

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

LCB File No. R077-03

August 18, 2003

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-14, NRS 293.124.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 14, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Complainant” means a person who files a complaint with the Secretary of State pursuant to section 5 of this regulation.*

Sec. 4. *“Respondent” means a state or local election official against whom a complaint is filed pursuant to section 5 of this regulation.*

Sec. 5. 1. *A person who believes that a violation of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur may file a complaint with the Office of the Secretary of State.*

2. *A complaint filed pursuant to subsection 1 must:*

(a) *Be in writing, notarized and signed and sworn by the complainant. If the Secretary of State prescribes a form for the complaint, the complaint must be filed on that form.*

(b) Provide the name of each respondent and a concise statement of the facts of the alleged violation of 42 U.S.C. §§ 15481 to 15502, inclusive.

(c) Be filed in the Office of the Secretary of State in Carson City:

(1) Not later than 60 days after the occurrence of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, is about to occur; or

(2) Not later than 60 days after the complainant knew or, with the exercise of reasonable diligence, should have known of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, is about to occur,

↳whichever is later.

3. The complainant shall mail or deliver a copy of the complaint to each respondent.

Sec. 6. 1. The Secretary of State or his designee will review each complaint filed pursuant to section 5 of this regulation to determine whether the complaint complies with the requirements of section 5 of this regulation. If a complaint does not comply with the requirements of section 5 of this regulation, the complaint will be dismissed without further action and notice of the dismissal will be provided to the complainant.

2. A complainant whose complaint has been dismissed for failure to state a violation may refile the complaint only one time.

Sec. 7. 1. The Secretary of State may consolidate complaints filed pursuant to section 5 of this regulation if the complaints relate to the same action or event or raise a common question of law or fact.

2. The Secretary of State will compile and maintain an official record in connection with each complaint filed pursuant to section 5 of this regulation.

Sec. 8. *1. A complainant may request in a complaint filed pursuant to section 5 of this regulation that the Secretary of State hold a hearing on the complaint.*

2. The Secretary of State or his designee will conduct a hearing on a complaint, unless the complaint is dismissed pursuant to section 6 of this regulation. The hearing will be held not sooner than 10 days but not later than 30 days after a request for a hearing has been made pursuant to subsection 1.

3. The Secretary of State will provide notice of the date, time and place of the hearing at least 5 business days before the hearing:

(a) By mailing a copy of the notice to the complainant, each respondent and any interested person who has requested in writing to be advised of the hearing;

(b) By posting a copy of the notice in a prominent place at the Office of the Secretary of State that is available to the general public; and

(c) By posting a copy of the notice on the website of the Secretary of State.

4. A hearing held pursuant to this section is not a contested case for the purposes of chapter 233B of NRS.

Sec. 9. *1. The Secretary of State or his designee will act as the hearing officer for a hearing held pursuant to section 8 of this regulation.*

2. The complainant, any respondent and any 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. All testimony to be considered in the hearing will be taken under oath. The hearing officer may limit the testimony of witnesses, if necessary, to ensure

that all interested persons may present their views. The hearing officer may recess the hearing and reconvene the hearing at a later date, time and place, which must be 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 is no right of cross-examination at the hearing but a person may testify or present evidence at the hearing to contradict any other testimony or evidence presented at the hearing. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence presented subsequently, that person is not entitled to be heard again but the hearing officer may authorize the person to provide a written response.

5. The hearing will be recorded on audiotape by and at the expense of the Office of the Secretary of State. The recording will not be transcribed but the Secretary of State, a local board of elections or any party to the hearing may obtain a transcript of the hearing at its own expense. If a board or party obtains a transcript of a hearing, the board or party shall file a copy of the transcript as part of the record and any other interested party may examine the copy of the transcript on record.

6. Any party to the proceeding may file a written brief or memorandum with the hearing officer within 5 business days after the conclusion of the hearing. No responsive or reply memorandum to such a brief or memorandum will be accepted without the specific authorization of the hearing officer.

7. At the conclusion of the hearing and after any brief or memorandum has been filed pursuant to subsection 6, the hearing officer will determine whether, by a preponderance of

the evidence, a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur.

Sec. 10. *If a complainant has not requested a hearing on a complaint filed pursuant to section 5 of this regulation, the Secretary of State or his designee will review the complaint and any accompanying record and determine whether, by a preponderance of the evidence, a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur.*

Sec. 11. 1. *If the Secretary of State or his designee, whether acting as a hearing officer pursuant to section 9 of this regulation or reviewing a complaint pursuant to section 10 of this regulation, determines that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur, the Secretary of State or his designee will provide the appropriate remedy, including, without limitation, an order to a respondent commanding the respondent to take specified action or prohibiting the respondent from taking specified action, with respect to a past or future election. Such a remedy will not include an award of money damages or attorney's fees.*

2. *If the Secretary of State or his designee, whether acting as a hearing officer pursuant to section 9 of this regulation or reviewing a complaint pursuant to section 10 of this regulation, determines that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has not occurred, is not occurring or is not about to occur, the Secretary of State or his designee will dismiss the complaint.*

3. *The Secretary of State or his designee will issue a final determination on a complaint made pursuant to subsection 1 or 2 in writing. The final determination will include an explanation of the reasons for the determination and, if applicable, the remedy selected.*

4. Except as otherwise provided in section 12 of this regulation, a final determination of the Secretary of State or his designee on a complaint will be issued within 90 days after the complaint is filed, unless the complainant consents in writing to an extension. The final determination will be:

(a) Mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination;

(b) Posted on the website of the Secretary of State; and

(c) Made available by the Secretary of State, upon request, to any interested person.

Sec. 12. 1. *If the Secretary of State or his designee does not render a final determination on a complaint filed pursuant to section 5 of this regulation within 90 days after the complaint is filed, or within any extension period to which the complainant has consented, the Secretary of State will, on or before the fifth business day after the final determination was due to be issued, designate in writing to the complainant the name of an arbitrator to serve on an arbitration panel to resolve the complaint. Not later than 3 business days after the complainant receives such a designation from the Secretary of State, the complainant shall designate in writing to the Secretary of State the name of a second arbitrator. Not later than 3 business days after such a designation by the complainant, the two arbitrators so designated shall select a third arbitrator to complete the panel.*

2. The arbitration panel may review the record compiled in connection with the complaint, including, without limitation, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any additional testimony or evidence unless the arbitration panel requests that the parties present additional briefs or memoranda.

3. The arbitration panel shall determine the appropriate resolution of the complaint by a majority vote.

4. The arbitration panel shall issue a written resolution of the complaint not later than 60 days after the final determination of the Secretary of State was due pursuant to section 11 of this regulation. This period for issuing a written resolution will not be extended.

5. The final resolution of the arbitration panel will be:

(a) Mailed to the complainant, each respondent and any other person who requested in writing to be advised of the final resolution;

(b) Posted on the website of the Secretary of State; and

(c) Made available by the Secretary of State, upon request, to any interested person.

Sec. 13. A final determination of the Secretary of State pursuant to section 9 or 10 of this regulation or the final resolution of an arbitration panel pursuant to section 12 of this regulation is not subject to appeal in any state or federal court.

Sec. 14. The Secretary of State will make reasonable accommodations to assist persons in using the procedures set forth in sections 2 to 14, inclusive, of this regulation.