

State Elections Enforcement Commission's Complaint Review Process

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December 18, 2018 | 2018-R-0358

Issue

Describe the process the State Elections Enforcement Commission (SEEC) follows when disposing of complaints of alleged election or campaign finance law violations and provide the relevant deadlines. This report expands upon OLR Report [2017-R-0354](#).

Summary

By law, SEEC receives complaints from the secretary of the state, registrars of voters, town clerks, and individuals under oath concerning alleged election law violations. It investigates and holds hearings as it deems appropriate (CGS § 9-7b(a)(1)).

SEEC's disposition process is governed by (1) Title 9 of the General Statutes, (2) SEEC regulations, and (3) the Uniform Administrative Procedure Act (UAPA). Generally, Title 9 of the General Statutes authorizes SEEC to receive and investigate complaints and requires it to dismiss any complaint it receives on or after January 1, 2018, that it has not adjudicated within one year. SEEC regulations set some procedural deadlines, but they generally do not affect the length of the disposition process. Under Title 9 and SEEC regulations, complaints that proceed to hearings are conducted as contested cases under the UAPA and must adhere to the UAPA's deadlines. However, these deadlines are triggered only when evidence and briefs in a contested case have concluded.

Disposition Process

SEEC's [website](#) provides an overview of the complaint disposition process. We summarize the major provisions below.

1. When an allegation, if proven true, would constitute a violation of state election or campaign finance laws, it is docketed and assigned to a staff member to investigate. (A complaint is not docketed if it does not allege facts that, if proven true, would constitute a violation.)
2. A SEEC investigator analyzes documents, collects evidence, interviews witnesses as necessary, and prepares an investigation report for review by a case manager and the commissioners.
3. When the commission meets, which is typically once a month, it reviews any complaints on its agenda and does one of the following:
 - a. dismisses the matter after concluding that there is no reason to believe that a violation occurred;
 - b. authorizes staff to attempt to resolve the issue without proceeding to a hearing (e.g., through a consent agreement);
 - c. finds reason to believe that a violation of law occurred and proceeds to a hearing; or
 - d. refers the matter to the chief state's attorney's office for criminal prosecution.
4. If the commission finds reason to believe that a violation occurred, a hearing officer is appointed and a hearing date is scheduled.
5. Hearings are conducted as contested cases under the UAPA (see below).

Statutory Requirements

Under Title 9, SEEC can hold hearings, subpoena and examine witnesses, and receive oral and documentary evidence. The commission can (1) refer evidence of criminal election violations to the chief state's attorney or (2) ask the attorney general for injunctive or any other appropriate equitable relief based on its findings. Generally, SEEC must keep information concerning a complaint and the preliminary investigation confidential, until it determines that an investigation is necessary or if a respondent requests otherwise ([CGS §§ 9-7a\(g\)](#) and [9-7b\(a\)\(1\)](#)).

Preliminary Examination

By law, commission staff must conduct and complete a preliminary examination of a complaint within 14 days after receiving it. At that time, commission staff must do one of the following:

1. dismiss a complaint that fails to allege, with supporting evidence, a substantial violation of state election law;
2. attempt to speedily resolve a complaint about a de minimus violation by engaging the respondent in discussions; or

3. investigate and docket the complaint for a probable cause determination by the commission.

The law requires commission staff to provide a brief written statement setting forth the reasons for any complaint dismissal. It also requires staff to docket a complaint for a probable cause determination by the commission for any complaint they are unable to resolve within 45 days after receipt.

Deadlines

For complaints received on or after January 1, 2018, SEEC must issue a final decision within one year after receipt or dismiss it. If any of the following actions delays the issuance of a final decision, the length of the delay is added to the one-year deadline:

1. commission or commission staff granting a respondent any extension or continuance before issuing the decision;
2. a subpoena's issuance in connection with the complaint;
3. litigation is filed in state or federal court related to the complaint; or
4. consultation with the chief state's attorney, attorney general, U.S. Department of Justice, or U.S. attorney for Connecticut.

If SEEC has neither issued a decision nor made a probable cause determination by 60 days after receiving a written complaint, the complainant or respondent may apply to Hartford Superior Court for an order to show cause why the commission has not acted and provide evidence that it has unreasonably delayed action.

Exceptions

Secretary of the State Complaints. With respect to complaints that the secretary of the state files, SEEC must (1) determine whether to investigate within 30 days after the filing and (2) complete an investigation and issue a decision within 90 days after the filing. If SEEC fails to meet these deadlines, the secretary may apply to Hartford Superior Court for an order to show cause why it has not acted on the complaint and provide evidence that it has unreasonably delayed action. Any such judicial proceeding must be privileged with respect to assignment for trial ([CGS § 9-7a\(g\)\(2\)](#) and (3)).

Help America Vote Act (HAVA) Complaints. SEEC has the authority to receive and determine complaints and issue orders to enforce HAVA. Complaints must be in writing, notarized, and signed and sworn by the complainant, who can request a hearing in accordance with the UAPA.

The commission must issue a final decision within 90 days after the filing, unless the complainant agrees to an extension. If the commission fails to meet the 90-day (or extended) deadline, it must resolve the complaint within another 60 days under an alternative dispute resolution procedure it establishes ([CGS § 9-7b\(a\)\(18\)](#)).

Regulatory Requirements

SEEC regulations establish the following procedural deadlines concerning the commission's disposition process:

1. within seven days after receiving a complaint, SEEC must notify the complainant and any respondent by sending a copy or summary of the complaint (Conn. Agencies Regs., § 9-7b-26);
2. within seven days of initiating an investigation, SEEC must provide written notice to the person who will be investigated, including a statement on the investigation's subject matter (Conn. Agencies Regs., § 9-7b-26); and
3. the commission must notify all parties to a hearing in writing at least 10 calendar days beforehand (Conn. Agencies Regs., § Sec. 9-7b-37).

In addition, regulations prohibit the commission from adopting a final decision until (1) a proposed final decision is served upon all parties and (2) all parties adversely affected have had the opportunity to file exceptions, present briefs, and make oral arguments before the commission (Conn. Agencies Regs., § Sec. 9-7b-43).

UAPA Requirements

As described above, if the commission finds reason to believe that a violation occurred, a hearing officer is appointed and a hearing date is scheduled. Hearings are conducted as contested cases under the UAPA ([CGS § 4-177](#) et seq.). Generally, this means the following:

1. an agency must render a final decision within 90 days after the close of evidence or the due date for the filing of briefs, whichever is later; and
2. a person aggrieved by an agency's final decision may appeal under [CGS § 4-183](#) (generally, aggrieved parties have 45 days to appeal final decisions to Superior Court).

The UAPA also allows parties to petition for reconsideration and establishes procedures and deadlines for doing so. Under these procedures, a party in a contested case may petition an agency for reconsideration within 15 days after the issuance of a final decision.

KS:cmg