

Final Rule

LSA Document #19-265(F)

DIGEST

Amends [40 IAC 2-2-1](#) regarding procedures for the state ethics commission. Amends [40 IAC 2-2-2](#) regarding reconsideration or clarification of formal advisory opinions. Amends [40 IAC 2-2-4](#) regarding advisory opinions signed by the director. Amends [40 IAC 2-2-5](#) regarding others providing information. Amends [40 IAC 2-2-6](#) regarding the public record. Amends [40 IAC 2-3-1](#) regarding applicable statutes and rules. Adds [40 IAC 2-3-1.5](#) to add definitions. Adds [40 IAC 2-3-2.3](#) regarding investigations. Adds [40 IAC 2-3-2.5](#) regarding complaints filed by the inspector general. Amends [40 IAC 2-3-3](#) regarding agreed settlements. Adds [40 IAC 2-3-4.1](#) regarding public hearings. Adds [40 IAC 2-4.5](#) regarding fines. Amends [40 IAC 2-5-4](#) regarding certification of documents and records. Repeals [40 IAC 2-1-1](#), [40 IAC 2-1-3](#), [40 IAC 2-1-4](#), [40 IAC 2-1-5.5](#), [40 IAC 2-1-6](#), [40 IAC 2-1-7.1](#), [40 IAC 2-1-8](#), [40 IAC 2-1-9](#), [40 IAC 2-1-14](#), [40 IAC 2-2-3](#), [40 IAC 2-3-2](#), [40 IAC 2-3-4](#), [40 IAC 2-3-5](#), [40 IAC 2-3-6](#), [40 IAC 2-3-7](#), [40 IAC 2-3-8](#), [40 IAC 2-4-2](#), [40 IAC 2-5-1](#), [40 IAC 2-5-2](#), and [40 IAC 2-5-3](#). Effective 30 days after filing with the Publisher.

[40 IAC 2-1-1](#); [40 IAC 2-1-3](#); [40 IAC 2-1-4](#); [40 IAC 2-1-5.5](#); [40 IAC 2-1-6](#); [40 IAC 2-1-7.1](#); [40 IAC 2-1-8](#); [40 IAC 2-1-9](#); [40 IAC 2-1-14](#); [40 IAC 2-2-1](#); [40 IAC 2-2-2](#); [40 IAC 2-2-3](#); [40 IAC 2-2-4](#); [40 IAC 2-2-5](#); [40 IAC 2-2-6](#); [40 IAC 2-3-1](#); [40 IAC 2-3-1.5](#); [40 IAC 2-3-2](#); [40 IAC 2-3-2.3](#); [40 IAC 2-3-2.5](#); [40 IAC 2-3-3](#); [40 IAC 2-3-4](#); [40 IAC 2-3-4.1](#); [40 IAC 2-3-5](#); [40 IAC 2-3-6](#); [40 IAC 2-3-7](#); [40 IAC 2-3-8](#); [40 IAC 2-4-2](#); [40 IAC 2-4.5](#); [40 IAC 2-5-1](#); [40 IAC 2-5-2](#); [40 IAC 2-5-3](#); [40 IAC 2-5-4](#)

SECTION 1. [40 IAC 2-2-1](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-1](#) Procedure**Authority:** [IC 4-2-6-4](#)**Affected:** [IC 4-2-6](#)

Sec. 1. (a) The commission may render **formal** advisory opinions ~~with respect to the interpretation and applicability of [IC 4-2-6](#), this title, and any other statute or rule governing official conduct of state officers or employees.~~ **in accordance with [IC 4-2-6-4\(b\)\(1\)](#).**

~~(b) An advisory opinion may be requested by any state officer, employee, former state officer or employee, person who has or had a business relationship with an agency, commission member, or commission employee.~~

~~(c) Requests for opinions~~ **(b) A person requesting a formal advisory opinion shall be in writing and submit a written request that is signed by the person making the request. and shall be designated an inquiry. The inquiry request shall state include the official status position of the person making the request and shall state disclose all material facts necessary for the commission to understand the circumstances and render a complete opinion. The request must relate to a real an actual set of circumstances Upon receipt of a letter of inquiry, the commission shall send an informational copy to the relevant state officer or appointing authority, if any: that applies to the requesting party. An agency ethics officer may submit a request on behalf of his or her agency or an employee of the agency.**

~~(d) (c) The person requesting the formal advisory opinion shall receive notice from the staff of the time and place to appear before the commission. The commission staff shall send to the person making the request notice of the date, time, and place to appear before the commission. The name of the person filing the inquiry request shall appear on the agenda of the meeting.~~

~~(e) (d) In an emergency situation, the chairman commission chair and the state ethics director shall decide whether to add to the agenda a request which that was received less than seven (7) ten (10) calendar days before a commission meeting. of the commission.~~

~~(f) The director shall mail a copy of the letter of inquiry to the commission members approximately seven (7) days before the commission's meeting. The person requesting the opinion shall be asked to appear before the~~

commission at its meeting to answer questions.

(e) The commission shall ~~decide~~ **render its opinion** in a public meeting by vote of a majority of commission members present.

~~(g)~~ **(f)** Following the commission's decision, the commission staff shall prepare a written **formal** advisory opinion. **The commission staff shall send** a copy shall be mailed **of the formal advisory opinion** to the person requesting ~~an who requested the formal advisory opinion~~ **A copy of the opinion shall be sent and** to the state officer or appointing authority **of the person requesting the formal advisory opinion**, if any. **The Reliance upon a formal** advisory opinion is conditioned upon the following:

- (1) The facts and circumstances actually exist.
- (2) All of the relevant facts and circumstances related to the **formal advisory** opinion have been disclosed to the commission.

~~(h)~~ **(g)** A **formal advisory** opinion rendered by the commission ~~until amended or revoked~~, is binding on the commission in any subsequent allegations concerning the person who requested the opinion and who acted on ~~it~~ **the advice given by the commission** in good faith, unless **the person requesting the formal advisory opinion omitted or misstated** material facts ~~were omitted or misstated by the person~~ in the request for the **formal advisory** opinion or testimony before the commission.

(State Ethics Commission; [40 IAC 2-2-1](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 204; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#); readopted filed Sep 30, 2013, 1:33 p.m.: [20131030-IR-040130243RFA](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 2. [40 IAC 2-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-2](#) Request for reconsideration or clarification of formal advisory opinions

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 2. (a) The person who ~~made an inquiry and any person directly affected by the commission's~~ **requested a formal advisory opinion or on whose behalf the formal** advisory opinion **was requested** may appeal to ask ~~that the commission for reconsideration or clarification of~~ **reconsider or clarify** the advisory opinion.

(b) **The commission must receive** any such appeal ~~shall be made~~, **request** in writing to the commission within fifteen (15) days of receipt of ~~when the commission sends~~ the **written formal** advisory opinion letter to ~~the person who made the request~~.

(c) **The commission shall consider the request for reconsideration or clarification and:**

- (1) vote to confirm the existing formal advisory opinion;**
- (2) amend the existing formal advisory opinion; or**
- (3) issue a new formal advisory opinion.**

(State Ethics Commission; [40 IAC 2-2-2](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 204; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#); readopted filed Sep 30, 2013, 1:33 p.m.: [20131030-IR-040130243RFA](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 3. [40 IAC 2-2-4](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-4](#) Signed by director

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 4. All **formal advisory** opinions rendered by the commission shall be signed by the **state ethics** director.

(State Ethics Commission; [40 IAC 2-2-4](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#); readopted filed Sep 30, 2013, 1:33 p.m.: [20131030-IR-040130243RFA](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 4. [40 IAC 2-2-5](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-5](#) Others may provide information

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 5. The commission may permit or request any person to submit memoranda, briefs, or other relevant material or to provide oral information **testimony** relevant to its determination **in rendering a formal advisory opinion**.

(State Ethics Commission; [40 IAC 2-2-5](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#); readopted filed Sep 30, 2013, 1:33 p.m.: [20131030-IR-040130243RFA](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 5. [40 IAC 2-2-6](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-6](#) Public record

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 6. The commission staff will periodically publish for distribution the accumulated **formal** advisory opinions with the names removed in a format explaining the facts, the question, and the commission's opinion.

(State Ethics Commission; [40 IAC 2-2-6](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#); readopted filed Sep 30, 2013, 1:33 p.m.: [20131030-IR-040130243RFA](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 6. [40 IAC 2-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-3-1](#) Applicable statutes and rules

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#); [IC 4-2-7](#); [IC 4-21.5](#); [IC 5-14-1.5](#)

Sec. 1. (a) All proceedings **involving ethics complaints** before the state ethics commission shall be governed by [IC 4-21.5](#), [IC 4-2-6](#), [IC 4-2-7](#), [IC 5-14-1.5](#), this rule, and any applicable rule adopted by the commission. On any procedural matter not dealt with by these statutes and rules, the commission shall be guided to the extent practicable by the Indiana Rules of Trial Procedure.

(b) ~~The basic purpose of this rule is to supplement the statutes and other rules stated in subsection (a).~~

(State Ethics Commission; [40 IAC 2-3-1](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#); readopted filed Sep 30, 2013, 1:33 p.m.: [20131030-IR-040130243RFA](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 7. [40 IAC 2-3-1.5](#) IS ADDED TO READ AS FOLLOWS:

[40 IAC 2-3-1.5](#) Definitions

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#); [IC 4-2-7](#); [IC 4-21.5](#)

Sec. 1.5. The following definitions apply throughout this article:

(1) "Administrative law judge" means a member of the commission who is appointed by the commission to function as an administrative law judge under [IC 4-21.5](#).

(2) "Code of ethics" means standards set forth in [IC 4-2-6](#) and [42 IAC 1](#) that govern the conduct for those persons listed in [IC 4-2-6-2.5](#).

(3) "Commission" means the state ethics commission established under [IC 4-2-6-2](#).

(4) "Inspector general" means the office established under [IC 4-2-7-2](#).

(5) "Recommended report" means an administrative law judge's order that is not a final order under [IC 4-21.5-3-29](#).

(6) "Report" means the commission's final order under [IC 4-21.5-3-27](#) and [IC 4-21.5-3-28](#).

(7) "Respondent" means an individual against whom the inspector general has filed an ethics complaint.

(State Ethics Commission; [40 IAC 2-3-1.5](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 8. [40 IAC 2-3-2.3](#) IS ADDED TO READ AS FOLLOWS:

[40 IAC 2-3-2.3](#) Investigations

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#); [IC 4-2-7-3](#); [IC 4-21.5-3](#)

Sec. 2.3. The state ethics director shall refer any request for investigation that is received by the commission to the inspector general consistent with [IC 4-2-7-3](#).

(State Ethics Commission; [40 IAC 2-3-2.3](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 9. [40 IAC 2-3-2.5](#) IS ADDED TO READ AS FOLLOWS:

[40 IAC 2-3-2.5](#) Complaint filed by the inspector general

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#); [IC 4-2-7-5](#)

Sec. 2.5. (a) The inspector general may seek probable cause from the commission to file a complaint within the commission's jurisdiction at the conclusion of an investigation.

(b) If the commission finds probable cause for a complaint under the code of ethics, the inspector general may file a complaint with the commission.

(State Ethics Commission; [40 IAC 2-3-2.5](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 10. [40 IAC 2-3-3](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-3-3](#) Agreed settlements

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 3. (a) The commission may ~~resolve cases through agreements with respondents.~~ **consider an agreed settlement entered into by the inspector general and the respondent to an ethics complaint in a public meeting. The commission may accept or reject an agreed settlement by majority vote.**

~~(b) In negotiations to settle under this section, if the negotiations occur before a vote to find probable cause and schedule a public hearing, the chairman or his designee will represent the commission. If the negotiations occur after a vote to find probable cause and schedule a public hearing, the chairman shall designate a person to~~

represent the commission. At an informal conference to negotiate, no record shall be made, and No statement made by any person at such conference **during settlement negotiations** shall be used as evidence in any subsequent public hearing or proceeding.

(c) If the respondent and the chairman or his designee concur that an agreed settlement would be appropriate, they may submit a proposal in writing to the commission for its approval or disapproval by majority vote. If the time of the agreed settlement is prior to a vote of the commission that probable cause exists to support an alleged violation, the commission vote on approval of the agreed settlement shall be in executive session unless the respondent has waived confidentiality. If the time of the agreed settlement is after the commission has voted that probable cause exists to support an alleged violation, the vote on approval or disapproval of the agreed settlement shall be taken at an open meeting. In either case, The commission shall state its findings **document its approval or rejection of the agreed settlement** in writing in a **written** report, signed by a majority of the commission members. The report may make a recommendation for the sanctions to be imposed as authorized in [IC 4-2-6-4\(b\)\(2\)\(E\)](#) or [IC 4-2-6-12](#).

(d) The report containing findings of fact and recommendations shall be open to public inspection as a public record and shall be presented to those **individuals** listed in [IC 4-2-6-4\(b\)\(2\)\(G\)](#). [IC 4-2-6-4\(b\)\(2\)\(J\)](#). **The commission may present the report to those individuals listed in [IC 4-2-6-4\(b\)\(2\)\(K\)](#).**

(State Ethics Commission; [40 IAC 2-3-3](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 207; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#); readopted filed Sep 30, 2013, 1:33 p.m.: [20131030-IR-040130243RFA](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 11. [40 IAC 2-3-4.1](#) IS ADDED TO READ AS FOLLOWS:

[40 IAC 2-3-4.1](#) Public hearings

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6-12](#); [IC 4-21.5-3](#)

Sec. 4.1. (a) Upon a finding of probable cause, the commission shall set a public hearing on the matter.

(b) Prior to the public hearing, the commission shall:

- (1) send a copy of the complaint filed by the inspector general to the respondent pursuant to service requirements under [IC 4-21.5-3-1](#); and**
- (2) serve notice of a public hearing to the respondent in accordance with the requirements set forth in [IC 4-21.5-3-20](#).**

(c) The respondent may be represented by counsel, who shall file a written appearance with the commission.

(d) The parties or counsel for either party may:

- (1) exercise all discovery provisions under Trial Rules 26 through 37; and**
- (2) file motions in writing at any time after the filing of the complaint.**

All appearances and filings must be filed with the commission in writing, with a copy served to the respondent or the respondent's counsel and the inspector general's counsel.

(e) There are no specific requirements of a form for any pleading, except:

- (1) cases shall be titled "In the Matter of";**
- (2) the title provided for shall appear at the upper left portion of the initial page of any pleading or paper (other than exhibits) filed;**
- (3) the initial page of any pleading or paper (other than exhibits) shall show, opposite the title, the case number assigned by the commission, if known; and**
- (4) motions and petitions shall contain the name, address, and phone number of the person filing, including any counsel representing a party, and shall be signed by the person filing or counsel.**

(f) Public hearings may be conducted by either:

(1) the commission; or

(2) one (1) or more commission members acting as administrative law judges.

(g) On motion of a party or the commission chair, the commission chair or an administrative law judge may consolidate hearings on two (2) or more allegations or cases against different persons if:

(1) it is determined that there is substantial identity of facts arising out of a common transaction or event; or

(2) the respondent is the same person although the violations alleged arose from different complaints, transactions, or events.

Consolidation shall not be ordered if consolidation will substantially prejudice the right of any party.

(h) The commission chair or an administrative law judge for the hearing shall rule on all motions, except for any motions or actions that would terminate the adjudicatory proceeding. Any motion or action that would terminate the adjudicatory proceeding may be taken only by the commission.

(i) Unless otherwise ordered by the commission chair or administrative law judge, the inspector general and respondent or counsel for respondent shall exchange exhibits and the names and addresses of witnesses at least ten (10) days prior to the public hearing.

(j) After the hearing, the commission chair or the administrative law judge may request that the interested parties submit proposed findings of fact and conclusions of law for the commission's acceptance, rejection, or modification.

(k) If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a recommended report to the full commission and all interested parties.

(l) The finding of a violation by the commission must be based on a preponderance of the evidence and be supported by a majority vote. If the commission finds a violation, the commission may set a penalty as provided in [IC 4-2-6-12](#).

(m) The commission shall state its findings in a written report supported and signed by a majority of the commission. The final report shall be adopted by the commission at a public meeting. The report shall be made public and served upon the respondent and all interested parties.

(State Ethics Commission; [40 IAC 2-3-4.1](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 12. [40 IAC 2-4.5](#) IS ADDED TO READ AS FOLLOWS:

Rule 4.5. Fines

[40 IAC 2-4.5-1](#) Fines

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 1. Any fine imposed by the commission under [IC 4-2-6-8](#) or [IC 4-2-6-12](#) shall be made payable to the commission and remitted to the general fund.

(State Ethics Commission; [40 IAC 2-4.5-1](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 13. [40 IAC 2-5-4](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-5-4](#) Certification of documents and records

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#); [IC 5-14-3](#)

Sec. 4. The **state ethics** director is authorized to copy and certify all documents and records of the commission, which may be released in accordance with public records laws.

(State Ethics Commission; [40 IAC 2-5-4](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 211; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#); readopted filed Sep 30, 2013, 1:33 p.m.: [20131030-IR-040130243RFA](#); filed Aug 28, 2019, 9:51 a.m.: [20190925-IR-040190265FRA](#))

SECTION 14. THE FOLLOWING ARE REPEALED: [40 IAC 2-1-1](#); [40 IAC 2-1-3](#); [40 IAC 2-1-4](#); [40 IAC 2-1-5.5](#); [40 IAC 2-1-6](#); [40 IAC 2-1-7.1](#); [40 IAC 2-1-8](#); [40 IAC 2-1-9](#); [40 IAC 2-1-14](#); [40 IAC 2-2-3](#); [40 IAC 2-3-2](#); [40 IAC 2-3-4](#); [40 IAC 2-3-5](#); [40 IAC 2-3-6](#); [40 IAC 2-3-7](#); [40 IAC 2-3-8](#); [40 IAC 2-4-2](#); [40 IAC 2-5-1](#); [40 IAC 2-5-2](#); [40 IAC 2-5-3](#).

LSA Document #19-265(F)

Notice of Intent: [20190515-IR-040190265NIA](#)

Proposed Rule: [20190626-IR-040190265PRA](#)

Hearing Held: July 25, 2019

Approved by Attorney General: August 14, 2019

Approved by Governor: August 26, 2019

Filed with Publisher: August 28, 2019, 9:51 a.m.

Documents Incorporated by Reference: None Received by Publisher

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Posted: 09/25/2019 by Legislative Services Agency

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