

Form #6

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Robert C. Lamont

TITLE 158
LEGISLATIVE RULES FOR THE
WEST VIRGINIA ETHICS COMMISSION

SERIES 1
WEST VIRGINIA ETHICS COMMISSION

158-1-1 General Provisions

1.1 Scope--The following legislative 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 West Virginia Governmental Ethics Act, (hereafter referred to as the "Act") West Virginia Code §6-1-1 et seq.

1.2 Authority-- W.Va. Code §6B-2-2(a)

1.3 Filing Date--

1.4 Effective Date--

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.

1.10 This rule repeals and replaces Procedural Rules for the West Virginia Ethics Commission, West Virginia Ethics Commission 158 CSR 1.

158-1-2 Definitions

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 The term "Act" means the West Virginia Governmental Ethics Act.

2.2 The term "Chairperson" means the chairperson of the West Virginia Ethics Commission elected by the Commissioners.

2.3 The term "Commissioner" means one (1) of the duly appointed members of the West Virginia Ethics Commission.

2.4 The term "Service" means personal delivery of a notice or other document to the agency or person to be so notified or by depositing the notice in the United States mail, postage prepaid, return receipt requested in an envelope addressed to the agency or person at his or her last known address. Proof of the giving of notice in either manner may be made by a signed and dated certificate of the person who delivers or mails the notice. Service is complete upon mailing.

2.5 The term "Personal Service" when required by this rule is that service as is described in Rule 4 of the West Virginia Rules of Civil Procedure.

2.6 The term "Hearing Panel" means the Commission members appointed in accordance with the provisions of West Virginia Code 6B-2-4(h)&(i).

2.7 The term "Hearing Examiner" means that statutory officer referred to in West Virginia Code 6B-2-4 required to conduct the public hearing or perform other functions authorized by the Act or the Commission's rules.

2.8 The term "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.

158-1-3 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 (3) 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 time and place of the meeting and the matters to be considered, except that notice is not required if the time, the place and matters for consideration 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 the meeting at least seven (7) days in advance of the meeting. The public notice shall contain the date, the time, the place of the meeting, and the matters to be considered.

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

3.5 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.

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

3.7 The Commission shall convene all regular meetings at the offices of the West Virginia Ethics Commission, Litton Building, 1207 Quarrier Street, Charleston, West Virginia, 25301, unless otherwise changed by a majority vote of a quorum of the Commission or by the chairperson.

3.8 Order of business--The general order of business for a regular meeting of the Ethics Commission is:

- (a) Call to order
- (b) Secretary's report
- (c) Agenda adjustments (to include executive session, if any)
- (d) Executive session re: ongoing or planned investigations; verified or unverified complaints
- (e) Discussion and vote on advisory opinions
- (f) Exemptions requested and vote
- (g) Other new business or concerns
- (h) Setting of next regular meeting
- (i) Adjournment

158-1-4 Proceedings to be Open; Exceptions

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

4.2 The Commission may at any meeting go into Executive Session, upon majority vote 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.

158-1-5 Minutes of Meetings

5.1 The Commission member designated Secretary of the Commission shall prepare written minutes of all Commission meetings and mail a copy of the minutes to each commission member within ten (10) days of each meeting.

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:

- (a) The date, time, and place of the meeting;
- (b) The name of each Commission member present or absent;
- (c) All motions, proposals, and resolutions; and,
- (d) The results of all votes and, upon the request of a member, the vote of each member, by name.

158-1-6 Quorum, Majority Vote Required; Proxy Vote Prohibited

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

6.2 A majority of the Commission shall transact business except:

- (a) that voting regarding probable cause to believe that a criminal violation may have been committed requires an affirmative vote of eight (8) Commission members as set forth in West Virginia Code 6B-2-4(u); and
- (b) when the commission is acting as a hearing panel pursuant to West Virginia Code 6B-2-4, then five members constitute a quorum.

6.3 No Commission member may vote by proxy.

6.4 Telephone conferences and voting may be held by the Commission members for the purpose of approving or rejecting any proposed advisory opinion prepared by the Commission, or for voting on issues involving the administrative functions of the Commission.

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 made a permanent part of the Commission records as set forth in West Virginia Code 6B-2-1(1).

158-1-7 Travel Expense Rules; Compensation

7.1 Members of the Ethics Commission shall receive one hundred dollars for each day actually devoted to the business of the Commission.

7.2 Every day spent in a regular meeting constitutes a day spent on Commission business.

7.3 Time devoted to Commission business, not spent in regular meetings shall be accumulated and eight (8) hours of time worked equals one day spent on Commission business.

7.4 Members of the Commission shall be reimbursed for expenses actually and necessarily incurred in the performance of their official duties based upon the rate applicable under the state employee travel regulations at the time the service is performed.

158-1-8 Oath

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

158-1-9 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.

SENATE BILL NO. 138

(By Senator Manchin)

[Introduced March 1, 1993; referred to the
Committee on the Judiciary.]

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10 A. BILL to amend and reenact section eight, article two, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 ethics commission to promulgate legislative rules relating to
14 the commission.

15 Be it enacted by the Legislature of West Virginia:

16 That section eight, article two, chapter sixty-four of the
17 code of West Virginia, one thousand nine hundred thirty-one, as
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO
20 PROMULGATE LEGISLATIVE RULES.

21 §64-2-8. Ethics commission.

22 (a) The legislative rules filed in the state register on the
23 thirty-first day of January, one thousand nine hundred
24 ninety-one, modified by the ethics commission to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the thirty-first day of October,
3 one thousand nine hundred ninety-one, relating to the ethics
4 commission (contributions), are authorized, with the amendment
5 set forth below:

6 On page one, subsection 3.4, by striking out the words "use
7 their official title or position in the endorsement or support
8 of" and inserting in lieu thereof "endorse".

9 (b) The legislative rules filed in the state register on the
10 thirty-first day of January, one thousand nine hundred
11 ninety-one, modified by the ethics commission to meet the
12 objections of the legislative rule-making review committee and
13 refiled in the state register on the thirty-first day of October,
14 one thousand nine hundred ninety-one, relating to the ethics
15 commission (gifts), are authorized, with the amendments set forth
16 below:

17 On page two, subsection 3.1, by striking out the word
18 "significant";

19 On page two, section four, subsection 4.1, by striking out
20 "\$20" and inserting in lieu thereof "\$25";

21 On page three, subsection 4.2, after the words "hotel room"
22 by inserting a period and striking out the remainder of the
23 sentence;

24 On page three, subsection 5.1, by striking out the word
25 "unlawful" and inserting in lieu thereof "improper";

1 On page three, subsection 5.1, after the words "health club
2 fees" by striking out the period and adding ", unless such
3 expenses are offered to all of the panelists or speakers.";

4 On page four, subsection 6.2, by striking out the word
5 "unlawful" and inserting in lieu thereof "improper".

6 And,

7 On page four, section 7, at the end of the section by
8 striking out the period and adding the following: ": Provided,
9 That public officials and public employees may accept
10 complimentary tickets to sporting events, if the tickets are
11 incidental to the conduct of their official or ceremonial
12 duties."

13 (c) The legislative rules filed in the state register on the
14 thirty-first day of January, one thousand nine hundred
15 ninety-one, modified by the ethics commission to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the thirty-first day of October,
18 one thousand nine hundred ninety-one, relating to the ethics
19 commission (interest in public contracts), are authorized, with
20 the amendment set forth below:

21 On page two, subsection 6.2, by striking out the words
22 "complete in every particular and including the exact" and
23 inserting in lieu thereof "including the".

24 (d) The legislative rules filed in the state register on the
25 thirty-first day of January, one thousand nine hundred

1 ninety-one, modified by the ethics commission to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on the thirty-first day of October,
4 one thousand nine hundred ninety-one, relating to the ethics
5 commission (lobbying), are authorized, with the amendment set
6 forth below:

7 On page three, subsection 4.3, after the words "copies of
8 forms" by inserting a period and striking out the remainder of
9 the sentence.

10 (e) The legislative rules filed in the state register on the
11 thirty-first day of January, one thousand nine hundred
12 ninety-one, modified by the ethics commission to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the seventeenth day of December,
15 one thousand nine hundred ninety-one, relating to the ethics
16 commission (private gain), are authorized, with the amendments
17 set forth below:

18 On page one, subsection 2.2, after the words "A public
19 official" by inserting "acting in his or her capacity as a public
20 official";

21 On page one, subsection 2.2, after the words "the public
22 official." by adding a new sentence to read as follows: "The
23 provisions of this subsection shall not apply to a public
24 official acting in his or her private capacity.";

25 On pages one and two, by striking out all of section three;

1 On pages two through four, by renumbering the remaining
2 sections;

3 On page two, subsection 4.1, by striking out the words
4 "persons in high office" and inserting in lieu thereof "a public
5 official or public employee";

6 On page two, subsection 4.1, by striking out the words "close
7 friends" and inserting in lieu thereof "cohabitating sexual
8 partners";

9 On page two, subsection 4.2, after the word "sister" by
10 striking out the remainder of the sentence and inserting in lieu
11 thereof "or spouse.";

12 On page two, subsection 4.3, by striking out the words "close
13 friend" and inserting in lieu thereof "cohabitating sexual
14 partner";

15 On page three, subdivision 4.3.b, by striking out the words
16 "close friend" and inserting in lieu thereof "cohabitating sexual
17 partner";

18 On page three, by striking out all of paragraph 4.3.b.2 and
19 inserting in lieu thereof a new paragraph 4.3.b.2 to read as
20 follows:

21 "A public official or public employee should at least have
22 some independent person take part in the selection. He or she
23 should avoid using a subordinate for the independent person.";

24 On page three, by striking out all of subsection 4.4 and
25 inserting in lieu thereof a new subsection to read as follows:

1 "4.4 All hiring by public officials and public employees of
2 relatives prior to the twenty-ninth day of February, one thousand
3 nine hundred ninety-two is not subject to review under the ethics
4 act, in Chapter 6B of the W. Va. Code.";

5 On page three, subsection 4.5, by striking out the words
6 "close friend" and inserting in lieu thereof "cohabitating sexual
7 partner";

8 On page three, after subsection 4.5, by adding thereto a new
9 subsection, designated subsection 4.6, to read as follows:

10 "4.6 It is improper for a public official or public employee
11 to terminate the employment of a person without sufficient cause
12 for the purpose of hiring a relative, friend or political
13 supporter.";

14 On page three, subsection 5.2, after the words "supervisor
15 during work hours.", by adding the following sentence: "This
16 subsection does not apply to de minimus work or services.";

17 On page four, by striking out all of subsection 6.2 and
18 inserting in lieu thereof a new subsection 6.2, to read as
19 follows:

20 "6.2 Improper Use - Public officials and public employees
21 shall not use government property for personal projects or
22 activities that result in private gain. This subsection does not
23 apply to the de minimus use of government property.";

24 And,

1 On page four, by striking out all of section 9 and inserting
2 in lieu thereof a new section 9 to read as follows:

3 "Full-time appointed public officials and part-time and
4 full-time public employees may not receive private compensation
5 for performing private work during public work hours. This
6 section shall not apply to de minimus private work."

7 (f) The legislative rules filed in the state register on the
8 thirty-first day of January, one thousand nine hundred
9 ninety-one, modified by the ethics commission to meet the
10 objections of the legislative rule-making review committee and
11 refiled in the state register on the seventeenth day of December,
12 one thousand nine hundred ninety-one, relating to the ethics
13 commission (voting), are authorized, with the amendments set
14 forth below:

15 On page one, subsection 2.2, by striking out the second and
16 third paragraphs of subsection 2.2;

17 And,

18 On page one, after subsection 2.3, by adding a new
19 subsection, designated subsection 2.4 to read as follows:

20 "2.4 In any case where a Senator or Delegate is voting as
21 part of their official duties of office, the members of the
22 Senate and the members of the House of Delegates are governed by
23 the rules of their respective houses. The provisions of
24 subsection 2.3 of this rule shall not apply to members of the
25 Legislature when acting as a member thereof."

1 (g) The legislative rules filed in the state register on the
2 thirty-first day of January, one thousand nine hundred
3 ninety-one, modified by the ethics commission to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the seventeenth day of December,
6 one thousand nine hundred ninety-one, relating to the ethics
7 commission (employment), are authorized, with the amendments set
8 forth below:

9 On page two, subsection 3.3, by striking out the words "if
10 there is a reasonable probability that the person will be
11 regulated. There must be" and inserting in lieu thereof "upon";

12 On page two, subdivision 4.2.c, after the word "prohibition"
13 by inserting the words "for all practical purposes";

14 On page three, by striking out all of subsections 4.5, 4.6
15 and 4.7;

16 And,

17 On page three, by renumbering the remaining subsections.

18 (h) The legislative rules filed in the state register on the
19 ninth day of September, one thousand nine hundred ninety-two,
20 modified by the ethics commission to meet the objections of the
21 legislative rule-making review committee and refiled in the state
22 register on the twentieth day of January, one thousand nine
23 hundred ninety-three, relating to the ethics commission (ethics
24 commission), are authorized.

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1 NOTE: The purpose of this bill is to authorize the Ethics
2 Commission to promulgate legislative rules relating to the
3 Commission.

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5 Strike-throughs indicate language that would be stricken from
6 the present law, and underscoring indicates new language that
7 would be added.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
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(Plus all the volunteer
help we can get)

FAX: (304) 558-6000

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 1 9 33 AM '93

FILED

TO: Lucy Sucky

AGENCY: Ethics Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 26, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: 158 Ethics Commission

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Robert T. Jamon

TITLE OF PERSON SIGNING: Counsel

DATE: Aug. 10, 1993

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

May 28, 1993

Lucy Sucky
Ethics Commission
1207 Quarrier Street
Charleston, WV 25301

HB 100 authorizing, **Title 158, Series 1, WV Ethics Commission**, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section **64-2-8(i)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division