



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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2/2/2018 10:37:34 AM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY **Ethics Commission**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **158-**

RULE NAME **Complaints, Probable Cause Review Board and Investigations** **16**

CITE AUTHORITY **W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Monday, March 05, 2018 5:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
**Rebecca L. Stepto
Executive Director
WV Ethics Commission
210 Brooks Street, Suite 300
Charleston, WV 25301**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Theresa M Kirk -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 158-16



Rule Id: 16707



Document: 50188



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**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
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PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

The Ethics Commission proposes to amend its Procedural Rule governing the investigation of complaints by the Ethics Commission's Probable Cause Review Board. The Rule has not been updated since 2005.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Ethics Commission**

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RULE NAME **Complaints, Probable Cause Review Board and Investigations** **16**

CITE AUTHORITY **W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.**

PRIMARY CONTACT

Theresa M. Kirk
210 Brooks Street
Suite 300
Charleston, WV 25301

SECONDARY CONTACT

Ellen M. Briggs
210 Brooks Street
Suite 300
Charleston, WV 25301

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CITE AUTHORITY **W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

None.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

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RULE NAME **Complaints, Probable Cause Review Board and Investigations** **16**

CITE AUTHORITY **W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.**

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Ethics Commission**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **158-**

RULE NAME **Complaints, Probable Cause Review Board and Investigations** **16**

CITE AUTHORITY **W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

Not applicable

Theresa M Kirk – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY **Ethics Commission**

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RULE NAME **Complaints, Probable Cause Review Board and Investigations** **16**

CITE AUTHORITY **W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.**

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.

The proposed Rule will not have a fiscal impact as it merely updates an existing Procedural Rule governing the processing of complaints by the Probable Cause Review Board.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Theresa M Kirk -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 12 – BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Ethics Commission**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **158-**

RULE NAME **Complaints, Probable Cause Review Board and Investigations** **16**

CITE AUTHORITY **W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

The primary changes to the Rule are: to allow the filing of complaints via electronic mail; to change the deadline for Respondents to request an opportunity to make an oral response to the Complaint before the Review Board from 15 to 30 days after receipt of the Notice of Investigation; to clarify that dismissal orders dismissing Complaints which do not state a claim under the Ethics Act may be signed by the Probable Cause Review Board Chairperson alone and need not be signed by all three members; to add the 18-month deadline to complete an investigation to conform to the 2016 Legislative changes to the Ethics Act, and to make technical changes.

Statement of Circumstances Requiring the Rule - This Rule establishes the procedure for the investigation of complaints by the Probable Cause Review Board. The Rule has not been updated since 2005.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Theresa M Kirk -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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TITLE 158
PROCEDURAL RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 16
COMPLAINTS, PROBABLE CAUSE REVIEW BOARD AND INVESTIGATIONS

§158-16-1. General Provisions.

1.1. Scope. -- ~~This legislative rule sets forth the practice and procedure established by the West Virginia Ethics Commission for carrying out its responsibilities and the responsibilities of the Probable Cause Review Board in the administration and enforcement of the West Virginia Governmental Ethics Act, (hereafter referred to as the "Act") W. Va. Code §6B-1-1 et seq.~~ This Procedural Rule establishes the practice and procedure for the administration, investigation and disposition of Complaints by the West Virginia Ethics Commission's Probable Cause Review Board.

1.2. Authority. -- W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.

1.3. Filing Date. -- ~~September 13, 2005.~~

1.4. Effective Date. -- ~~October 14, 2005.~~

~~1.5. During the 2005 Special Session the Legislature amended the West Virginia Ethics Act. The Act, as amended, provides for the creation of a Probable Cause Review Board (Review Board). This rule sets forth the procedure for the Review Board and applies to all complaints filed after July 1, 2005. All complaints filed prior to July 1, 2005 are governed by 158 CSR 3, filed July 6, 1993 and effective September 1, 1993.~~

§ 158-16-2. Verified Complaints.

2.1. ~~Any person may file a verified complaint with the Commission. A verified complaint~~ A Verified Complaint is one written and ~~duly~~ verified by oath or affirmation before a notary public.

2.2. ~~A duly verified complaint must be filed with the Ethics Commission.~~ Any person may file a Verified Complaint with the Ethics Commission through hand delivery, United States Mail or via electronic mail if the Verified Complaint has been scanned and attached to the electronic mail.

2.3. ~~The Executive Director or his or her designee shall within three days of receipt in the office of the Commission acknowledge the verified complaint by first class mail.~~ The Executive Director or his or her designee shall, within three business days of receipt of a Verified Complaint, send a letter to the Complainant by first-class mail acknowledging receipt of the Verified Complaint.

2.4. ~~After July 1, 2005, the~~ The Executive Director of the Ethics Commission, upon majority affirmative vote of the Commission, may file a ~~verified complaint~~ Commission-Initiated Complaint.

§ 158-16-3. Probable Cause Review Board.

3.1. Within fourteen ~~(14)~~ days of the receipt of a ~~verified complaint~~ Verified Complaint or Commission-Initiated Complaint (hereinafter "Complaint"), the Executive Director shall refer the

~~complaint~~ Complaint to the Probable Cause Review Board (hereinafter "Review Board"). ~~(Review Board).~~ Provided, That, any complaint filed prior to July 1, 2005 shall be referred to an investigative panel and processed in accordance with 158 C.S.R. 3, filed July 6, 1993 and effective September 1, 1993.

3.2. The Review Board must first determine whether the allegations stated in the ~~complaint~~ Complaint, if taken as true, would constitute a violation of the ~~Act~~. Ethics Act (hereinafter "Act").

3.3. ~~If two members of the Review Board determine that the complaint does not contain allegations which would constitute a violation of the Act, then the investigative panel shall dismiss the complaint by order.~~ If the Review Board determines that the Complaint does not contain allegations that would constitute a violation of the Act, the Review Board shall dismiss the Complaint by Order signed by the Review Board Chairperson.

§ 158-16-4. Notice of Investigation.

4.1. ~~If the Review Board determines that the allegations of the complaint, if taken as true, would constitute a violation of the Act, then the Executive Director or his or her designee shall give notice of the initiation of an investigation (Notice of Investigation) by the Review Board to the complainant and respondent.~~ If the Review Board determines that an allegation in the Complaint, if taken as true, would constitute a violation of the Act, then the Executive Director or his or her designee shall give notice to the Complainant and Respondent that an investigation will begin (hereinafter "Notice of Investigation").

4.2. The Notice of Investigation, ~~accompanied by a copy of the complaint~~ and a copy of the Complaint, shall be mailed to the ~~parties~~ Respondent ~~and be sent to the respondent~~ by certified mail, return receipt requested, marked "Addressee only, personal and confidential." The Executive Director shall also provide a copy of the Notice of Investigation to the Complainant.

4.3. The Notice of Investigation shall describe ~~respondent's~~ the Respondent's conduct which is the basis for the alleged violation of ~~the Act.~~ law.

4.4. The Notice of Investigation shall advise the ~~respondent~~ Respondent that the purpose of the investigation is to determine whether probable cause exists to believe ~~that~~ that a violation of ~~law~~ the Act has occurred which may subject the ~~respondent~~ Respondent to sanctions by the Commission, criminal prosecution by the state, or civil liability ~~as appropriate.~~

4.5. ~~The Notice of Investigation shall also inform the respondent that he or she has the right to appear and make an oral response before the Review Board if he or she reserves the right to make an appearance in writing within 15 days of the date of notice.~~ The Notice of Investigation shall also inform the Respondent that he or she has the right to appear and make an oral response before the Review Board and that he or she must submit a request for such an oral response within thirty days of receipt of the Notice of Investigation.

4.6. ~~The Notice of Investigation shall also inform the respondent that he or she may respond in writing to the Review Board within thirty (30) days of receipt of the notice, which time may be extended by the Chairman of the Review Board upon good cause shown by the respondent.~~ The Notice of Investigation shall also inform the Respondent that he or she may respond to the Complaint in writing within thirty days of receipt of the Notice of Investigation. This time may be extended by the Executive Director, his or her designee, or the Chairperson of the Review Board upon a showing of good cause by the Respondent.

4.7. The Notice of Investigation shall also advise the ~~respondent~~ Respondent that his or her failure or refusal to respond to a fact or allegation is not taken as an admission of the truth of that fact or allegation.

§ 158-16-5. Investigation.

5.1. The Review Board has forty-five ~~(45)~~ days following the mailing of the Notice of Investigation to commence to consider:

5.1.1. 5.1.a. The allegations raised in the ~~complaint~~ Complaint;

5.1.2. 5.1.b. Any written response filed by the Respondent ~~timely received written response of respondent~~;

5.1.3. 5.1.c. Any oral response ~~received from~~ presented by the ~~respondent~~ Respondent;

5.1.4. 5.1.d. Other competent, relevant evidence submitted by any person to the Commission, and

5.1.5. 5.1.e. Other competent, relevant evidence gathered by the Commission.

5.2. The investigation and determination as to probable cause shall not exceed eighteen months from the date the Notice of Investigation is mailed unless consented to by both the Respondent and Complainant, or unless the Ethics Commission finds that there is good cause for delay in the investigation and memorializes its determination in writing.

~~5.2. If the respondent requests an appearance before the Review Board to present an oral response to the complaint, the Review Board chairperson will schedule a meeting to be held after the time has passed for the respondent to file a written response (within 30 days after the notice of investigation is received by the respondent). The respondent, his or her counsel, legal counsel to the Commission and the Commission investigator(s) may be present at the meeting.~~

5.3. If the Respondent submits a request to make an oral response to the Complaint, the Executive Director, his or her designee, or the Review Board Chairperson shall schedule a meeting for that purpose. The Respondent, his or her attorney, Commission staff and any person the Review Board determines is necessary for the efficient operation of the meeting may be present at that meeting.

5.4. 5.3. The ~~respondent~~ Respondent has thirty minutes to make an oral response or statement of defense to the charges or ~~allegation~~ allegations contained in the ~~complaint~~ Complaint. The Review Board, in its discretion, may allow the ~~respondent~~ Respondent additional time for the oral response.

5.5. 5.4. The Review Board may seek additional probative information from the ~~respondent~~ Respondent as is necessary for its investigation.

5.6. 5.5. The ~~Ethics Commission and the~~ Review Board may issue subpoenas as is necessary and any subpoena issued has the same effect as one issued by a circuit court of the state. The subpoena may be signed by the Review Board Chairperson, his or her designee, or by the Executive Director.

5.7. 5.6. ~~The Commission may seek enforcement of any Commission or Review Board subpoena by applying to a circuit court of the county in which the Review Board is conducting its investigation,~~

~~through the issuance of a rule or an attachment against the respondent in a contempt case. The Review Board Chairperson, his or her designee, the Executive Director, or his or her designee, may seek enforcement of any subpoena in a circuit court.~~

§ 158-16-6. ~~Findings of Probable Cause.~~ Finding of Probable Cause.

6.1. ~~After investigation, if~~ If the Review Board unanimously finds probable cause to believe that a violation ~~under~~ of the Act has occurred, the Review Board members shall sign an ~~order~~ Order directing the Commission staff to prepare a ~~statement of charges~~ Statement of Charges and to schedule a hearing within ninety (90) days after ~~the date of the order.~~ the date the Order was entered.

~~6.2. If the Review Board fails to find probable cause the proceedings shall be dismissed by order of the Review Board. Copies of the order shall be sent to complainant and respondent within three days of execution of the order by the Review Board. If the Review Board fails to find probable cause, the proceedings shall be dismissed by an Order issued by the Review Board. Copies of the Order shall be sent to the Complainant and the Respondent.~~