

Notice of Ethics Workshop

(Advance Notice of Proposed Rulemaking – R.I.G.L. § 42-35-2.5)

The Rhode Island Ethics Commission is holding a Public Workshop to explore possible amendments to its procedural regulations to help make the Commission’s decisions to dismiss a Complaint more transparent to the public and fairer to those accused of violating the Code of Ethics. To help inform its decision-making, the Ethics Commission is soliciting both written and oral comment on two questions:

1. Should the Ethics Commission issue a publicly-available, written decision any time it dismisses a complaint at the Probable Cause Hearing, providing the Commission’s rationale and basis for the dismissal?
2. Should the Ethics Commission continue to make public the Prosecutor’s Investigative Report after the Probable Cause Hearing, including in cases where the complaint is dismissed because there is not enough evidence to prove a violation of the Code of Ethics?

Background: One of the roles of the Ethics Commission is to hold hearings to adjudicate complaints of alleged violations of the Code of Ethics. The Commission has adopted several procedural regulations to establish a complaint process that is both open to the public and fair to someone accused of an ethics violation.

A properly filed ethics complaint is a public document. The adjudicative hearing to determine whether a public official or employee has violated the Code of Ethics (“the adjudication”) is similarly open to the public. After the complaint is filed, but prior to the public adjudication, the Ethics Commission holds a Probable Cause Hearing in closed session to determine whether there is sufficient evidence of a violation to go forward. At this Probable Cause Hearing, a Prosecutor presents an “Investigative Report” that details the evidence gathered during the investigation and presents the Prosecutor’s theory of the case. The Ethics Commission considers the Prosecutor’s Investigative Report, and hears from the accused, before making an independent determination to either proceed to an adjudication or to dismiss the complaint.

When a complaint is dismissed by the Ethics Commission at the Probable Cause Hearing, there is currently no requirement that the Commission issue a written decision, available to the public, explaining the basis for the dismissal. While in recent years the Commission has released a copy of the Prosecutor’s Investigative Report, that report is not authored by the Commission itself and does not explain the basis for the Commission’s decision to dismiss the complaint. Rather, it only reflects the Prosecutor’s view of the evidence and arguments. Nevertheless, as the only publicly available document relative to the Probable Cause Hearing, the Investigative Report often shapes the public’s view of the merits of the complaint. Some subjects of ethics complaints believe that releasing the Investigative Report is misleading to the public and prejudicial to the accused, and that the investigative facts discussed in the report should remain confidential until there is a public adjudication.

WRITTEN COMMENT: You may provide the Ethics Commission with written comment as to the above questions via email (preferred) or regular mail any time before January 30, 2018:

Via Email: ethics.comment@ethics.ri.gov

Mailing Address: Attn: Ethics Workshop
Rhode Island Ethics Commission
40 Fountain Street, 8th Floor
Providence, RI 02903

PUBLIC WORKSHOP: The Ethics Commission will hold a public workshop to discuss these issues, and to review any written comments submitted, at the above address on **February 6, 2018 at 10:00 a.m.** An official agenda will be posted prior to the workshop. You are also welcome to attend and, if you wish, orally address the Commission with your comments or ideas. If you plan to attend the workshop, it would be helpful if you would RSVP at the above email address so that we can ensure necessary accommodations for everyone. You may also call us at (401) 222-3790.