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Agency #108.00

RULES OF PRACTICE AND PROCEDURE

(Effective December 29, 2015; Revised January 25, 2022)



STATE BOARD OF ELECTION COMMISSIONERS
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Scope of Rules

These rules set forth a general description of the State Board of Election Commissioners stating the general course and method of the board's operations and the nature and requirements of the board's formal and informal procedures pursuant to A.C.A. § 25-15-203.

These rules also set forth the procedure for the filing and disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by the board pursuant to A.C.A. § 25-15-206. These rules are in addition to and not a substitute for the laws of the State of Arkansas.

§ ~~1100~~ 1101 Board Organization

- (1) The State Board of Election Commissioners is an agency of the state government composed of seven appointed commissioners and a staff. The entities who appoint board members, the qualifications of board members, the terms of board members, and other duties and responsibilities of the board are set out in A.C.A. § 7-4-101.
- (2) The legislature has empowered the board to enforce election laws and voter registration laws and has delegated to the board the authority to promulgate rules to assure even and consistent application of voter registration laws and fair and orderly election procedures. The board also develops resources to educate and assist candidates and county election administrators, develops specialized training programs, conducts and coordinates statewide training of county election commissioners and election officials, monitors compliance by local election authorities with federal and state election laws, investigates complaints of alleged election misconduct and election law violations, and distributes funds to the counties for state-supported political party primary elections, nonpartisan general elections, special primary elections, and statewide special elections.
- (3) The Secretary of State is the chair and secretary of the board. The chair or a person designated by the chair conducts meetings of the board. The chair's designee is the chair's proxy and counts toward a quorum to conduct business and may vote in the meeting. [A.C.A. § 7-4-101 (e)(4)]
- (4) The board may form such committees or subcommittees as it deems necessary and/or appropriate to accomplish its legal aims and statutory purposes. The board may appoint one or more of its members to an unofficial committee or subcommittee and may invite non-board members to participate as unofficial committee or subcommittee members.
- (5) At any meeting of the board, four (4) members constitute a quorum whether in person or by electronic or telephonic means.

- (6) A majority of the members of the board present shall vote on any matter before the board for any decision of the board to become effective. However, no sanctions for violations of election laws or voter registration laws may be imposed without the affirmative vote of at least four members. [A.C.A. § 7-4-101(e)(3)]
- (7) The following matters shall be by motion, followed by a second, in order for a vote of the board to be valid:
 - a. All matters requiring affirmative action by the full board or one of its members;
 - b. All decisions on public positions taken by the full board;
 - c. All decisions on declaratory orders; and
 - d. All decisions regarding findings of fact and conclusions of law or other actions regarding a person accused of violating the board's regulations or laws under the board's jurisdiction.
- (8) The board may by majority vote delegate the execution of any official duty or action to its chair, one of the other members, or the director.
- (9) A vacancy on the board shall not impair the right of the board to exercise its statutory powers and authority, subject to the requirement that a quorum be present and participating before any action of the board shall be considered valid.

§ ~~1101~~ 1102 Staff Organization

- (1) The board may employ a director who may hire a staff. The director or other members of the staff may act as spokesmen for the board, receive correspondence and correspond on behalf of the board, provide legal and other research for the board, investigate allegations of violations of election laws under the board's jurisdiction, and perform other functions deemed appropriate by the board. The director serves at the will and the pleasure of the board.
- (2) The director shall ensure that the chair is advised of the progress and conduct of the employees and operation of the board office.
- (3) The director shall operate the board's office. The director's duties shall include, without limitation, the following:
 - a. General administration of the office and staff;

- b. Managing the appropriated budget of the board;
- c. Maintenance of the board's files and records as the custodian of those records;
- d. Preparing reports, studies, policy statements, legal interpretations, proposed rules, training materials, reimbursements of county election expenses and other matters required by the board;
- e. Receiving and responding to correspondence on behalf of the board on matters relating to official board business;
- f. Managing travel, logistics, expenses, and reimbursement for members and staff and scheduling seminars and training by or for the board;
- g. Ensuring that the board office and its employees reflect good character, comply with the law, and carry out other duties as may, from time to time, be enumerated by the board.

(4) Employees of the office (the staff) are the responsibility of the director in matters common to an employer/employee relationship, and the director shall be responsible to the board for the actions of staff.

§ ~~1102~~ 1103 Meeting Times and Sites

(1) Meetings shall be called as needed by the chair or upon written request to the chair of at least four (4) members of the board. [A.C.A. § 7-4-101(e)]

The director shall notify all members of the date, time and place of the meeting.

(2) A written request by four members for a meeting:

- a. Shall state the date of the meeting;
- b. Shall state the items to be taken up at the meeting;
- c. Shall be delivered to the chair, the director, and all other members; and
- d. May be delivered as a separate email from each member requesting the meeting, or as a letter or letters signed by one or more of the members requesting the meeting.

Letters may be delivered by hand, by first class mail through the United States Post Office or by commercial mail service.

Upon receipt of the written request, the director shall notify all members of the date, time and place of the meeting and prepare an agenda in consultation with the chair for the meeting that includes the items in the written request.

(3) Notice of the date, time and place of all meetings shall be furnished to anyone who requests the information and to the news media located in the county in which the meeting is to be held and those located elsewhere that cover meetings of the board and have requested to be so notified.

- (4) Notice of meetings shall be provided to the news media and others who request notice at least forty-eight (48) hours prior to the scheduled meeting, or as soon as possible after the meeting is called if it is called within forty-eight (48) hours of the scheduled meeting. No meeting shall be held until at least two hours after the news media has been notified of the date, time, and place of the meeting.
- (5) The board may vary its meeting site to accommodate its needs and accomplish its purposes.
- (6) The director shall prepare a proposed agenda for each meeting with the consent of the chair. The proposed agenda shall be distributed to the commission members prior to any such meeting. Agenda items may be added during meetings by a majority vote of the board.

§ ~~1103~~ 1104 Meeting Procedures

- (1) All meetings of the board shall be governed by Roberts Rules of Order, except as may be modified by a majority of the board or by rule.
- (2) Any member who has an actual conflict of interest in any proceeding before the board shall recuse voluntarily from any involvement in the matter. If four members determine that a member has a conflict, they may, by affirmative vote, disqualify said member from participation in the matter.
- (3) All meetings of the board shall be open to the public. All records generated or accepted by the board and its staff shall be open to public inspection, except for:
 - a. Matters which are parts of a complaint record while the record is exempt from disclosure under Ark. Code Ann. § 7-4-120(c)(2); and
 - b. The advice and opinions of the board's attorneys on matters which may be considered to have occurred in the attorney-client relationship.

§ ~~1104~~ 1105 Declaratory Orders Defined

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules or orders over which the State Board of Election Commissioners has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules or orders may apply to the petitioner's particular circumstances. ~~A declaratory order is not the proper means for determining the conduct of another person or for obtaining a policy statement of general applicability from the board.~~ A petition must describe the potential impact of statutes, rules or orders upon the petitioner's interests. [A.C.A. § 25-15-202]

§ ~~1105~~ 1106 Petition for a Declaratory Order

The process to obtain a declaratory order is begun by filing a petition that provides the name, address, telephone number, and signature of the person requesting the order, and a complete statement of the facts and circumstances applicable to that person, including the statutes, rules or orders for which clarification is sought. The petitioner may request a hearing in the petition.

§ ~~1106~~ 1107 Declaratory Order

- (1) Staff shall promptly draft an order. A draft order prepared by staff is unofficial until it has received the affirmative vote of a majority of a quorum of the Board. The Board may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.
- (2) No declaratory order shall be valid, official or have any effect unless it has been approved by a majority vote of a quorum of the Board. The board may alter, amend or strike any portion of the draft order, or may table a draft order for consideration in a future meeting or request that it be rewritten to comply with the commission's directives. The Board will render a final order within 90 days of filing the petition, either denying the petition or issuing a declaratory order. The board may reconsider, withdraw or amend prior orders on its own motion or by petition of a citizen, on a majority vote of a quorum of the Board.

§ 1108 Filing an Appeal of a Polling Site Closure

(a) The process to appeal the closure of a poll under A.C.A. § 7-5-101(d)(4) is begun by filing a document that provides the following information:

- (1) The Appellant's name,
- (2) The Appellant's address,
- (3) The Appellant's telephone number or email address if available,
- (4) A signature attesting to the truthfulness of the statements in the appeal under penalty of perjury, and

- (5) A complete statement of the facts and circumstances which form the basis of this appeal, including;
- a. the location or name of the poll(s) which have been closed;
 - b. whether any poll(s) were designated to replace the polls which were closed (if known);
 - c. the reason this closure is adverse to the election process;
 - d. whether the appellant is an eligible voter in the county; and
 - e. any additional information the appellant believes is relevant to the appeal.

(b) An appeal must arrive in the office of the SBEC by the close of business on the seventh (7) calendar day from the date on which the county board of election commissioners acted to close the poll or polls which are the subject of the appeal. If the seventh day falls on a weekend, a state holiday, or a day that state offices in Pulaski County are closed, the appeal shall be timely if received by the close of business on the next business day the office of the SBEC is open.

(c) The appeal must be in writing and may be filed in person, submitted by mail or common carrier, or submitted electronically. If submitted electronically, the appellant must include a facsimile of the appellant's original wet signature on the document.

§ 1109 Processing an Appeal of a Polling Site Closure

(a) When an appeal is filed under A.C.A. § 7-5-101(d)(4) the Director shall:

- (1) Promptly review the appeal;
- (2) Notify the county board of election commissioners that the appeal has been filed and provide an opportunity to respond to the appeal in writing;
- (3) Conduct a review of the poll assignments of the county at issue in the appeal;
- (4) Provide the appeal and a report analyzing the appeal to the State Board of Election Commissioners;
- (5) Notify the appellant and the county board of election commissioners when a meeting to consider the appeal has been scheduled; and
- (6) Provide a draft order to the State Board of Election Commissioners.

(b) When an appeal under A.C.A. § 7-5-101(d)(4) is filed, the State Board of Election Commissioners shall:

- (1) Hold a public meeting no less than 30 days prior to the date of the election at issue to consider the appeal;
- (2) Consider the information provided in the appeal, any response from the county board of election commissions, and the information provided by staff;
- (3) Determine whether the closure of each poll which are the subjects of the appeal is permissible; and
- (4) Issue an order;
 - a. Upholding each poll closure at issue in the appeal;
 - b. Prohibiting each poll closure at issue in the appeal; or

c. Dismissing the appeal as procedurally deficient.

(c) The State Board of Election Commissioners may hear testimony by the appellant and by the county board of election commissioners or may reach a determination on the basis of the written statement of the appellant, the county board of election commissioners, and the information provided by Staff.

(d) The State Board of Election Commissioners may also hear public comment if it believes that the information would be helpful.

(e) The State Board of Election Commissioners may limit the time of any testimony it hears.

(f) If an appeal is filed which clearly fails to meet the requirements of A.C.A. § 7-5-101(d)(4) and the rules governing these appeals, the staff shall contact the appellant, using whatever contact information is provided, inform the appellant of the deficiency, and assist the appellant in filing a modified application.

(g) An appeal which is filed that is omitting any of the following information shall be considered deficient as a matter of law:

- (1) The Appellant's name;
- (2) The Appellant's signature attesting to the truthfulness of the statements in the appeal under penalty of perjury; and
- (3) A statement of the facts and circumstances which identify the location of the poll(s) which have been closed.
- (4) The appeal was untimely under this rule.

(h) An appeal which is found deficient as a matter of law may be dismissed without a meeting of the SBEC if:

- (1) The SBEC attempts to notify the appellant of the deficiency using the information provided by the appeal; and
- (2) The applicant fails to provide the missing information:
 - A. Within seven (7) days of the act of the CBEC to close the poll, or
 - B. Within seven (7) days of receiving the appeal if the date the CBEC acted to close the poll(s) in question is unknown.
- (3) The appeal is received less than 53 days prior to the date of the election shall be considered deficient as a matter of law and may be dismissed without a prior attempting to contact the appellant due to the appellant's failure to file the appeal within 7 days of the last day for the CBEC to make changes to the location of polling sites.

(i) To dismiss an appeal which is deficient as a matter of law, the director of the SBEC shall direct a letter to the appellant explaining why this appeal was deficient and eligible for dismissal. This letter, and a copy of the appeal, shall also be sent to the members of the State Board of Election Commissioners and the county board of election commissioners for the county at issue.

§ 1110 Standard of Review in an Appeal of a Polling Site Closure

(a) The State Board of Election Commissioners shall consider the following when determining whether a polling site closure subject to the appeal is permissible:

- (1) Whether the closure of the poll forces voters to travel an unreasonable distance in order to cast a ballot on election day;
- (2) The capacity of remaining polling locations to accommodate voters;
- (3) The number of voters who utilized a poll in prior elections;
- (4) The availability of vote centers and early voting in the county;
- (5) The relative distribution of the population across the county;
- (6) Whether the polling location in question meets or can be modified to meet the requirements of a poll under state and federal law;
- (7) The expense of operating the poll or of modifying the poll in order to make a poll satisfy the requirements of state and federal law;
- (8) The availability of the poll in question;
- (9) Whether the closure constitutes a violation of state or federal law; and
- (10) The number of poll workers available at the time poll worker appointments were made.

(b) The State Board of Election Commissioners shall uphold the actions of the county board of election commissioners unless, by a majority vote, it finds that the closure of one or more polls causes an undue burden on the ability of voters to access the polls on election day or constitutes a violation of law.

(c) If more than one poll was at issue in the appeal, the State Board of Election Commissioners shall consider each poll at issue and may prohibit some closures while upholding other closures.

§ 1111 Applicability of the polling site appeal process

(a) An appeal of a polling site closure may only be made for polling site closures in a preferential primary or general election under A.C.A. § 7-5-101(d)(4).

(b) A vote center is a location selected by the CBEC where votes are cast and is within the definition of a polling site under A.C.A. § 7-1-101(28) and is subject to appeal under this rule.

(c) Changes made to early voting locations in a county are not subject to review under this rule.

(d) Under A.C.A. § 7-5-101(d)(4), the SBEC is required to resolve any appeal no less than 30 days prior to an election; therefore, emergency polling site changes are not subject to review by the SBEC.

§ 1112 Review of a Statewide Ballot Title and Popular Name

(a) Pursuant to Article 5 §1 as implemented in Act 376 of 2019, the State Board of Election Commissioners is required to review the ballot title and popular name of a proposed statewide ballot measure.

(b) Upon receipt of a proposed ballot title and popular name the SBEC Director shall:

- (1) Forward the information received from the Secretary of State to the membership of the State Board of Election Commissioner within one (1) business day;
- (2) Analyze the text of the ballot title and popular name;
- (3) Provide a report to the SBEC which analysis issues identified by staff that may impact whether the SBEC may certify the ballot title or popular name;
- (4) Assist any members with questions or research which is requested of staff regarding the certification of a ballot title and popular name.
 - A. In the event that a member believes a ballot title may not be eligible for certification, the member may request the staff draft a proposed explanation of non-certification for consideration by the SBEC in the certification meeting.
 - B. Documents drafted for a member under this provision shall not be circulated to other members prior to the public meeting.
- (5) Send written notification to the petition sponsor on file with the Secretary of State's office notifying the sponsor of the date and time of the meeting in which certification will be considered.
 - A. Notification must be sent to the physical address of the sponsor and to any email address which was provided when the petition was filed with the Secretary of State.
 - B. Notice should be sent as soon as possible but not less than five (5) business days prior to the date of the meeting.

(c) Upon receipt of a proposed ballot title and popular name the SBEC shall:

- (1) Hold a public meeting no less than 29 days from the date the Secretary of State certifies the proposed ballot title and popular name to the SBEC staff.
- (2) Conduct deliberations regarding the sufficiency of the ballot title and popular name under A.C.A. § 7-9-111(i)(3) and vote whether to certify the ballot title and popular name.
- (3) If the ballot title is not certified, the SBEC shall:
 - A. Adopted a motion describing the reasons that the ballot title and popular name were not certified which is sufficiently detailed to allow the Director to provide the sponsor a written statement explaining why the ballot title and popular name were not certified; or
 - B. Adopted a written statement explaining why the ballot title and popular name were not certified.

(d) Within one (1) business day of the public meeting in which the SBEC determines whether to certify a ballot title or popular name the SBEC Director shall:

- (1) Provide to the sponsor of the ballot title and popular name:
 - A. written notification to the sponsor regarding whether the ballot title and popular name were certified to the Secretary of State; and
 - B. In the event a ballot title was not certified, provide a written statement explaining why the ballot title and popular name were not certified.
- (2) Provide the Secretary of State:
 - A. A statement of certification for a ballot title and popular name approved by the SBEC including the text of the language reviewed; or
 - B. Notification that the ballot title and popular name were not certified.

§ 1113 Outside Advocacy Regarding a Statewide Ballot Title and Popular Name

(a) The determination regarding whether to certify a ballot title and popular name under Article 5 §1 as implemented in Act 376 of 2019 is an administrative determination for the State Board of Election Commissioners and should not be considered an adversarial process.

(b) Interested third parties may file briefs in support or opposition of certification; however, the State Board of Election Commissioners is not obligated to review or respond any filings made by third parties. If a brief is filed with the Director which satisfies the requirements of this rule, the brief shall be forwarded to the members of the State Board of Election Commissioners within one (1) business day of being filed.

(c) The sponsor of the petition may file a brief analyzing why the language filed satisfies the requirements of A.C.A. § 7-9-111(i). This brief shall:

- (1) Be filed with the State Board of Election Commissioners within three (3) business day of the filing of the petition with the Secretary of State;
- (2) Be accompanied by the full text of the ballot title and popular name in an electronic format which can be imported into a word processor;
- (3) Utilizes standard 12-point typeface or a 10-point typeface in footnotes;
- (4) Utilize a in a Century font; and
- (5) Not exceed twenty (20) pages.

(d) Other interested third parties may file amicus tabula legatourm briefs with the State Board of Election Commissioners.

(1) In order to be reviewed by the State Board of Election Commissioners, these briefs shall be filed:

- A. Be filed by a registered voter in the State of Arkansas;
- B. Be filed within seven (7) days of the date the petition being filed with the Secretary of State;
- C. Utilizes standard 12-point typeface or a 10-point typeface in footnotes;
- D. Utilize a in a Century font; and

E. Not exceed twenty (20) pages.

(2) Any brief filed after the deadline will not be forwarded to the State Board of Election Commissioners

(e) The sponsor of the petition may file one responsive brief addressing all amicus brief within twelve (12) days or the petition being filed with the Secretary of State.

§ 1114 Consideration of a Ballot Title and Popular Name in a Public Meeting

(a) The State Board of Election Commissioners shall conduct deliberations in a public meeting regarding the sufficiency of the ballot title and popular name under A.C.A. § 7-9-111(i)(3) and vote whether to certify the ballot title and popular name.

(b) The State Board of Election Commissioners may hear testimony by the sponsor and by other third parties.

(c) If the State Board of Election Commissioners allows public testimony, this testimony shall be conducted pursuant to the following provisions:

(1) All persons testifying in this matter shall be placed under oath;

(2) The sponsor or the sponsor's designee shall be allowed to testify in favor of certification

(3) Other interested third parties who sign up to speak in favor or in opposition for certification may be permitted to testify.

(4) Additional testimony shall be offered in the order the person signed up to testify alternating testimony in favor or in opposition for certification.

(d) The State Board of Election Commissioners may limit the time of any testimony it hears.

(e) The State Board of Election Commissioners may end public testimony if by a two-thirds vote of the member present, the Board determines that additional testimony would be redundant or would not assist the member in determining whether the ballot title and popular name should be certified.

(f) The determination of whether to adopt a motion to certify or to decline to certify the ballot title and popular name being considered shall be made by an affirmative vote of at least four members.