

LCB File No. R077-03

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

(This proposed regulation was adopted as LCB File No. E001-03)

Explanation – Matter in *italics* is new; matter in brackets [] is material to be omitted.

Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 to 11, inclusive, of this regulation.

Section 1. Definitions. (NRS 293.124) *As used in this chapter, unless the context otherwise requires:*

- 1. “Complainant” means the person who files a complaint with the Secretary of State under this chapter.*
- 2. “Respondent” means any State or local election official whose actions are asserted, in a complaint under this subtitle, to be in violation of Title III.*
- 3. “Title III” means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code §§15481-15485.*

Sec. 2. Who May File. (NRS 293.124) *Any person who believes that there is a violation of any provision of Title III may file a complaint, including a violation that has occurred, is occurring, or is about to occur.*

Sec. 3. Form of Complaint. (NRS 293.124)

- 1. Writing and Notarization. A complaint shall be in writing and notarized, signed and sworn by the Complainant.*
- 2. The Secretary of State may prescribe a form to be used in filing a complaint.*

Sec. 4. Filing of Complaint; Time for Filing; Initial Screening. (NRS 293.124)

- 1. Place for Filing. A complaint shall be filed with the Secretary of State’s Office in Carson City.*
- 2. Time for Filing. A complaint shall be filed within 60 days after the occurrence of the actions or events that form the basis for the complaint, including the actions or events that form the basis for the Complainant’s belief that a violation is about to occur, or, if later, within 60 days after the Complainant knew or, with the exercise of reasonable diligence, should have known of those actions or events.*
- 3. Copy for Respondent. The Complainant shall mail or deliver a copy of the complaint to each Respondent.*
- 4. Screening of Complaint. The Secretary of State or his designee shall screen all complaints to determine if they state a violation of Title III. If a complaint clearly on its face does not state a violation of Title III, it shall be dismissed without further action, with notice to the Complainant. A Complainant whose complaint has been dismissed for failure to state a violation may refile a complaint one time in order to state a violation.*

Sec. 5. Official Record; Consolidation of Similar Complaints; Request for Hearing. (NRS 293.124)

1. *Consolidation.* The Secretary of State may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

2. *Record.* The Secretary of State shall compile and maintain an official record in connection with each complaint under this subtitle.

3. *Request for Hearing.* At the request of the Complainant, made at the time of filing the complaint, the Secretary of State shall conduct a hearing on the record. This hearing is not intended to be a “contested case” within the meaning of the Nevada Administrative Procedure Act, Chapter 233B of Nevada Revised Statutes.

Sec. 6. Time of Hearing; Notice. (NRS 293.124)

1. *The hearing shall be conducted no sooner than 10 days and no later than 30 days after the Secretary of State receives the complaint. The Secretary of State shall give at least 5 business days’ advance notice of the date, time, and place of the hearing:*

(a) *By mail, to the Complainant, each named Respondent, and any other interested person who has asked in writing to be advised of the hearing;*

(b) *On the Secretary of State website; and*

(c) *By posting in a prominent place, available to the general public, at the office of the Secretary of State.*

Sec. 7. Conduct of Hearing; Post-hearing Briefs. (NRS 293.124)

1. *The Secretary of State or his designee shall act as hearing officer.*

2. *The Complainant, any Respondent, or any other interested member of the public may appear at the hearing, in person or by teleconference, and testify or present tangible evidence in connection with the complaint. Each witness shall be sworn. The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views. The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing.*

3. *A Complainant, Respondent, or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.*

4. *There shall be no right of cross-examination, but a person may testify or present evidence to contradict any other testimony or evidence. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence subsequently presented, that person is not entitled to be heard again, but may make a written presentation to the hearing officer.*

5. *The proceedings shall be tape-recorded by and at the expense of the Secretary of State. The recording shall not be transcribed as a matter of course, but the Secretary of State, a local board of elections, or any party may obtain a transcript at its own expense. If a board or party obtains a transcript, the board or party shall file a copy as part of the record, and any other interested person may examine the record copy.*

6. *Any party to the proceedings may file a written brief or memorandum within 5 business days after the conclusion of the hearing. No responsive or reply memoranda will be accepted, except with the specific authorization of the hearing officer.*

Sec. 8. Final Determination; Referral to Alternate Dispute Resolution. (NRS 293.124)

1. *If there has been no hearing under section 7 of this regulation, the Secretary of State or his designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established.*

2. *At the conclusion of any hearing under section 7 of this regulation, the hearing officer shall determine, under a preponderance of the evidence standard, whether a violation of Title III has been established.*

3. *Form of Determination.*

(a) *If the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the Secretary of State shall provide the appropriate remedy. The remedy so provided may include an order to any Respondent, commanding the Respondent to take specified action, or prohibiting the Respondent from taking specified action, with respect to a past or future election; however, the remedy may not include an award of money damages or attorney's fees.*

(b) *If the complaint is not timely or not in proper form, or if the Secretary of State or his designee whether acting as hearing officer or otherwise, determines that a violation has not occurred or that there is insufficient evidence to establish a violation, the Secretary of State shall dismiss the complaint.*

4. *The Secretary of State or his designee shall explain in a written decision the reasons for the determination and for any remedy selected.*

5. *Except as specified in subsection 6 of this section, the final determination of the Secretary of State shall be issued within 90 days after the complaint was filed, unless the Complainant consents in writing to an extension. The final determination shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final determination. It shall also be published on the Secretary of State website and made available on request to any interested person.*

6. *If the Secretary of State cannot make a final determination within 90 days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be referred for final resolution under section 9 of this regulation. The record compiled under subsection 2 of section 5 of this regulation shall be made available for use under section 9.*

Sec. 9. Alternate Dispute Resolution. (NRS 293.124)

1. *If, for any reason, the Secretary of State or his designee does not render a final determination within 90 days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be resolved under this section.*

2. *On or before the 5th business day after a final Secretary of State determination was due, the Secretary of State shall designate in writing to the Complainant the name of an arbitrator to serve on a panel to resolve the complaint. Within 3 business days after the Complainant receives this designation, the Complainant shall designate in writing to the Secretary of state the name of a second arbitrator. Within 3 business days after the Complainant's designation, the two arbitrators so designated shall select a third arbitrator to complete the panel.*

3. *The arbitration panel may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or*

memoranda, but shall not receive additional testimony or evidence. In exceptional cases, the panel may request that the parties present additional briefs or memoranda.

4. The arbitrators shall determine the appropriate resolution of the complaint by a majority vote.

5. The arbitration panel must issue a written resolution within 60 days after the final Secretary of State determination was due under subsection 5 of section 8 of this regulation. This 60-day period may not be extended. The final resolution of the panel shall be transmitted to the Secretary of State and shall be the final resolution of the complaint. The final resolution shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final resolution. It shall also be published on the Secretary of State website and made available on request to any interested person.

Sec. 10. Appeal. *(NRS 293.124) The final determination of the Secretary of State under subsection 1 or 2 of section 8 of this regulation, or the final resolution of an arbitration panel under section 9 of this regulation, shall not be subject to appeal in any State or federal court.*

Sec. 11. Accommodation. *(NRS 293.124) The Secretary of State shall make reasonable accommodations to assist persons in utilizing this complaint procedure.*