the complaint being considered.

(2) An offer of settlement or a sanction imposed following a hearing may include a term of years for which the decertification will remain in effect within the following range:

(A) Not less than two (2) federal election cycles; and

(B) Not more than seven (7) federal election cycles.

(3) An offer of settlement or a sanction imposed following a hearing may include a permanent decertification as an election official in the State of Arkansas if the State Board makes the additional findings that the violation of election or voter registration law was:

(A) Intentional;

(B) Severe in nature; and

(C) Was of a nature that undermines the public confidence in the integrity of the election process.

(4) Notice of decertification shall be directed to the respondent or respondents and shall also be sent to the following person if those persons are not respondents:

(A) The county board of election commissioners; and

(B) The county clerk;

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- (b) Pursuant to the governing provision of state law, the county clerk is not an election official for the purposes of this rule and is not subject to decertification.

## **§ 614 Direct Administration of a County Election**

- (a) In the event that the State Board of Election Commissioners issues an order to take over and conduct the direct administration of a county's election under A.C.A. 7-4-120(e)(6), the implementation of this sanction shall be governed by the following provisions:

(1) The State Board of Election Commissioners may take over and conduct the administration of the county's election in its entirety or may take over and conduct the responsibilities of a person or entity which is the subject of the complaint.

(2) An order issued under A.C.A. 7-4-120(e)(6) shall be directed to the respondent or respondents and shall also be sent to the following persons if those persons are not respondents:

(A) The county board of election commissioners;

(B) The county clerk;

(C) The county judge; and

(D) The county prosecuting attorney.

(3) The State Board of Election Commissioners shall continue to conduct the direct administration of a county's election until the State Board votes to terminate the direct administration of the County's Election but no longer than two federal election cycles including the cycle in which the administration began.

- (b) Upon assuming the election related duties of the county board of election commissioners or the county clerk, the State Board of Election Commissioners shall:

(1) Appoint a person certified by the State Board of Election Commissioners as an election coordinator to conduct the administrative functions of the election which the State Board has assumed including, but not limited to:

(A) Conducting ballot draw;

(B) Preparing ballots and voting equipment;

(C) Conducting logic and accuracy testing;

(D) Publishing or ensuring all required notices are posted;

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(E) Selecting and training election officials required to conduct the election;

(F) Receiving and reporting preliminary and unofficial election night results; and

(G) Any responsibility of the county clerk which is assumed by the State Board:

(i) including any receptibilities related to the election; but

(ii) excluding any responsibility related to voter registration other than compiling the precinct voter registration list based on the records kept by the county clerk.

(2) Fulfill the following deliberative functions of the election which the State Board has assumed through a county election administration committee including, but not limited to:

(A) Fulfilling the role of the county election commission regarding the canvassing and counting of absentee ballots;

(B) Fulfilling the role of the county election commission regarding the review of provisional ballots;

(C) Overseeing the canvasses and counts the ballots cast in the election; and

(D) Certifying the results of the election pursuant to the requirements of State Law;

(E) Issuing any certificate or other election related document required under state law.

(3) The county election administration committee may be made up of:

(A) the State Board;

(B) A subcommittee of the State Board;

(C) Three qualified voters of the state selected by the State Board; or

(D) A combination three individuals including members of the State Board and other qualified electors of the state.

(c) Following the election, the election coordinator appointed by the State Board shall:

(1) Ensure the return of voting equipment to a secure facility for storage; and

(2) Ensure that ballot boxes and records are appropriately labeled and stored in such a manner that records may be retrieved for any election challenge or post-election audit authorized by the State Board.

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- (d) When the SBEC makes an offer of settlement which includes the direct administration of the county board of election commissioners' roll in the election process, all of the members of the county board must accept the offer of settlement for it to be immediately effective.
- (1) If one or more members of the county board reject the offer, a hearing must be held to determine whether the state board of election commissioners will directly administer the county's election and to resolve the complaint with respect to the members rejecting the offer of settlement.
- (2) A member of the county board who accepts the offer of settlement will not be a respondent in the hearing to determine whether the state board will directly administer the county's election.
- (e) Care and custody of the county election equipment rests with the county board of election commissioners or county clerk under A.C.A. 7-5-301(k)-(m) shall temporarily transfer to the state board of election commissioner if the state board directly administers a county's election.