

RULES OF PROCEDURE

CHAPTER A. GENERAL RULES

Section 1

1.1 Purpose and Construction of Rules

a) These rules are adopted for the following purposes:

1) to establish and explain the practice and procedures followed by the commission and its employees performing its duties under the law; and

2) to provide specific guidance necessary to encourage and ensure full compliance with all laws administered and enforced by the commission.

b) A person's obligation to comply with a requirement or prohibition established by statute exists even if this title is silent concerning a statutory requirement.

c) These rules should always be construed in a manner consistent with all applicable constitutional and statutory requirements.

1.2 Authority to Adopt Rules

These rules are adopted under the authority granted by the Commission under Chapter 2, Article LXXVIII of the Code of Miami-Dade County and by any other law administered and enforced by the Ethics Commission that establishes the commission's authority to adopt rules.

1.3 Computation of Time

a) This section states how to compute a period of time prescribed or allowed by this section, by any order of the Ethics Commission or by any applicable ordinance. The day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would be a Saturday, Sunday or a legal holiday, the period is extended until the next day that is not a Saturday, Sunday or legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the offices are closed for a holiday.

b) A time period described by ordinance or these rules to be a certain number of business days is calculated under subsection (a) of this section without including any Saturday, Sunday or legal holiday within that time period.

c) A document filed or served by a deadline established by ordinance or these rules is filed or served when it is actually received. A document may be deemed to be filed or served when it is deposited with the United States Postal Service, properly addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.

d) A document filed or served by the delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark.

SUBCHAPTER B. OFFICERS AND EMPLOYEES OF THE ETHICS COMMISSION

1.1 Officers of the Commission

a) The Ethics Commission shall have a chairperson and a vice-chairperson.

b) Ethics Commission officers are elected annually by a vote of the Commission. Each officer shall serve until his or her successor is elected.

c) The chairperson shall preside at all meeting of the Commission. While presiding, the chair shall direct the order of the meeting, appoint committees and persons to chair committees, recognize persons to be heard at meetings, set reasonable and necessary time limits for speakers and take other actions to clarify issues and preserve order. When the presiding officer is absent, the vice-chair shall perform all duties of the chair.

1.2 Commission Staff

a) The Executive Director is the chief administrative officer of the Ethics Commission. The Executive Director shall be empowered to appoint, remove and suspend employees or agents of the Ethics Commission, to fix their compensation and adopt personnel and management policies. The Executive Director must be a member of the Florida Bar. 11

b) Staff General Counsel- The Staff General Counsel shall provide legal advice to the Ethics Commission, the Executive Director and the Inspector General and shall perform any other duties delegated by the Commission, the Executive Director or the Inspector General

c) Advocate-The Advocate shall prosecute cases before the Ethics Commission.

1.3 Appointment and Operation of Advisory Committees

a) The commission by resolution may establish one or more committees to obtain the viewpoints and advice of interested persons with respect to any contemplated rule-making. The membership or method of appointment of members to a committee established under this section shall be specified in the resolution that creates the committee. A committee created under this section shall be advisory only.

b) In addition to committees established under subsection (a) of this section, with the consent of other members of the commission the chair may from time to time establish and appoint commission members and others to a special committee to exercise advisory duties specified by the chair.

SUBCHAPTER C. COMMISSION MEETINGS

1.1 Quorum

Three commissioners must be present as a quorum to hold a commission meeting.

1.2 Frequency of Meetings

The commission shall meet at least once a month.

1.3 Called Meetings

The executive director shall give notice to each commissioner of the date and time of each meeting. Notice under this section shall be provided in a reasonable amount of time in advance of the meeting and may be by telephone, fax or mail.

1.4 Open Meetings

a) Except as otherwise provided herein, each meeting of the Commission shall be conducted in accordance with the Sunshine Law.

b) A commission meeting limited to consideration and action on matters related to sworn complaints is not subject to the Sunshine Law.

1.5 Meeting Agenda

a) The agenda shall consist of agenda items proposed by the Executive Director prior to the meeting for which the agenda is specified.

b) Any commission member may direct the Executive Director to include an item on the agenda if it complies with the posting requirements specified by law.

c) A member of the public may ask the executive director to place an item on a proposed agenda. The executive director shall advise the chair and may include the item on a proposed agenda.

1.6 Public Hearing and Participation

a) A public hearing on an agenda item shall be conducted when required by law or requested by a commissioner.

b) The executive director shall prepare and maintain a plan for providing special assistance (

including without limitation translation of the English language) to persons who request such assistance for the purpose of attending, observing, or participating in a commission meeting.

1.7 Speakers Addressing the Commission

a) The executive director shall prescribe a speaker registration form. Each person who wishes to speak at a commission meeting shall provide the following information:

- 1) the speaker's name
- 2) the person or entity the speaker represents, if any;
- 3) the agenda item the speaker wishes to address; and
- 4) his or her mailing address and telephone number.

b) Any person who addresses the commission shall state his or her name and the name of the person or entity the speaker represents, if any, for the purposes of the tape recording.

1.8 Order and Conduct of Commission Meeting

a) The presiding officer shall preside at all meetings of the commission. The chair shall direct the order of the meeting in accordance with its agenda, recognize persons to be heard, set reasonable and necessary time limits for speakers, maintain and enforce appropriate standards of conduct, and take any other action necessary in his or her discretion to clarify issues and preserve order. When the chair is absent, the vice-chair shall perform all duties under this section.

b) With the consent of a majority of the commissioners present, any provision or requirement of this section may be waived.

c) No action of the commission that otherwise complies with the law shall be void or invalid because the action was taken in violation of a rule or procedure established by this section.

1.9 Tape Recording of Meeting; Minutes

a) All meetings of the commission shall be commission shall be tape-recorded. The tape recording shall be the official record of actions taken at the meeting.

b) The executive director shall prepare minutes after each meeting that reflect all commission votes and other actions taken during the meeting. The minutes shall be approved by a vote of the commission at a subsequent commission meeting.

SUBCHAPTER D. ADVISORY OPINIONS

1.1 Definitions

The following words and terms, when used in this rules of procedure, shall have the following meanings, unless the context clearly indicates otherwise,

RQO Number- An advisory opinion request file number assigned by the Executive Director to a pending advisory number in accordance with this chapter.

1.2 Subject of an Advisory Opinion

a) The commission will issue a written advisory opinion on the following laws to a person qualified to make a request under 1.5 of this subchapter (relating to Persons Eligible to Receive an Advisory Opinion):

- 1) Section 2-11.1 (The Conflict of Interest and Code of Ethics Ordinance) of the Code of Miami-Dade County)
- 2) Section 20-45 (Community Councils-Conflict of Interest)
- 3) Section 2-11.1.1 (Ethical Campaign Practices Ordinance)
- 4) The Citizen's Bill of Rights

b) The Commission will not issue an advisory opinion that concerns the subject matter of pending litigation known to the commission.

1.3 Persons Eligible to Receive An Advisory Opinion

a) A person who is subject to one of the laws described in 1.2 (a) of this subsection may request an opinion regarding the interpretation or application of any of the laws under the Commission's jurisdiction to himself or herself or a person who renders services to the County may request an opinion regarding the applicability of the ordinance to himself or herself.

1.4 Request for an Advisory Opinion

a) A request for an advisory opinion shall describe a specified factual situation. The facts specified may be real or hypothetical. The request must provide sufficient detail to permit the commission to provide a response to the request.

b) A request for an advisory opinion shall be in writing. A written request may be mailed, hand-delivered, or faxed to the commission at the Commission office.

1.5 Review and Processing of An Advisory Opinion

a) Upon receipt of a request for an advisory opinion, the executive director will determine whether the request concerns a matter under the Commission's jurisdiction and is made by a person eligible to receive an advisory opinion.

b) If the commission will answer the request, the executive director will assign a ROO number to the request and assign the matter to the staff general counsel to draft a recommended opinion.

c) If the request is one the commission can not answer, the executive director shall notify the person making the request that the request cannot be answered.

1.6 Time Period

a) Requests shall be considered at the next scheduled Ethics Commission meeting .

1.7 Publication of Advisory Opinions

a) Each advisory opinion issued by the Commission shall be published and distributed to interested persons on a quarterly basis. All opinions shall be published with the name of the requestor redacted unless the requestor authorizes the use of his or her name.

1.8 Advice on General Questions

The Ethics Commission staff may answer general questions on issues about which the Ethics Commission has rendered a decision. The staff may not render informal written opinions.

CHAPTER 3. COMPLAINTS

1.1 Definitions

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise

Complainant- An individual who has filed a sworn complaint with the commission.

Respondent- A person identified in a sworn complaint who is alleged to have violated a law administered and enforced by the Ethics Commission

1.2 Scope of Chapter

This chapter applies to sworn complaint proceedings before the commission. This chapter is intended to more clearly define the procedure required by the ordinance and shall be construed to ensure the fair and expeditious determination of a sworn complaint

1.3 Subject Matter of a Sworn Complaint

The commission will not consider a complaint regarding:

- 1) An allegation involving an ordinance outside of the jurisdiction of the Ethics Commission;
- 2) an alleged violation that occurred before November, 1996
- 3) if the alleged violation is also a criminal offense, an allegation barred from criminal prosecution by operation of the applicable statute of limitations; or
- 4) for any other alleged violation, an allegation based on facts that occurred more than three years before the date the sworn complaint is filed.

1.4 Staff Procedures Upon Receipt of a Complaint of a Breach of the Public Trust.

1) Safeguarding confidential materials. Upon receipt of a sworn complaint, staff shall stamp on the face thereof the date on which the complaint was received in the Commission office. Each complaint received shall be a complaint number which shall be entered on the complaint itself. Any document related to the complaint shall be entered into the complaint file.

2) Upon a written complaint, except for a complaint filed by the Inspector General, the Advocate or the State Attorney, which alleges the elements of a violation within the Ethics Commission's jurisdiction and is executed on the proper complaint form and based substantially upon the personal knowledge of the complainant and signed under oath or affirmation by the complaining person, the Ethics Commission shall forward a copy of the complaint to the respondent within thirty days of receipt of the complaint. Any amendments or additional material provided by the Complainant shall also be transmitted to the Respondent.

3) Upon a written complaint filed by the Inspector General, the Advocate or the State Attorney which alleges a violation within the jurisdiction of the Ethics Commission, the Ethics Commission shall forward a copy of the complaint to the respondent within five days after receipt of the complaint from the Inspector General, the Advocate or the State Attorney. Any amendments or additional material provided by the Complainant shall also be transmitted to the Respondent.

1.5 Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation

a) After the complaint has been reviewed and found to be in the proper form, the complaint shall be reviewed by the Staff General Counsel in order to determine whether the Commission has jurisdiction over the ; that is whether it concerns an ordinance under the Commission's jurisdiction. Complaints need not be as precise as would be required by the rules of civil procedure and shall be deemed sufficient if the complainant under oath upon knowledge or belief alleges matters, which, if true, would constitute a violation of an ordinance under the Ethics Commission's jurisdiction.

b) The Staff General Counsel shall prepare a memorandum for the Commission regarding the legal sufficiency of all complaints. The commission shall meet in executive session and may find the complaint to be insufficient; dismiss it, and notify the complainant that no investigation will be made or may take such other action as may be appropriate. In any case where a complaint is found legally insufficient and dismissed, the public report and order dismissing the complaint together with the complaint itself and all documents related thereto shall become a public record and constitute a public record.

1.6 Withdrawal of Complaints

a) After a complaint has been filed with the Commission, the Commission may permit the complainants to withdraw the complaint only for good cause shown. Withdrawal shall be requested in writing, signed by the complainant(s) and witnessed by a notary public stating the facts regarding the disposition of the request which shall be given to the Commission together with the request. "Good Cause" shall be determined based upon the legal sufficiency or insufficiency of the complaint to allege a violation of an ordinance under the Commission's jurisdiction., the stage of the disposition of the complaint arrived at before the request was received and the reasons given by the complainant(s) for wishing to withdraw the complaint. If withdrawal is permitted, the Commission shall order the complaint dismissed and shall proceed as if the complaint had been found insufficient under Rule 1.5.

1.7 Delegation of Authority

A) The Commission hereby delegates to its investigators the authority to administer oaths and affirmations, delegates the authority to issue subpoenas to its chair and in the absence or unavailability of the chair, to its vice chair and authorizes the employees to serve any subpoena issues under the Commission's authority.

1.8 Subpoenas during Preliminary Investigation

When a complaint is filed or at any time thereafter, upon recommendation of the Executive Director, the Staff General Counsel, the Advocate or the Inspector General, the Commission Chair or other member authorized by the Commission may authorize the issuance of subpoenas or subpoenas duces tecum. Each subpoena shall be signed by the Chair or other member authorized by the Commission and shall state the person, documents, or other things to be subpoenaed. Each subpoena further shall name the person before whom the witness is to give testimony, and shall state in general terms the subject matter of the testimony to be elicited. If documents or other things are to be produced, the subpoena shall describe the same with as much specificity as reasonably practicable. The subpoena shall state clearly on its face that it is issued by the Commission on Ethics and Public Trust in accordance with its authority to investigate breaches of public trust. Such subpoenas shall be issued for investigative purposes only and neither the complainant, the respondent nor their counsel shall be entitled to attend the investigative proceeding at which the witness is to give a sworn statement unless the complainant or the respondent is the person subpoenaed.

1.9 Investigations

1) Commencement of Investigations

a) Preliminary Investigations- A preliminary investigation shall be undertaken of every legally sufficient complaint over which the Ethics Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred.

b) Investigators- Investigations shall be conducted by Ethics Commission staff under the direction of the Executive Director and the Advocate.

c) Scope of Investigation- Investigations shall be limited to the allegations in the complaint, but

shall include an investigation of all facts and persons materially related to the complaint at issue.

d) Evidence of Wrongful Acts Unrelated to the Complaint- If during the course of an investigation, evidence of a wrongful act not materially related to the complaint at issue is discovered by an investigator, such evidence shall be reported to the Executive Director and the Inspector General in a separate investigator's report. Upon receipt of the investigator's report containing evidence of a wrongful act not materially related to the complaint at issue, the Executive Director and the Inspector General shall a) as soon as practicable 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 as soon as practicable following the conclusion of the preliminary investigation.

e) Investigator Contacts with Potential Witnesses- The investigator shall inform the person being interviewed of the confidential nature of the investigation and of the complaint, unless the respondent has waived confidentiality.

f) Investigator to be Impartial. An investigator shall be impartial and unbiased in the conduct of the preliminary investigation. An investigator shall collect all evidence materially related to the allegations of the complaint, whether such evidence tends to prove or disprove the allegations. If the Commission determines that a public hearing shall be held, however, the investigator is responsible for assisting the Advocate in the proof of allegations against the Respondent. If an investigator feels that for any reason, he or she cannot be impartial or unbiased during the preliminary investigation then such investigator shall so notify the Executive Director and shall immediately discontinue working the investigation.

g) Investigator's Report. Upon completion of the preliminary investigation, the investigator shall prepare a report for presentation to the Advocate. The report shall contain a narrative account of all pertinent information obtained through interview of witnesses, documentary evidence or other sources and shall include a discussion of any conflicts in the evidence.

1.10 - Investigation of Facts and Parties Materially Related to Complaint- The Ethics Commission has the duty to investigate all facts and parties materially related to the complaint at issue.

1) Facts materially related to the complaint include facts which tend to show:

a) a separate violation of an ordinance under the Ethics Commission jurisdiction by a respondent other than as alleged in the complaint and consisting of separate instances of the same or similar conduct by respondent as alleged in the complaint. ; or

b) A separate violation of an ordinance under the Ethics Commission's jurisdiction by the respondent from that alleged in the complaint which arises out of or in connection with the allegations in the complaint.

2) Where facts materially related to the complaint are discovered by the investigator during the course of the investigation, the Executive Director shall order an investigation of them and the investigator shall include them in the investigative report. The Advocate may recommend and the Ethics Commission may order a public hearing as to those violations of an ordinance under its jurisdiction. From that point in the proceedings until final disposition of the complaint,

such facts shall be treated as if they were initially alleged in the complaint at issue.

3) A party materially related to the complaint means:

A) Any other public officer or employee within the same agency as the respondent who has engaged in the same conduct as that alleged against the respondent in the complaint at issue; or

B) Any other public officer or employee who has participated with the respondent in the alleged violations as a coconspirator or an aider and abettor.

4) Whenever the investigation of the complaint at issue indicates the existence of a party materially related to the complaint, the Executive Director shall order an investigation of that party. The investigator shall maintain a separate investigatory file and prepare a separate investigative report, neither of which shall be made available to the complainant or the original respondent. The Advocate may recommend and the Ethics Commission may order a hearing as to those violations which are indicated by the Investigator's report to have been committed by such a party. Separate proceedings from the original complaint at issue shall be commenced against such a party who shall be deemed a respondent by sending that person a copy of the investigator's report and the Advocate's recommendation not less than fourteen days prior to the hearing. From that hearing until final disposition of the matter, the charges against such a party (respondent) shall be treated as if they had been included in a complaint filed against such party. A separate public hearing shall be held on the matter unless consolidation with the original complaint is ordered.

1.11 Counsel

a) Respondent. Respondent may appear on his own behalf or may be represented by a lawyer or other qualified representative. All notices and communications to a respondent represented by a lawyer or other qualified representative shall be made through the respondent's lawyer or qualified representative.

b) Advocate. The Advocate representing the matter before the Commission shall be the legal counsel retained by the Ethics Commission to serve as advocate. Should the staff Advocate have a conflict of interest, the Ethics Commission may retain special counsel to serve as the Advocate in any matter.

c) Complainant- To the limited extent the complainant is entitled to participate in or observe Ethics Commission proceedings, the complainant may be represented by legal counsel. All notices and communications to a complainant represented by counsel shall be made through complainant's lawyer.

1.12 Probable Cause Determination

a) Notification of Completion of Investigation. When the investigator's report is completed, the Staff General Counsel shall notify the respondent that the report is completed and shall send to the respondent a copy of the investigator's report. The investigatory file and the main complaint file shall be open for inspection by the respondent and the respondent's counsel at that time and copies may be obtained at no more than cost.

b) Time to Review Report. The respondent shall be given not less than 10 days from the date of the mailing of the investigator's report, within which time to file with the Commission a written response to the investigator's report. This time period may be shortened with the consent of the respondent, or without the consent of the respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission

so long as reasonable notice under the circumstances is given.

c) Advocate's recommendation. The Advocate shall review the investigator's report and shall make a written recommendation to the Commission for the disposition of the complaint. If the Advocate recommends that a public hearing be held, the recommendation shall include a statement of what charges shall be at issue at the hearing. A copy of the recommendation shall be furnished to the respondent. The respondent shall be given not less than ten days from the date of mailing of the Advocate's recommendation, within which time to file with the Commission a written response to the recommendation. This time period may be shortened with the consent of the respondent, or without the consent of the respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission so long as reasonable notice under the circumstances is given.

d) Notice of Hearing and Right to Attend. The respondent, the complainant(s), their counsel and the Advocate shall be permitted to attend the hearing at which the probable cause determination is made. Notice of the hearing shall be sent to the respondent, complainant(s) and advocate at least ten days before the hearing. This time period may be shortened with the consent of the respondent, or without the consent of the respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission so long as reasonable notice under the circumstances is given.

e) Scope of Probable Cause Determination. The probable cause determination is the conclusion of the preliminary investigation. The respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Commission, based upon the investigator's report, before the probable cause determination. The Commission's determination shall be based upon the investigator's report, the Advocate's recommendation, the complaint and staff recommendations, as well as any written statements submitted by the respondent and any oral statements made at the hearing. Not testimony or other evidence will be accepted at the hearing.

f) Probable Cause Determination. At its meeting to determine probable cause, the Commission may continue its determination to allow further investigation; may order the issuance of a public report of its investigation if it finds no probable cause to believe that a violation of the Conflict of Interest and Code of Ethics ordinance or any other ordinance under its jurisdiction has occurred; or may take such other action as it deems necessary to resolve the complaint; consistent with due process of law. In making its determination, the Commission may consider:

- 1) the sufficiency of the evidence against the respondent as contained in the investigator's report;
- 2) the admissions and other stipulations of the respondent, if any;
- 3) the nature and circumstances of the respondent's actions;
- 4) the expense of further proceedings and
- 5) such other factors as it deems material to its decision. If the Commission orders a public hearing of the complaint, the Commission shall determine what charges shall be at issue for the hearing.

1.13 Notification of Manner of Disposition

Upon the Commission's ordering a public hearing of a complaint or a public report, the Executive Director shall so notify the complainant and the respondent in writing. The complainant shall also be provided with a copy of the report and the Advocate's written

recommendation.

1.14 Confidentiality

a) Except as otherwise provided in these rules, the complaint and all staff and Commission activities, proceedings and documents related to the complaint shall be confidential until either :

1) Confidentiality is waived in writing by the respondent; or

2) The Commission orders the complaint dismissed, or:

3) The Commission orders a public report or a public hearing. When confidentiality is waived , the Commission orders the complaint dismissed, or the Commission orders a public report or public hearing, all materials related to the complaint shall become public records available to the public as provided in Chapter 119, Florida Statutes except to the extent the materials are otherwise exempted from disclosure under the public records law.

b) For purposes of this rule, the Commission shall be deemed to have ordered a dismissal of the complaint, a public report, or a public hearing at the time the written order or document evidencing that action is filed with the Clerk of the Board of County Commissioners, rather than at the time the Commission has so voted.

c) The confidentiality provided by this rule shall not prohibit the Commission or its staff from advising the respondent or the complainant about the status of the complaint proceeding.

1.15 Public Hearings

Public Hearings may be conducted by the full Commission or by a three member panel of the Ethics Commission designated by the Chair or his or her designee. Proceedings before the Commission shall be governed by the Rules of Civil Procedure except where otherwise designated herein.

1.16 Parties to Public Hearing

The person accused of a violation of an ordinance under the Commission's jurisdiction shall be the only party unless consolidation is granted. The Advocate shall be a full participant in the proceedings and shall present all the evidence relevant to the cause that was produced by the preliminary investigation and such additional evidence as may be obtained through discovery or further investigation.

1.17 Consolidation of Cases

The Ethics Commission may consolidate case if there are matters which involve identical parties or arise out of related issues of law and fact and if it appears that consolidation would promote the just, speedy and inexpensive resolution of the parties and would not unduly prejudice the rights of a party.

1.18 Disqualification of Commissioners

a) Commission members shall be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final public hearing for bias, prejudice or interest.

Disqualification may be raised by the respondent, by the Advocate or by any member but not by the complainant.

b) Unless good cause is shown, all motions for disqualification shall be filed with the Commission at least five days prior to the hearing at which the Commissioner is expected to participate. The motion shall be accompanied by an affidavit stating the particular grounds.

c) Unless denied as untimely, the motion shall be ruled on by the commissioner whose disqualification is sought; the ruling shall be based on the legal sufficiency of the motion and affidavit. If the motion and affidavit are found legally sufficient, the member shall disqualify himself or herself.

d) Any commissioner may recuse himself or herself, where to the judge's own knowledge any of the grounds stated in section(b) above exist. The failure of a commissioner to recuse himself or herself shall not be assignable as error or subject to review.

1.19 Ex-Parte Communications

a) A commissioner shall not initiate nor consider any ex-parte communication relative to the merits of a pending complaint by:

1) A public employee or official engaged in prosecution or advocacy in connection with the matter;

2) A party to the proceeding or any person who directly or indirectly would have a substantial interest in the proposed action of the Commission or his or her authorized representative or counsel; or

3) a complainant or any other individual who has personal knowledge of the facts underlying the proceeding, or his or her authorized representative or counsel;

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the Commission in the proceeding or shall prohibit Commissioners who are contacted by any of the above persons from referring them to Commission staff.

4) A commissioner who receives such ex-parte communication shall place on the record of the matter all written communications received, all written response to such communications and a memorandum stating the substance of all oral communications received and oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party, including the Advocate, desiring to rebut the ex parte communication should be allowed to do so, if a request for the opportunity for rebuttal is made within 10 days after notice of the communication.

1.20 Subpoenas for Discovery

At any time after the Ethics Commission orders a public hearing of the matter, the Ethics Commission may issue subpoenas to effect discovery upon the written request of respondent or Advocate. The requesting member shall give the name and address of each witness he or she wishes to have deposed and shall describe with particularity those documents or other items that the person wishes to have the witness produce, bring or deliver pursuant to a subpoena duces tecum. Parties may also obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390. Florida Rules of Civil Procedure. The chairperson or a member of the Ethics Commission may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

1.21 Subpoenas for Public Hearing

The respondent and the Advocate shall submit to the Executive Director a list of all witnesses he or she wishes to have subpoenaed to attend the hearing. The lists shall include the correct names and addresses of the witnesses and shall describe with particularity those documents or other items that he or she wishes to have the witness bring to the hearing pursuant to subpoena duces tecum. Subpoenas shall be issued as provided herein.

1.22 Motions

a) All motions shall be in writing unless made on the record during a hearing, and shall fully state the actions requested and the grounds relied upon. The motion shall include a statement that the movant has conferred with the Advocate and all other parties of record and shall state whether there is any objection to the motion.

b) The original written motion shall be filed with the Ethics Commission and a copy served on all parties or their attorneys. The Ethics Commission staff shall send a copy of the motion to the Chairperson

c) Unless the motion is in opposition to the proceeding as provided in Section 9(k), the chairperson, or a member of the Ethics Commission designated by the chairperson, shall conduct such proceedings and make such order as are deemed necessary to dispose of issues raised by motions, but it is not required to hold a hearing on the motion in order to rule upon it.

d) Every written motion may be accompanied by, or included in, a written memorandum stating the grounds upon which the motion is based. Other parties to a proceeding may, within seven days of service of a written motion, file written memoranda in opposition.

1.23 Motions in Opposition to a Proceeding

Motion in opposition to a proceeding including motions to dismiss, to strike and for a more definite statement shall be filed within twenty days of service of the notice of hearing. Unless waived by the parties, the Ethics Commission shall hold a hearing and rule on the motion.

1.24 Prehearing Conferences

The chairperson, or a member of the Ethics Commission designated by the chairperson, may conduct one or more prehearing conferences for the purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing the possibilities of settlement of the issues, examining exhibits and documents, exchanging names and addresses of witnesses and resolving other procedural issues.

1.25 Exchange of Witness Lists

Unless otherwise ordered by the chairperson or a member of the Ethics Commission designated by the chairperson as a result of a prehearing conference, the Advocate and the respondent(s) or counsel for respondent(s) shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing with a copy being provided to the chairperson. Names and addresses of witnesses discovered subsequently shall be disclosed to the other party or parties and to the chairperson as soon as possible. Failure to disclose the name and address of a witness may result in the exclusion of the witness's testimony, according to the rule applied in civil judicial proceedings.

1.26 Motions to Dismiss Filed by Advocate

After probable cause is found and a public hearing is ordered by the Ethics Commission and after further investigation or discovery is made by the Advocate, the Advocate may move to dismiss the proceeding if the Advocate concludes that there is insufficient evidence to proceed to public hearing in good faith. Such a motion shall specifically state the grounds upon which it is made. The motion shall be heard by the Ethics Commission in accordance with the procedure delineated in Section 1.22.

Chapter 4. Procedures for Public Hearings

1.1 Presentation of the Case

The Advocate shall present his or her case first. The Respondent may then present his or her case. Rebuttal evidence may be permitted in the discretion of the Ethics Commission.

1.2 Opening and Closing Statements

Opening and Closing Statements may be presented by the Advocate and the respondent. The Advocate may make the first statement and the respondent may follow. Rebuttal by the Advocate may be permitted or may be denied.

1.3 Evidence

- a) Stipulations may be received and are encouraged as to uncontested matters.
- b) Oral evidence shall be taken only on oath or affirmation.
- c) The respondent and the Advocate shall have the right: to present evidence relevant to the issue; to cross-examine opposing witnesses on any matter relevant to the issue; and to impeach any witness regardless of who first called him or her to testify.
- d) The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in and of itself to support a finding. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The Ethics Commission shall not allow the introduction into evidence of an affidavit of a person when that person can be called to testify; this shall not preclude the admission of a deposition of such person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.
- e) Transcript of proceedings. The proceedings shall be recorded by recording instruments or by a court reporter. Respondent may at his or her own expense provide a court reporter or recording instruments. The Ethics Commission may provide a court reporter. No transcript of the proceedings shall be prepared unless requested by the Ethics Commission or the respondent. If the respondent requests that a transcript be prepared by a court reporter, the respondent shall pay the expense of transcription. If the respondent requests that the Ethics Commission prepare a transcript from recording instruments and the Ethics Commission grants such request, the respondent shall pay the Ethics Commission the actual cost of transcription. If a court reporter

records the proceedings, the court reporter's transcript shall be the official transcript.

f) Proposed Public Report.

After the conclusion of the hearing, the respondent and the Advocate may present written proposed public reports, within a time designated by the chairperson or a member of the Ethics Commission designated by the chairperson. If a proposed public report is filed by the respondent or the Advocate each proposed finding in the proposal that is rejected shall be accompanied by a statement summarizing the reasons for rejection.

Chapter 5. Appeals

1.1 Appeal of Final Order

Any final order where the Ethics Commission finds that a violation has been committed or any advisory opinion issued by the Ethics Commission shall be subject to review in accordance with the Florida Rules of Appellate Procedure. The Ethics Commission shall provide the index and record on appeal when required by and in accordance with the Florida Rules of Appellate Procedure.

1.2 Fees

a) A fee may be charged by the Ethics Commission for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such fee may be waived by the Executive Director if the party requesting the record is indigent.

b) Costs or fees may not be assessed against the Ethics Commission in any appeal from a final order or advisory opinion issued by the Ethics Commission pursuant to this chapter.

1.3 Stay

c) Unless specifically ordered by the Ethics Commission or by a court of competent jurisdiction, the commencement of an appeal does not suspend or stay a final order or an advisory opinion of the Ethics Commission.