

Form #3

~~OFFICE WEST VIRGINIA~~
SECRETARY OF STATE

Lewis D. Brewer, Executive Director
Authorized Signature

\$6.60

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Complaints, Investigations and Hearings

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Ethics Commission

Address: 210 Brooks Street, Suite 300
Charleston, WV 25301 1838

Phone Number: (304) 558-0664 Email: tkirk@wvadmin.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule repeals WV 158 CSR 3 which is entitled "Complaints, Investigations and Hearings." No fiscal impact is anticipated as a result of these amendments.

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.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: Complaints, Investigations and Hearings

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

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.

Date: 7/19/05

Signature of Agency Head or Authorized Representative

Lewis D. Brown, Executive Director

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 18, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Ethics Commission, 210 Brooks Street

Suite 300, Charleston, WV 25301 1838

LEGISLATIVE RULE TITLE: Complaints, Investigations, and Hearings

1. Authorizing statute(s) citation W Va. Code 6B-2-2

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 3, 2005

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 5, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

07-20-05

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Theresa M. Kirk, Legal Counsel

210 Brooks Street, Suite 300

Charleston, WV 25301 1838

tkirk@wvadmin.gov

(304) 558-0664

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Lewis G. Brewer, Executive Director

Theresa M. Kirk, Legal Counsel

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 3

During a 2005 Special Session of the Legislature, extensive changes were made to the Ethics Act. One significant change is that after a Complaint is initially filed, it will no longer be assigned to an Investigative Panel; instead, it will be referred to a newly created Probable Cause Review Board. The existing series 3, while designated as a legislative rule, is essentially procedural in nature. Further much of the rule focuses upon the role of investigative panels. Due to the changes in the Ethics Act, the Commission is proposing two new procedural rules to govern the procedure before the Probable Cause Review Board and before the Commission for cases where that has been a finding of probable cause by the Review Board. The proposed rules are W.Va. CSR § 158-16-1 et. seq. (Probable Cause) and W.Va. CSR § 158-17-1 et. seq. (Hearings). Due to these new rules, and due to provisions in Series 3 which are inconsistent with the new provisions in the Ethics Act, the Commission is seeking to repeal this rule.

STATEMENT OF CIRCUMSTANCES
Title 158, Series 3

The Legislature amended the West Virginia Ethics Act during the January 2005 Special Session. Due to the changes, after July 1, 2005, many of the provisions in Series 3 will conflict with the new law. As such, the Commission is proposing the repeal of this rule.

FILED

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

2005 JUL 20 P 1:26

SERIES 3
COMPLAINTS, INVESTIGATIONS, AND HEARINGS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

~~§158-3-1. 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 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.~~

~~1.2. Authority. -- W. Va. Code §6B-2-2.~~

~~1.3. Filing Date.~~

~~1.4. Effective Date.~~

~~1.5. This Rule repeals and replaces Procedural Rules of the West Virginia Ethics Commission, Complaints, Investigative Panel, and Hearing Process, 158 CSR 3, 4, and 5.~~

~~§158-3-2. Verified Complaints.~~

~~2.1. Any person may file a verified complaint with the Commission. 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, at the Litton Building, 1207 Quarrier Street, Charleston, West Virginia 25301.~~

~~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.~~

~~§158-3-3. Investigative Panel.~~

~~3.1. The chairperson of the Commission shall appoint three (3) Commission members to act as an investigative panel within fourteen (14) days of receipt of a verified complaint in the office of the Commission.~~

~~3.2. In appointing the investigative panel the Chairperson of the Commission shall not appoint all members of the same political affiliation. The chairperson shall assign complaints to~~

~~investigative panels on a rotation basis so that the caseloads of the investigative panels are as equal as possible.~~

~~3.3. The investigative panel must first determine whether the allegations stated in the complaint, if taken as true, would constitute a violation of the Act.~~

~~3.4. If two members of the investigative panel 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.~~

~~§158-3-4. Notice of Investigation.~~

~~4.1. If the investigative panel 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 panel to the complainant and respondent.~~

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

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

~~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 a violation of law has occurred which may subject the 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 investigative panel if he or she reserves the right to make an appearance in writing within 15 days of the date of notice.~~

~~4.6. The Notice of Investigation shall also inform the respondent that he or she may respond in writing to the Commission within thirty (30) days of receipt of the notice, which time may be extended by the Chairman of the investigative panel upon good cause shown 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.~~

~~§158-3-5. Investigation.~~

~~5.1. The investigative panel has forty five (45) days following the mailing of notice of investigation to consider:~~

~~5.1.1. The allegations raised in the complaint;~~

~~5.1.2. Any timely received written response of respondent;~~

~~5.1.3. Any oral response received from 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. If the respondent requests an appearance before the investigative panel to present an oral response to the complaint, the investigative panel chairman 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. The respondent has thirty minutes to make an oral response or statement of defense to the charges or allegation contained in the complaint. The investigative panel, in its discretion, may allow the respondent additional time for the oral response.~~

~~5.4. The investigative panel may seek additional probative information from the respondent as is necessary for its investigation.~~

~~5.5. The Ethics Commission and the investigative panel may issue subpoenas as is necessary and any subpoena issued has the same effect as one issued by a circuit court of the state.~~

~~5.6. The Commission may seek enforcement of any Commission subpoena by applying to a circuit court of the county in which the investigative panel is conducting its investigation, through the issuance of a rule or an attachment against the respondent in a contempt case.~~

~~§158-3-6. Findings of Probable Cause.~~

~~6.1. If a majority of the investigative panel fails to find~~

~~probable cause the proceedings shall be dismissed by order of the Commission signed by a majority of the members of the investigative panel.~~

~~6.2. The Commission order shall be signed by the majority members of the panel and copies of the order shall be sent to complainant and respondent within three days of execution of the order by the panel members.~~

~~6.3. If a majority of the investigative panel finds probable cause to believe that a violation under the Act has occurred the majority members of the investigative panel shall sign an order directing the Commission staff to prepare a statement of charges and to schedule a hearing within ninety (90) days after the date of the order.~~

~~§158-3-7. Confidentiality Requirements.~~

~~7.1. The Commission shall keep all matters or information received by the Commission and the investigative panel relating to a complaint, including the identity of the complainant and respondent, confidential except as otherwise provided by the Act or this Rule.~~

~~7.2. If the respondent agrees in writing to a release of information, the Commission may disclose any information relating to a complaint or an investigation to the public at any time.~~

~~7.3. Upon a finding by an investigative panel 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. Provided, That confidentiality of the information remains in full force and effect until the respondent has been served by the commission with a copy of the investigative panel's order finding probable cause and with the statement of charges.~~

~~7.4. 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.~~

~~7.5. 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.~~

~~7.6. 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.~~

~~7.7. No present or former Commission member or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties.~~

~~7.8. 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.~~

~~§158-3-8. Notice of Hearing.~~

~~8.1. If an investigative panel finds probable cause to believe a violation of the Act has occurred, the Executive Director shall serve respondent by certified mail, return receipt requested, a notice of the hearing at least eighty (80) days prior to the date of the hearing.~~

~~8.2. The notice shall contain a statement of the charges, and provide the date, time, and place of the hearing.~~

~~§158-3-9. Continuances.~~

~~9.1. The scheduled hearing may be continued only upon a showing of good cause by either party prior to the hearing or at the convenience and on motion of the Commission members who will make up the hearing board.~~

~~§158-3-10. Hearing Board and Hearing Examiner.~~

~~10.1. The Commission members who have not served as members of the investigative panel in a particular case shall comprise a hearing board responsible for adjudicating the case. A hearing examiner may be employed by the Commission to preside at the taking of evidence at the hearing and issue a recommended decision, unless the hearing board orders that it will both preside at the taking of evidence and adjudicate the case. The hearing examiner, or the hearing board if a hearing examiner is not employed, shall be known as the "presiding officer" at the hearing as that term is used in these rules.~~

~~10.2. The qualifications of the hearing examiner shall, where applicable, be guided by the Judicial Code of Ethics. Hearing~~

~~examiners must be attorneys licensed to practice in West Virginia, with a minimum of three years experience in the practice of law.~~

~~10.3. The hearing examiner shall not reside in the same county as either the respondent or, if applicable, the complainant.~~

~~10.4. The hearing examiner will be selected by the chairperson of the Commission, subject to approval at the next meeting by a majority vote of the Commission members present and voting.~~

~~10.5. The hearing board or hearing examiner presiding at a hearing may:~~

~~10.5.1. administer oaths and affirmations;~~

~~10.5.2. compel the attendance of witnesses;~~

~~10.5.3. compel the production of documents;~~

~~10.5.4. examine witnesses and parties;~~

~~10.5.5. rule on offers of proof;~~

~~10.5.6. rule on evidentiary matters;~~

~~10.5.7. regulate the course of the hearing;~~

~~10.5.8. hold conferences for the settlement or simplification of issues by consent of the parties;~~

~~10.5.9. dispose of procedural requests or similar matters;~~

~~10.5.10. accept stipulated agreements;~~

~~10.5.11. take other action authorized by the Ethics Commission consistent with the provisions of the Act; and,~~

~~10.5.12. continue the hearing date upon motion of the respondent or Commission where good cause is shown.~~

~~§158-3-11. Disqualification of Hearing Examiners.~~

~~11.1. A party seeking the disqualification of a hearing examiner must file a written, verified motion stating the facts and reasons for disqualification. The motion should be filed at least thirty days prior to a scheduled hearing or state, with particularity, why it is filed later.~~

~~11.2. The hearing examiner may disqualify himself or herself without a hearing or may refuse to do so and inform the parties~~

~~that a hearing is necessary.~~

~~11.3. A member of the investigative panel assigned to the case shall be appointed by the Commission chairman to hear and decide a motion for disqualification. The hearing shall be held no sooner than three days and no later than seven days after the motion is filed, unless the parties agree to a shorter or longer time period.~~

~~11.4. The party seeking disqualification of the hearing examiner may make a full record. The costs thereof, including the cost of court reporter services, witness fees and expenses shall be borne by the moving party unless the moving party prevails on the motion or makes a showing of indigence.~~

~~11.5. The investigative panel member assigned to hear the motion for disqualification shall issue a written decision on the motion as soon as practicable, but no later than seven days after the motion was heard. If a motion is granted the Commission chairperson shall appoint a new hearing examiner no later than seven days after the decision on the motion is received. If the motion is denied the hearing examiner shall proceed to hear the case within the time frame set forth in the notice of hearing or, if necessary and upon a showing of good cause, shall reschedule the hearing to a later date.~~

~~11.6. The decision on the merits of a motion to disqualify a hearing examiner shall be considered interlocutory in nature and not subject to direct or immediate appeal, except that this rule shall not prohibit any party from seeking redress by appropriate extraordinary remedy.~~

~~§158-3-12. Prehearing Discovery.~~

~~12.1. Information which is exempt from discovery includes, but is not limited to the following:~~

~~12.1.1. any record, report, memorandum, or communication dealing with the internal practice, policy and procedure of the Commission.~~

~~12.1.2. any record, report, memorandum, or communication of the staff or Commission member regarding the institution, progress or result of an investigation of a complaint.~~

~~12.1.3. the work product of an investigator or other staff member made in the course of an investigation of a complaint, or in preparation for an investigative panel, or in anticipation of or in preparation for a hearing on the complaint.~~

~~12.1.4. any memorandum, statement or opinion prepared or~~

~~directed to be prepared by legal counsel to the Commission.~~

~~12.1.5. the identity of a confidential informant unless he or she is the complainant or will be a witness for the Commission at the hearing.~~

~~12.2. The parties shall exchange within sixty (60) days of the mailing and receipt of notice of the hearing to the respondent.~~

~~12.2.1. reports of experts to be used at the hearing,~~

~~12.2.2. a list of witness names, addresses, and telephone numbers as available to be used at the hearing,~~

~~12.2.3. copies of documents to be used at the hearing, and~~

~~12.2.4. results of any inspection of tangible objects to be used at the hearing.~~

~~12.3.1. Witness Statements -- At least seven (7) days prior to the hearing the parties shall exchange written and signed statements, tape recorded statements, and statements adopted by individuals who will be witnesses at the hearing which are within the respondent's or Commission's possession.~~

~~12.3.2. If a party fails to comply with section 12.3.1 of this rule to produce witness statements in a timely manner the hearing examiner or hearing board shall bar that witness' testimony at the hearing unless good cause can be shown and the hearing examiner or hearing board allows the witness' testimony.~~

~~12.4.1. Production of Witnesses -- Each party is entitled to compel through subpoena the attendance of any witness whose testimony may be relevant and material, except that a party is not entitled to the presence of a witness who is determined unavailable. A witness is unavailable in, but not limited to, the following situations:~~

~~a. The witness is not subject to compulsory process in West Virginia by reason of non-residence within, or prolonged absence from the State of West Virginia,~~

~~b. The witness is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity,~~

~~c. The witness is exempted from testifying by ruling of a circuit court on the ground of privilege from testifying.~~

~~12.4.2. Where a subpoena is issued at the instance of a~~

~~party to the hearing, the cost of service, and the witness and mileage fee shall be borne by the party at whose request the subpoena is issued, at the same rate as paid to witnesses in state circuit court proceedings. The party who uses an expert witness at the hearing is responsible for payment of the appearance fee of the witness.~~

~~12.4.3. The presence of a witness may be obtained by the issuance of a subpoena requiring the attendance of the witness at the designated place, time and hearing date. A subpoena for a witness may be issued by the Executive Director upon the written application of any party. It is the responsibility of the party requesting the issuance of a subpoena to serve the subpoena on a witness by personal service or certified mail, return receipt requested.~~

~~12.5. Production of Documents -- Each party is entitled to compel through a subpoena duces tecum the production of documents which are relevant and material to the hearing. A subpoena duces tecum may be issued by the Executive Director upon written application of any party. It is the responsibility of the party requesting the issuance of a subpoena duces tecum to serve the subpoena on the authorized records custodian by certified mail or personal service.~~

~~12.6.1. Depositions -- Depositions may be obtained by either party and used for evidentiary purposes.~~

~~12.6.2. Evidentiary objections may be made on the record during any deposition or at the time the deposition is offered into evidence.~~

~~12.6.3. It is not necessary that a hearing examiner or the hearing board be present at the deposition.~~

~~12.6.4. A party may be permitted to take a deposition of a witness, within or without the State of West Virginia upon written request to and approval by the hearing examiner or hearing board. A request for deposition shall contain:~~

~~a. the name and address of the person whose deposition is requested;~~

~~b. a brief statement of the matters on which the person is to be examined, and~~

~~c. a brief statement of the reasons for taking the deposition in lieu of eliciting testimony at a hearing.~~

~~12.6.5. If approval is granted for the deposition, the party~~

~~taking the deposition shall provide reasonable notice of the deposition to the person deposed, all parties, and their counsel of record.~~

~~12.6.6. The notice shall be in writing and contain the date, time and place of the deposition, as well as the name and address of each person to be deposed.~~

~~12.6.7. The cost of court reporter services, witness fees and expenses shall be borne by the party taking the deposition.~~

~~12.6.8. The deposition shall be taken in the manner proscribed by the laws of West Virginia for taking depositions in civil cases in courts of record except as set forth in this rule.~~

~~§158-3-13. Hearing Procedure.~~

~~13.1. The West Virginia Rules of Evidence shall be used in the hearing.~~

~~13.2. A complainant may be assisted by a member of the Commission staff assigned by the Commission after a determination of probable cause.~~

~~13.3. The hearing proceedings shall be electronically recorded.~~

~~13.4. Any party to a hearing has the right to be represented by an attorney duly qualified to practice in the State of West Virginia. A respondent may not be represented at a hearing by a spokesperson, lay representative or anyone else not licensed or authorized to practice law in the State of West Virginia.~~

~~13.5. The respondent may appear without counsel and represent himself or herself at the hearing. At the beginning of the hearing the presiding officer shall insure the respondent does not desire to obtain counsel and is thoroughly advised of the sanctions which may be imposed in the event of a finding that the respondent committed a material violation of chapter six-B of the West Virginia Code.~~

~~13.6. All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at hearings shall not be permitted. The presiding officer may, in his or her discretion, recess or continue any hearing in which the parties, attorneys, witnesses or spectators, conduct themselves in a disrespectful, disorderly or contemptuous manner which interferes with or prevents the proper conduct of the hearing.~~

~~13.7. All testimony to be considered by the presiding officer~~

~~at the hearing shall be by sworn or affirmed testimony.~~

~~13.8. The purpose of the hearing is to further inquire into the matters set forth in the statement of charges, and to record evidence and arguments in support of and in opposition to the charges so that the Commission may determine all issues.~~

~~13.9. Members of the Commission and its officers, agents and employees are competent to testify at the hearing as to material and relevant matters. Provided, That no member of the Commission who testifies at the hearing shall thereafter participate in the deliberations or decisions of the Commission with respect to the case in which he or she testified.~~

~~13.10. Each party may make a brief opening statement setting forth the evidence he or she intends to prove.~~

~~13.11. Initially the complainant or the commission's counsel shall present competent and relevant evidence, including testimony or documents, in proof of the statement of charges.~~

~~13.12. The respondent or his or her counsel may present competent and relevant evidence following the conclusion of the complainant's case.~~

~~13.13. Each party has the right to cross-examine any witness who testifies.~~

~~13.14. Following the presentation of the respondent's evidence the complainant has the right to submit rebuttal evidence.~~

~~13.15. Following the presentation of all evidence both parties have the right to offer oral argument to summarize the evidence presented, not to exceed ten (10) minutes for each presentation, unless for good cause the period is extended by the presiding officer.~~

~~13.16. All exhibits offered into evidence shall be labeled and marked as either "Complainant Exhibit," or "Respondent Exhibit".~~

~~13.17. All exhibits offered into evidence, or copies thereof, shall be appended to the record of proceedings, and if any exhibit is not susceptible to attachment or copying either a photograph, facsimile, or description of the exhibit may be substituted.~~

~~13.18. The presiding officer may order witnesses sequestered upon his or her own motion or on the motion of a party.~~

~~13.19. The respondent is entitled to be present and to present evidence at the hearing, however, the taking of evidence and a~~

~~final determination of the issues shall not be prevented, and the respondent shall be considered to have waived the right to be present if:~~

~~13.19.1. after being notified of the date, time and place of hearing he or she does not appear, absent a prior showing of good cause, or~~

~~13.19.2. after being advised by the presiding officer that disruptive conduct will cause removal from the hearing, he or she persists in conduct which justifies his or her exclusion from the hearing.~~

~~13.20. The cost of preparing a transcript of the hearing shall be borne by the party requesting it. Upon a showing of indigence by the respondent, however, the Commission may provide a transcript of the hearing without charge.~~

~~§158-3-14. Findings of Fact, Conclusions of Law, and Briefs.~~

~~14.1. Either party, within fifteen (15) days from the conclusion of the hearing, may submit proposed findings of fact, conclusions of law and a brief containing argument. All proposed findings of fact, conclusions of law and briefs shall be filed with the West Virginia Ethics Commission at 1207 Quarrier Street, Charleston, West Virginia 25301. If the hearing board presided at the hearing, it is the duty of the executive director of the commission to provide each hearing board member with a copy of any party's proposed findings of fact, conclusions of law, and brief within one day of receipt.~~

~~14.2. Findings of fact shall be limited to the facts admitted into evidence at the hearing or made part of the record and any facts found through judicial notice.~~

~~§158-3-15. Decision if Hearing Examiner is Presiding Officer.~~

~~15.1. If the hearing was held before a hearing examiner, the hearing examiner shall prepare a recommended decision following the fifteen (15) day period after the hearing reserved to the parties to submit proposed findings of fact, conclusions of law and any briefs containing argument.~~

~~15.2. The hearing examiner has forty five (45) days from receipt of the proposed findings and conclusions from the parties to issue his or her recommended decision.~~

~~15.3. The hearing examiner shall make copies of this recommended decision available to the parties, and submit the recommended decision along with the entire record to the Commission~~

~~for final decision by the hearing board.~~

~~15.4. The parties may submit briefs to the Commission's hearing board in support of or in opposition to the hearing examiner's recommended decision within fourteen (14) days of receipt of the recommended decision.~~

~~15.5. The Commission's hearing board, consisting of the nine members of the Commission who did not serve on the investigative panel for that complaint, shall then have forty-five days (45) within receipt of the entire record to make a final decision on behalf of the Commission.~~

~~15.6. Either party may request an opportunity to make an oral argument to the hearing board members prior to their deliberations on the hearing examiner's recommended decision and the imposition of appropriate sanctions, if applicable. The request must be made in writing and submitted with the party's brief regarding the hearing examiner's recommended decision filed pursuant to section 14.2 of this rule.~~

~~§158-3-16. Decision When Hearing Board is the Presiding Officer.~~

~~16.1. If the Commission chose not to employ a hearing examiner to hear the evidence and prepare a recommended decision and the presiding officer was the hearing board, no additional oral argument beyond what is allowed pursuant to section 15 of this rule shall be necessary.~~

~~16.2. The hearing board shall have twenty one (21) days following receipt of the entire record to make a final decision on behalf of the Commission.~~

~~§158-3-17. Administrative Record.~~

~~17.1. The exclusive record for decision is:~~

~~17.1.1. the transcript or recording of testimony at the hearing,~~

~~17.1.2. exhibits introduced into evidence at the hearing,~~

~~17.1.3. all documents filed in the proceeding, and~~

~~17.1.4. the proposed decisions and any briefs submitted by the parties.~~

~~17.2. A party permitted by the Commission to take and file an evidentiary deposition, or otherwise exercise discovery may make that part of the record.~~

~~§158-3-18. Final Decision.~~

~~18.1. All final decisions of the Commission must be in writing and copies mailed within three days of the final decision by certified mail, return receipt requested, marked "Addressee only, personal and confidential" to:~~

~~18.1.1. the respondent and respondent's counsel, if any, and~~

~~18.1.2. complainant.~~

~~18.2. A final decision must be approved by at least six members of the Commission's hearing board.~~

~~§158-3-19. Recusal of Ethics Commissioners.~~

~~19.1. Members of the Commission shall recuse themselves from a particular case upon their own motion with the approval of the Commission or for good cause shown upon motion of a party. The remaining members of the Commission shall by majority vote, select a temporary member of the Commission to replace a recused member.~~

~~19.2. The temporary replacement for a recused Commission member shall be a person of the same status or category provided in W. Va. Code §6B-2-1(b) as the recused member.~~

~~§158-3-20. Sanctions.~~

~~20.1. In its final decision the Commission may impose one or more of the following sanctions upon the respondent if it finds, by evidence beyond a reasonable doubt, that the charges are true and constitute a material violation of the Act:~~

~~20.1.1. a public reprimand;~~

~~20.1.2. a cease and desist order;~~

~~20.1.3. an order of restitution of money, thing of value, or services taken or received in violation of the Act, and,~~

~~20.1.4. fines not to exceed one thousand dollars per violation.~~

~~20.2. The Commission may institute civil proceedings in the circuit court of the county wherein a violation occurred for the enforcement of sanctions imposed in its final decision.~~

~~20.3. In addition to the foregoing sanctions, the Commission may recommend to the appropriate governmental body that the respondent be terminated from employment or be removed from office.~~

~~§158-3-21. Appeal.~~

~~The respondent may appeal final decisions of the Commission involving the issuance of sanctions to the circuit court of Kanawha County, West Virginia, or to the circuit court of the county where the violation is alleged to have occurred, only upon grounds set forth in W. Va. Code §29-5-4.~~

~~§158-3-22. Costs Assessed Against Complainant.~~

~~22.1. If the Commission finds in favor of respondent and that the complaint was brought or made in bad faith, the Commission shall order the complainant to:~~

~~22.1.1. reimburse reasonable actual costs incurred by respondent; and/or~~

~~22.1.2. pay reasonable attorney fees incurred by respondent.~~

~~22.2. The respondent also has a cause of action and is entitled to compensatory damages, punitive damages, costs, and attorney fees for a complaint made or brought in bad faith.~~

~~§158-3-23. Criminal Referral.~~

~~23.1. A hearing examiner, investigative panel, or Commission member shall bring before the full Commission a factual situation where it appears that a criminal violation may have been committed.~~

~~23.2. If after a discussion of the facts eight (8) members of the Commission vote that probable cause exists to believe a criminal violation has occurred, the matter may be referred to the prosecutor of the county where the violation is alleged to have occurred with a recommendation to initiate a criminal investigation.~~

~~23.3. The county prosecutor's office has sixty (60) days after receiving a referral letter from the Commission's legal counsel to advise the Commission in writing whether:~~

~~23.3.1. it believes a criminal violation has been committed by the respondent or other individuals, and~~

~~23.3.2. if it would be able and willing to prosecute this matter.~~

~~23.4. The ethics proceedings or investigation by the Commission shall be held in abeyance until the conclusion of the referral proceedings.~~

~~23.5. The Commission shall keep the matter confidential and not disclose the fact that it referred this matter for criminal investigation.~~

~~23.6. If eight (8) of the Commission members do not vote to refer the matter for criminal investigation, the Commission shall remand the matter to the investigating panel, hearing examiner, or Commission hearing panel for further proceedings.~~