

ALABAMA ETHICS COMMISSION
ADMINISTRATIVE CODE

CHAPTER 340-X-1
GENERAL OPERATIONS

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340-X-1-.01	<u>Policy For The Handling Of Cases Being Presented To The Alabama Ethics Commission.</u>

(1) Not less than 45 days prior to any hearing before the commission, the respondent shall be given written notice that a complaint has been filed against him or her and shall be given a summary of the charges contained therein. The respondent shall have the right to be represented by retained legal counsel.

(2) The commission may not require the respondent to be a witness against himself or herself.

(3) Discovery. The commission shall provide discovery to the respondent pursuant to the Alabama Rules of Criminal Procedure.

(a) The respondent shall not be entitled to the commission's investigatory report, memoranda, witness lists, or other internal documents made by any employee or agent of the Ethics Commission in connection with the investigation of the case or the substance of any statements made by prospective witnesses.

(4) Evidence to be Considered.

(a) The commission shall consider evidence that the complainant or respondent wishes to offer. The commission may refuse to hear testimony or evidence that is merely cumulative

in nature. The commission shall give testimony or evidence the weight it deems appropriate.

(b) The rules of evidence shall not be strictly applied and hearsay testimony or evidence may be considered by the commission.

(c) If evidence or issues are raised during a hearing that require additional investigation on the part of the commission staff, the commission may continue the hearing until the investigation is complete.

(d) The complainant may not raise additional issues or present additional evidence during the hearing before the commission that will require the hearing to be continued in order to allow the respondent to adequately respond.

(5) Conducting Hearings Before the Ethics Commission.

(a) Hearing conducted before the Alabama Ethics Commission are subject to the same restrictions relating to secrecy and non-disclosure as secret Grand Jury proceedings, specifically as provided in Code of Ala. 1975, Sections 12-16-214 to 12-16-216. There is no right of cross-examination of witnesses before the commission by either the complainants or the respondent.

(b) During the presentation of the complaint's case, the respondent or his or her attorney shall not be present in the hearing room. If the complainant has additional witnesses he or she wishes to offer, the complainant or his or her attorney or other representative shall not be present during the testimony or questioning of these witnesses by the commission or commission staff.

(c) At the conclusion of the complainant's case, the respondent shall be given an opportunity to testify. While the commission cannot compel a respondent to be a witness against himself or herself, if the respondent chooses to testify, the respondent will be subject to examination by the Ethics Commission.

(d) During the presentation of the respondent's case, the complainant or his or her attorney or representative shall not be present in the hearing room. If the respondent has additional witnesses he or she wishes to offer, other than his or her own testimony, the respondent or his representative shall not be present during the testimony or questioning of these additional witnesses by the commission or commission staff.

(6) Continuances. Upon the timely request of the respondent, for good cause shown, a continuance of the hearing for not less than 30 days may be granted.

(7) Right of Appeal/Review.

(a) The respondent may request a reconsideration of the decision of the commission based on good cause shown.

(b) Good cause shown shall include, but not be limited to, additional evidence or information which was not available at the time of the initial hearing which more likely than not would have influenced the commission's decision.

(c) A request for reconsideration shall be filed with the commission within 30 days from the date of the initial ruling and shall require the consent of three commission members in order to be granted.

(8) Failure of Complainant to Appear Before Commission. The commission may in its discretion dismiss a case if a complainant fails or refuses to appear before the commission without showing good cause for failure to appear.

(9) Failure of Respondent to Appear Before Commission. The commission may proceed with a hearing when the respondent has failed or refused to appear before the commission if it be established that sufficient notification was given to the respondent.

(10) Administrative Resolution.

(a) Upon the respondent being notified of the complaint pending against him or her, the respondent shall also be informed of the Administrative Resolution provisions in the Ethics Law (assuming that Administrative Resolution would apply in the fact situation). The respondent shall also be provided a Request for Administrative Resolution form.

(b) If the respondent desires to have his or her case resolved administratively, the respondent shall fill out the Administrative Resolution Request form with the commission prior to the commencement of the hearing.

(c) The commission shall hear testimony necessary in order to make a determination of the appropriateness of an Administrative Resolution. The commission may by unanimous vote of the members present grant or deny Administrative Resolution based on the evidence presented.

(d) Upon the decision to grant the respondent's petition for Administrative Resolution, the commission shall forward the

signed request to the district attorney for the appropriate jurisdiction of the Attorney General for final approval.

(e) If a respondent petitions for Administrative Resolution and the commission denies the request, the respondent's request for Administrative Resolution shall not be admissible in any further proceedings that arise from the hearing before the Ethics Commission.

Author: James L. Sumner, Jr.; Hugh R. Evans, III

Statutory Authority: Code of Ala. 1975, §36-25-4.

History: Filed September 30, 1982. **Repealed and Replaced:** Filed February 11, 1998; effective March 18, 1998.

340-X-1-.02 Policy Regarding Reconsideration Of Advisory Opinions.

(1) The Alabama Ethics Commission may reconsider an Advisory Opinion upon the consent of at least three members of the Commission. Consent may be orally obtained and shall not require a meeting of the Ethics Commission.

(2) Reconsideration may be granted only for good cause shown. Good cause shall include, but shall not be limited to, new facts or evidence which support the reconsideration and which may materially affect the opinion.

(3) A request for reconsideration shall be made within 30 days of the Commission's rendering an advisory opinion.

(4) Review or appeal from any final action or decision of the Alabama Ethics Commission on an Advisory Opinion shall be filed in the Circuit Court of Montgomery County.

Author: James L. Sumner, Jr.; Hugh R. Evans, III

Statutory Authority: Code of Ala. 1975, §36-25-4(a).

History: Filed September 30, 1982. **Repealed and Replaced:** Filed February 11, 1998; effective March 18, 1998.

340-X-1-.03 Policy Regarding Access To Commission Records.

(1) A person requesting to examine information on file with the Commission shall first complete a Request for Access to Commission Records form which requires the identification of the person making the request by name, address, occupation, and telephone number, and the identification of the records requested by individual name, and position or agency.

(2) The following records are available for public access:

(a) Statements of Economic Interests

(b) Notification of Contracts with the State or Any of its Agencies

(c) Notification of Representation for a Fee

(d) Lobbyist Registration Forms

(e) Principal Form - Statement of Lobbyist Registration

(f) Lobbyist Form - Quarterly Statement of Lobbying Activities

(g) Principal Form - Quarterly Statement of Lobbying Activities

(h) Supplements to Lobbyist/Principal Registration Statements or Quarterly Reports

(i) Statement of Termination of Lobbying Activities

Author: James L. Sumner, Jr.; Hugh R. Evans, III

Statutory Authority: Code of Ala. 1975, §§36-25-4(5).

History: Filed September 30, 1982. **Repealed and Replaced:** Filed February 11, 1998; effective March 18, 1998.

340-X-1-.04**Policy For Informal Opinions Relating To The Alabama Ethics Act.**

(1) In order to facilitate the work of the Alabama Ethics Commission and to serve the public, the Director and General Counsel of the Alabama Ethics Commission are authorized to issue informal opinions to those covered and regulated by the Alabama Ethics Act as to the meaning and application of the Act and that individual's or entity's compliance with the Act.

(2) Requests for informal opinions shall be in writing and shall state all of the facts relating to the request. A request contained in an email satisfies the requirement that the request be "in writing".

(3) All requests for informal opinions and the opinions themselves are confidential and will not be disclosed unless authorized by the individual or entity requesting the opinion.

(4) The effect of an informal opinion is prospective only and is based only on the facts presented.

(5) Informal Opinions do not have the force and effect of Formal Opinions issued by the Alabama Ethics Commission and do not provide legal immunity to the requesting party.

Author: John L. Carroll

Statutory Authority: Code of Ala. 1975, §36-25-4(a)(11).

History: New Rule: Filed April 1, 2015; effective May 6, 2015.

340-X-1-.05 Procedures For Pre-Certification Of A Function Or Activity.

(1) Code of Ala. 1975, §36-25-1(34)(b)(15) authorizes the Director of the Ethics Commission to pre-certify a function or activity. Anyone may invite a public official or public employee and their spouse to attend a pre-certified function or activity without violating the Alabama Ethics Act so long as the invitation is not for the purpose of corruptly influencing official action. A public official or public employee and their spouse may attend a pre-certified function or activity without violating the Alabama Ethics Act so long as the attendance at the function or activity would not constitute accepting something to corruptly influence their official action.

(2) In order to assist the director in determining whether an event or function should be pre-certified, an application seeking pre-certification shall

(a) Be made in writing to the Director at least 10 calendar days before the function or activity is to take place and

(b) Shall contain a statement of facts sufficient to show that the event or function should be pre-certified. The application should always state when the function or activity is to take place, specific information about who is invited as well as specific information about the purpose of the event and the event itself. If there is a formal agenda, a copy of the agenda should be attached to the application.

(3) Applications for pre-certification and their disposition will be posted on the website of the Alabama Ethics Commission.

(4) The website will also contain a chart summarizing the applications and dispositions for the applicable fiscal year.

Author: John L. Carroll

Statutory Authority: Code of Ala. 1975, §36-25-4(a)(11).

History: New Rule: Filed April 1, 2015; effective May 6, 2015.

340-X-1-.06 Policy For Liquidation Of Campaign Property.

Code of Ala. 1975, §17-5-7.2 (2015) states as follows:

(a) Except as provided in subsection (b), property purchased by or contributed to a principal campaign committee with a value of five hundred dollars (\$500) or more shall be liquidated at fair market value or donated to a qualified entity pursuant to subsection (a) of Section 17-5-7 not more

than 120 days following the election. Any funds generated by the liquidation of the property shall be deposited in the candidate's principal campaign committee account.

(b) Property purchased by or contributed to a principal campaign committee that can be used by the person in the performance of his or her duties of the office he or she was elected to hold need not be liquidated as long as he or she holds office.

The Commission considers "property...with a value of five hundred (\$500) or more" to mean property with a reasonable fair market value of \$500 within the 120 days following an election, not the amount paid for the property prior to that time period. The Commission presumes the following property to fall below the threshold amount required for this chapter and, therefore, not required to be liquidated or donated.

1. Campaign signs, literature, stickers, t-shirts, etc. which upon the conclusion of the campaign have nominal value at best.

Author: Thomas B. Albritton, Director, Alabama Ethics Commission

Statutory Authority: Code of Ala. 1975, §36-25-4(11).

History: New Rule: Filed June 29, 2016; effective August 12, 2016.