
REGULATIONS (CURRENT)

RULES AND REGULATIONS TITLE 51. PUBLIC OFFICERS PART 1, STATE ETHICS COMMISSION

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CHAPTER 11. GENERAL PROVISIONS

§11.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise. Additional definitions are set forth in the act.

Act -- The act of June 26, 1989 (P.L. 26, No. 9)(65 P.S. §§401-413), known as the Public Official and Employee Ethics Law (65 P.S. §§401-413).

Administering or monitoring grants --- Directing, supervising or approving the expenditure or reimbursement of grant funds or monitoring another person's or organization's administering of grant funds. The term does not include compiling expenditures, comparing actual to planned expenditures or reimbursements, preparing comparative reports or completing grant proposals or reimbursement forms under specific direction.

Advice -- Any directive of the Chief Counsel of the Commission issued under

section 7(11) of the act (65 P.S. §407(11)) and based exclusively on prior Commission opinions, the act, regulations promulgated under the act and court opinions which interpret the act. See section 402 of the act (65 P.S. §402).

Appointing authority -- The person who is vested with the power to appoint, hire or terminate; if the power is vested in a governmental body, a majority vote of a quorum of that body constitutes the appointing authority.

Audit -- A review of statements of financial interests to determine compliance with the act and to provide technical assistance in its administration.

Chairperson --- The Chairperson of the Commission.

Child -- The term includes adopted and biological children.

Clear and convincing proof -- To a degree which requires more than a preponderance of the evidence but less than beyond a reasonable doubt.

Commission - The State Ethics Commission of the Commonwealth.

Commissioner - An appointed and seated member of the Commission.

Confirmation --- The power vested in a person or governmental body to approve the nomination of persons.

Contracting or procurement --- Awarding a contract or making a decision to purchase by the preparation of requests for bids and proposals, the solicitation and evaluation of proposals or the selection of a vendor. The term does not include contracting or purchasing through master contracts or purchasing schedules already awarded.

De minimis economic impact - An economic consequence which has an insignificant effect.

Director -- An officer acting as an agent for a business who is authorized to regulate, manage and direct alone or in conjunction with other officers.

Docket -- The official assignment of a file number to a matter submitted to the Commission.

Election -- The term includes primary, special or general elections.

Employed by -- Used in any capacity, with or without compensation. This definition is only used in the context of section 6(d)(5) of the act (65 P.S. §406(d)(5)).

Employer -- One who uses the services of others and pays their wages, salaries or other compensation.

Filed -- Official papers are filed on the date they are physically received at the Commission Office whether delivered by United States mail, express carrier, hand delivery or by Facsimile Service (FAX). See §19.1 (relating for forms; filing) for additional requirements when filing a Statement of Financial Interests by Facsimile Service (FAX).

Governing authority -- The body empowered to enact ordinances, appropriations and resolutions or to otherwise govern a subordinate body.

Gross negligence -- The failure to perform a manifest duty in reckless disregard of the consequences or a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness.

Inspecting, licensing, regulating or auditing --- The normal meanings of the terms apply, but the terms do not include activities which are exclusively internal in nature, such as auditing the internal process of an organization, and clerical and procedural activities in issuing permits and licenses.

Local --- Governmental units other than the Commonwealth or counties.

Office --- The position of president, vice president, secretary, treasurer and other positions designated as an office in the bylaws of the business.

Opinion -- A directive of the Commission issued pursuant to section 7(10) of the act setting forth a public official's or public employee's duties under the act.

Planning or zoning --- An action which is directed by a planning commission, zoning board, department, agency or governmental body which involves the regulation of real property.

Political subdivision. -- Any county, city, borough, incorporated town, township, school district, vocational school, county institution district and any authority, entity or body organized by the aforementioned.

Public employe --

(i) The term includes an individual who is employed by the Commonwealth or a political subdivision and who is responsible for taking or recommending official action of a nonministerial nature with regard to one or more of the following:

(A) Contracting or procurement.

(B) Administering or monitoring grants or subsidies.

(C) Planning or zoning.

(D) Inspecting, licensing, regulating or auditing a person.

(E) Other activities in which the official action has greater than a de minimis economic impact.

(ii) The following criteria will be used, in part, to determine whether an individual is within the definition of "public employee":

(A) The individual normally performs his responsibility in the field without onsite supervision.

(B) The individual is the immediate supervisor of a person who normally performs his responsibility in the field without onsite supervision.

(C) The individual is the supervisor of a highest level field office.

(D) The individual has the authority to make final decisions.

(E) The individual has the authority to forward or stop recommendations from being sent to the person or body with the authority to make final decisions.

(F) The individual prepares or supervises the preparation of final recommendations.

(G) The individual makes final technical recommendations.

(H) The individual's recommendations or actions are an inherent and recurring part of his position.

(I) The individual's recommendations or actions affect organizations other than his own organization.

(iii) The term does not include individuals who are employed by the Commonwealth or a political subdivision of the Commonwealth in teaching as distinguished from administrative duties.

(iv) Persons in the following positions are generally considered public employees:

(A) Executive and special directors or assistants reporting directly to the agency

head or governing body.

(B) Commonwealth bureau directors, division chiefs or heads of equivalent organization elements and other governmental body department heads.

(C) Staff attorneys engaged in representing the department, agency or other governmental bodies.

(D) Engineers, managers and secretary-treasurers acting as managers, police chiefs, chief clerks, chief purchasing agents, grant and contract managers, administrative officers, housing and building inspectors, investigators, auditors, sewer enforcement officers and zoning officers in all governmental bodies.

(E) Court administrators, assistants for fiscal affairs and deputies for the minor judiciary.

(F) School superintendents, assistant superintendents, school business managers and principals.

(G) Persons who report directly to heads of executive, legislative and independent agencies, boards and commissions except clerical personnel.

(v) Persons in the following positions are generally not considered public employes:

(A) City clerks, other clerical staff, road masters, secretaries, police officers, maintenance workers, construction workers, equipment operators and recreation directors.

(B) Law clerks, court criers, court reporters, probation officers, security guards and writ servers.

(C) School teachers and clerks of the schools.

Public official ---

A person elected by the public or elected or appointed by a governmental body, or an appointed official in the Executive, Legislative or Judicial Branch of the Commonwealth or a political subdivision thereof. The term does not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to exercise otherwise the power of the Commonwealth or a political subdivision thereof.

(i) The following criteria will be used to determine if the exception in this paragraph is applicable:

(A) The body will be deemed to have the power to expend public funds if the body may commit funds or may otherwise make payment of monies, enter into contracts, invest funds held in reserves, make loans or grants, borrow money, issue bonds, employ staff, purchase, lease, acquire or sell real or personal property without the consent or approval of the governing body and the effect of the power to expend public funds has a greater than de minimis economic impact on the interest of a person.

(B) The body will be deemed to have the authority to otherwise exercise the power of the Commonwealth or a political subdivision if one of the following exists:

(I) The body makes binding decisions or orders adjudicating substantive issues which are appealable to a body or person other than the governing authority.

(II) The body exercises a basic power of government and performs essential governmental functions.

(III) The governing authority is bound by statute or ordinance to accept and enforce the rulings of the body.

(IV) The body may compel the governing authority to act in accordance with the body's decisions or restrain the governing authority from acting contrary to the body's decisions.

(V) The body makes independent decisions which are effective without approval of the governing authority.

(VI) The body may adopt, amend and repeal resolutions, rules, regulations or ordinances.

(VII) The body has the power of eminent domain or condemnation.

(VIII) The enabling legislation of the body indicates that the body is established for exercising public powers of the Commonwealth or a political subdivision.

(ii) The term does not include judges and inspectors of elections, notary publics and political party officers.

(iii) The term generally includes persons in the following offices:

(A) Incumbents of offices filled by nomination of the Governor and confirmation of the Senate.

(B) Heads of executive, legislative and independent agencies, boards and

commissions.

(C) Members of agencies, boards and commissions appointed by the General Assembly or its officers.

(D) Persons appointed to positions designated as officers by the Commonwealth or its political subdivisions.

(E) Members of municipal, industrial development, housing, parking and similar authorities.

(F) Members of zoning hearing boards and similar quasi-judicial bodies.

(G) Members of the public bodies meeting the criteria in paragraph (i)(A).

Requestor -- The person seeking an advice or opinion from the Commission.

Respondent --- The person who is the subject of a complaint, inquiry or investigation.

Service -- Official papers are deemed served on the date of United States postmark if delivered by United States mail, the pickup date if delivered by express carrier or the date received from the Commission if hand delivered or transmitted by FAX.

Staff --- The Executive Director, the chief counsel, investigators and other personnel as may be employed by or assigned to assist the Commission.

Sworn complaint --- A complaint on a form promulgated by the Commission or its equivalent which is notarized and contains the provision that the complaint is signed under the penalty of perjury.

Unannounced write-in-candidate -- An individual who is not a "candidate" as defined in the act and who received sufficient write-in votes on election day to be elected to or nominated for an office.

Vice Chairperson --- The Vice Chairperson of the Commission.

§11.2. Construction.

Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this title shall be liberally construed to promote complete financial disclosure as specified in the act.

§11.3. Statute of limitations.

The Commission may investigate a violation of the act within 5 years of its occurrence. The occurrence transpires when an act is complete or requires no further action. This title does not apply to violations committed prior to the effective date of the act, and causes of action initiated for the violations shall be governed by the prior law and title, which are continued in effect for that purpose as if this title were not in force. For the purposes of this title, a violation was committed prior to the effective date of the act if any elements of the violation occurred prior thereto.

CHAPTER 13. OPINIONS AND ADVICES OF COUNSEL

§13.1. General provisions.

(a) An advice or an opinion may be requested by a public official or public employe as to his own conduct or by the authorized representative of the person, his present employer, or appointing authority of the person through majority action of the appointing authority, if applicable.

(b) The requestor shall provide the following information in writing:

(1) The name, address and phone number of the person who is the subject of the request and if different, the name, address and phone number of the person initiating the request.

(2) The name of the governmental body with which the subject serves and the name or title of the person's public office or position.

(3) If the requestor is the appointing authority, employer or representative of the subject of the request, the nature of the relationship.

(4) The nature and duties of the subject's office or job. Include an organization chart, bylaws of the organization, if available, and a job description.

(5) List the relevant facts and circumstances surrounding the request.

(c) The requestor may ask that an opinion or advice be issued under either section 7(10) or (11) of the act (65 P.S. §407(10) and (11)).

(d) The Commission will decide, within 14 days, whether an opinion or advice should be issued and will so advise the requestor.

(e) If a requestor seeks an opinion and is advised that an advice should be issued or if the requestor seeks an advice and is advised that an opinion should be issued, the requestor may either withdraw the request by notifying the Commission within 14 days of

the date of receiving notice under subsection (d) or may elect to have the opinion or advice issued as docketed by the Commission.

(f) Advices and opinions are matters of public record except as provided in this section.

(g) A requestor may seek a confidential advice or opinion in writing at the time of the request or within 7 days of notification of docketing as an advice or opinion.

(h) A confidential advice or opinion will be publicly filed but will contain deletions and changes to preserve the confidentiality of the requestor's or subject's identity.

(i) The files relating to a confidential advice or opinion will not be public and will so remain unless released by the requestor or the public official or public employe who is the subject of the advisory.

(j) If a Petition for Review or other legal pleading is filed in a court of law regarding a confidential advice or opinion, the files will become public on the date that the Commission record is transmitted to court or on the date the responsive pleading, motion, application or other legal document is filed by the Commission, whichever date comes first, unless the court directs otherwise.

(k) Documents and submissions to the Commission relating to a request for an opinion or an appeal of an advice shall be made at least 7 days prior to the meeting of the Commission during which the appeal or opinion will be reviewed.

§13.2. Advice of counsel.

(a) Advice of counsel will be based exclusively on one or more of the following authorities:

- (1) Prior Commission opinions.
- (2) The act.
- (3) This title.
- (4) Court opinions interpreting the act.

(b) The Chief Counsel will issue the advice on behalf of the Commission within 21 working days after receipt of the request, but the time may be extended for good cause.

(c) Clarification of an advice may be requested in cases where the original advice was incomplete, inconsistent or unclear.

(d) Requests for clarification shall be filed within the 30-day period normally applicable for appealing an advice to the Commission.

(e) The timely filing of a request for clarification will toll the applicable period for appealing an advice to the Commission.

(f) Supplemental advice may be requested in cases in which additional facts are present or circumstances have changed from those in the original request.

(g) An advice of counsel may be appealed to the Commission by the requestor or the subject of the request.

(h) An appeal from an advice to the Commission shall be in writing and filed within 30 days of the issuance of the advice.

(i) An appeal from an advice will be considered by the Commission after which an opinion will be issued either affirming, modifying or reversing the original advice.

(j) Reconsideration may be requested under §21.29 (relating to finality; reconsideration) of an opinion disposing of an appeal of an advice if the request is filed within 30 days of the issuance of the opinion.

(k) An advice shall be a complete defense in an enforcement proceeding initiated by the Commission, and evidence of good faith conduct in another civil or criminal proceeding, if the requester, at least 21 working days prior to the alleged violation, requested written advice from the Commission in good faith, disclosed truthfully the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the Commission to provide advice within 21 days of the request or the later extended time.

§13.3. Opinions.

(a) Opinions shall be issued under the provisions in section 7(10) of the act (65 P.S. §407(10)).

(b) Requests for Commission opinions will be considered in accordance with the procedures outlined in §§ 23.1-23.6.

(c) A party may request that the Commission reconsider an opinion in accordance with §21.29 (relating to finality; reconsideration). The request shall be filed within 30 days of the service of the opinion and contain a detailed explanation of the reasons in support of the request.

(d) Reconsideration may be granted in the discretion of the Commission under §21.29(e).

(e) A person who acts in good faith on an opinion issued to him by the Commission will not be subject to criminal or civil penalties for so acting, if the material facts are as stated in the opinion request.

§13.4. Intervention.

(a) A person who is not a party in an advice or opinion request or reconsideration thereof, may file a petition to intervene if the person has an interest. One or more of the following criteria will be utilized to determine whether a person has an interest:

- (1) A right conferred by Federal or State law.
- (2) An interest which may be affected and which is not adequately represented.
- (3) An issue of public importance.

(b) A person shall apply for intervention within 14 days prior to the Commission meeting if the opinion will be reviewed or decided. The Commission may grant an application at any time prior to the meeting, but only for good cause shown.

(c) An application for intervention shall include the facts which establish the nature of the alleged right or interest and the grounds for intervention. The application shall also address the facts if they are deficient or incorrectly stated, and the relevant issues of law. The application may cite authority in support of the advocated position.

(d) The Commission will review applications for intervention to determine whether a grant of intervention is appropriate.

(e) A person may file an amicus brief which shall be received within 14 days prior to the Commission meeting.

§13.5. Public access.

(a) Subject to §13.1(h) and (i) (relating to general provisions), the Commission's advisories, letters requesting advisories, files and information submitted to the Commission relating to a request are public records and will be available for public inspection and reproduction during normal business hours.

(b) The Commission will transmit, free of charge, copies of each order, advice and opinion which has become a matter of public record quarterly to the law library of each county, one public library in each county, the State Library, the State Senate Library, each

authority appointing Commission members under this act, the Pennsylvania Association of County Commissioners, the Pennsylvania Association of Boroughs, the Pennsylvania Association of Township Supervisors, the Pennsylvania State Association of Township Commissioners, the Pennsylvania School Boards Association and the Pennsylvania League of Cities.

(c) The Commission may charge a fee for additional copies at a rate not to exceed actual cost.

(d) A digest and index of Commission opinions may be published and disseminated annually.

CHAPTER 15. STATEMENTS OF FINANCIAL INTERESTS, APPLICABILITY

§15.1. Federal officials, employes and candidates.

(a) Federal officials, employes and candidates are not required to file the Statement of Financial Interests with regard to their Federal position.

(b) Federal officials, employes and candidates who serve with the Commonwealth or a political subdivision as part of an exchange or comparable program are required to file a Statement of Financial Interests.

§15.2. Public officials and public employes.

(a) Public officials and employes shall file a Statement of Financial Interests for the preceding calendar year by May 1 of each year during which they hold office or a position and by May 1 for the year after they leave the position.

(b) A public official may not take the oath of office, continue upon his duties or receive compensation for holding office unless a Statement of Financial Interests has been filed.

(c) Public officials in State level offices shall file with the Commission and as follows:

(1) Executive branch public officials, board and commission members shall file with the Governor's office.

(2) Legislative branch public officials shall file with either the Chief Clerk of the House of Representatives or the Secretary of the Senate, depending upon in which body the official serves.

(3) Independent agency public officials and other public officials shall file with their agency.

(d) Public employes of the Commonwealth shall file with the State agency with which they are employed.

(e) County and local officials, and employes, shall file with the governing body of the political subdivision in which they serve or are employed.

(f) In an election year, public officials, public employes who are also candidates, shall, in addition, file at the times and locations required by candidates.

(g) Full- or part-time solicitors are required to file Statements of Financial Interests.

(h) If a law firm or engineering firm is designated solicitor or engineer, the persons primarily responsible for providing such services in the firm are responsible for filing a Statement of Financial Interests.

§15.3. Candidates/nominees.

(a) A candidate for State level public office shall file a Statement of Financial Interests with the Commission on or before the last day for filing a petition to appear on the ballot and a copy of the Statement shall be appended to the petition.

(b) A candidate for county and local public office shall file a Statement of Financial Interests with the governing authority of the political subdivision wherein the candidate is seeking office on or before the last day for filing a petition to appear on the ballot and a copy of the Statement shall be appended to the petition.

(c) A candidate running for office as a substitute nominee shall file a Statement of Financial Interests on or before the last day for filing a substitute nomination certificate as follows:

(1) A nominee for State level office shall file the Statement with the Commission and a copy shall be appended to the substitute nomination certificate.

(2) A nominee for county or local level public office shall file the Statement with the governing authority of the political subdivision wherein the person is seeking office and a copy of the Statement shall be appended to the substitute nomination certificate.

(d) An independent candidate not running in a primary election shall file a Statement of Financial Interests on or before the last day for filing a petition to appear on the ballot for election. The filing shall be made in accordance with subsections (a) and (b).

(e) A write-in-candidate shall file a Statement of Financial Interests within 30 days of having been nominated or elected unless the person declines the nomination or office within that period of time.

(1) The Statement shall be filed with the Commission for State level public office and with the governing authority of the political subdivision wherein the person has been elected or nominated for county or local level office.

(2) For the purposes of calculating the 30-day period during which the Statement of Financial Interests shall be filed, the time shall commence on the date that the appropriate board of elections certifies the individual as the winner of a nomination or election.

(f) A petition to appear on the ballot will not be accepted unless a copy of the Statement of Financial Interests is attached thereto.

(g) A nominee for public office shall file a Statement of Financial Interests for the preceding calendar year at least 10 days prior to the date of approval or rejection by the confirming body.

(1) A nominee for Commonwealth positions requiring Senate confirmation shall file with the Commission and the Secretary of the Senate.

(2) A nominee for county or local level public office shall file with the governing authority of the political subdivision in which the person is a nominee and, if different, with the official or body vested with the power of confirmation.

CHAPTER 17. STATEMENTS OF FINANCIAL INTERESTS, CONTENT

§17.1. General.

The person required to file shall list the following general identification information:

- (1) The full name and address of the public official, public employe or candidate.
- (2) The county of residence.
- (3) The position sought or held, and name of the governmental body associated with the position sought or held.
- (4) An occupation or profession.

§17.2. Real estate.

(a) The person required to file shall list direct or indirect interests in real estate as follows:

(1) Real estate sold or leased to the Commonwealth or its agencies or political subdivisions.

(2) Real estate purchased or leased from the Commonwealth, or its agencies or political subdivisions.

(3) Real estate which is subject to condemnation proceedings by the Commonwealth or its agencies or political subdivisions.

(b) Real estate interests include ownership in the form of title, as fiduciary, by option agreement, partnership or corporate share, easement, trustee-beneficiary type interests or other forms of interest in realty.

(c) An indirect interest in real estate constitutes any business entity, the assets of which are 80% or more in real property.

§17.3. Creditors.

(a) Each creditor to whom is owed in excess of \$6,500 or the amount as adjusted under 65 Pa.C.S. §1105(d) (relating to statements of financial interests) and §19.5 (relating to reporting threshold adjustments) shall be reported.

(b) Mortgages, home equity loans or other loans secured by a primary or secondary residence of the person filing need not be reported.

(c) A joint obligation with other persons, for which the filer is responsible only for a proportional share that is less than the reporting threshold, is not required to be reported.

(d) The joint obligation of a husband and wife shall be reported if within the reporting threshold.

(e) An obligation within the reporting threshold for which a person acts as a guarantor for the person required to file shall be reported.

(f) Loans or credit between the person required to file and the person's spouse, parents, children, brothers or sisters are excluded.

(g) No dollar amounts are required.

- (h) The interest rate for a reportable obligation shall be indicated.
- (i) A reportable creditor shall be identified by name and address.

§17.4. Income.

(a) The name and address of a direct or indirect source of income, including employers, in the aggregate of \$1,300 or more or the amount as adjusted under 65 Pa.C.S. §1105(d) (relating to statements of financial interests) and §19.5 (relating to reporting threshold adjustments) shall be reported unless the disclosure would require the divulgence of confidential information protected by statute or existing professional codes of ethics or common law privileges.

(b) Income from the securities of a particular business equaling or exceeding the reporting threshold, capital gains and dividends equaling or exceeding the reporting threshold shall be listed.

(c) If the income generated equals or exceeds the reporting threshold, mutual funds and other financial plans for individuals may be reported as a single source if the individual has no authority to buy or sell particular assets in the fund.

(d) An individual or an individual and a spouse who has an investment portfolio, with a broker, other than a mutual fund, shall list individually the income from each asset to which subsection (b) applies if the asset may be bought and sold by the individual or by the individual and a spouse.

§17.5. Gifts.

(a) The name and address of the source of a gift valued in the aggregate at \$250 or more or the amount as adjusted under 65 Pa.C.S. §1105(d) (relating to statements of financial interests) and §19.5 (relating to reporting threshold adjustments) shall be reported.

(b) The amount of the gift as well as the circumstances surrounding it shall be reported.

(c) A gift from a spouse, parent, parent by marriage, sibling, child, grandchild, other family member or friend is not required to be reported when the circumstances surrounding the gift indicate the motivation for the action was a personal or family relationship.

(d) The term "friend," under this section, does not include a registered lobbyist or an employe thereof.

§17.6. Expense reimbursement.

(a) The name and address of the source and the amount of a payment for or reimbursement of actual expenses for transportation and lodging or hospitality received in connection with public office or employment where the actual expenses for transportation and lodging or hospitality exceed \$650, or the amount as adjusted under 65 Pa.C.S. §1105(d) (relating to statements of financial interests) and §19.5 (relating to reporting threshold adjustments), in the course of a single occurrence shall be reported.

(b) This subsection does not apply to expenses reimbursed by a governmental body, or to expenses reimbursed by an organization or association of public officials or employees of political subdivisions which the public official or employee serves in an official capacity.

(c) The reporting requirement shall be based upon the actual expense amount.

§17.7. Office, directorship and employment.

A public official, public employe or candidate shall disclose the name and address of the business entity with which he is associated and the position held, whether the person required to disclose is an officer, director, fiduciary or partner -- limited or general.

§17.8. Financial business interest.

(a) A financial interest in a legal entity engaged in business for profit shall be reported. Financial interest means more than either 5% of the equity of the business, or 5% of the assets of the economic interest in indebtedness.

(b) A financial interest in a business and employment by the same business shall be listed in both categories of the Statements of Financial Interests.

§17.9. Transferred business interests.

(a) A financial interest in a business with which the reporting person is or has been associated during the preceding calendar year which has been transferred to a member of the person's immediate family; that is, a parent, spouse, child, brother or sister, shall be reported.

(b) Financial interests comprise more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness.

(c) Transfer includes a conveyance whether or not written or otherwise recorded.

§17.10. Reporting in multiple categories.

(a) The required disclosure of information in one category does not excuse the nondisclosure of that information in other categories when so required. Therefore, the same information may be required in more than one category.

§17.11. Application of Lobbying Disclosure regulations.

See, Lobbying Disclosure regulations, Chapters 31 and 35, (relating to general provisions; and reporting), as to the differentiation between “gift” and “transportation and lodging or hospitality received in connection with public office or employment” and the determination of such amounts for reporting.

CHAPTER 19. STATEMENTS OF FINANCIAL INTERESTS, MISCELLANEOUS

§19.1. Forms.

(a) Public officials, public employees and candidates shall file Form SEC-1, as published and revised by the Commission.

(b) The Statement of Financial Interests form is available at the Commission, the State Board of Elections, the County Board of Elections and other locations as conditions warrant. The postal address of the Commission is: State Ethics Commission, Post Office Box 11470, Harrisburg, Pennsylvania 17108-1470. The office of the Commission is located in Room 309, Finance Building, Capitol Complex, Harrisburg, Pennsylvania, (717)783-1610, (800)932-0936.

(c) Additional sheets may be attached to the Statement of Financial Interests form if more space is required.

(d) A Statement of Financial Interests sent by FAX transmission is filed on the date the commission receives the faxed copy if the Commission receives the signed original within 5 business days thereafter. If the Commission does not receive the signed original within 5 business days from the date of receiving the faxed copy, the Statement of Financial Interests is filed on the date the Commission receives the signed original.

§19.2. Period covered.

The Statement of Financial Interests requires information for the full calendar year immediately preceding the year in which the Statement of Financial Interests is filed.

§19.3 Late or deficient filings.

(a) If an audit or inspection determines that a required filing is deficient or that a

required filing has not been made, the Commission will provide written notice to the individual required to file, detailing the deficiency and the penalties for deficient filing or failure to file.

(b) If a complaint is received alleging that a required filing is deficient or has not been made, the Commission may elect to proceed in the matter under this section rather than through the investigative procedures of Chapter 21 (relating to investigations).

(1) Upon election, the complainant will be notified of the decision as well as the final resolution of the matter.

(2) In determining whether to proceed under this section, the Commission may consider whether:

- (i) The deficient filing or failure to file was intentional.
- (ii) The filer had prior notice of the requirements of the act.
- (iii) The filer has in the past complied with the act.

(c) The individual notified in accordance with subsection (a) has 20 days from the mailing date of the notice to correct deficiencies or to file a Statement of Financial Interests. If an individual fails to file or to correct their statement within that time, the Commission will review the matter to determine whether a civil penalty is appropriate under the act.

(d) If the Commission determines that a penalty is appropriate, it will issue a rule to show cause, notifying the individual of his deficiency under the act and of the grounds for the rule and of his opportunity to respond in writing to the rule. If cause is not shown, the rule and penalty therein become absolute.

(e) The Commission may assess a penalty of not more than \$25 per day for the time a Statement of Financial Interests remains delinquent up to a maximum of \$250 total.

(f) The penalty in subsection (d) is in addition to other penalties provided by law and the filing of a Statement of Financial Interests in accordance with subsection (a) does not otherwise vitiate the failure to comply with the act.

§19.4. Availability of statements of financial interests.

(a) Statements of Financial Interests filed with the Commission under the act are available for public inspection and copying at a charge not to exceed actual cost at the office of the Commission in Harrisburg, Pennsylvania between the hours of 8 a.m. and 5

p.m., weekdays.

(b) A governmental body required to maintain Statements of Financial Interests shall make them available for public inspection and copying during regular business hours.

(c) Statements of Financial Interests more than 1 year old shall be made available for public inspection and copying within 2 working days after the request has been made for the Statements. The Statements shall be kept on file for 5 years.

§19.5. Reporting threshold adjustments.

(a) On a biennial basis commencing in January 1991, the Commission will review and may increase the threshold dollar amounts in §§17.3(a), 17.4(a), 17.5(a) and 17.6(a).

(b) The Commission will base the increases upon a review of the National Consumer Price Index as published by the United States Department of Labor or other relevant indices.

(c) The Commission may hold a hearing to receive testimony or information regarding the appropriate rate of increases.

(d) Upon final determination of the appropriate reporting increases, the Commission will publish a schedule of the increases in the Pennsylvania Bulletin in 2 successive months and take other action deemed necessary to disseminate the information.

(e) The effective date of threshold increases shall be delayed a sufficient period of time to allow publication of the information to afford affected individuals the opportunity to comply therewith and relevant Commission forms shall be revised accordingly.

CHAPTER 21. INVESTIGATIONS

GENERAL

§21.1. Complaints.

(a) A complaint alleging a violation of the act shall contain the name, position or office held by the respondent and the basis of the complaint which would delineate the facts and circumstances of the alleged violation.

(b) A complaint shall be sworn and signed by the complainant.

(c) The identity of the complainant will remain confidential unless there is a wrongful use of the act.

(d) The Commission will acknowledge, in writing, the receipt of the complaint.

(e) The Commission through its Executive Director will review complaints and proceed only if the complaint:

(1) Contains sufficient information.

(2) Is sworn and signed.

(3) Is within the Commission's jurisdiction.

(4) Concerns an alleged violation of the act having a greater than de minimis economic impact.

(f) A complaint not meeting the requirements of subsection (e) will be dismissed without prejudice to refile if the requirements are satisfied.

(g) Upon the receipt of a complaint which satisfies the criteria of subsection (e), the Commission, through its Executive Director, will initiate a preliminary inquiry. If the preliminary inquiry establishes reason to believe that the act was violated, the Commission, through its Executive Director, may initiate a full investigation.

(h) A complainant will be notified of the dismissal of a complaint under subsection (f).

(i) In the case of sworn complaints alleging a violation of the Statements of Financial Interests filing requirements, the Commission may elect to proceed under §19.3 (relating to late or deficient filings), in which event this chapter does not apply.

(j) This section supersedes 1 Pa. Code §35.9 (relating to formal complaints generally).

§21.2. Initiation of investigation by the Commission.

The Commission through its Executive Director may, on its own motion, conduct a preliminary inquiry regarding an alleged violation of the act.

§21.3. Preliminary inquiries.

(a) A preliminary inquiry will be terminated or opened as a full investigation within 60 days of the initiation thereof. A preliminary inquiry is considered initiated at the time

when it is officially docketed.

(b) The Commission will keep information, records and proceedings relating to a preliminary inquiry confidential. The Commission will, however, have the authority to refer the case to law enforcement officials during a preliminary inquiry or any time thereafter without providing notice to the subject of the inquiry.

(c) If, after preliminary inquiry, there is reason to believe that the act has been violated, the Executive Director will commence an investigation. An investigation will be considered commenced when the respondent is notified under §21.5(b) (relating to conduct of investigation).

(d) The Commission, through its Executive Director, will close the preliminary inquiry if:

(1) The occurrence giving rise to the complaint is not within the purview of the act as having been committed and completed prior to the act.

(2) The occurrence giving rise to the complaint is clearly not within the purview of the act.

(3) The respondent is not a person subject to the act.

(4) There is no reason to believe that the act has been violated.

(5) The violation complained of has a de minimis economic impact.

(e) If the preliminary inquiry is closed, the Commission will notify the complainant and the respondent.

§21.4. Frivolous complaints; complaints without probable cause; disclosure of complaints.

(a) If a public official or public employee has reason to believe a complaint is frivolous due to its having been filed in a grossly negligent manner without basis in law or fact, or without probable cause and made primarily for a purpose other than that of reporting a violation of the act, or that a person has publicly disclosed or caused to be disclosed that a complaint against the public official or public employee has been filed with the Commission, the public official or public employee shall notify the Commission and the Commission, through its Executive Director, shall conduct an investigation.

(b) These matters will be processed by the Commission in accordance with Chapter 25 (relating to wrongful use of the act).

§21.5. Conduct of investigations.

(a) Within 72 hours of the commencement of an investigation, the complainant will be provided notification thereof by first class mail.

(b) The respondent will be provided with a general statement of the alleged violation of the act and other applicable statutes under investigation. Service of the notice is complete upon mailing which will be by certified or registered mail.

(c) The complainant and respondent will be notified of the status of the investigation every 90 days until it is complete.

(d) The Commission may employ or be assigned staff, including attorneys, investigators and hearing officers, as may be required to properly investigate, review and dispose of complaints and investigations.

(e) The Executive Director, staff counsel, director of investigations and special investigators have the authority to conduct interviews, take statements, receive and inspect documents and records and otherwise obtain evidence and gather information by lawful means.

(f) Commission staff members identified in subsection (e) are designated to administer oaths or affirmations for the purpose of obtaining voluntary sworn statements with regard to matters which may properly come before the Commission.

(g) A person having possession or control of documents or records deemed relevant to an investigation that the Commission is authorized to conduct may be required to produce the materials for inspection by subpoena served by the members of the Commission staff designated in subsection (e). These Commission staff members have the right to retain or have access to subpoenaed documents and records for a reasonable period, and to make copies thereof.

(h) The Commission may authorize one or more members of the Commission staff designated in subsection (e) to obtain by subpoena the sworn statement of a person deemed to have information relevant to an investigation that the Commission is authorized to conduct.

(1) Sworn statements may be conducted by and before one or more of the staff members in subsection (e).

(2) Testimony received in the preparation of a sworn statement will be under oath or affirmation administered and recorded by a stenographer.

(3) The authority to question a witness appearing for a sworn statement will be

limited to staff members taking the sworn statement, the hearing officer and counsel for the witness.

(4) Persons permitted to be in attendance at the preparation of a sworn statement will be limited to staff members of the Commission, the hearing officer, the witness, counsel for the witness and a stenographer.

(5) A witness giving a sworn statement may object to a question if it is irrelevant or privileged.

(6) A witness subpoenaed by the Commission is entitled to compensation as fixed by 42 Pa.C.S. §5903 (relating to compensation and expenses of witnesses).

(i) Subpoenas issued under subsection (g) or (h) will be authorized by the Commission and signed by the Chairperson or Vice Chairperson. Subpoenas may be served by a person empowered to do so or as designated by the Executive Director.

(j) Within 180 days of commencing the investigation, the Commission will do one of the following:

(1) Terminate the investigation and notify the complainant and respondent.

(2) Rule upon a request for an extension by the Executive Director, upon a showing of need, not to exceed 90 days.

(i) The granting of or denial of a request for an extension requires a majority vote of a quorum of the Commission.

(ii) A maximum of two extensions may be granted.

(iii) A findings report will be issued within 180 days after the commencement of an investigation or within the time period of a granted extension.

(3) Issue a findings report which sets forth the pertinent facts, and affords the subject of the investigation an opportunity to respond to the findings and to request an evidentiary hearing.

(k) The respondent shall file a response to the findings report of the Commission within 30 days, unless an application for an extension is made to the Commission and granted for good cause shown.

(1) The respondent shall admit or deny the allegations in the findings report by number. Anything not specifically denied or general denials will be deemed an admission of the individual factual finding.

(2) New matter raised by a respondent in his answer does not require a reply by the Commission.

(l) Investigations by the Commission and the information gained therein will be confidential subject to the exceptions in section 8(k)(1)-(8) of the act (65 P.S. §408(k)(1)-(8)).

(m) If an investigation conducted under the act indicates that no violation has been committed, the Commission will immediately terminate the investigation and send written notice of the determination to the complainant and the person who was the subject of the investigation.

(n) Subsection (h) supersedes 1 Pa. Code §§ 35.142-35.145 (relating to subpoenas; and depositions).

§21.6. Confidentiality.

(a) As a general rule, a person may not disclose or acknowledge, to any other person, any information relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which is before the Commission. However, a person may disclose or acknowledge to another person matters held confidential in accordance with this chapter or 65 Pa.C.S. §1108 (relating to investigations by commission), when the matters pertain to any of the following:

- (1) Final orders of the Commission as provided in 65 Pa.C.S. §1108(h);
- (2) Hearings conducted in public under 65 Pa.C.S. §1108(g);
- (3) For the purpose of seeking advice of legal counsel;
- (4) Filing an appeal from a Commission order;

(5) Communicating with the Commission or its staff, in the course of a preliminary inquiry, investigation, hearing or petition for reconsideration by the Commission;

(6) Consulting with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;

(7) Testifying under oath before a governmental body or a similar body of the United States of America;

(8) Information, records or proceedings relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which the person is the subject of;

(9) The publication or broadcast of information legally obtained by the news media regarding a confidential Commission proceeding; or

(10) The divulgence by individuals who are interviewees or witnesses as to confidential Commission proceedings regarding information that was already in their possession or the disclosure of their own statements.

HEARINGS

§21.21. General.

(a) The Commission will conduct hearings upon the request of a respondent. A respondent shall request a hearing in his answer to the findings report or separately within 30 days of the issuance of the findings report. Failure to request a hearing within the time period will be deemed a waiver.

(1) The respondent may be granted an extension for filing an answer upon application to the Chief Counsel and for good cause shown. The Chief Counsel may grant an extension up to 30 days.

(2) Further requests shall be made to the Chairperson 2 weeks prior to the extended deadline. The Chairperson may grant a second extension if extraordinary circumstances are demonstrated in writing.

(3) Extensions granted will correspondingly advance other deadlines provided for in the act.

(4) A hearing will be held within 45 days after the respondent's answer to the Findings Report unless the time is extended upon application for good cause shown.

(5) A notice of hearing will be issued to the respondent unless represented by counsel in which case to counsel within a reasonable period of time prior thereto. The notice will advise of the date, time and location of the hearing, and of the hearing rights, privileges, process and procedures in this section.

(6) Hearings will be conducted in Harrisburg, Pennsylvania. For cases to which the act applies, a request for a hearing in Philadelphia or Pittsburgh will be granted, if filed with the Commission within 7 days after the notice of hearing is mailed. Failure to request a hearing in those locations within the time period will be deemed a waiver of the right.

(b) Hearings will be conducted before one or more members of the Commission. The Commission may appoint a hearing officer for the conduct of the hearings.

§21.22. Discovery.

(a) The respondent will be given access to evidence intended to be used by the Commission at the hearing, as well as exculpatory evidence developed during the investigation.

(b) Access to evidence does not include the original complaint or the name of the complainant, information which is otherwise privileged or information not within subsection (a).

§21.23. Scope of hearing.

(a) Hearings may be conducted as follows based upon the express agreement of the parties:

- (1) Full evidentiary hearing.
- (2) Oral argument based on stipulated findings.
- (3) Submission on briefs.
- (4) Limited hearing based on partially stipulated facts.

(b) The respondent has the right to a full hearing, if so requested.

(c) The Commission and the respondent may stipulate one or more of the facts.

(d) Motions for dismissal made by the respondent will be deferred to the full Commission for consideration.

(e) This section supersedes 1 Pa. Code §35.126 (relating to presentation by the parties).

§21.24. Hearing officer.

(a) It is the duty of the hearing officer and he has the power to do one or more of the following:

(1) Schedule and conduct a hearing as required to resolve the matter and to provide the parties with proper notice of the hearing.

- (2) Administer oaths or affirmations to witnesses.
 - (3) Rule on motions, objections or other matters arising during the hearing.
 - (4) Insure that all parties have a full and fair opportunity to be heard.
 - (5) Insure that a record of the proceedings is available for review by the Commission.
 - (6) Advise witnesses and parties to the hearing of the confidentiality requirements of the act.
 - (7) Advise witnesses or the respondents, when not represented by counsel, of their rights as witnesses.
 - (8) Issue subpoenas upon written request for the production of documents, records and persons needed for the proceeding. The hearing officer will be provided with the name and addresses of the persons and a description of the documents or records involved, and will be satisfied that the documents, records or testimony are relevant and are not protected by privilege.
 - (9) Arrange for the payment of witness fees and mileage expenses or pay other related expenses as required by law.
- (b) The presiding officer will make the following available to the Commission to the extent applicable:
- (1) A transcript of the hearing, including exhibits.
 - (2) Motions, briefs, memorandums or documents filed by a party to the proceeding.
- (c) Subsection (a) supersedes 1 Pa. Code §35.187 (relating to authority delegated to presiding officers).

§21.25. Conduct of the hearing.

- (a) The formal rules of evidence will not apply to hearings. Relevant probative evidence except properly objected-to hearsay will be admitted.
- (b) Testimony shall be given under oath or affirmation and witnesses shall be subject to cross-examination.

(c) The investigative staff of the Commission will present its case followed by the case of the respondent.

(d) Each party may make an opening and closing statement.

(e) Parties to the proceeding will be afforded a full and fair opportunity to be heard and may be represented by counsel.

(f) The hearing will be closed to the public unless the respondent requests an open hearing.

(g) Witnesses summoned for hearings shall receive reimbursement for expenses under 42 Pa.C.S. §5903 (relating to compensation and expenses of witnesses).

(h) Subpoenas may be issued at the request of the parties to the hearing on the approval of the Commission or hearing officer. Information subpoenaed shall be relevant and not privileged.

(i) The hearing and papers, records and disclosures therein will be confidential except for the contents of the final order as provided in §21.29 (relating to finality; reconsideration).

(j) If one or more of the participants in a hearing become disrespectful, disorderly or disruptive, the hearing officer may continue the hearing to allow the full Commission to rule on the proper limitations or sanctions for the person whose behavior does not conform to minimum standards required for an orderly proceeding.

(k) Subsection (a) supersedes 1 Pa. Code §35.161 (relating to form and admissibility of evidence). Subsection (b) supersedes 1 Pa. Code §35.137 (relating to oral examination). Subsection (c) supersedes 1 Pa. Code §35.125 (relating to order of procedure).

§21.26. Motions.

(a) A motion filed prior to the issuance of a notice of hearing will be submitted to the Chairperson, Vice Chairperson or designated hearing officer who will rule on the matter unless in the exercise of his discretion the motion should be submitted to the Commission for a determination at the next scheduled executive session of the Commission.

(b) A motion filed will correspondingly advance other deadlines provided for in the act by an amount of time equal to the period between the date of filing of the motion and the date of disposition.

(c) A motion filed immediately prior to or at hearing will be submitted to the hearing officer. The hearing officer will rule on the motion except that which would involve a final determination which will be deferred and submitted to the Commission as part of the record for final disposition of the case.

(d) This section supersedes 1 Pa. Code §35.177 (relating to scope and contents of motions).

§21.27. Briefs.

(a) The hearing officer or the parties may request that briefs, proposed findings of fact and conclusions of law be presented. The hearing officer will establish a schedule for the presentation of this material. The parties have the right to request a schedule for the filing of briefs. Failure to comply with this schedule without reasonable excuse, as determined by the hearing officer, shall operate as a waiver of the opportunity to present this material.

(b) The hearing officer will provide the specifications for briefs which will be in conformity with 1 Pa. Code Chapter 35 (relating to formal proceedings).

(c) Subsection (a) supersedes 1 Pa. Code §35.191 (relating to proceedings in which briefs are to be filed).

§21.28. Decision.

At the conclusion of a hearing concerning an alleged violation and in a timely manner, the Commission will deliberate on the evidence to determine whether there has been a violation of the act.

(1) At least four members of the Commission present at a meeting must find a violation of the act by clear and convincing proof.

(2) The names of the members finding a violation and the names of those dissenting and abstaining will be listed in the order.

(3) The determination of the Commission, in the form of a final order and findings of fact, will be a matter of public record.

§21.29. Finality; reconsideration.

(a) An order disposing of an investigation will be a final order when issued. Public release of the order will occur 30 days after the date of issuance, unless reconsideration is requested within that 30-day time period.

(b) Any party may ask the Commission to reconsider an order or opinion within 30 days of service of the order or opinion. The requestor shall present a detailed explanation setting forth the reason why the order or opinion should be reconsidered.

(c) A request for reconsideration filed with the Commission will delay the public release of an order, but will not suspend the final order unless reconsideration is granted by the Commission.

(d) A request for reconsideration may include a request for a hearing before the Commission.

(e) Reconsideration may be granted at the discretion of the Commission if:

(1) A material error of law has been made.

(2) A material error of fact has been made.

(3) New facts or evidence are provided which would lead to reversal or modification of the order or opinion and if these could not be or were not discovered by the exercise of due diligence.

(f) If the Commission grants reconsideration the Commission may do one or more of the following:

(1) Order new hearings.

(2) Schedule and conduct oral argument.

(3) Take other action or issue an order or opinion in final disposition of the case.

(g) Pending reconsideration or request for reconsideration, an order will remain confidential.

(h) An order which becomes final in accordance with this section will be available as a public document, but the files and records relating thereto will remain confidential.

(i) This section supersedes 1 Pa. Code §§35.231 - 35.241 (relating to reopening and rehearing).

§21.30. Effect of order.

In addition to deciding the case before it, the Commission may take one or more of the following actions, if appropriate. The Commission may:

(1) Order the respondent to make restitution or impose a monetary penalty in accordance with the act.

(2) Order the respondent to cease and desist from engaging in a particular activity deemed to be in contravention of the act.

(3) Order the respondent to take specified action to bring himself in compliance with the act.

(4) Refer the matter for review or with a specific recommendation for action to law enforcement, regulatory or other authorities with jurisdiction over the matters.

(5) Institute restitution order enforcement proceedings through the Office of Attorney General or the Commission's legal staff.

CHAPTER 23. COMMISSION

GENERAL PROVISIONS

§23.1. Meetings.

Meetings of the Commission will be held at the call of the Chairperson or any four members, at a time and location and for a purpose as may be determined by the Chairperson or the four other members.

§23.2. Quorum.

A minimum of four members of the Commission will constitute a quorum. In a meeting, the majority vote of the quorum will constitute official action, except as provided in §§21.28 and §23.22(e) (relating to decision; and prohibited activities).

§23.3. Presiding officer.

(a) The Commission will elect a Chairperson and a Vice Chairperson. The Chairperson will preside over Commission meetings. If the Chairperson is absent or that position is vacant, the Vice-Chair will preside.

(b) If the Chairperson and Vice Chairperson will be absent from a Commission meeting, the Chairperson, or the Vice Chairperson if presiding, may designate a Commission member to preside for a scheduled meeting.

(c) If no designation is made under subsection (b), the Commission will elect from among its members, a presiding officer by a majority vote.

(d) The presiding officer will rule upon matters at the meeting and take action as may be necessary to ensure that the meeting proceeds in an orderly and proper manner.

§23.4. Conduct of meetings.

(a) *Statements.* Persons in attendance before the Commission may be given a reasonable time in which to make relevant commentary. A person may be questioned during the presentation. The presentation may be terminated by the presiding officer if a reasonable time has expired or if the statement is irrelevant.

(b) *Questioning.* The authority to question an individual making a statement will be limited to the presiding officer, other members of the Commission and to the extent permitted by the presiding officer, staff members and the parties.

(c) *Public meetings.* Meetings of the Commission will be open to the general public at a time and place announced in advance under the Sunshine Act (65 P.S. §§271 - 286).

(d) *Executive session.* Executive sessions of the Commission will be announced at public meetings of the Commission, including the time and reason for holding of an executive session.

§23.5. Records of meetings.

Records of public meetings will be kept by the Executive Director and filed within a reasonable time following each Commission meeting. These records will be made available for public inspection during office hours.

§23.6. Supplemental procedures.

The Commission may adopt supplemental procedures or guidelines to govern the administrative and internal operations of the Commission in its discretion by resolution of a majority of a quorum.

§23.7. Election of Chairperson and Vice Chairperson.

(a) At the first meeting of every year, after the expiration of the term of office of the Chairperson and Vice Chairperson, a quorum of the Commission will elect a Chairperson and Vice Chairperson. Commission members who are nominated for these positions are not precluded from voting.

(b) The term of office for the Chairperson and Vice Chairperson is 2 years. The officers will remain in office during the interim period between the date when the term of

office expires and the next regularly scheduled election.

(c) The Chairperson and Vice Chairperson are eligible to serve successive terms.

(d) Notice of the election will be public and announced during the final meeting of the Commission in the year preceding the year in which the terms of office of the serving officers expire.

(e) In the event of the completion of the term of office and nonreappointment, resignation, removal or incapacity of the Chairperson, the Vice Chairperson will serve the unexpired term of the Chairperson or will serve during the period of incapacity of the Chairperson.

(f) Upon the resignation, removal, completion of the term and nonreappointment, or in the event that the Vice Chairperson must assume the duties of the Chairperson, a majority of the quorum of the Commission may schedule a special election to elect a Vice Chairperson.

(g) Notice of a special election will be publicly announced at least 30 days prior to the election. Notice will be forwarded to the members of the Commission.

(h) The Chairperson, or Vice Chairperson may be removed as officers, but not as Commissioners, for just cause upon a majority vote of the Commission.

(i) A motion to remove a member of the Commission from the offices mentioned in subsection (h) may be made by a Commission member.

(j) A member may not be removed unless given reasonable notice and an opportunity to be heard.

CODE OF CONDUCT

§23.21. Code of conduct.

(a) Due to their special position, Commissioners have a higher duty than other public officials to avoid conflicts of interests. Respect for the act can be maintained only if Commission members are models of ethical behavior. The purpose of this section and §§23.22 and 22.23 (relating to prohibited activities; and limitations on voting/recusal) is to guide the Commissioners so that their behavior meets the highest of ethical standards.

(b) The provisions of this section and §§23.22 and 23.23 are in addition to the duties, responsibilities or obligations imposed upon the Commission members as public officials under the act.

§23.22. Prohibited activities.

(a) A Commissioner may not be employed by the Commonwealth or a political subdivision of the Commonwealth in a capacity with or without compensation, including holding another public office or position.

(b) A Commissioner may not hold an office in a political party during his tenure or for 1 year prior to his appointment to the Commission, nor may a member hold office in a political committee during his tenure.

(c) A Commissioner, a spouse of a Commissioner or a member of a Commissioner's immediate family residing in the Commissioner's household may not actively participate in or contribute to a political campaign.

(1) Active participation in a campaign includes attempting to assist a candidate or nominee to obtain public office, soliciting support or information, distributing campaign materials or advertisements, fundraising, publicly supporting a candidate, participating in an organized effort for the purpose of helping a candidate or nominee or attending a fundraiser or dinner on behalf of a candidate.

(2) This section does not abridge the right of a Commissioner to vote or attend a debate, speech or similar event that is held primarily for the purpose of communicating a candidate's platform or position on issues of public concern.

(d) A Commissioner may not directly or indirectly attempt to influence a decision by a governmental body, other than a court of law or as a representative of the Commission on a matter within the jurisdiction of the Commission.

(e) If a Commissioner violates section 6(d) of the act (65 P.S. §406(d)), a majority of the Commission may declare the seat vacant.

(1) A motion to remove a Commissioner will be made by a Commission member.

(2) A Commissioner may not be removed prior to notice and an opportunity to be heard.

§23.23. Limitations on voting/recusal.

(a) A Commissioner is required to recuse himself from a matter which involves persons with whom the Commissioner has a direct involvement, personally or financially.

(1) A Commissioner is deemed to have a direct personal involvement with members of his immediate family as defined in the act, in-laws and close friends.

(2) A Commissioner has a direct financial involvement with an individual who owns a part of or is employed by a business with which the Commissioner is associated within the 2 years prior to the Commission's review of a matter in question if the financial involvement was of more than a de minimis nature.

(3) If a Commissioner recuses himself from a matter he will:

(i) Remove himself from that segment of the Commission meeting wherein the matter is to be discussed and avoid casual discussion of the matter with other Commissioners.

(ii) Receive no further information from the Commission or the Commission staff regarding the matter.

(iii) Receive copies of minutes of the meeting containing deletions so as to not disclose the matter to the Commissioner.

(b) A Commissioner who has a potential conflict not addressed in subsection (a) will take one of the following courses of action:

(1) Disclose the matter to the Commission and seek its guidance as to whether it would be proper to participate and vote in a matter before the Commission.

(2) Disclose to the parties his potential conflict and solicit their express agreement that he may continue in his official capacity, subject to the approval of the Commission.

(3) Recuse himself.

(c) A Commissioner who recuses himself or is recused by the Commission or at the suggestion of one of the parties is subject to subsection (a)(3).

(d) A Commissioner's participation involving parties with whom the Commissioner has had substantial prior contact may present a conflict under subsection (b) depending on the totality of the circumstances. Circumstances to be considered include whether the matter involves one or more of the following:

(1) A relative of the Commissioner.

(2) A former employer or employe.

(3) A person or business with which a Commissioner has or had financial dealings of more than a de minimis nature within the 2 years prior to the Commissioner's review of the matter in question.

- (4) A source of income reportable on the Statement of Financial Interests.
 - (5) The individual appointing authority of the Commissioner is a respondent.
 - (6) A person providing the Commissioner with funds, goods or services without compensation.
 - (7) A person with whom the Commissioner has a fiduciary relationship.
 - (8) A debtor or creditor of the Commissioner.
- (e) A Commissioner recused from a matter shall direct that the individual recording the minutes at the meeting enter into the minutes the recusal and the reasons therefor.
- (f) If the Commission cannot achieve a quorum because recusals reduce the number of Commissioners available to vote, the matter in question will be deferred until a meeting at which a quorum may be achieved.

CHAPTER 25. WRONGFUL USE OF THE ACT

§25.1. Wrongful use of Act.

Wrongful use of the act is established by one or more of the following elements:

- (1) The filing of a frivolous complaint which is a complaint filed in a grossly negligent manner without basis in law or fact.
- (2) The filing of a complaint without probable cause, primarily for a purpose other than reporting a violation of the act.
- (3) Disclosing publicly or causing to be publicly disclosed the fact that an individual is the subject of a complaint or Commission investigation.

§25.2. Initiation of proceedings.

(a) The Commission may initiate proceedings to determine whether there has been a wrongful use of the act through the filing of a notification by a public official/public employe as provided for in section 8(l) of the act (65 P.S. §408(l)), which notification shall contain the following:

- (1) A reference identifying the complaint/investigation involved.

(2) A detailed explanation as to the reasons, information, facts or evidence establishing the elements of wrongful use of act as outlined in §25.1 (relating to wrongful use of the act).

(3) If applicable, identification of the person publicly disclosing the existence of Commission proceedings and the specific nature of the disclosure.

(4) Additional information necessary to the resolution of the matter.

(b) Failure to provide information as outlined in this section will be cause for dismissal of the notification.

§25.3. Disposition.

(a) Pursuant to a notification containing the requisite information outlined in §25.2 (relating to initiation of proceedings), the Commission will initiate proceedings by conducting an investigation to determine whether there has been a wrongful use of act.

(b) The investigation will be conducted in a confidential manner.

(c) The investigation may incorporate information which the Commission has already obtained.

(1) If the Commission determines a complaint has been filed in violation of the act, it will release the name and address of the complainant to the respondent after giving the complainant notice and an opportunity to be heard on the issue of whether the complainant wrongfully used the act.

(2) If the Commission determines that a complaint was proper, it will so notify the respondent who may appeal that determination and the Commission will schedule a hearing.

(d) Upon completion of the investigation, the Commission will make a preliminary determination as to wrongful use of the act. The Commission will notify the complainant and subject of the preliminary determination.

§25.4. Appeal of determination.

(a) Both the complainant and the subject have standing and either may appeal the preliminary determination to the Commission.

(1) Any appeal shall be filed with the Commission within 30 days of service of the preliminary determination.

(2) If there is no timely appeal filed, the Commission's initial determination will become absolute and will become the final determination of the Commission in the matter as to wrongful use of the act.

(b) The issuance of orders to Show Cause is governed by the following:

(1) If a subject appeals, the Commission will issue an Order to Show Cause requiring the respondent to set forth reasons why the rule should not be made absolute as to a finding of no wrongful use of the act. The answer to the rule shall contain specific factual averments which establish a basis for believing the act was wrongfully used. One or more of the following are inadequate to establish wrongful use:

- (i) Dismissal of the complaint.
- (ii) Dismissal for lack of probable cause.
- (iii) Dismissal on jurisdictional grounds.

(2) The Commission will schedule a hearing for the subject's appeal at which the subject shall bear the burden of proving wrongful use of the act by clear and convincing evidence. The investigative staff of the Commission will present the case opposing the subject's appeal.

(c) If the complainant appeals, the Commission will issue a Rule to Show Cause requiring the complainant to file an answer to the averments in the Rule as to why the Rule should not be made absolute as to a finding of wrongful use of the act. The Commission will schedule a hearing for the complainant's appeal. The investigative staff of the Commission will present the Commission's case and will have the burden of proving wrongful use of the act by clear and convincing evidence.

(d) If the Commission makes a final determination that the act has been wrongfully used, it will release to the subject the name and address of the complainant solely for the purpose of initiating an action for wrongful use of the act. The complainant's identity will not otherwise be publicly released.

(e) If the Commission makes a final determination that the act was not wrongfully used, it will issue a final determination setting forth the reasons and evidence for its finding.

(f) The procedures of §§21.21 - 21.29 (relating to hearings) will apply to the hearing to the extent applicable.