

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

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2015 JUN 30 P 1:18

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY: W. Va. Code 6B-2-5c(e)

AMENDMENT TO AN EXISTING RULE: YES  NO

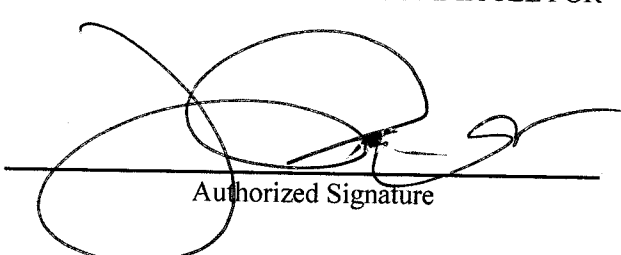
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_  
\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: PUBLIC USE OF NAME OR LIKENESS  
\_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

TITLE 158  
LEGISLATIVE RULE  
WEST VIRGINIA ETHICS COMMISSION

SERIES 21  
PUBLIC USE OF NAME OR LIKENESS

FILED  
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SECRETARY OF STATE

**§158-21-1. General.**

1.1. Scope. -- This legislative rule establishes guidelines concerning limitations on a public official using his or her name or likeness pursuant to W. Va. Code §6B-2-5c.

1.2. Authority. -- W. Va. Code §6B-2-5c.

1.3. Filing Date. --

1.4. Effective Date. --

**§158-21-2. Persons subject to W. Va. Code §6B-2-5c.**

2.1. The provisions of this section apply to all elected and appointed public officials and public employees, their agents, and any other person on the public payroll, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

**§158-21-3. Exceptions.**

3.1. Incidental use of public resources for personal or business purposes resulting in *de minimis* private gain to a person subject to this section or another person does not constitute a violation of this section.

3.2. Nothing in W. Va. Code § 6B-2-5c shall require the removal of names or likenesses of public officials which appear on publicly-owned vehicles as of May 28, 2015.

**§158-21-4. Advertising.**

4.1. "Advertising," for purposes of W. Va. Code § 6B-2-5c(a)(3), means any form of publication or media communication intended for general dissemination to the public that has the primary intent or effect of promoting a public official. Dissemination of office press releases or official information via e-mail, social media or other public media tools for official purposes is not considered advertising under W. Va. Code § 6B-2-5(a)(3).

4.2. This section does not prohibit communications released by college and university staff, for marketing, development, recruiting or other advertising purposes.

**§158-21-5. Entertainment Activities.**

5.1. "Within forty-five days," for purposes of W. Va. Code § 6B-2-5c(a)(4), means forty-five days prior to a primary, general, or special election.

5.2. The term "entertainment activities," for purposes of W. Va. Code § 6B-2-5c(a)(4), does not include any activity considered usual and customary to the official's position, an activity with a charitable purpose that does not directly benefit a person subject to this act, or an activity that primarily advances public policy or constituent services.

5.3. Nothing in W. Va. Code § 6B-2-5c(a)(4) shall be construed to infer that the expenditure of public funds on private entertainment activities is otherwise permitted under the Ethics Act.

**§158-21-6. Trinkets.**

6.1. Nothing in W. Va. Code § 6B-2-5c(b)(2) shall be construed to permit persons subject to this section to purchase with public funds pens, pencils or other markers featuring a public official's name or likeness. However, public officials are not prohibited from expending public funds to purchase pens, pencils or other markers used during ceremonial signings.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Title 158, Series 21  
PUBLIC USE OF NAME OR LIKENESS

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Ethics Commission

Address: 210 Brooks St., Suite 300  
Charleston, WV 25301-1804

Phone Number: (304) 558-0664 Email: ethics@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Title 158, Series 21  
PUBLIC USE OF NAME OR LIKENESS

Rule Title:

Title 158, Series 21  
PUBLIC USE OF NAME OR LIKENESS

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

None

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule affects the interpretation of new legislation. It does not fiscally impact the operation of the Ethics Commission.

Date: June 30, 2015

Signature of Agency Head or Authorized Representative

Rebecca Steph

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: June 30, 2015

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Ethics Commission  
210 Brooks St.  
Suite 300  
Charleston, WV 25301-1804

LEGISLATIVE RULE TITLE: PUBLIC USE OF NAME OR LIKENESS

1. Authorizing statute(s) citation W. Va. Code 6B-2-5c(e)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
May 12, 2015

b. What other notice, including advertising, did you give of the hearing?  
There was no public hearing for this rule.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
June 12, 2015

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 30, 2015

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Rebecca L. Stepto

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Executive Director

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Phone: (304) 558-0664

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Fax: (304) 558-2169

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E-Mail: Rebecca.L.Stepto@wv.gov

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing or comment period:

\_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

\_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

## MEMORANDUM

Title 158, Series 21, submitted for Public Comment Period on May 11, 2015, did not receive any public comments from the date of submission until the Public Comment Period ended June 12, 2015.

## **RULE SUMMARY**

### **TITLE 158 LEGISLATIVE RULE WEST VIRGINIA ETHICS COMMISSION**

#### **SERIES 21 PUBLIC USE OF NAME OR LIKENESS**

The purpose of this proposed Legislative Rule is to establish guidelines concerning limitations on a public official's use of his or her name or likeness pursuant to W. Va. Code § 6B-2-5c.

The Legislative Rule is intended to delineate which individuals are subject to W. Va. Code § 6B-2-5c; to provide a *de minimis* exception to the statute; to define "advertising" and "within forty-five days;" to exempt certain activities from the term "entertainment activities;" and to clarify that pens, pencils and other writing supplies which are technically "vital and necessary" to the performance of a public official's job may not feature a public official's name or likeness unless used for ceremonial purposes.

#### **Statement of Circumstances**

These rules are necessary to enable the Ethics Commission to properly interpret, provide guidance on, and enforce W. Va. Code § 6B-2-5c. Without these rules, the statute will contain significant undefined terms which would leave public officials and employees affected by W. Va. Code § 6B-2-5c without proper guidance regarding compliance.