

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: WV Ethics Commission TITLE NUMBER: 158

AMENDMENT TO AN EXISTING RULE: YES , NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

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

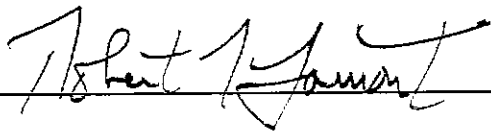
TITLE OF RULE BEING PROPOSED: Complaints, Investigations, and Hearings

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 100

SECTION 64-2-8(h), PASSED ON May 26, 1993

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: September 1, 1993



TITLE 158
LEGISLATIVE RULES FOR THE
WEST VIRGINIA ETHICS COMMISSION

SERIES 3
COMPLAINTS, INVESTIGATIONS, AND HEARINGS

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") West Virginia 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

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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:

- (a) The allegations raised in the complaint;
- (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 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 West Virginia 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:

- (a) administer oaths and affirmations;

- (b) compel the attendance of witnesses;
- (c) compel the production of documents;
- (d) examine witnesses and parties;
- (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; and,
- (l) 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:

- (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 Commission 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 opinion 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 parties shall exchange 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) a 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) 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:

- (a) 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
- (b) 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 158-3-14.2 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 158-3-15 of this rule shall be necessary.

16.2 The hearing board have shall 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:

- (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.

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:

- (a) the respondent and respondent's counsel, if any, and
- (b) 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 West Virginia 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:

- (a) a public reprimand;
- (b) a cease and desist order;
- (c) an order of restitution of money, thing of value, or services taken or received in violation of the Act; and,
- (d) 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 West Virginia 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:

- (a) reimburse reasonable actual costs incurred by respondent; and/or
- (b) 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:

- (a) it believes a criminal violation has been committed by the respondent or other individuals, and
- (b) 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.

SENATE BILL NO. 139

(By **Senator Manchin**)

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

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

Be it enacted by the Legislature of West Virginia:

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

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

§64-2-8. Ethics commission.

(a) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred 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
24 (complaints, investigations and hearings), are authorized.

25

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

4
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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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

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: 3 TITLE: 158 Ethics Commission

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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

SIGNED: Robert J. Fournier

TITLE OF PERSON SIGNING: Counsel

DATE: Aug 10, 1993

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 11 9 33 AM '93

FILED

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Secretary of State

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Deputy Secretary of State

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May 28, 1993

Lucy Sucky
Ethics Commission
1207 Quarrier Street
Charleston, WV 25301

HB 100 authorizing, **Title 158, Series 3, Complaints, Investigations and Hearings**, 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(h)**. 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