
2011
City of Jacksonville
Sunshine Law
Public Records Law and
Ethics Training Program

FLORIDA COMMISSION ON ETHICS

Materials Provided By:
The State of Florida Commission on Ethics

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FLORIDA COMMISSION ON ETHICS

The Florida Commission on Ethics was created by statute in 1974, codified as Chapter 112, Part III, *Florida Statutes*. As stated, the Commission's role is "to serve as guardian of the standards of conduct" for state and local government officers and employees (s. 112.320, *F.S.*). In 1976, by citizen initiative, the Commission's responsibility being "to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees . . ." (art. 2, sec 8(f), Const.)

A. COMPOSITION

The Commission on Ethics consists of nine persons. Of these, five are appointed by the Governor, subject to confirmation by the Senate (one shall be a former city or county official); two each are appointed by the Speaker of the House and the President of the Senate, respectively. Terms of appointment are two years. Members serve without salary. The members shall elect a chairman, and the Commission shall employ an executive director and staff. (s. 112.321, *F.S.*)

B. COMMISSION'S INVESTIGATORY FUNCTION

The mission of the Commission is stated in broad terms in the Florida Constitution - - to investigate **ALL** complaints concerning breach of trust (emphasis added). The legislature has not implemented its expansive treatment of the Commission's purpose, however. The only statutory statement of the Commission's role is that which is contained in the 1974 statute: the "duty" of the Commission is stated as that of investigating alleged violations of "the code of ethics as established in this part" (part IV, ch. 112, *F.S.*), and of any other breach of public trust, as established in Article II, Section 8, Const. (S. 112.322, *F.S.*)

The Code of Ethics is reviewed in some detail in the previous "The Code of Ethics." Briefly, the provisions are:

- 1) Prohibition of solicitation or acceptance of gifts or compensation of any kind in exchange for a vote or other favorable action (ss.112.313(2) and (4) and 112.3148, *F.S.*).
- 2) Restrictions on business relations between an officer's or employee's agency and a business in which he or she has a

- material interest (s. 112.313(3), *F.S.*).
- F.S.).
- 3) Prohibition of misuse of position in order to secure a special privilege, benefit, or exemption for oneself (s. 112.313(6), *F.S.*).
 - 4) Prohibition of employment or contractual relationship which would create a continuing conflict of interests (s. 112.313(7), *F.S.*).
 - 5) Prohibition of misuse of privileged information (s. 112.313[8], *F.S.*).
 - 6) Prohibition against being both an employee and a member of a governing body at the same time (s. 112.313(10)*F.S.*).
 - 7) Prohibition of nepotism (s. 112.3135, *F.S.*).
 - 8) Prohibition of voting on matters inuring to the private gain of oneself or one's client; public disclosure of reason for abstaining from a vote; in event that one violates the prohibition, requirement of public disclosure. (S. 112.3143, *F.S.*).
 - 9) Requirement of disclosure of financial interests and clients represented (ss. 112.3144 and 112.3145, *F.S.*).
 - 10) Restrictions on honoraria (s. 112.3149, *F.S.*).
 - 11) Restrictions concerning municipal attorneys (s. 112.313(16), *F.S.*).

The Commission is restricted to the investigation of only "sworn complaints" (s. 112.322(1), *F.S.*). It may not actively search out targets of investigation; rather, it acts only on the basis of sworn complaints of violations. Procedures to be followed by the Commission in the investigation of a complaint are detailed in ss. 112.322 and 112.324, *F.S.*

The Commission itself has no power to penalize guilty persons, other than through making public its reports. When the Commission concludes that a violation has been committed, it may recommend a penalty to the proper disciplinary official or body. Possible recommendations include the following: impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary, forfeiture of salary (of no more than one-third of salary for no more than 12 months), forfeiture of retirement benefits, a fine not to exceed \$10,000, and restitution of any pecuniary benefits received (ss. 112.317 and 112.3173, *F.S.*).

C. OTHER COMMISSION FUNCTIONS

Other functions of the Commission on Ethics, as stated in a Commission publication, are as follows:

- 1) renders advisory opinions to public officials;

- 2) prescribes forms for financial disclosure;
- 3) prepares mailing lists of public officials subject to disclosure laws for use by County Supervisors of Elections and the Secretary of State in distributing forms and notifying delinquent filers;
- 4) makes recommendations to disciplinary officials, when appropriate, for violations; and
- 5) may file suit to void contracts entered in violation of the code.

D. FORMS

Forms provided by the Commission on Ethics for use by municipal officers and employees include the following:

Statement of Financial Interests
Quarterly Client Disclosure
Disclosure of Specified Business Interests
Memorandum of Voting Conflict
Gift Disclosure for Elected Officers

Any person in need of these forms may request them from the County Supervisor of Elections or from the Florida Secretary of State. There also is a specific form which must be used in the filing of a formal complaint.

E. ADVISORY OPINIONS

An advisory opinion concerning interpretation of the Code of Ethics (ch. 112, *F.S.*) May be obtained from the Commission on Ethics (P.O. Box 6, Tallahassee, FL 32302-0006; 904-488-7864). Advisory opinions "on any questions of law relating to the official duties of the requesting officer" (s. 16.01, *F.S.*) may be obtained from the Department of Legal Affairs, Division of Opinions (The Capitol 1603, Tallahassee, FL 32399-1050; 904-487-1963).

REFERENCES

Florida Constitution: Article 2, Section 8. Florida Statutes: Chapter 112. Laws of Florida: Chapter 74-176. Also see Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, State of Florida, Commission on Ethics (1994).

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FACTS ABOUT THE FLORIDA COMMISSION ON ETHICS

Composition

Nine members appointed for two-year terms. Five members appointed by the Governor, no more than three of whom are from the same political party. One member appointed by the Governor shall be a former city or county official. Two members are appointed by the President of the Senate, and two members by the Speaker of the House of Representatives. Neither the Speaker of the House nor the President of the Senate may appoint more than one member from the same political party. No member may hold any public employment. No member may serve more than two full terms in succession. (Section 112.321, Fla. Stat.)

Mission and Authority

Part III, Chapter 112, Florida Statutes, and Article II, Section 8, Florida Constitution, provide that the Commission on Ethics shall:

- Serve as guardian of the standards of conduct for officers and employees of the state and its political subdivisions.
- Conduct investigations and make public reports on all complaints concerning the breach of public trust by public officers and employees other than judges.
- Issue legally binding advisory opinions interpreting the ethics laws upon request of any public officer or employee.
- Compile a list of persons required to file financial disclosure, receive and maintain disclosure forms, and enforce the timely filing of financial disclosure forms.

Functions and Responsibilities

The Commission

The nine-member Commission, by majority vote, interprets the ethics laws by taking action on the disposition of complaints, the recommendation of penalties, and the issuance of legal opinions. Additionally, the Commission hires the Executive Director, recommends changes in the ethics laws to the Legislature, and adopts rules of procedure and an operating budget.

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Tallahassee

Commission Staff

**** Legal Section ****

Drafts legal opinions, orders, rules, and proposed legislation for consideration by the Commission. Responds to inquiries about the ethics laws and represents the Commission in litigation.

**** Public Information Section ****

Provides information regarding Commission practices and procedures to other states, the press, and the public. Responds to inquiries about the Commission and the ethics laws.

**** Investigative Section ****

Investigates complaints of violations of the ethics laws and writes narrative investigative reports.

**** Financial Disclosure Section ****

Handles and supervises the disclosure notification process. Receives and maintains disclosure forms. Enforces the timely filing of disclosure forms. Responds to inquiries about financial disclosure laws.

**** Administrative Section ****

Provides administrative and clerical support to Commissioners and staff.

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COMPLAINT PROCEDURES

When a 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 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 reaches a stage in the Commission's proceedings where it becomes public. As long as a complaint 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 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 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, at which time it becomes public.

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 Public Report 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.