



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

3/12/2018 10:49 AM

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Ethics Commission

TITLE-SERIES: 158-16

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Complaints, Probable Cause Review Board and
Investigation

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

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 12, 2018

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 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. -- March 12, 2018.

1.4. Effective Date. -- April 12, 2018.

§ 158-16-2. Verified Complaints.

2.1. A Verified Complaint is one written and verified by oath or affirmation before a notary public.

2.2. 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 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. The Executive Director of the Ethics Commission, upon majority affirmative vote of the Commission, may file a Commission-Initiated Complaint.

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

3.1. Within fourteen days of the receipt of a Verified Complaint or Commission-Initiated Complaint (hereinafter "Complaint"), the Executive Director shall refer the Complaint to the Probable Cause Review Board (hereinafter "Review Board").

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

3.3. 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 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 and a copy of the Complaint shall be mailed 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 the Respondent's conduct which is the basis for the alleged violation of the Act.

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

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 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 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 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 days following the mailing of the Notice of Investigation to commence to consider:

- 5.1.1. The allegations raised in the Complaint;
- 5.1.2. Any written response filed by the Respondent;
- 5.1.3. Any oral response presented by the Respondent;
- 5.1.4. Other competent, relevant evidence submitted by any person to the Commission, and
- 5.1.5. 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.

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

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

5.6. 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. 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. Finding of Probable Cause.

6.1. If the Review Board unanimously finds probable cause to believe that a violation of the Act has occurred the Review Board members shall sign an Order directing the Commission staff to prepare a Statement of Charges and to schedule a hearing within ninety days after the date the Order was entered.

6.2. 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.