ARTICLE 2. STATE OFFICERS AND EMPLOYEES

Rule 1. Indiana Code of Ethics for the Conduct of State Business

NOTE: IC 4-2-6-3 was repealed by P.L.222-2005, SECTION 50, effective May 11, 2005.

40 IAC 2-1-1 Name of rule

Authority: IC 4-2-6-3
Affected: IC 4-2-6

Sec. 1. The name of this rule shall be the Indiana code of ethics for the conduct of state business. *(State Ethics Commission; 40 IAC 2-1-1; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.: 15 IR 198; 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)*

40 IAC 2-1-2 Other sources (Expired)

Sec. 2. *(Expired under IC 4-22-2.5, effective January 1, 2008.)*

40 IAC 2-1-3 Purpose

Authority: IC 4-2-6-3
Affected: IC 4-2-6

Sec. 3. (a) This section is intended as a guide to those under the jurisdiction of the state ethics commission and is not a basis for sanctions by the state ethics commission. This section is aspirational in character and represents the objective toward which every public servant should strive. Sections 6 through 9 of this rule are mandatory in character and state minimum levels of conduct below which those under the jurisdiction of the state ethics commission may not fall without being subject to sanctions by the state ethics commission.

(b) The purpose of this rule is to set ethical standards for the official conduct of the current and former officers and employees of the executive and administrative branches of state government and for persons who have or had a business relationship with an agency so that the general public will have confidence that the conduct of state business is always conducive to the public good. This rule promotes the principle that public office is a public trust where government is based upon the consent of its citizens who are entitled to have complete confidence in the integrity of their government. Thus, the business of the state will be conducted in such a manner as to reassure the citizens of Indiana that the character and conduct of its officials and employees are above reproach.

(c) The following are goals toward which those under the jurisdiction of the state ethics commission should strive:

(1) Duties should be carried out impartially.

(2) Decisions and policy should not be made outside of proper channels of state government.

(3) Public office should not be used for private gain.

(4) Public confidence in the integrity of government is essential to the exercise of good government.

(5) Actions, transactions, or involvements should not be performed or engaged in which have the potential to become a conflict of interest.

(d) This rule is not meant to unduly restrict or limit the behavior of the officers and employees of this state during the time when they are not on duty. Each state officer and employee retains lawful rights and privileges as a private citizen to interests of a personal or private financial nature. These rights and privileges will be honored by the commission to the extent that they are compatible with an individual's public office or employment. *(State Ethics Commission; 40 IAC 2-1-3; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.: 15 IR 198; 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)*

40 IAC 2-1-4 Definitions

Authority: IC 4-2-6-3
Affected: IC 3-9-2; IC 4-2-6-2; IC 4-13-1-4; IC 5-14-3-4

Sec. 4. (a) The definitions in this section apply throughout this article.

(b) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a counsel, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term does not include any of the following:

(1) The judicial department of state government.

(2) The legislative department of state government.

(3) Separate bodies corporate and politic.

(4) A state educational institution, as defined in IC 20-12-0.5-1 *[IC 20-12 was repealed by P.L.2-2007, SECTION 390, effective July 1, 2007.]*.

(c) "Appointing authority" means the chief administrative officer of an agency. The term does not include a state officer.

(d) "Business relationship" means dealings an agency has with a person seeking, obtaining, establishing, maintaining, or implementing:

(1) a pecuniary interest in a contract or purchase with an agency; or

(2) a license or permit requiring the exercise of judgment or discretion by the agency.

(e) "Commission" means the state ethics commission created under IC 4-2-6-2.

(f) "Compensation" means any money, thing of value, or financial benefit conferred on or received by any person in return for services rendered, or for services to be rendered, whether by that person or another.

(g) "Conflict of interest" means a situation in which the private financial interest of a state officer, an employee, or the spouse or unemancipated child of a state officer or employee, may influence the state officer's or employee's judgment in the performance of a public duty.

(h) "Employee" means an individual, other than a state officer, who is employed by an agency. The term includes, for the limited purposes of this rule, an individual who contracts with an agency for personal services for more than thirty (30) hours a week for more than twenty-six (26) weeks during any one (1) year period.

(i) "Ethics" means the principles of conduct governing an individual or group.

(j) "Financial interest" means an interest:

(1) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(2) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of the state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interests of the general public or any state officer or any state employee.

(k) "Gift" means the transfer or promise of a transfer of something of value regardless of the form without adequate and lawful consideration or consideration less than that required of others who are not employees, including the full or partial forgiveness of indebtedness, which is not extended to others who are not state employees on the same terms and conditions. However, "gift" does not include gifts from relatives of less than two hundred fifty dollars ($250) or campaign contributions subject to IC 3-9-2.

(l) "Honorarium" means a payment of money for an appearance, a speech, or an article but does not include payment or reimbursement of travel expenses for a state employee.

(m) "Information of a confidential nature" means information:

(1) obtained by reason of the position or office held; and

(2) which:

(A) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(B) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(C) the information is not in a public record, but if it were, would be confidential.

(n) "Moonlighting" means any activity for compensation by a state employee outside of state employment.

(o) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(p) "Property" has the meaning set forth in IC 35-41-1-23 *[IC 35-41-1-23 was repealed by P.L.114-2012, SECTION 122, effective July 1, 2012.]*.

(q) "Public official" means anyone who holds a public office, elected or appointed, at the federal, state, county, or local level.

(r) "Relative" means any person related as father, mother, step-father, step-mother, brother, sister, step-brother, step-sister, uncle, aunt, husband, wife, son, daughter, step-child, son-in-law, daughter-in-law, grandchild, step-grandchild, niece, or nephew.

(s) "State officer" means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.

(t) "Travel expenses" means transportation, lodging, and meals. It may be actual travel expenses or an amount approximating those expenses which would be allowed by state travel policies and procedures authorized under IC 4-13-1-4(7).

(u) The masculine gender includes the masculine and feminine.

(v) The singular form of any noun includes the plural wherever appropriate. *(State Ethics Commission; 40 IAC 2-1-4; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.: 15 IR 199; 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)*

40 IAC 2-1-5 Policy statement (Repealed)

Sec. 5. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

40 IAC 2-1-5.5 Ethics education

Authority: IC 4-2-6-4
Affected: IC 4-2-6

Sec. 5.5. Each agency's appointing authority shall do the following:

(1) Require all new employees to participate in ethics training within six (6) weeks of the employee's starting employment date with the agency.

(2) Require all employees to participate in ethics training at least every two (2) years during an employee's tenure with the agency.

(3) Maintain documentation to demonstrate employee compliance with subdivisions (1) and (2).

(State Ethics Commission; 40 IAC 2-1-5.5; filed Jul 20, 2005, 1:00 p.m.: 28 IR 3452; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA)

40 IAC 2-1-6 Acceptable gifts, favors, services, entertainment, food, drink, and honoraria

Authority: IC 4-2-6-4
Affected: IC 3-9-2; IC 4-2-6

Sec. 6. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, or drink from a person who has a business relationship with the employee's agency or is seeking to influence an action by the employee in his or her official capacity. The following shall not be subject to this section:

(1) Gifts, favors, services, entertainment, food, or drink from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, so long as:

(A) the gifts or other items of value are not deducted as a business expense; and

(B) the gift giver is not seeking to influence an action by an employee in his or her official capacity.

In cases involving ongoing social relationships, employees should seek a waiver under subsection (b) before accepting a gift.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee conducting official state business while he or she is at a workplace of a person who has a business relationship or seeks to influence official action with the employee's agency.

(8) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.

(b) An employee's state officer or appointing authority may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and shall identify the following:

(1) The employee.

(2) The nature and value of the gift.

(3) The donor of the gift.

(4) Why acceptance of the gift is in the public interest.

Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(c) A person who has a business relationship with an employee's agency shall not provide any:

(1) gifts;

(2) favors;

(3) services;

(4) entertainment;

(5) food; or

(6) drink;

to such employee if the employee would not be permitted to accept the gift, favor, service, entertainment, food, or drink under subsection (a).

(d) An employee shall not personally accept an honorarium for himself or herself for anything that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium in this situation on behalf of the state. The state employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. A state employee may personally accept an honorarium or fee for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources. However, in no case can a state employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

(e) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law. *(State Ethics Commission; 40 IAC 2-1-6; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2327; filed Oct 22, 1991, 11:10 a.m.: 15 IR 201; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; filed Jul 20, 2005, 1:00 p.m.: 28 IR 3452; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA)*

40 IAC 2-1-7 Appearances; activities; expenses (Expired)

Sec. 7. *(Expired under IC 4-22-2.5, effective January 1, 2012.)*

40 IAC 2-1-7.1 Political activity

Authority: IC 4-2-6-3
Affected: IC 4-2-6

Sec. 7.1. (a) A state employee shall not engage in political activity including solicitation of political contributions from another employee or any other person when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee from engaging in such activity when not on duty.

(c) A state employee shall not solicit political contributions at any time from:

(1) persons whom the employee knows to have a business relationship with the employee's agency; or

(2) state employees directly supervised by the employee.

(State Ethics Commission; 40 IAC 2-1-7.1; filed Oct 22, 1991, 11:10 a.m.: 15 IR 203; 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)

40 IAC 2-1-8 Moonlighting

Authority: IC 4-2-6-3
Affected: IC 4-2-6

Sec. 8. A state employee shall not engage in outside employment or other outside activity not compatible with agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the employee to disclose confidential information acquired as a result of official duties. *(State Ethics Commission; 40 IAC 2-1-8; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2328; filed Oct 22, 1991, 11:10 a.m.: 15 IR 203; 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)*

40 IAC 2-1-9 Conflict of interest; prohibitions

Authority: IC 4-2-6-3
Affected: IC 4-2-6-9

Sec. 9. (a) A state officer or employee shall not engage in conduct that constitutes a conflict of interest. It is the state officer's or employee's duty to determine if a potential conflict of interest exists, to avoid the conflict, if possible, or, where applicable, to disclose a conflict as follows:

(1) A state officer or employee may seek an advisory opinion to determine whether a conflict of interest exists using the procedure in 40 IAC 2-2.

(2) If the state officer or employee determines that a conflict of interest or potential conflict of interest exists, that individual shall, if possible, be screened from participating in the matter and the matter shall be assigned to another individual who does not have a conflict of interest.

(3) The state officer or employee may make a disclosure under IC 4-2-6-9 or IC 35-44-1-3 *[IC 35-44 was repealed by P.L.126-2012, SECTION 53, effective July 1, 2012.]*, where applicable.

(b) A state officer or employee shall not solicit or accept compensation other than that provided for by law for such state officer or employee for the performance of official duties.

(c) A state officer or employee, other than in performing duties in making payments to other state officers or employees as provided by law, shall not pay or offer to pay any state officer or employee any compensation for the performance of official duties.

(d) A state officer or employee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

(e) A state officer or employee, in personal dealings, with a person who has a business relationship with the employee's agency, shall not receive any special terms or benefit not available to others not employed with the agency.

(f) A state officer or employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and the benefit by such use.

(g) A state officer or employee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

(h) A state officer or employee shall not divulge information of a confidential nature, except as permitted by law. *(State Ethics Commission; 40 IAC 2-1-9; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2329; filed Oct 22, 1991, 11:10 a.m.: 15 IR 203; 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)*

40 IAC 2-1-10 Report of possible conflicts; advice from commission (Repealed)

Sec. 10. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

40 IAC 2-1-11 Violations; complaints and investigations (Repealed)

Sec. 11. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

40 IAC 2-1-12 Compliance of appointing authority (Repealed)

Sec. 12. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

40 IAC 2-1-13 Statements of economic interest (Repealed)

Sec. 13. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

40 IAC 2-1-14 Severability of title
Authority: IC 4-2-6-3
Affected: IC 4-2-6

Sec. 14. If any provision of this title or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable. *(State Ethics Commission; 40 IAC 2-1-14; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2330; 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)*

Rule 2. Advisory Opinions before the State Ethics Commission

40 IAC 2-2-1 Procedure
Authority: IC 4-2-6-4
Affected: IC 4-2-6

Sec. 1. (a) The commission may render 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.

(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 shall be in writing and signed by the person making the request and shall be designated an inquiry. The inquiry shall state the official status of the person making the request and shall state all material facts necessary for the commission to understand the circumstances and render a complete opinion. The request must relate to a real 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.

(d) The person requesting the advisory opinion shall receive notice from the staff of the time and place to appear before the commission. The name of the person filing the inquiry shall appear on the agenda of the meeting.

(e) In an emergency situation, the chairman and the director shall decide whether to add to the agenda a request which was

received less than seven (7) days before a 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. The commission shall decide in public meeting by vote of a majority of commission members present.

(g) Following the commission's decision, the commission staff shall prepare a written advisory opinion. A copy shall be mailed to the person requesting an opinion. A copy of the opinion shall be sent to the state officer or appointing authority, if any. The 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 opinion have been disclosed to the commission.

(h) Any 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 in good faith, unless material facts were omitted or misstated by the person in the request for the 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)*

40 IAC 2-2-2 Appeal from 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 advisory opinion may appeal to the commission for reconsideration or clarification of the advisory opinion.

(b) Any such appeal shall be made, in writing, to the commission within fifteen (15) days of receipt of the advisory opinion letter. *(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)*

40 IAC 2-2-3 Failure to comply; investigation

Authority: IC 4-2-6-4
Affected: IC 4-2-6

Sec. 3. If a person who has requested an advisory opinion has been advised that he or she has a conflict of interest and to remove himself or herself from any conflict or potential conflict of interest and has failed to do so after having been given a reasonable opportunity to do so, the commission may review the matter to determine compliance with the advisory opinion and, in executive session, vote to initiate an investigation. *(State Ethics Commission; 40 IAC 2-2-3; 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)*

40 IAC 2-2-4 Signed by director

Authority: IC 4-2-6-4
Affected: IC 4-2-6

Sec. 4. All opinions rendered by the commission shall be signed by the 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)*

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 relevant to its determination. *(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)*

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 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)*

Rule 3. Adjudication Proceedings before the State Ethics Commission

40 IAC 2-3-1 Applicable statutes and rules

Authority: IC 4-2-6-4
Affected: IC 4-2-6; IC 4-21.5; IC 5-14-1.5

Sec. 1. (a) All proceedings before the state ethics commission shall be governed by IC 4-21.5, IC 4-2-6, 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)*

40 IAC 2-3-2 Investigations

Authority: IC 4-2-6-4
Affected: IC 4-2-6-4; IC 4-21.5-3

Sec. 2. (a) The commission shall enforce the statutes and rules under its jurisdiction primarily by means of its own independent staff investigations and commission hearings. The process may include confidential commission determination of sufficient evidence to warrant an investigation, confidential investigation and commission determination of probable cause, and public hearing.

(b) An investigation may be initiated by any of the following:

(1) The commission.

(2) Request of the governor.

(3) A complaint filed by an individual with direct knowledge of facts central to an alleged violation.

(c) The procedure for investigation on commission initiative shall be as follows:

(1) The commission may use information received in any way to form the basis for an investigation. When information is received, the director shall first determine whether the information indicates a possible violation of statute or rule within the commission's jurisdiction. If the information indicates a possible violation of statute or rule within the commission's jurisdiction, the director may instruct the commission's investigator to do preliminary factfinding or refer the matter to an appropriate investigative authority. In either case, the commission shall be informed at its next meeting of the action taken. The factfinding shall be for the purpose of providing the commission with verified information by determining if the allegation's facts are correct. Upon completion of this preliminary factfinding, the matter shall be brought to the commission for determination under IC 4-2-6-4(a)(1) whether the commission wants to initiate an investigation.

(2) The investigation is initiated by adoption of a resolution of the commission stating the nature and scope of the investigation and actions or activities to be investigated.

(3) A copy of the resolution stating the nature of the investigation and a general statement of the applicable statute or rule with respect to the investigation shall be sent to the respondent.

(d) The procedure for investigation on receipt of a request of the governor shall be as follows:

(1) The director shall instruct the commission's investigator to proceed with an investigation or shall refer the matter to an appropriate investigative authority. In either case, the commission shall be informed at its next meeting of action taken.

(2) A copy of the governor's request for an investigation shall be sent to the respondent.

(e) Investigation on receipt of a complaint shall be as follows:

(1) All complaints to be considered by the commission shall be filed in writing with the commission and shall contain the following:

(A) The name and address of the person or persons who filed the complaint.

(B) The name and address of the person against whom the complaint is filed.

(C) The state government position, if applicable, held by the person against whom the complaint is filed.

(D) A clear and concise statement of the facts upon which the complaint is based.

(E) Which sections of statute or rule are alleged to be violated.

(F) A statement of the facts as to which the complainant has personal knowledge.

(G) The names and addresses of other persons having personal knowledge of the acts complained of and the nature and extent of each person's knowledge.

(H) Verification under penalty of perjury that the facts stated are true to the best of the complainant's knowledge and the signature of the complainant.

(2) The complaint shall include the following: "If the commission finds, after preliminary investigation, that probable cause exists to support the alleged violation, I agree to be called as a witness to testify to the charge above set forth, under oath. The state ethics commission requests you keep confidential the filing of this complaint and facts involved, except from those people directly involved in the investigation of this matter.".

(3) A complaint dismissed under IC 4-2-6-4(b)(2)(A)(i) or IC 4-2-6-4(b)(2)(A)(ii) will not again be entertained by the commission unless the commission is provided with new facts which materially add to the complaint.

(f) Upon receipt of a copy of the resolution of the commission, a copy of the request of the governor to initiate an investigation, or a copy of the complaint, the respondent may respond in writing within twenty (20) days to the allegations if he or she so desires.

(g) During investigations, the procedure shall be as follows:

(1) The scope of investigations shall be limited to the allegations, but shall include an investigation of all facts and persons materially related to the allegations at issue.

(2) If, during the course of an investigation, evidence of a wrongful act not materially related to the allegations at issue is discovered, such evidence shall be reported to the commission in a separate report. The wrongful act shall not be further investigated in the absence of direction from the commission with respect thereto. Upon receipt of a separate report containing evidence of the wrongful act not materially related to the allegations at issue, the commission may:

(A) forward evidence of the commission of a crime to the appropriate law enforcement official;

(B) forward evidence of the commission of any other wrongful act to the appropriate disciplinary or law enforcement official; or

(C) decide to initiate its own investigation.

(h) At the conclusion of its investigation, the commission shall make a determination of whether or not probable cause exists to believe that a violation of IC 4-2-6-4, 40 IAC 2-1, or any other statute or rule governing official conduct of state officers or employees has occurred. The procedure shall be as follows:

(1) If the commission determines that probable cause does not exist to believe a violation has occurred, the commission shall immediately send written notice of such a determination to the respondent and, if a complaint has been filed, to the party who made the complaint or, if the investigation was initiated at the governor's request, to the governor.

(2) If the commission determines that there is probable cause to believe that a violation has been committed, it shall state the name of the person alleged to have committed a violation, a citation to the statute or rule that may have been violated,

and the particulars of the alleged violation or violations which may include violations the commission has, as a result of its investigation, probable cause to believe have occurred which were not contained in the complaint, resolution, or governor's request. The director shall notify the respondent, the complainant, and the office or appointing authority, if any, of the date, time, and place of the public hearing. The respondent shall be mailed a written notice by certified mail, return receipt requested, in accordance with IC 4-2-6-4(b)(2)(C) and IC 4-21.5-3.

(i) An investigation conducted prior to a probable cause finding shall be confidential except the respondent may, in writing at any time, elect to waive the confidentiality protection of IC 4-2-6-4. If the respondent has agreed in writing to waive confidentiality, the commission may in its discretion release any information at any time. The commission may deem public statements by a respondent concerning the substance of the investigation to be a waiver of confidentiality. In any case, the identity of the complainant or information as to how the investigation was initiated shall be disclosed to the respondent.

(1) During an investigation, the procedures concerning confidentiality shall be as follows:

(A) If the investigation is confidential, the allegations and any information supplied to or received from the commission shall not be disclosed during the investigation to any third party by the commission, or a staff member except as necessary to conduct the investigation.

(B) An employee of the commission may acknowledge the existence and scope of an investigation along with a statement that no finding of probable cause has been made and that no adverse inference of impropriety or guilt should be drawn from the decision to investigate.

(2) From the initiation of an investigation and during the pendency of an investigation until a finding of probable cause has been made, the proceedings of the commission shall be in executive session, and the activities of commission staff in connection with the investigation shall be confidential.

(3) If the commission determines that no probable cause exists, all records of the investigation shall be kept confidential by the commission unless the respondent has waived confidentiality. The respondent may request that any of the persons interviewed be informed that the commission did not find probable cause. The respondent is not entitled to examine documents or records obtained or prepared by the commission in connection with the investigation, unless the respondent has waived confidentiality. An employee of the commission may acknowledge that the commission did not find probable cause to support an alleged violation.

(4) No provisions of this section shall prevent the commission from forwarding a copy of a complaint or any other relevant information to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the appointing authority, or other appropriate authority for action, and staying the commission's proceedings pending the other action.

(j) After a reasonable period of time, the commission may review the matter again if the person or agency to which the complaint was forwarded fails or refuses to take action in regard to the matter and the commission may vote to proceed. *(State Ethics Commission; 40 IAC 2-3-2; 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)*

40 IAC 2-3-3 Agreed settlements

Authority: IC 4-2-6-4
Affected: IC 4-2-6-12

Sec. 3. (a) The commission may resolve cases through agreements with respondents.

(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 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 in writing in a 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 listed in IC 4-2-6-4(b)(2)(G). *(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)*

40 IAC 2-3-4 Public hearings

Authority: IC 4-2-6-4
Affected: IC 4-2-6-4; IC 4-21.5-3

Sec. 4. (a) The following are discovery and prehearing rights:

(1) The respondent may:

(A) be represented by counsel;

(B) exercise all discovery provisions of rules 26 through 37 of the Indiana Rules of Trial Procedure; and

(C) file with the commission a motion for any order or action not inconsistent with law or this article, for example, motion to dismiss, motion for more definite statement, motion to enlarge time, or motion for summary judgment.

(2) Motions may be made in writing at any time after the commencement of the adjudicatory proceeding, or they may be made during a prehearing conference.

(3) The original of a written motion shall be filed at the commission's office and a copy served on all persons designated in section 5(a) of this rule or their attorneys.

(4) The person who is to preside at the hearing, which may be the chairman of the commission, his designee, or the administrative law judge for the hearing, shall generally rule on motions. However, any action which would terminate the adjudicatory proceeding may be taken only by the commission.

(5) On motion of a party or the commission's own motion, a prehearing conference may be held in conformance with IC 4-21.5-3-18 and IC 4-21.5-3-19.

(6) Unless otherwise ordered by the presiding officer as a result of a prehearing conference, the commission and respondent or counsel for respondent shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing.

(7) Upon motion of a party or the commission's own motion, the commission may consolidate for hearing two (2) or more allegations or cases against different persons if the commission determines that there is substantial identity of facts arising out of a common transaction or event or if 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.

(8) Ex parte communications are governed by IC 4-21.5-3-11.

(b) Procedures at the hearing shall be as follows:

(1) Public hearings and prehearing matters may be conducted by any of the following:

(A) The full commission.

(B) One (1) or more commission members acting as administrative law judges.

(C) Another individual, not necessarily an employee of the commission, appointed by the commission, acting as an administrative law judge under IC 4-21.5-3-9.

(2) Hearings shall be as informal as may be reasonable and appropriate under the circumstances.

(3) The person presiding, which may be the commission chairman, his designee, or the administrative law judge, shall conduct the hearing making all decisions regarding admission or exclusion of evidence or any other procedural matters. The order of proceeding is at the discretion of the presiding officer.

(4) The respondent shall be afforded appropriate due process protection consistent with IC 4-21.5-3, including the following:

(A) The right to be represented by counsel.
(B) The right to call and examine witnesses.
(C) The right to introduce exhibits.
(D) The right to cross-examine witnesses.

(5) Commission members shall be disqualified in accordance with IC 4-21.5-3-9 through IC 4-21.5-3-13.

(c) After the hearing, the procedure shall be as follows:

(1) Deliberation and discussion of a report at the conclusion of the public hearing may be conducted in executive session. Vote on the report shall be conducted in a public meeting.

(2) A report by less than the full commission serving as administrative law judges or by another individual who has been appointed to be an administrative law judge shall be a recommended report and shall be transmitted to the full commission and served upon the respondent.

(3) In regard to a recommended report, the parties may present briefs or request oral argument under IC 4-21.5-3-28.

(4) The final report shall be adopted by the commission at a public meeting. The commission is the ultimate authority under IC 4-21.5.

(5) Findings shall be made on a preponderance of the evidence and it shall require the concurrence of at least three (3) members of the commission to find a violation or impose a penalty.

(6) The report shall be signed by the commission members present and voting at the public meeting, transmitted by certified mail to the respondent, return receipt requested, and shall be made available to the public, to those persons required to receive the report under IC 4-2-6-4(b)(2)(G) and may be forwarded to any of the persons listed in IC 4-2-6-4(b)(2)(H).

(State Ethics Commission; 40 IAC 2-3-4; filed Oct 22, 1991, 11:10 a.m.: 15 IR 208; 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)

40 IAC 2-3-5 Service

Authority: IC 4-2-6-4
Affected: IC 4-2-6; IC 4-21.5-3-21

Sec. 5. (a) Motions and petitions shall be served on the respondent, complainant, if any, and any intervenors.

(b) Petitions for intervention shall comply with IC 4-21.5-3-21. *(State Ethics Commission; 40 IAC 2-3-5; filed Oct 22, 1991, 11:10 a.m.: 15 IR 209; 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)*

40 IAC 2-3-6 Form of pleadings

Authority: IC 4-2-6-4
Affected: IC 4-2-6

Sec. 6. (a) There are no specific requirements of form for any pleading or other paper except as provided for by this section.

(b) Cases shall be titled "In the Matter of".

(c) The title provided for shall appear at the upper left portion of the initial page of any pleading or paper (other than exhibits) filed. The initial page of any pleading or paper (other than exhibits) shall show, opposite the title, the file number, if known, assigned by the commission.

(d) The commission prefers that all papers filed in proceedings be on paper eight and one-half (8½) inches by eleven (11) inches.

(e) Motion 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 by counsel. *(State Ethics Commission; 40 IAC 2-3-6; filed Oct 22, 1991, 11:10 a.m.: 15 IR 209; 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)*

40 IAC 2-3-7 Witness expenses

Authority: IC 4-2-6-4
Affected: IC 4-2-6

Sec. 7. (a) State officers or employees who are required to appear before the commission shall be paid for the time spent to appear by the office or agency which employs them. State travel expenses of state officers or employees who are required to appear before the commission shall be paid by the office or agency which employs them.

(b) Any person who is not a state officer or an employee of the state who is subpoenaed to testify at a public hearing shall be entitled to mileage and expense reimbursement as allowed by the state travel rules and the per diem allowance for witnesses in state courts. The person shall be paid by the party at whose request the witness is subpoenaed. *(State Ethics Commission; 40 IAC 2-3-7; filed Oct 22, 1991, 11:10 a.m.: 15 IR 209; 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)*

40 IAC 2-3-8 Subpoenas

Authority: IC 4-2-6-4
Affected: IC 4-2-6-4

Sec. 8. (a) At any stage of an investigation or public hearing, the commission may issue a subpoena.

(b) The commission shall issue a subpoena on request of the respondent to compel appearance of witnesses at a deposition or public hearing held in accordance with IC 4-2-6-4(b) if the witness' testimony is reasonably necessary for resolution of the matter. *(State Ethics Commission; 40 IAC 2-3-8; filed Oct 22, 1991, 11:10 a.m.: 15 IR 209; 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)*

Rule 4. Financial Disclosure to the State Ethics Commission

40 IAC 2-4-1 Persons required to file by rule (Expired)

Sec. 1. *(Expired under IC 4-22-2.5, effective January 1, 2008.)*

40 IAC 2-4-2 Processing violations

Authority: IC 4-2-6-4
Affected: IC 4-2-6-8

Sec. 2. (a) This section shall apply to the processing of violations under IC 4-2-6-8.

(b) The following are procedures for staff audit:

(1) After financial disclosure statements are submitted, the staff will review and audit all forms to ensure that they are complete, legible, and filed properly and in a timely manner. The staff person conducting this audit will examine each statement to determine that all information required is complete according to instructions and that all necessary information is included.

(2) If a statement is not complete, the staff person will notify the person who filed the statement and afford the person the opportunity to provide the requested information or the form may be returned to the person for completion.

(3) At the discretion of the director, a field audit to examine the accounts and documents supporting the information on the financial disclosure statement may be conducted.

(c) The following are procedures in the event of failure to comply:

(1) Whenever a person required to file has not done so, the commission shall initiate an investigation and conduct its proceedings in compliance with IC 4-2-6-4(b)(2)(C).

(2) An investigation under this subsection shall remain confidential until the commission finds probable cause to believe that a violation of IC 4-2-6-8 has occurred.

(3) If at the conclusion of its investigation the commission determines that probable cause exists to believe that a violation of IC 4-2-6-8 has occurred, the respondent shall be notified that, subject to the approval of the commission, he or she may consent to an entry of a finding that he or she has committed a violation as alleged and further consent to the imposition of a penalty or a fine as determined under IC 4-2-6-8(d) through IC 4-2-6-8(e). Such consent shall be filed on a form provided by the commission and shall contain a waiver of the respondent's right to appear at a public hearing. If the respondent consents and the commission, by majority vote, accepts the consent entry, the commission may impose the penalties listed in IC 4-2-6-8(d) through IC 4-2-6-8(e).

(4) In the event the respondent fails to consent to a finding of a violation, the commission shall convene a public hearing under IC 4-2-6-4(b)(2)(D) through IC 4-2-6-4(b)(2)(E) and under IC 4-2-6-4(b)(2)(G) through IC 4-2-6-4(b)(2)(H) and may impose sanctions under IC 4-2-6-8(d) through IC 4-2-6-8(e).

(d) Any fines imposed by the commission shall be made payable to the state of Indiana and submitted to the state ethics commission. *(State Ethics Commission; 40 IAC 2-4-2; filed Oct 22, 1991, 11:10 a.m.: 15 IR 210; 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)*

Rule 5. General Procedural Provisions of the State Ethics Commission

40 IAC 2-5-1 Notice of meetings and agendas

Authority: IC 4-2-6-4
Affected: IC 4-2-6; IC 5-14-1.5

Sec. 1. (a) The commission shall give notice of meetings and emergency meetings in conformance with IC 5-14-1.5. Commission staff shall prepare an agenda listing specific items to be considered. The commission shall adopt an agenda at the beginning of its meeting and may make changes in the agenda for good cause.

(b) The director or his or her designee shall sign on behalf of the commission notices of meetings. *(State Ethics Commission; 40 IAC 2-5-1; filed Oct 22, 1991, 11:10 a.m.: 15 IR 210; 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)*

40 IAC 2-5-2 Rulemaking

Authority: IC 4-2-6-4
Affected: IC 4-22

Sec. 2. Proceedings held for the adoption, amendment, or repeal of a commission rule shall be conducted according to the provisions of IC 4-22. *(State Ethics Commission; 40 IAC 2-5-2; filed Oct 22, 1991, 11:10 a.m.: 15 IR 210; 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)*

40 IAC 2-5-3 Meeting by telephone and other communications media technology

Authority: IC 4-2-6-4
Affected: IC 4-2-6

Sec. 3. The commission may utilize telephone conference calls, speaker phone, and other communications media technology as it becomes available to conduct commission business when necessary due to emergencies of the situation. However, it is the commission view that the public interest is best served by having public hearings held in person, rather than by use of communication media technology. *(State Ethics Commission; 40 IAC 2-5-3; filed Oct 22, 1991, 11:10 a.m.: 15 IR 210; 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)*

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 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)*

*