

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158
RULE TYPE: Legislative; CITE AUTHORITY WV Code §§ 6B-2-1(e) and
AMENDMENT TO AN EXISTING RULE: YES NO X 6B-2-4

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 3

TITLE OF RULE BEING PROPOSED: Complaints, Investigations,
and Hearings

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 8/6/92 AT 4:30 P.M.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Ethics Commission

1207 Quarrier St. 4th Floor

Charleston WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3.80

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Ethics CommissionType of Rule: X Legislative Interpretive ProceduralAgency: WV Ethics Commission Address 1207 Quarrier St.
4th Floor, Charleston WV 25301

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Hereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	None	None	None	None	None
Current Expense	"	"	"	"	"
Repairs and Alterations	"	"	"	"	"
Equipment	"	"	"	"	"
Other	"	"	"	"	"

2. Explanation of above estimates:

These rules will repeal and replace existing procedural rules series 3,4, and 5 which govern the complaint adjudication process. There will be no net increase or decrease from the costs of existing procedures.

3. Objectives of these rules:

The purpose of these rules is to set forth the rules of practice and procedure governing the Commission's processing and adjudication of complaints.

1. Is 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: 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

SUMMARY

TITLE 158 LEGISLATIVE RULES

SERIES 3, COMPLAINTS, INVESTIGATIONS, AND HEARINGS

These proposed legislative rules will repeal and replace existing procedural rules, Series 3, 4, and 5, on the same subject matter. These rules set forth the procedures for the filing of complaints with the commission, the initial handling of such complaints, and the conduct of investigations. They also set out the hearing procedures to be followed during the administrative adjudication of complaints where probable cause of a violation of the Ethics Act has been found.

TITLE 158
LEGISLATIVE RULES FOR THE
WEST VIRGINIA ETHICS COMMISSION

FILED

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SERIES 3
COMPLAINTS, INVESTIGATIONS, AND HEARINGS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

158-3-1 General Provisions

1.1 Scope--These legislative rules and regulations set 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 section one, article one, chapter six-B, et seq.

1.2 Authority-- W.Va. Code §§6B-2-1(e) and 6B-2-4

1.3 Filing Date--

1.4 Effective Date--

1.5 These Rules repeal and replace Title 158 Procedural Rules of the West Virginia Ethics Commission, Series 3 Complaints, Series 4 Investigative Panel, and Series 5 Hearing Process.

158-3-2 Verified Complaints

2.1 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 designee shall within three days of receipt in the office of the Commission acknowledge the complaint by first class mail.

158-3-3 Investigative Panel

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

3.2 The investigative panel shall not be composed of all members of the same political affiliation. Complaints shall be assigned to investigative panels on a rotation basis so that the caseloads of the investigative panels shall be 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 is insufficient in this regard 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, constitute a potential violation of the Act, then the Executive Director or his designee shall give notice of a pending 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 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.

158-3-5 Investigation

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

- (a) The allegations raised in the complaint, or the Commission's inquiry;

- (b) Any timely received written response of respondent;
- (c) Any oral response received from the respondent;
- (d) Other competent, relevant evidence submitted by any person to the Commission; and
- (e) Other competent, relevant evidence gathered by the Commission.

5.2 If the respondent requests an appearance before the investigative panel, the investigative panel chairman will schedule a meeting to be held after the time has passed for respondent to file a written response (within 30 days after notice of investigation received by respondent). Respondent, his counsel, legal counsel to the Commission and the Commission investigator(s) may be present at the meeting.

5.3 The respondent will have 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 panel may seek additional probative information from the respondent as is necessary for its investigation.

5.5 The Ethics Commission and 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 Enforcement of any Commission subpoena may be had upon application 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 Confidentiality requirements

6.1 All matters or information received by the Commission and investigative panel relating to a complaint, including the identity of the complainant and respondent must be kept confidential except as otherwise provided by the Act or this Rule.

6.2 If the respondent agrees in writing to such a release, any information relating to a complaint or an investigation may be disclosed to the public at any time.

6.3 Upon a finding 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 introduced at any probable cause hearing held pursuant to the complaint are thereafter not confidential: Provided, That confidentiality of such information shall remain 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.

6.4 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.

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

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

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

6.8 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.

158-3-7 Findings of Probable Cause

7.1 If a majority of the investigative panel fails to find probable cause the proceedings shall be dismissed by order of the investigative panel.

7.2 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 signature.

7.3 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.

158-3-8 Notice of Hearing

8.1 The Executive Director shall, at least eighty (80) days prior to the date of the hearing, serve respondent by certified mail, return receipt requested a notice of the hearing.

8.2 The notice shall contain:

- (a) 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 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 Examiners

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 to adjudicate the case. A hearing examiner, employed by the Commission shall preside at the taking of evidence at the hearing, unless the hearing board shall order that it will both preside at the taking of evidence and adjudicate the case.

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 examiner presiding at a hearing may:

- (a) administer oaths and affirmations
- (b) compel the attendance of witnesses
- (c) compel the production of documents
- (d) examine witnesses
- (e) rule on offers of proof
- (f) rule on evidentiary matters
- (g) regulate the course of the hearing
- (h) hold conferences for the settlement or simplification of issues by consent of the parties
- (i) dispose of procedural requests or similar matters
- (j) accept stipulated agreements
- (k) take other action authorized by the Ethics Commission consistent with the provisions of the Act

- (1) 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 without a hearing or may refuse to do so and inform the parties that a hearing will be 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 frame.

11.4 The moving party shall be permitted to 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 indigency.

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:

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

- (b) any record, report, memorandum, or communication of the staff or member regarding the institution, progress or result of an investigation of a complaint.
- (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 an investigative panel, or in anticipation of or in preparation for a hearing on the complaint.
- (d) any memorandum, statement or mental impression prepared or directed to be prepared by legal counsel to the Commission.
- (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.

12.2 The following information shall be exchanged within sixty (60) days of the mailing and receipt of notice of the hearing to the respondent:

- (a) reports of experts to be used at the hearing;
- (b) list of witness names, addresses, and telephone numbers as available to be used at the hearing;
- (c) copies of documents to be used at the hearing; and
- (d) 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 Failure to comply with section 12.3.1 and produce such witness statements in a timely manner will result in the bar of that witness' testimony unless good cause can be shown and the hearing examiner or Commission panel 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 deemed unavailable. A witness shall be deemed 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, witness and mileage fee shall be borne by the party at whose request the subpoena is issued, at the same rate as are paid witnesses in state circuit court proceedings.

12.4.3 The party who uses an expert witness at the hearing shall be responsible for payment of the appearance fee, of such witness.

12.4.4 The presence of a witness may be obtained by the issuance of a subpoena requiring the attendance of such 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 shall be 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.

12.5.1 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 shall be 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--Although the hearing process is for the purpose of the development of evidence and should be used to the maximum extent possible, depositions may be obtained 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 Commission panel 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 Commission panel. 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 by the hearing examiner or Commission panel, reasonable notice shall be given to the person deposed, all parties and their counsel of record.

12.6.6 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 Such deposition shall be taken in the manner proscribed by laws of West Virginia for taking depositions in civil cases in courts of record except as set forth in these regulations.

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 shall have 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 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 such hearing.

13.7 All testimony to be considered by the hearing examiner or the Commission panel at the hearing shall be by sworn or

affirmed testimony.

13.8 The purpose of the hearing shall be to further inquire into the matters set forth in the statement of charges, and to record evidence and arguments in support of same and in opposition thereto, so that the commission may determine all issues.

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

13.10 Each party shall have the opportunity to make a brief opening statement setting forth the evidence it intends to prove.

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

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

13.13 Each party shall have the right to cross-examine any witness who testifies.

13.14 Following the presentation of respondent's evidence the complainant shall have the right to submit rebuttal evidence.

13.15 Following the presentation of all evidence both parties shall 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 such 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 by the presiding officer shall not be prevented, and the respondent shall be considered to have

waived the right to be present if:

- (a) after being notified of the date, time and place of hearing he does not appear, absent a prior showing of good cause, or
- (b) after being advised by the hearing examiner or Commission panel that disruptive conduct will cause removal from the hearing, he persists in conduct which is such as to justify his 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; Briefs; and Recommended Decisions

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.

14.2 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 and argument. The hearing examiner shall prepare his or her own proposed findings of fact, make copies of the findings available to the parties, and submit the recommended decision along with the entire record to the Commission for final decision.

14.3 If the hearing board presided at the taking of evidence then each party shall supply the executive director of the commission with the original copy of the proposed findings of fact, conclusions of law and any brief submitted. The executive director shall then supply all members of the hearing board with copies of any such documents filed within one day of receipt thereof.

14.4 The original proposed findings of fact, conclusions of law and brief shall be filed with the West Virginia Ethics Commission at 1207 Quarrier Street, Charleston, West Virginia 25301.

14.5 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.

14.6 The hearing examiner shall have forty five (45) days from receipt of the proposed decisions and briefs of the parties to issue a recommended decision with findings of fact and conclusions of law.

14.7 The parties may submit briefs to the Commission in

support of or in opposition to the recommended decision within fourteen (14) days of receipt of the recommended decision.
158-3-15 Administrative Record

15.1 The exclusive record for decision by the hearing examiner or hearing panel shall be:

- (a) the transcript or recording of testimony at the hearing;
- (b) exhibits introduced into evidence at the hearing;
- (c) all documents filed in the proceeding, and
- (d) the proposed decisions and any briefs submitted by the parties.

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

158-3-16 Oral Argument

If a hearing examiner presided at the hearing, 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. Such a request must be made in writing and submitted with the party's brief regarding the hearing examiner's recommended decision.

158-3-17 Final Decision

17.1 If the hearing was held before a hearing examiner the Commission's hearing board shall have forty-five days (45) within receipt of the entire record to make a final decision.

17.2 If the hearing was held before the hearing board they have shall twenty one (21) days following receipt of the entire record to make a final decision.

17.3 All final decisions 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:

- (a) the respondent and respondent's counsel, if any, and
- (b) complainant.

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

17.5 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.

17.6 The temporary replacement for a recused Commission member shall be a person of the same status or category provided in subsection b, section one, article two, chapter six B of the West Virginia Code as the recused member.

158-3-18 Sanctions

18.1 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:

- (a) public reprimand;
- (b) cease and desist order;
- (c) order restitution of money, thing of value, or services taken or received in violation of the Act;
- (d) fines not to exceed one thousand dollars per violation; and
- (e) recommend to the appropriate governmental body that respondent be terminated from employment or be removed from office.

18.2 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.

158-3-19 Appeal

19.1 Decisions of the Commission involving the issuance of sanctions may be appealed 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 by respondent and only upon grounds set forth in section four, article five, chapter twenty-nine of the West Virginia Code.

158-3-20 Costs Assessed Against Complainant

20.1 If the Commission hearing panel finds in favor of respondent and that the complaint was brought or made in bad faith, the Commission shall order complainant to:

- (a) reimburse reasonable actual costs incurred by respondent; and/or
- (b) pay reasonable attorney fees incurred by respondent.

20.2 Respondent shall also have a cause of action and be entitled to compensatory damages, punitive damages, costs, and attorney fees for a complaint made or brought in bad faith.

158-3-21 Criminal Referral

21.1 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.

21.2 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.

21.3 The county prosecutor's office shall have sixty (60) days after receiving a referral letter from the Commission's legal counsel to advise the Commission in writing whether:

- (a) it believes a criminal violation has been committed by this or other individuals, and
- (b) if it would be able and willing to prosecute this matter.

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

21.5 It shall remain confidential and not be disclosed that the Commission has referred this matter for criminal investigation.

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



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polan
Secretary

September 15, 1992

RECEIVED
1992 SEP 16 PM 9 55
OFFICE OF THE SECRETARY
STATE OF WEST VIRGINIA

Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Re: Ethics Commission Rule---158 CSR 3

Dear Mr. Hechler:

Approval is hereby given for filing of the enclosed rule of the Ethics Commission, 158 CSR 3, entitled "Complaints, Investigations, and Hearings," in accordance with West Virginia Code §5F-2-2(a)(12).

Sincerely,

Chuck Polan
Secretary

CP:bt

cc: Richard M. Alker