

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY: W.Va. Code 6B-2-1 et seq

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: (Title of Rule Being Amended to Read "Confidentiality.")

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

Lewis D. Burns Executive Director
Authorized Signature

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

**SERIES 1
CONFIDENTIALITY**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§158-1-1. General Provisions.

1.1. Scope. -- This rule sets forth the practice and procedure established by the West Virginia Ethics Commission for maintaining the confidentiality of communications and documents in accordance with the West Virginia Governmental Ethics Act, (hereafter referred to as the "Act") W. Va. Code § 6B-1-1 et seq.

1.2. Authority. -- W. Va. Code §§ 6B-2-2 and 6B-2-4

1.3. Filing Date. --

1.4. Effective Date. --

1.5. This rule repeals and replaces the previous rule filed with the Secretary of State on July 6, 1993. The previous rule, with modification, has been refiled as a procedural rule with the designation 158 CSR 19.

§158-1-2. Confidentiality.

2.1. Confidentiality Requirements.

2.1.a. The Commission and Review Board shall keep all matters or information received by the Commission and the Review Board relating to a complaint, including the identity of the complainant and respondent, confidential except as otherwise provided by the Ethics Act, chapter 6-B of the West Virginia Code, or this Rule.

2.1.b. If the respondent agrees in writing to a release of information, the Commission or Review Board may disclose any information relating to a complaint or an investigation to the public at any time.

2.1.c. Upon a finding by the review board that probable cause exists to believe that there has been a violation of chapter six-B of the West Virginia Code, the complaint and all reports, records, non-privileged and non-deliberative material used to determine probable cause of a violation are thereafter not confidential.

2.2. The following documents are confidential by law and privileged and shall not be subject to the provisions of chapter twenty-nine-b of this code nor subject to subpoena:

2.2.a. any record, report, memorandum, or communication dealing with the internal practice, policy and procedure of the Commission.

2.2.b. any record, report, memorandum, or communication of the staff or Commission member regarding the institution, progress or result of an investigation of a complaint.

2.2.c. the work product of an investigator or other staff member made in the course of an investigation of a complaint, or in preparation for the Review Board or in anticipation of or in preparation for a hearing on the complaint.

2.2.d. any memorandum, statement or opinion prepared or directed to be prepared by legal counsel to the Commission.

2.2.e. the identity of a confidential informant unless he or she is the complainant or will be a witness for the Commission at the hearing.

2.2.f. any record, report, memorandum, or communication of the staff or Commission member regarding the rendering of advice to a public official or employee; Provided, That, this subdivision does not apply to advisory opinions which are issued by the Commission.

2.3. Notwithstanding the provisions of this subsection, a member, employee or agent of the Commission may:

2.3.a. For the purpose of investigating a sworn complaint or motion, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if the disclosure is necessary to conduct an investigation.

2.3.b. Share otherwise confidential documents, materials or information with appropriate agencies of state government, including county prosecuting attorneys, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or information.

2.4. The confidentiality of the information remains in full force and effect until the respondent has been served by the commission with a copy of the review board's order finding probable cause and with the statement of charges.

2.5. After a finding of probable cause any subsequent hearing held for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and non-deliberative materials introduced into evidence as well as the commission's orders, are not confidential.

2.5.a. The complaint as well as the identity of the complainant shall be disclosed to a person named as respondent in any complaint filed with the commission immediately upon the respondent's request.

2.5.b. The commission shall disclose the complaint and all reports, records, and non-privileged and non-deliberative material where the commission is otherwise required by the provisions of chapter six-B of the W. Va. Code to disclose the information or to proceed in such a manner that disclosure is necessary and required to fulfill the requirements.

2.5.c. No present or former Commission member or employee may knowingly and improperly disclose any confidential information, which is not otherwise subject to disclosure pursuant to chapter six-B of the W. Va. Code or the provisions of this section, acquired by him or her in the course of his or her official duties.

2.5.d. The Commission may order a person filing a complaint to be bound to confidentiality if the Commission makes a finding that there is a reasonable likelihood that the dissemination of information regarding a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice.