



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Ethics Commission

TITLE-SERIES: 158-19

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

RULE NAME: West Virginia Ethics Commission

CITE STATUTORY AUTHORITY: W. Va. Code §§ 6B-2-1 and 6B-2-2

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 04/13/2018

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The Rule sets forth the practice and procedure established by the West Virginia Ethics Commission for carrying out its responsibilities in the administration and enforcement of the Ethics Act.

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

The primary changes are to change the number of Commissioners required for a vote on a decision regarding the truth or falsity of charges against a respondent and a decision to impose sanctions from five to six to conform to 2017 changes to the Ethics Act and to correct citations to the Open Governmental Meetings Act.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None.

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Based upon information and belief, the Rule has no fiscal impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

**TITLE 158
PROCEDURAL RULE
WEST VIRGINIA ETHICS COMMISSION**

**SERIES 19
WEST VIRGINIA ETHICS COMMISSION**

§ 158-19-1. General Provisions.

1.1. Scope. -- This Procedural Rule ~~rule~~ sets forth the practice and procedure established by the West Virginia Ethics Commission ("the Commission") for carrying out its responsibilities 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.~~ through 6B-3-11.

1.2. Authority. -- W. Va. Code §§ 6B-2-1 and 6B-2-2.

1.3. Filing Date. -- ~~October 9, 2014.~~

1.4. Effective Date. -- ~~November 8, 2014.~~

~~1.5. Procedure governed — This rule governs all practice and procedure before the West Virginia Ethics Commission (hereafter referred to as "the Commission").~~

~~1.6. Liberal construction — This rule shall be liberally construed to permit the Commission to discharge its statutory functions and to secure just and expeditious determination of all matters before the Commission.~~

~~1.7. Practice where rule does not govern — In situations where the rule is not applicable, the Commission's or its hearing examiner's discretion shall be exercised in accordance with the traditional notions of fairness and justice.~~

~~1.8. Severability — If any of this rule is held invalid, it shall not be construed to invalidate any of the other provisions of this rule.~~

~~1.9. Delegation of powers and duties — Except where contrary to the law, the Commission may delegate any of the powers and duties of the Commission to an employee or agent of the Commission.~~

§ 158-19-2. Definitions.

2.1. All words defined in chapter six-B of the West Virginia Code have the meanings therein ascribed to them for the purpose of all legislative rules of the West Virginia Ethics Commission. The following words have the meanings herein ascribed to them as set forth below:

2.1.a. "Act" means the West Virginia Governmental Ethics Act.

2.1.b. "Chairperson" means the chairperson of the West Virginia Ethics Commission elected by

the Commissioners.

2.1.c. "Commissioner" means one of the duly appointed members of the West Virginia Ethics Commission.

2.1.d. "Meeting" means the convening of the Commission for which a quorum is required ~~in order~~ to make a decision or to deliberate toward a decision on any matter. As provided in W. Va. Code ~~§ 6-9A-2-4(A)~~ § 6-9A-2(5)(A), the term "meeting" does not include any meetings for the purposes of making an adjudicatory decision.

§ 158-19-3. Meetings.

3.1. Meetings of the Commission may be called by the chairperson, and the chairperson shall call a meeting upon the written request of three commissioners.

3.2. The chairperson shall send a notice to the Commission members in writing at least seven ~~(7)~~ days in advance of a meeting setting forth the date, time and place of the meeting, except that notice is not required if the date, time, and place have been fixed in a prior meeting.

3.3. The chairperson shall notify the public and the news media by filing with the office of the Secretary of State a public notice of each regular or special meeting for publication in the State Register at least five ~~(5) calendar~~ business days in advance of the meeting. The public notice shall contain the date, time, and place of the meeting.

3.4. At least three business days prior to the date of the meeting, an agenda for each regular and special meeting shall be made available in the Commission's office and on the Commission's website (ethics.wv.gov) ~~www.ethics.wv.gov~~. An agenda which has been issued at least three days in advance of a meeting may be amended up to two business days before the meeting. In calculating business days, the day of the meeting, as well as Saturdays, Sundays and legal holidays are excluded.

3.5. The provisions of this ~~section~~ Rule shall not apply in the event of an emergency requiring immediate official action by the Commission.

3.6. Meetings that are not concluded in one day may be continued to a set date, time and place by a majority vote of the Commission members present and voting.

3.7. The Commission shall meet in regular session on the first Thursday of each month or such other date as the Commission may direct.

3.8. The Commission shall convene all regular meetings at the offices of the West Virginia Ethics Commission, unless otherwise changed by a majority vote of a quorum of the Commission or by the chairperson.

§ 158-19-4. Proceedings to be Open; Exceptions.

4.1. All meetings of the Commission are open to the public except as otherwise provided in W. Va. Code §6-9A-4, or as otherwise provided in the Act.

4.2. The Commission may at any meeting go into executive session, upon a majority vote of the Commissioners present or participating by teleconference or other electronic means to discuss Commission personnel, planned or ongoing litigation, and planned or ongoing investigations, or to conform with the provisions of the Act requiring confidentiality.

4.3. Any action taken as a result of a discussion in executive session must be properly ratified in open session of the Commission to be an official action of the Commission.

§ 158-19-5. Minutes of Meetings.

5.1. The Commission shall prepare written minutes of all Commission meetings.

5.2. A copy of the minutes of open meetings shall be available to the public within a reasonable time after the meetings and shall include the following information:

5.2.a. The date, time, and place of the meeting;

5.2.b. The name of each Commission member present or absent;

5.2.c. All motions, proposals, measures, orders, and resolutions proposed; and,

5.2.d. The results of all votes and, upon the request of a member, the vote of each member, by name.

§ 158-19-6. Quorum, Majority Vote Required; Proxy Vote Prohibited.

6.1. Five members of the Commission shall constitute a quorum for the transaction of business.

6.2. At least ~~five~~ six members of the Commission are required to render a decision regarding the truth or falsity of charges against a respondent and a decision to impose sanctions.

6.3. No Commission member may vote by proxy.

6.4. Meetings of the Commission may be held by telephonic or other electronic conferencing except when the Commission is acting as a hearing board.

6.5. Meetings held by telephone conference require notice to members in the same manner as meetings personally attended, shall be electronically recorded, and the recordings shall be retained in accordance with the Commission's record retention policy.

§ 158-19-7. Travel Expense Rules; Compensation.

7.1. Members of the Commission shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as ~~recommended by the Citizens Legislative Compensation Commission and~~ authorized by law for each day or portion thereof engaged in the discharge of official duties.

7.2. Every day spent in a regular or special meeting, committee meeting or hearing constitutes a day spent on Commission business. A member shall not be reimbursed for expenses unless he or she is personally in attendance.

§ 158-19-8. Oath.

Each member of the Commission shall take and subscribe to the oath or affirmation required pursuant to ~~Section 5~~, Article IV, Section 5 of the Constitution of West Virginia.

§ 158-19-9. Removal of Member.

A Commission member may be removed by the Governor for substantial neglect of duty, gross misconduct in office, or violation of the Act, after written notice and an opportunity for reply.

§ 158-19-10. Delegation of powers and duties

Except where contrary to the law, the Commission may delegate any of the powers and duties of the Commission to an employee or agent of the Commission.