

Rule 13. Election and HAVA Complaints

13.1 Election complaint procedures

13.1.1 Any individual who personally witnesses a violation of the Uniform Election Code of 1992 may file an election complaint.

13.1.2 An election complaint must include the approved Secretary of State's Election Complaint cover sheet.

13.1.3 Processing and docketing election complaints

(a) Within three business days of receiving a complaint, the Secretary's designee will review the complaint to determine if it satisfies Rule 13.1.2 and sufficiently alleges a violation of the Uniform Election Code of 1992. The Secretary's designee may extend this deadline in the event that there are extenuating circumstances which would inhibit the designee's ability to meet the deadline.

(1) If the complaint does not meet the requirements of Rule 13.1.3(a), the Secretary's designee will notify the complainant of the deficiency.

(2) If a complaint meets the criteria, the Secretary's designee will notify the complainant and send a copy of the complaint to the person or entity alleged to have committed a violation.

(b) After notification, the person or entity alleged to have committed the violation will have 15 business days to submit a written response to the Secretary of State's office.

13.1.4 Amending an election complaint

(a) A complainant may amend a complaint within seven days after filing if he or she discovers new facts relating to the existing complaint.

(b) An amendment may not contain allegations of a new violation.

13.1.5 Investigation

- (a) After the response period outlined in Rule 13.1.3, the Secretary's designee will investigate the complaint.
- (b) If the Secretary of State determines that the complaint requires an immediate investigation, the Secretary's designee will begin investigating before the response period closes. In making the determination, the Secretary will consider whether the issue has the potential to affect an upcoming election.
- (c) Depending on the violation alleged, the Secretary's designee may:
 - (1) Review documents;
 - (2) Visit the county;
 - (3) Conduct interviews;
 - (4) Test equipment;
 - (5) Take other steps necessary; or
 - (6) Convene a hearing and take testimony from interested parties.
- (d) During an ongoing investigation, county clerks and staff must accommodate requests by the Secretary's designee in the timeframe requested by staff.

13.1.6 Resolution of election complaints

- (a) After an investigation and hearing, if applicable, the Secretary's designee will:
 - (1) Dismiss the complaint as not supported by credible evidence;
 - (2) Refer the complaint to a prosecuting authority under Article 13 of Title 1, C.R.S.; or
 - (3) Find a violation, recommend a resolution, and forward the recommendation for resolution to the Secretary of State.

13.2 Help America Vote Act (HAVA) complaint procedures

13.2.1 Any person who believes that a violation of Title III of HAVA has occurred, is occurring, or is about to occur, may file a HAVA complaint with the Secretary of State.

13.2.2 A HAVA complaint must include the approved Secretary of State's HAVA Complaint cover sheet.

13.2.3 A complainant must allege a HAVA violation with particularity and refer to the section of HAVA that has been violated.

13.2.4 A complaint must be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the violation, whichever is later.

13.2.5 Each complaint must be in writing and notarized, signed, and sworn by the person filing the complaint.

13.2.6 Processing and docketing HAVA complaints

(a) Within three business days of receiving a complaint, the Secretary's designee will review the complaint to determine if it satisfies Rules 13.2.2 through 13.2.5.

(1) If the complaint does not include a cover sheet the Secretary's designee will notify the complainant of the discrepancy.

(2) If a complaint meets the criteria, the Secretary's designee will assign a complaint number, notify the complainant, and send a copy of the complaint to the person or entity alleged to have committed a violation.

(b) After notification, the person or entity alleged to have committed the violation will have 15 business days to submit a written response to the Secretary of State's office.

(c) The Secretary's designee may consolidate two or more HAVA complaints.

13.2.7 Amending a HAVA complaint

- (a) A complainant may amend a complaint within seven days after filing if he or she discovers new facts relating to the existing complaint.
- (b) An amendment may not contain allegations of a new violation.

13.2.8 Investigation

- (a) After the response period outlined in Rule 13.2.6, the Secretary's designee will investigate the complaint.
- (b) If the Secretary of State determines an immediate investigation is required, the Secretary's designee will begin investigating before the response period has closed. In making the determination, the Secretary will consider whether the issue has the potential to affect an upcoming election.
- (c) Depending on the violation alleged, the Secretary's designee may:
 - (1) Review documents;
 - (2) Visit the county;
 - (3) Conduct interviews;
 - (4) Test equipment; or
 - (5) Take other steps necessary.
- (d) While an investigation is ongoing, county clerk staff must accommodate requests by the Secretary's designee in the timeframe requested.

13.2.9 Hearing and resolution of HAVA complaints

- (a) The Secretary of State or his or her designee will hold a hearing if the complainant requests one at the time of filing the complaint, unless the complainant later withdraws the request.

- (b) After the investigation and hearing, if any, the Secretary's designee will:
 - (1) Dismiss the complaint as not supported by credible evidence;
 - (2) Refer the complaint to a prosecuting authority under Article 13 of Title 1, C.R.S.; or
 - (3) Find a violation, recommend a resolution, and forward the recommendation for resolution to the Secretary of State.

13.2.10 Alternative dispute resolution under section 1-1.5-105(2)(j), C.R.S.

- (a) If the Secretary of State does not resolve the complaint within 90 days of the date that it was filed and the complainant does not consent to an extension of time, the Secretary of State will transfer the complaint to a hearing officer for a hearing as required by 8 CCR 1505-3, Rule 3.
- (b) The Secretary of State will provide the record and any other materials from the proceedings to the hearing officer.
- (c) The Secretary of State will consider the initial determination by the hearing officer and issue a final determination within 30 days of the date the determination is received by the Secretary.

13.2.11 The Secretary of State's determination is a final agency action.

13.2.12 The Secretary of State may recover the costs of proceeding against any complainant that files a frivolous, groundless, or vexatious complaint.