

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY: Procedural

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 4

TITLE OF RULE BEING ADOPTED: Procedural Rules for the West
Virginia Ethics Commission

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS June 4, 1990



Legal Counsel
WV Ethics Commission

2.60

SERIES 4

INVESTIGATIVE PANEL

158-4-1 General

~~1.1 The chairperson shall appoint three (3) Commission members within fourteen (14) days of receipt of the complaint to act as an investigatory panel.~~

1.1 Scope--The following procedural 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 The investigative panel shall not be composed of all members of the same political affiliation.~~

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

~~1.3 The investigative panel must first determine whether the allegations stated in the complaint if taken as true would constitute a violation of the Act.~~

1.3 Filing Date--

~~1.4 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.~~

1.4 Effective Date--

~~1.5 A complaint dismissed by the investigative panel does not preclude the Commission from initiating an investigation through an unverified complaint process.~~

1.5 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.

1.6 The investigative panel shall not be composed of all members of the same political affiliation.

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

1.8 If a majority of the investigative panel finds probable cause to believe that a violation under the Act has occurred an order shall be signed by a majority of the panel members.

1.9 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.

158-4-2 Notice of Investigation

2.1 If the investigative panel determines the complaint to be sufficient, in that the allegations set forth would on their face constitute a violation of the Act, then the Executive Director or his designee shall give notice of a pending investigation by the panel to the complainant and respondent.

~~2.2 The notice shall be mailed to the parties and be sent to the respondent by certified mail, return receipt requested, marked "Addressee only, person and confidential."~~

2.2 The notice accompanied by a copy of the complaint if one was filed shall be mailed to the parties and be sent to the respondent by certified mail, return receipt requested, marked "Addressee only, personal and confidential."

2.3 The notice shall describe respondent's conduct which is the basis for the alleged violation of law.

~~2.4 If a complaint was filed a copy of it will be mailed to the respondent.~~

2.4 The notice 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.

~~2.5 The notice 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 administrative sanctions, by the Commission, criminal prosecution by the state, or civil liability.~~

2.5 The notice shall also inform the respondent that he 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.

~~2.6 The notice shall also inform the respondent that he has the right to appear before the investigative panel if he or she requests an appearance within 15 days in writing.~~

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

~~2.7 The notice shall also inform the respondent that he or she may respond in writing to the Commission within thirty (30) days of receipt of notice.~~

2.7 The notice shall also advise the respondent that his or her failure or refusal to respond to a fact or allegation is not taken as admitted.

~~2.8 The notice shall also advise the respondent that his or her failure or refusal to respond to a fact or allegation is not taken as admitted.~~

158-4-3 Investigation

3.1 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) Other competent, relevant evidence submitted by any person to the Commission;
- (d) Other competent, relevant evidence gathered by the Commission.

~~3.2 The respondent shall be given an opportunity to appear before the investigative panel and make an oral response.~~

3.2 The investigative panel chairman will schedule a meeting to be held after the time has passed for respondent to file his 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.

~~3.3 The respondent must notify the investigative panel chairman in writing within 15 days after receiving notice of investigation that he or she would like to appear before the panel.~~

3.3 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 his oral response.

~~3.4 The investigative panel chairman will schedule a meeting to be held after the time has passed for respondent to file his 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. All information obtained must be kept confidential pursuant to subsection (c), section four, article two, chapter six-B.~~

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

~~3.5 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 his oral response.~~

3.5 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.

~~3.6 The panel may seek additional probative information from the respondent as is necessary for its investigation.~~

3.6 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.

~~3.7 The Commission may issue subpoenas as is necessary and any subpoena issued has the same effect as one issued by a circuit court of the state.~~

~~3.8 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.~~

158-4-4 Confidentiality requirements

~~4.1 All matters information received by the Commission and investigative panel relating to a complaint, including the identity of the complainant and respondent must be kept confidential up to the signing of an order.~~

4.1 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.

4.2 However, if the respondent agrees in writing to a release of confidential information the information relating to a complaint including the identity of the respondent and complainant it may be disclosed.

4.3 Upon a finding that probable cause exists 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

~~4.9 After a finding set forth above the Commission may also order that all or a portion of the information communicated to the Commission and all allegations of ethical misconduct or criminal acts contained in a complaint to be kept confidential.~~



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
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Bob LaMont

AGENCY: Ethics Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 6, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTER 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: 4 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 LaMont

TITLE OF PERSON SIGNING: COUNSEL

DATE: 7/15/92

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