



GUAM ELECTION COMMISSION

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GUAM ELECTION COMMISSION ADMINISTRATIVE COMPLAINT PROCEDURE DRAFT

AN ACT TO ADD § 9154 TO TITLE 3 OF THE GUAM CODE ANNOTATED, RELATIVE TO ADMINISTRATIVE COMPLAINT PROCEDURES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Section 9154 is hereby *added* to Chapter 9 of Title 3 of the Guam Code Annotated to read as follows:

“Section 9154. Administrative Complaint Procedures.

(a) Scope. These provisions provide a uniform, nondiscriminatory procedure for resolving any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002 ("HAVA"), including a violation that has occurred, is occurring, or is about to occur. This procedure does not apply to alleged violations of Guam or federal law not involving Title III. Any writing received by the Guam Election Commission that does not appear to involve an alleged violation of Title III shall be referred to appropriate persons or agencies for processing.

(b) Definitions.

- (1) "Complainant" means the person who files a complaint with the Guam Election Commission under these provisions.
- (2) "Person" shall be any individual residing in Guam, at the time the complaint is filed.
- (3) "Respondent" means any Guam Election Official or local election official, or any other person or entity, whose action or actions are alleged, in a complaint under these provisions, to have violated, are violating, or are about to violate Title III.
- (4) "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.

(c) Who May File. Any person who believes that there has been a violation, there is a violation, or a violation is about to occur of any provision of Title III may file a complaint.

(d) Form of Complaint.

- (1) Writing and Notarization. As required by HAVA, a complaint shall be in writing and notarized, signed and sworn by the Complainant.
- (2) What to File.

- a. The Complainant may use the form prescribed by the Guam Election Commission, which will be available from the Guam Election Commission, from local election officials, or which may be downloaded from the Guam Election Commission's website or made interactive on the Guam Election Commission's website. Alternatively, the Complainant may use any other writing containing the information solicited by the prescribed form.
- b. The form prescribed by the Guam Election Commission shall be available in versions translated into all languages applicable, pursuant to Section 203 of the Voting Rights Act, to any jurisdiction in Guam.
- c. The Guam Election Commission shall consult with an advisory committee, appointed for such purpose, on ways to ensure that the complaint procedure is accessible to persons with disabilities.

(e) Place and Time for Filing.

- (1) Where to File. A complaint shall be sent to: Guam Election Commission, P.O. Box BG, Hagatna, Guam 96932, or delivered in person to the Office of the Guam Election Commission, Suite 200, GCIC Building, 414 W. Soledad Avenue, Hagatna, Guam 96910.
- (2) When to File. A complaint shall be filed within 60 days after the occurrence of the actions or events that form the basis for the complaint, or within 90 days after the Complainant becomes aware of the actions or events, whichever is later.

(f) Processing of Complaint.

- (1) Consolidation. The Guam Election Commission may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.
- (2) Notice to Respondents. The Guam Election Commission, at a time which it deems appropriate, but in any case prior to making any determination regarding the complaint, shall notify all Respondents of the allegations made in the complaint. This subsection shall not apply if the Guam Election Commission has reason to believe that notifying a respondent or respondents of the complaint filed might compromise a criminal investigation or prosecution or other enforcement action by any local, state or federal agency.
- (3) Record.
 - a. The Guam Election Commission shall compile and maintain an official record in connection with each complaint filed pursuant to these provisions.
 - b. The official record shall contain:
 1. A copy of the complaint, including any amendments;
 2. A copy of any written submission by the Complainant;
 3. A copy of any written response by any Respondent or other interested person;
 4. A written report of any investigation conducted by agents of the Guam Election Commission or of any local election official, who may not be directly involved in the actions or events complained of;

5. Copies of all notices and correspondence to or from the Guam Election Commission in connection with the complaint;
6. Originals or copies of any tangible evidence produced at any hearing conducted under subsection 9154(f)(4) of this section;
7. The original tape recording produced at any oral hearing conducted under subsection 9154(f)(4) of this section, and a copy of any transcript produced; and
8. A copy of any final determination made under subsection 9154(f)(5) of this section.

(4) Hearing.

a. At the request of the Complainant, the Guam Election Commission shall conduct a hearing on the record. This hearing may be oral, at the discretion of the Guam Election Commission, but otherwise it shall be based on:

1. All writings and tangible evidence received under subsection 9154(f)(3).
2. The hearing shall be conducted no sooner than 10 days and no later than 60 days after the Guam Election Commission receives the complaint.
3. The Guam Election Commission may designate the Executive Director or any other qualified person to act as the hearing officer.

(5) Final Determination.

a. The Guam Election Commission's designated hearing officer shall review the record, including the record of any hearing conducted, and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established.

b. Form of Determination.

1. If the Guam Election Commission or its designated hearing officer determines that a violation of Title III has occurred, the Guam Election Commission shall provide an appropriate remedy if an appropriate remedy is available. No remedy may involve the awarding of compensatory or punitive monetary damages to a Complainant.
2. If the Guam Election Commission or its designated hearing officer determines that violation of Title III has not occurred or that there is insufficient evidence to establish a violation of Title III, the Guam Election Commission shall dismiss the complaint.

c. The Guam Election Commission or its designated hearing officer shall explain in a written decision the reasons for the determination and for any remedy selected.

d. Except as specified in subsection 9154(f)(5)e of this section, the final determination of the Guam Election Commission 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 Guam Election Commission website and made available on request to any interested person. However, no mailing, publication or other providing of the determination or remedy shall be required if the Guam Election Commission has reason to believe that such mailing, publication or providing might compromise a criminal investigation or prosecution or other enforcement action by any local, state or federal agency.

e. If the Guam Election Commission cannot make or has not made 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 subsection 9154(f)(6) of this section. The record compiled under subsection 9154(f)(3) of this section shall be made available for use under subsection 9154(f)(6).

(6) Alternate Dispute Resolution.

a. If, for any reason, the Guam Election Commission or its designated hearing officer 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 subsection.

b. On or before the 5th business day after a final Guam Election Commission determination was due, the Guam Election Commission shall designate in writing a Hearing Officer who shall be a neutral party not associated with the Complainant or any respondent.

c. The Hearing Officer may review the record compiled in connection with the complaint, but need not receive additional testimony or evidence. The Hearing Officer may request that the parties present additional briefs, memoranda, or oral testimony.

d. The Hearing Officer shall determine the appropriate resolution of the complaint. No resolution may involve the awarding of compensatory or punitive monetary damages to a Complainant.

e. The Hearing Officer must issue a written resolution within 60 days after the final Guam Election Commission determination was due under subsection 9154(f)(5) of this section. This 60-day period may not be extended without the express consent of the Complainant. The final resolution shall be transmitted by the Hearing Officer to the Guam Election Commission and shall be the final resolution of the complaint. The final resolution shall be mailed by the Guam Election Commission 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 Guam Election Commission website and made available on request to any interested person. However, no mailing, publication or other providing of the determination or remedy shall be required if the Guam Election Commission has reason to believe that such mailing, publication or providing might compromise a criminal investigation or prosecution or other enforcement action by any local, state or federal agency.

(g) Effective Date. This complaint procedure shall be effective upon its posting on the Guam Election Commission's website and shall remain in effect until superceded by any modification, repeal, regulation or statute.