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"A Public Office is a Public Trust"

COMPLAINT PROCEDURES

When a referral* or sworn complaint is received in the Commission office, the Executive Director determines whether it is legally sufficient, that is, whether the allegations, if proven to be true, would violate any law over which the Commission has jurisdiction. If found to be legally sufficient, the complaint is assigned to a staff investigator, who undertakes a preliminary investigation. If found legally insufficient, it is agendaed for consideration by the full Commission which, if it agrees with the Executive Director's analysis, will issue a final report dismissing the complaint without investigation.

A complaint/referral received in the Commission office, as well as all proceedings and records relating to it, are confidential and exempt from the public records law either until the alleged violator (Respondent) makes a written request to the Commission that such records be made public or until the complaint/referral reaches a stage in the Commission's proceedings where it becomes public. As long as a complaint/referral remains in a confidential stage, neither Commission members nor staff are free to comment on it to members of the public or the press.

After completion of the preliminary investigation, copies of the Investigative Report and the complaint/referral are forwarded to the Commission Advocate, an Assistant Attorney General. The Advocate reviews these documents and prepares his or her recommendation, which is forwarded to the Commission. At a closed meeting (executive session), the Commission determines whether there is probable cause to believe there has been a violation of the ethics laws. The Respondent, Complainant (person who filed the complaint), and their attorneys are allowed to attend this meeting at which the Commission Advocate and the Respondent make presentations and may be questioned by Commission members. The Commission makes its decision by a majority vote of those members present and voting. In cases where the Commission may not make a decision, such as when further investigation is ordered, the complaint/referral is continued and maintains its confidential status.

Once the Commission makes a probable cause determination, the case becomes a matter of public record when the written order is filed a few days following the meeting. A no probable cause determination results in the issuance of a public report noting the finding and dismissing the complaint/referral, at which time it becomes public.

*Written referrals of possible ethics violations can be accepted from the Governor, the Department of Law Enforcement, a State Attorney, or a United States Attorney. Referrals are investigated when at least six members of the Commission determine that the referral contains information sufficient to indicate a violation of the ethics code.

If the Commission finds there is probable cause to believe there has been a violation of the ethics laws, it must decide whether the law actually was violated and, if so, whether a penalty should be recommended. Either the Respondent can request or the Commission may order a public hearing (trial) at which evidence will be presented. These hearings usually are held in or near the area where the alleged violation occurred and usually are conducted by a Division of Administrative Hearings (DOAH) administrative law judge. In lieu of a hearing, the Respondent may resolve a complaint proceeding through a stipulated settlement or consent order entered into with the Commission Advocate and approved by the Commission.

After the public hearing has been held, the DOAH administrative law judge transmits his or her Recommended Order to the Commission, which then meets to consider that recommendation for final action. In the case of a public officer, violations of the Code of Ethics or the Sunshine Amendment may be punished by impeachment, removal or suspension from office, public censure and reprimand, and/or a civil penalty not to exceed \$10,000 per allegation. A public employee can be dismissed, suspended, demoted, censured, and/or fined in an amount up to \$10,000 per charge.

Since the Commission has no power to impose its recommended penalties, it reports its findings and recommendations to the appropriate body, as follows: the President of the Senate or Speaker of the house, whichever is applicable, if a complaint is against a member or employee of the Legislature; the President of the Senate and the Speaker of the House of Representatives where the complaint is against the Public Counsel, the Auditor General, an employee of a joint committee, or a member or employee of the Public Service Commission, Public Service Commission Nominating Council, Legislative Committee on Intergovernmental Relations, or Advisory Council on Environmental Education; the Speaker of the House where the Complaint is against an impeachable officer and may constitute grounds for impeachment; the Attorney General if the complaint is against the Governor; and the Supreme Court if the complaint is against an employee of the Judicial Branch. All other recommended penalties against any other public officer, employee, or candidate, including those involving impeachable officers (other than impeachment), are forwarded to the Governor.