

APPENDIX E

ADMINISTRATIVE COMPLAINT PROCEDURE

- I. Authority:** In accordance with the provisions of 42 U.S.C. § 15512(a) and 17 V.S.A. § 2458 this rule provides for a uniform, nondiscriminatory procedure for the resolution of a complaint alleging a violation of provisions of Title 17 of the Vermont Statutes or Title III of the Help America Vote Act of 2002 (HAVA). It is not intended to over-ride any specific provisions of Title 17 that provide for dispute resolution for specific aspects of Vermont elections (e.g. complaint in Superior Court for recounts).
- II. Definitions:**
- A. “Complaint” means an allegation in writing that there is a violation of provisions of Title 17 of the Vermont Statutes or Title III of the HAVA that has occurred, is occurring or is about to occur in an election.
 - B. “Complainant” means any person filing a complaint in accordance with the provisions of paragraph III, below.
 - C. “Election” means a primary or general election in which a federal office appears on the ballot.
 - D. “Respondent” means any state or local elections official whose actions are alleged to be violation of Title 17 or Title III.
 - E. “Secretary” means the Vermont Secretary of State or his or her designee.
 - F. “Title 17” means 17 V.S.A. §§ 2451-2602.
 - G. “Title III” means Title III of the Help America Vote Act of 2002; 42 United States Code §§ 15281-15485.
- III. Complaints:** Any person who believes that a violation of provisions of Title 17 or Title III by any state or local election official has occurred, is occurring or is about to occur may file a complaint with the Secretary.
- A. Complaints must be in writing, sworn under oath under penalty of perjury, signed by the complainant and notarized.
 - B. Complaints must include the full name, telephone number and mailing address of the complainant.
 - C. Complaints must include a description of the alleged violation sufficient to make the Secretary and respondent aware of the nature and specifics of the complaint.
 - D. If a hearing on the record is requested, the complaint must so state.
 - E. The notarized complaint must be filed with the Secretary at 26 Terrace Street, Drawer 9, Montpelier, VT 05609-1101.
 - F. The complainant must also send a copy of the complaint to each respondent by first class U.S. mail.

- IV. Procedures:** The Secretary may process complaints in any of the following ways:
- A. Dismiss the complaint and issue a final determination if the complaint does not comply with the requirements of paragraph III above; or if the complaint does not, on its face, allege a violation of Title 17 or Title III with regard to an election.
 - B. Dismiss the complaint and issue a final determination if the complaint is not filed within sixty (60) days of the final certification of the federal election at which the alleged violation took place.
 - C. Resolve the complaint informally, and issue a final determination without a formal proceeding unless the complaint requests a hearing on the record.
 - D. Designate a hearing officer and schedule a date, time and place for a hearing on the record.
 - E. Consolidate multiple complaints into a single proceeding if the complaints relate to the same actions or events giving rise to the complaints, or the complaints raise common questions of law or fact.
- V. Hearing Procedures:** If requested in the complaint, and if no other summary action has occurred, the Secretary shall schedule a hearing as follows:
- A. Written notice of the hearing shall be given to all parties setting out the date, time and place of the hearing. Notice must be sent by first class U.S. mail as least seven (7) days prior to the date of the hearing.
 - B. The hearing shall be recorded. The audio recording shall constitute the official record of the hearing.
 - C. An extension of time for a hearing may be granted for good cause.
 - D. At the hearing all parties shall have the opportunity to be heard and to present evidence relevant to the determination of the complaint. Witnesses shall be sworn.
 - E. Any party may be represented by legal counsel.
 - F. If a complainant fails to appear at the hearing then the complaint shall be dismissed with prejudice.
- VI. Determination:**
- A. A written determination on the complaint shall be made within ninety (90) days of the filing of the complaint.
 - B. A written determination shall be issued within ten (10) days of the conclusion of any hearing.
 - C. The determination shall be final. The determination may be appealed to the Superior Court in the county where an appellant resides.

- VII. Alternative Dispute Resolution:** If, for any reason, the Secretary does not make a final determination within ninety (90) days after the complaint was filed, or within any extension of time to which the complainant consents, the complaint shall be resolved under this section:
- A. The Secretary shall immediately designate a three-member arbitration panel, which shall consider the complaint and any record previously created and reach a final determination by majority vote of the panel. If no record has been created, or the record is incomplete, the panel may receive evidence in accordance with provisions contained in paragraph V, above.
 - B. The panel shall issue a written, final determination within thirty (30) days of its designation.
 - C. The final determination of the panel may be appealed to the Superior Court in the county in which an appellant resides.