

**RHODE ISLAND GOVERNMENT REGISTER**

**PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Rhode Island Ethics Commission

**RULE IDENTIFIER:** 520-RICR-00-00-3

**REGULATION TITLE:** Procedures-Complaints and Investigations

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Amendment

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

**Date of Public Notice:** June 15, 2018

**Date of Public Hearing:** August 21, 2018

**End of Comment Period:** August 28, 2018

**SUMMARY OF PROPOSED RULE:**

By this rulemaking, the Ethics Commission is proposing to:

1. In § 3.11(A), remove language stating that a copy of the Investigative Report, and any written response thereto, be made public after the probable cause hearing and also add language to expressly state that the Investigative Report, and any written response thereto, shall at all times remain a confidential investigatory record.
2. In § 3.11(C)(1), add language requiring that when the Ethics Commission dismisses a complaint following a probable cause hearing, it must prepare and issue a public, written Decision and Order explaining the basis for the dismissal.

**COMMENTS INVITED:**

All interested parties are invited to submit written comments concerning the proposed amendments by August 28, 2018, either by email or letter, to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Email Address:** [ethics.comment@ethics.ri.gov](mailto:ethics.comment@ethics.ri.gov)

**Mailing Address:** Rhode Island Ethics Commission

Attn: Regulation Comment

40 Fountain Street

Providence, RI 02903

**WHERE AMENDMENTS MAY BE INSPECTED:**

A copy of the proposed amendments will be available for examination from June 15, 2018 through August 28, 2018, to view in person at the addresses listed below or by calling Teodora Papa at 401-222-3790, ext. 11. Electronic copies of the proposed amendments will also be available on the Ethics Commission website at [www.ethics.ri.gov](http://www.ethics.ri.gov) and Secretary of State's at <http://sos.ri.gov/ProposedRules/>.

**PUBLIC HEARING INFORMATION:**

**Public Hearing Date & Time:** August 21, 2018 at 9:30 a.m.

**Public Hearing Location:** Rhode Island Ethics Commission

**40 Fountain Street**

**Providence, RI 02903**

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 800-RI5-5555 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**FOR FURTHER INFORMATION CONTACT:**

Jason Gramitt, Executive Director

Rhode Island Ethics Commission

40 Fountain Street

Providence, RI 02903

Tel.: 401-222-3790

Email: jason.gramitt@ethics.ri.gov

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:**

There is no anticipated cost associated with these amendments to the Ethics Commission's procedures.

**Authority for This Rulemaking:**

R.I. Const., art. III, sec. 8; R.I. Gen. Laws § 36-14-9.

**Regulatory Findings:**

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

**The Proposed Amendment:**

The Rhode Island Ethics Commission proposes to amend 520-RICR-00-00-3 as specifically shown in the attached redlined document:

520-RICR-00-00-3

## TITLE 520 – ETHICS COMMISSION

### CHAPTER 00 – N/A

### SUBCHAPTER 00 - N/A

#### PART 3 – Procedures - Complaints and Investigations

### 3.1 Limitations Period on Filing of Complaint (1001.1)

Any Complaint shall be filed with the Ethics Commission no later than six (6) years from the date of the alleged violation of the Rhode Island Code of Ethics.

### 3.2 Limitation on Pre-election Complaints (1001.2)

The Ethics Commission shall not accept any complaint against an individual who has filed a valid declaration of candidacy for elective office, during the period of time beginning ninety (90) days prior to the general or special election in which the individual is a candidate, and ending the day after the election. Provided, however, that this restriction shall not apply to investigations or complaints initiated by the Ethics Commission.

### 3.3 Preliminary Review of Information (1000)

The Executive Director or designee may review any information which indicates a possible violation of the Rhode Island Code of Ethics with the Commission in Executive Session and may thereupon conduct a preliminary investigation. The Executive Director or designee shall report to the Commission regarding such preliminary investigation.

### 3.4 Preliminary Investigations (36-14-12001)

A. Pursuant to its constitutional authority to investigate violations of the State's Code of Ethics (R.I. Const., art. III, sec. 8) and its statutory empowerment to investigate allegations of violations of the provisions of R.I. Gen. Laws § 36-14-1, *et seq.* (R.I. Gen. Laws § 36-14-12(a)), the Rhode Island Ethics Commission adopts the following procedures for the preliminary investigation of allegations of violations of the Code of Ethics.

1. Upon a determination by the Executive Director of the Commission that information provided to and/or in the possession of the Commission and/or its staff establishes a reasonable basis to believe that a state or municipal official or employee, as those terms are defined in R.I. Gen. Laws § 36-14-1, *et seq.*, may have violated provisions of R.I. Gen. Laws § 36-14-1, *et seq.*, the State's Code of Ethics, the Executive Director, within a

reasonable time, shall provide the Commission with written notification that a preliminary investigation has been initiated including the date the preliminary investigation file was opened, the subject(s) and/or subject matter of the preliminary investigation, and the nature and source(s) of the information that establishes a reasonable basis that a state or municipal official or employee may have violated provisions of R.I. Gen. Laws § 36-14-1, *et seq.*, the State's Code of Ethics.

2. All files, documents or other materials relating to a preliminary investigation, including but not limited to written notifications, pleadings, records of counsel and investigators, subpoenas and pleadings requesting the issuance of subpoenas, documentary evidence, and records of witness statements, whether written or recorded by other means, shall remain confidential, except as follows:
  - a. the Commission, itself or through its Executive Director, may at any time grant access to any information related to and/or obtained during a preliminary investigation to any federal, state or municipal law enforcement agency;
  - b. the Commission, itself or through its Executive Director or his/her designee, may in a complaint filed with the Commission pursuant to R.I. Gen. Laws § 36-14-12(b) disclose information related to and/or obtained during a preliminary investigation; and
  - c. the Commission, itself or through its Executive Director or his/her designee, shall disclose information related to and/or obtained during a preliminary investigation in accordance with the provisions of R.I. Gen. Laws § 36-14-12(c)(4).
3. In accordance with R.I. Gen. Laws § 36-14-12(a)(1) the Commission, its Executive Director or his/her designee, through the issuance of subpoenas, may compel the attendance of witnesses and require the production of documents as follows:
  - a. no subpoenas may issue until written notification of the initiation of a preliminary investigation is made to the Commission pursuant to § 3.4(A)(1) of this Part; and
  - b. issuance of a subpoena(s) as part of a preliminary investigation shall be in accordance with the provisions of § 3.14 of this Part.
4. No later than sixty (60) days from the initiation of a preliminary investigation the Executive Director or his/her designee shall complete the preliminary investigation and shall file a report with the full Commission detailing the results of said investigation, including whether or not the Executive Director or his/her designee intends to file a complaint with the Commission pursuant to R.I. Gen. Laws § 36-14-12(b) as a result of said

investigation. Upon a showing of good cause the Commission may grant an extension of time for the filing of said report.

5. The only decision made by the Commissioners during the preliminary investigation stage is whether there is good cause for an extension of time. The Commission shall not engage in any review of the substance of the complaint relating to the merits of the complaint.
6. The Executive Director or designee shall provide the Commission with quarterly reports identifying all open preliminary investigations.
7. The Executive Director or designee shall provide the Commission with notice when a preliminary investigation is closed without the filing of a complaint.

### **3.5 Review of Complaint (1002)**

- A. Any Complaint filed shall be reviewed as to form. If the Complaint is defective as to form, it shall be returned to the Complainant for correction. If it is not returned to the Commission by the Complainant within twenty (20) days of mailing by the Commission, the Complaint shall not be processed as filed.
  1. Notwithstanding § 3.5(A) of this Part, if the Executive Director or designee determines that the facts stated in a defective Complaint are sufficient to allege a violation of the Code of Ethics, the Executive Director or designee may initiate a preliminary investigation, regardless of any defects as to form, or the failure of the Complainant to refile the Complaint.
  2. If the Complaint contains no defect as to form, it shall be reviewed by the Executive Director or designee to determine whether or not the Complaint alleges facts sufficient to constitute a knowing and willful violation of the Code of Ethics, who shall forward the Complaint to the Commission for review at an initial determination.
- B. Subsequent to receipt of a Complaint in proper form, within three (3) working days, the Complainant and Respondent shall be mailed a copy of the Complaint, Notification of Receipt of Complaint, and a copy of the Code of Ethics and any Regulations promulgated thereto.

### **3.6 Filing of Complaint (1001)**

- A. The Rhode Island Ethics Commission shall investigate allegations of violation of the Rhode Island Code of Ethics. The Commission may proceed to investigate allegations of violations by:
  1. accepting any information which indicates a possible violation of the Rhode Island Code of Ethics. The Executive Director or designee shall be responsible for the review and processing of such information in order to

determine whether to conduct a preliminary investigation which may form the basis of a Commission Complaint, which the Commission may file on its own initiative.

2. accepting the filing of a Complaint by any person, business, state or municipal agency, or any other public body, which alleges a violation of the Code of Ethics. Such Complaint should be signed under oath and should set forth the name of the person who has allegedly violated the Code of Ethics, and should state in detail the specific acts which form the basis of the Complaint. Any such Complaint filed with the Commission should be made on a form provided by the Commission at no cost to the Complainant.
- B. Any Complaint filed with the Commission and all documents in the Commission's official Complaint file relating to such Complaint shall be a public record, except as provided in § 3.6(C) of this Part.
- C. All documents or other material related to the investigation of the Complaint, including but not limited to records of counsel and investigators, and interviews of witnesses, whether written or recorded by other means, shall remain confidential, provided that nothing herein shall prohibit the Commission from granting access to the above-described investigative documents or materials to law enforcement agencies.
- D. Any person or entity which files such Complaint is not a party in interest to any action taken by the Commission. The people of the State of Rhode Island and the Respondent shall be the parties in interest. Notice by a Complainant that he or she wishes to withdraw a Complaint shall in no way affect the continuing jurisdiction of the Commission over the Complaint.

### **3.7 Time for Investigations (36-14-12002)**

- A. Pursuant to R.I. Gen. Laws § 36-14-12(c), upon receipt of a written complaint alleging a violation of this chapter, the Commission shall within one hundred eighty (180) days of the receipt of the written complaint complete its investigation; provided, that the Commission may, for good cause shown, grant no more than two (2) extensions of sixty (60) days each, as follows:
1. Requests to the Commission for extensions of sixty (60) days to complete investigations shall be submitted in writing to the full Commission by the Executive Director or his/her designee at least fifteen (15) days prior to the expiration of the initial one hundred eighty day (180) period or of an initial sixty (60) day extension, as the case may be.
  2. Requests to the Commission pursuant to § 3.7(A)(1) of this Part, above, shall be submitted *ex parte* to the Commission and determinations of good

cause shown shall be made upon a review and consideration of the full record before the Commission at the time the request is made.

3. All proceedings before the Commission relating to requests for extensions of time pursuant to §§ 3.7(A)(1) and (2) of this Part, above, shall be stenographically transcribed.
4. Upon completion of the investigation of a complaint, and prior to proceedings by the Commission as to a finding of probable cause regarding allegations of the complaint, all records relating to any determination(s) of extensions for good cause shown, including any stenographic transcripts made pursuant to § 3.7(A)(3) of this Part, above, shall be available to the subject of a complaint and/or his/her counsel.

### **3.8 Initial Determination of Complaint (1003)**

- A. At the initial determination, the Commissioners must review the complaint and decide whether or not the facts alleged, if true, are sufficient to constitute a knowing and willful violation of the Code of Ethics. The Commissioners will not review any additional information or engage in any fact finding. The Commissioners are to examine the alleged facts within the four (4) corners of the complaint, without making any judgment as to credibility or examination of any collateral information.
- B. If the Commission determines that the Complaint fails to allege facts sufficient to constitute a knowing and willful violation of the Code of Ethics, the Complaint shall be dismissed and the Respondent and Complainant shall be mailed a written notification of the dismissal within three (3) working days.
- C. If the Commission determines that the Complaint alleges facts sufficient to constitute a knowing and willful violation of the Code of Ethics, the Commission shall promptly investigate the allegations contained therein. The Respondent and Complainant shall also be sent any written notification regarding such initial determination by the Commission within three (3) working days.

### **3.9 Investigation of Complaint (1004)**

- A. Upon determining that the Complaint states facts sufficient to constitute a knowing and willful violation, the Commission shall have the power to investigate any and all alleged violations of the Code of Ethics. In furtherance of said investigation, the Commission shall have the power to:
  1. compel the attendance of witnesses and require the production of documentary evidence; and



2. take oral or written evidence under oath or affirmation. Each Commissioner, the Executive Director or designee, and investigators shall have the authority and power to administer oaths and affirmations.
- B. Upon receipt of a written Complaint alleging a violation of the Code of Ethics, the Commission shall complete its investigation within one hundred eighty (180) days of receipt of the written Complaint, provided that the Commission may grant no more than two (2) extensions of sixty (60) days each, for good cause shown.

### **3.10 Filing a Response (1005)**

The Respondent shall be mailed a copy of the Commission's Initial Determination that the Complaint properly alleges a knowing and willful violation of the Code of Ethics, which will be investigated by the Commission. The Respondent shall be further notified of the right to file a response under oath within twenty (20) days of the mailing date on forms provided by the Commission.

### **3.11 Finding of Probable Cause (1006)**

- A. The Executive Director or designee shall submit a written report to the Commission summarizing the results of the investigation. The Executive Director or designee may make a recommendation as to the existence or non-existence of probable cause. A copy of this written report shall be sent to the Respondent and/or counsel no less than fourteen (14) days before the scheduled hearing regarding the existence of probable cause. ~~A copy of any report, and written response thereto, so submitted shall be made public and a part of the official Commission Complaint file, upon the issuance by the Commission of either a Finding of Probable Cause or a Dismissal of the Complaint. The report, and any written response thereto, shall at all times remain a confidential investigatory record.~~
- B. The Commission shall permit the Respondent and/or counsel to submit a written statement and/or to appear for the purpose of presenting arguments and/or written evidence in response to the allegations against him or her.
- C. The Commission shall consider the Complaint, any amendment thereto, the written report submitted by the Executive Director or designee, and recommendation, if any, and any response submitted by the Respondent and/or counsel, in addition to any arguments or statements made thereupon by the Executive Director or designee and the Respondent and/or counsel, in finding the existence of probable cause. The Commission shall conduct its hearing regarding probable cause in Executive Session as an investigative proceeding, pursuant to R.I. Gen. Laws § 42-46-5(a)(4).
1. If the Commission finds that probable cause does not exist, the Complaint shall be dismissed with prejudice and the Commission shall forthwith prepare and issue a written Decision and Order explaining the basis for

such dismissal. The Decision and Order shall be placed in the official Commission Complaint file and shall be a public record. A copy of the Decision and Order shall be provided to the Respondent and the Complainant. Respondent and the Complainant, if any, shall be sent a copy of the Dismissal of the Complaint within three (3) working days of such issuance. A Complaint dismissed for lack of probable cause shall not be entertained again by the Commission unless new facts are discovered which materially add to the Complaint.

2. If the Commission finds that probable cause exists to support the allegations of the Complaint, its findings shall state in detail such violations complained of and the manner in which they occurred. A copy of the Finding shall be mailed to the Respondent and the Complainant, if any, within three (3) working days of such issuance. The Commission shall schedule an adjudicative hearing on the matter. The Finding of Probable Cause constitutes the official Commission Complaint upon which the hearing shall be held.

### **3.12 Amendment of the Complaint by the Commission (1007)**

If the investigation reveals probable cause exists to believe that violations of the Code of Ethics have been committed, other than those contained in the Complaint, the Commission may amend the Complaint to include such other violations. Any amended Complaint shall be mailed to the Respondent and Complainant, if any, within three (3) working days of such issuance. The Respondent shall have twenty (20) days from the date such amended Complaint is mailed to file a response thereto. Any action by the Commission on such amendment shall be made part of the Commission's findings.

### **3.13 Discovery (1008)**

- A. No discovery between the Executive Director or designee and the Respondent shall be permitted prior to the issuance of the Commission's Finding of Probable Cause, provided, however, that this limitation on discovery shall in no way limit the authority of the Commission or staff to conduct its investigation or to subpoena required documents or witnesses as reasonably necessary. No adjudicative hearing shall be scheduled until such time as the Executive Director or designee and the Respondent and/or counsel are afforded a reasonable opportunity to conduct discovery pursuant to this Regulation.
- B. The Respondent and/or Respondent's counsel and the Executive Director or designee may request discovery only in accordance with this Regulation.
- C. Within twenty (20) days after receiving a request, the party to whom the request is directed shall furnish the requesting party with:

1. the names, addresses and official positions, if any, of all individuals who are known to have information which is relevant to the allegations contained in the Finding of Probable Cause;
  2. a copy of all documents which are known to be relevant to the allegations contained in the Finding of Probable Cause.
- D. The obligation to provide discovery as specified in this Regulation shall be a continuing duty to disclose, and, if subsequent to compliance with the obligation to provide discovery either the Executive Director or designee or the Respondent and/or counsel discovers additional material which is subject to disclosure or has been requested under this Regulation, such disclosure shall be promptly made as required herein.
- E. If at any time during the course of the proceedings the Commission finds that the Executive Director or designee, or the Respondent and/or counsel, has failed to comply with this Regulation, it may prohibit introduction into evidence of the material or the testimony which was not disclosed.
- F. Except as provided for in this Regulation, no other discovery shall be permitted, including interrogatories, depositions or any other discovery mechanism, unless allowed by the Commission upon good cause shown.

### **3.14 Subpoena (1009)**

Subject to the provisions of § 3.13 of this Part, the Executive Director or designee, or the Respondent and/or Respondent's legal counsel, may issue a subpoena to compel the production of evidence or the attendance of witnesses regarding any matter pending before the Commission upon the filing of an affidavit detailing the specific persons or documents to be subpoenaed and their relevance to the matter at issue. Said affidavit shall be accepted and filed by the Commission staff and placed in the Commission's relevant complaint file. In addition, at the adjudicative hearing any Commission member shall be authorized to issue a subpoena.

### **3.15 Taking of Oral or Written Evidence Under Oath (1010)**

Any member of the Commission shall have the authority to take oral or written evidence and administer oaths in any matter pending before the Commission.

### **3.16 Informal Disposition (1011)**

- A. At any time subsequent to a finding by the Commission that the Complaint, and any amendment thereto, states a knowing and willful violation of the Code of Ethics, the Executive Director or designee, with the concurrence of the Respondent and/or counsel, may seek an informal disposition through an agreed settlement, consent order, or other informal resolution of the pending Complaint.

- B. The Executive Director or designee may meet with the Respondent and/or counsel for an informal conference to seek such informal disposition. The informal conference shall not be transcribed or recorded and no statements made by any person at such conference shall be used as evidence in any subsequent proceeding.
- C. These Regulations shall in no way limit the resolution of any matter pursuant to R.I. Gen. Laws § 42-35-9(d), provided that any informal disposition of a pending Complaint shall be subject to the approval of the number of Commission members otherwise required to vote in the affirmative to find a violation of the Code of Ethics. For purposes of this Regulation, any hearing conducted by the Commission to review an informal disposition, prior to its approval and issuance, shall be treated as a proceeding in Executive Session, pursuant to R.I. Gen. Laws § 42-46-5(a)(4). The approved informal disposition of the Complaint shall become a public record.
- D. If the Complaint at issue has been filed by a Complainant, he or she shall be notified of the date upon which the Commission will consider the proposed informal disposition, shall be notified of any actions taken by the Commission regarding said informal disposition, and shall be provided with a copy of any approved informal disposition agreement and/or order.

### **3.17 Prehearing Motions (1012)**

Unless good cause is shown, all prehearing motions shall be filed in writing no later than five (5) days prior to the date set for any hearing held pursuant to these Regulations. The motion shall be disposed of by order of the Commission with or without oral argument in the Commission's discretion. Nothing herein shall prevent or require the filing of a written objection to any such motion. All hearings conducted by the Commission related to any motion filed pursuant to this Regulation, subsequent to the issuance of a Finding of Probable Cause, shall be open to the public.

### **3.18 Stenographic Recording of Commission Proceedings (1012.1)**

- A. The respondent to any complaint pending before the Ethics Commission may, at his or her own expense, arrange for the creation of a stenographic recording of those portions of the Ethics Commission proceedings to which the respondent has a right of participation or attendance. The respondent shall provide the Ethics Commission with a transcript of any such recording.
- B. The respondent shall, not less than two (2) business days prior to the proceeding to be transcribed, provide the Ethics Commission with written notice of intent to create a stenographic record.
- C. The Commission may, at its sole option, proceed with any matter in the absence of a stenographer if any of the above conditions are not met, if the stenographer

is not prepared to begin at the scheduled time, or if the Commission determines that the creation of the stenographic recording will in any way delay or interfere with the orderly conduct of the proceeding.

### **3.19 Continuances (1013)**

Except in emergency cases or by agreement of counsel, any continuance shall be requested in writing stating the reasons therefore and received by the Commission at least two (2) days prior to the hearing. Oral arguments thereupon shall be within the discretion of the Commission, and the period of the continuance shall extend any time period in which the Commission may be otherwise required to act.

### **3.20 Scheduling of Hearings (1014)**

Unless good cause is shown, the Respondent shall be given at least fifteen (15) days notice prior to any scheduled adjudicative hearing by the Commission. Failure by any counsel to appear must be documented on the record by proof of actual engagement in Superior or Federal Court or the Supreme Court of Rhode Island.

### **3.21 Commission Deliberations (1014.1)**

- A. At any hearing held in executive session pursuant to R.I. Gen. Laws § 42-46-5 of the Open Meetings Act, the Commission may privately deliberate on the matter under consideration without the presence of any other person or party.
- B. During the private deliberations authorized by this section, if the Respondent to a pending complaint has been excluded, then the Commission shall also exclude all Commission prosecutors, investigators and other members of the Commission staff.
- C. Notwithstanding the requirements of § 3.21(B) of this Part, the Commission may allow the presence of its own independent legal counsel to respond to questions of law and procedure posed by Commission members.
- D. There shall be no motions made, nor votes taken, during private deliberations.

### **3.22 Hearing to Determine Violation of the Code of Ethics (1015)**

- A. Adjudicative hearings shall be conducted consistent with these Regulations. The Chair of the Commission, or the Chair's designee, shall act as the presiding officer. All hearings conducted by the Commission subsequent to the issuance of a Finding of Probable Cause shall be open to the public, except for any hearing conducted by the Commission to review an informal disposition prior to its approval and issuance, pursuant to § 3.16 of this Part. Any such hearing shall

be treated as a proceeding in Executive Session, pursuant to R.I. Gen. Laws § 42-35-5(a)(4).

- B. The Executive Director or designee shall present the case against the Respondent.
- C. The Respondent may either represent himself or herself or appear through counsel.
- D. Unless waived by the Respondent, the presiding officer shall read aloud the Finding of Probable Cause. The Respondent shall then either admit or deny such Finding of Probable Cause.
- E. The Executive Director or designee may make an opening statement. The Respondent and/or counsel may next make an opening statement or delay such statement until the presentation of the Respondent's case.
- F. Oral evidence shall be taken only on oath or affirmation.
- G. The Executive Director or designee and the Respondent and/or counsel shall have the right to compel attendance of witnesses, to compel the production of documents, to examine witnesses and cross-examine opposing witnesses, to introduce exhibits and otherwise to present matters to the Commission relevant to the Complaint.
- H. Commission members may ask questions of each witness during the hearing.
- I. The Respondent and/or counsel may make a closing statement followed by the closing statement of the Executive Director or designee.
- J. A stenographic record shall be made of all evidentiary hearings conducted pursuant to this Regulation. If the Respondent desires a copy of the stenographic record, he or she must make arrangements with the stenographer and bear all costs. The original stenographic record shall be filed with the Commission.

### **3.23 Rules of Evidence; Standard of Proof (1016)**

- A. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in administrative proceedings shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under strict rules of evidence may be admitted, if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and generally admissible in administrative proceedings.
- B. The Commission shall give effect to the rules of privilege recognized by law. Objections to the introduction of evidence may be made and shall be noted on

the record and the Commission may permit offers of proof to be made. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

- C. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy to the original.
- D. Notice may be taken of judicially cognizable facts. The civil standard of proof, preponderance of the evidence, shall apply.

### **3.24 Issuance of Decision (1017)**

- A. At the conclusion of all evidentiary hearings concerning the alleged violation, the Commission shall immediately begin deliberations on the evidence in Executive Session and proceed to determine whether there has been a knowing and willful violation of the Code of Ethics.
- B. Legal Counsel to the Commission may not participate in the deliberations of the Commission. Counsel shall respond to questions of law posed by Commission members.
- C. In order for the Commission to issue a decision that there has been a knowing and willful violation of the Code of Ethics, it shall be necessary that a majority of members who have attended all hearings, but in no case fewer than three (3) members of the Commission, shall vote in the affirmative to so find.
- D. The written decision shall contain findings of fact and conclusions of law, and shall be reviewed by all members participating in the deliberations. The decision is rendered on the date on which the presiding officer affixes his signature.

### **3.25 Quorum Requirement (1018)**

For any action of the Commission to be taken by the Commission, there shall be a quorum of five (5) members present. For every two members who recuse themselves from participation in a particular hearing, the number required for quorum shall be reduced by one (1).

### **3.26 Continuance for Commissioner Unavailability (1019)**

If the quorum requirements set forth in § 3.24 of this Part are not satisfied at any scheduled proceeding of the Commission, said proceeding shall automatically be continued to the next available hearing date when a sufficient number of Commission members will be present.

### **3.27 Enforcement (1020)**

- A. The Commission, upon a finding that there has been such a violation of the Code of Ethics, shall issue an order that may:
1. require such violator to cease and desist such violation of the provisions of the Code of Ethics; and/or
  2. require such violator to file any report, statement, or other information as required by the Code of Ethics; and/or
  3. require such violator to pay a civil penalty of not more than twenty-five thousand dollars (\$25,000.00) for each such violation of the Code of Ethics and the pecuniary value of any unjust enrichment realized by the violator as the result of his or her violation of the Code of Ethics; and/or
  4. remove such violator from office who is not subject to impeachment, provided that such removal may only occur upon the affirmative vote of two-thirds (2/3) of those members of the Commission participating in the issuance of the decision and order, and further, that such removal shall be conditioned upon a finding by the Commission that the conduct of the violator was a knowing, willful, wanton and reckless violation of the prohibited activities provisions of the Code of Ethics;
  5. refer the entire record of its proceedings to the Attorney General, or any appropriate law enforcement agency. Such referral shall not affect any continuing jurisdiction of the Commission over the matter.

### **3.28 Request for New Hearing or Modification of Decision (1021)**

- A. A request for a new hearing or modification of a decision of the Commission may only be made by the Executive Director or designee or the Respondent and/or counsel within fourteen (14) days of the date on which the decision is mailed.
- B. Such request shall be in writing and shall state the reasons for the requested new hearing or modification of the decision. Any such request shall be handled as a priority matter by the Commission. No oral arguments shall be heard unless requested by the Commission.
- C. In order for the Commission to order a new hearing or modification of the decision, it shall be necessary that a majority of the members who attended all hearings, but in no case fewer than three (3) of said members, shall so vote.
- D. The Respondent, and Complainant, if any, shall be notified of the Commission's action regarding the request for a new hearing or modification of the decision.



- E. If a new hearing is granted, the Respondent, and Complainant, if any, shall be notified of the new hearing date. If the request is denied, appeal may be taken pursuant to R.I. Gen. Laws § 42-35-15.

### **3.29 Judicial Review (1022)**

Any final decision of the Commission may be subject to judicial review pursuant to R.I. Gen. Laws § 42-35-15.

### **3.30 Procedure for Complaints Relating to Financial Disclosure (1023)**

- A. Complaints which solely relate to alleged violations of the Code of Ethics regarding either delinquent or deficient financial disclosure statements, shall be processed pursuant to the procedures set forth in this Regulation, unless otherwise determined by the Commission.
  - 1. The Commission shall adopt, by a majority vote, a schedule of fines and penalties to which a Respondent shall be subject if he or she consents to the entry of a finding of a violation for failure to file a financial disclosure statement which complies with the requirements of the Code of Ethics, in violation thereof. Such schedule shall not apply to any adjudicative hearing as described in § 3.30(A)(5) of this Part.
  - 2. Whenever records of the Commission reveal that a person required to file a financial disclosure statement has not complied with the requirements of the Code of Ethics, the Executive Director or designee may file a Complaint against said person, accompanied by an affidavit specifying the basis upon which the Respondent is required to file such statement, and setting forth in detail any non-compliance.
  - 3. Upon the filing of any Complaint described above in § 3.30(A)(2) of this Part, a copy of the Complaint and copies of all documents supporting such Complaint shall be mailed to the Respondent by certified mail, along with a copy of the Code of Ethics, Commission Regulations, waiver of right to appear, stipulation and agreement, and the schedule of fines and penalties adopted pursuant to this Regulation.
  - 4. If the Respondent agrees to the waiver of his or her right to appear and pays the appropriate fine as determined by the above-described schedule, and properly files any delinquent or deficient financial disclosure statement, and stipulation and agreement, no hearing on the matter will be required.
  - 5. If the Respondent contests the Complaint described above in § 3.30(A)(2) of this Part, the Commission shall conduct a proceeding regarding probable cause, pursuant to § 3.11 of this Part, and, should a Finding of

Probable Cause issue, the Commission shall conduct a hearing thereupon, pursuant to § 3.22 of this Part.