



Commission on Ethics Complaint Procedures:

Reference

- ❖ Code of ethics: Art. XIII, sec. 2-441 through 2-448
- ❖ Commission on Ethics: Art. V, Division 8, sec. 2-254 through 2-260.10
- ❖ State Statutes:
 - Whistleblower – s. 112.3188, Florida Statutes
 - Sunshine law – s. 286.011, Florida Statutes
 - Complaint procedures – F.S. 112.324, Florida Statutes
- ❖ Commission on Ethics Rules of Procedure:
 - Rules 3.1 – 10.7

Legal sufficiency

- 1- Upon receipt of a complaint, the executive director makes a legal sufficiency finding. **Sec. 2-260(a), Rule 4.1(b), 4.2(a)**
- 2- “Upon a finding of legal sufficiency by the executive director, the commission on ethics shall initiate a preliminary investigation” **Sec. 2-260(b), Rule 4.4(a)**
- 3- The executive director prepares a memorandum regarding legal sufficiency of all complaints. If not legally sufficient, a recommendation to dismiss “must” be presented to the COE. **Rule 4.2(d)**

Public Records Exemption

Sec. 2-260(f), Rule 3.3

“All records held by the commission on ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in Florida Statutes s. 112.3188(2), Florida Statutes. Once a preliminary investigation is complete and a probable cause determination is made, all other proceedings conducted pursuant to this subsection shall be public meetings...and all other documents made or received by the commission on ethics shall be public records...”

Sec. 112.324, Florida Statutes

(2)(a)“The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county... or by any municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements...are confidential and exempt from the provisions of s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the state constitution.”

Sec. 112.324, Florida Statutes

(2)(b) “Any proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from the provisions of s. 286.011, s. 24(b), Art. I of the state constitution, and s. 120.525.”

Also, see **Rule 5.4**

Sec. 112.324, Florida Statutes

(2)(c) “The exemptions in paragraphs (a) and (b) apply until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records and proceedings be made public, or until the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory power determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.”

COE Rules of Procedure, Rule 4.2(e)

“Pursuant to Section 112.324, Florida Statutes, the Commission may meet in executive session at any time prior to a finding of probable cause 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...”

Assignment of advocate

Rule 4.3

“Upon a finding of legal sufficiency the Executive Director will assign an Advocate with the responsibility to oversee the investigation and to present cases to the Commission on Ethics.”

Probable Cause Determination

Rule 5.1

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 a public hearing (final hearing) be held, the recommendation shall include a statement of what charges shall be at issue at the hearing

Probable Cause Determination

Rule 5.2 Recommendation provided to the Respondent (10 days), ability to file response to the advocate's recommendation

Rule 5.3 Notice of probable cause hearing and respondent's right to attend

Rule 5.4 Probable cause hearing not subject to s. 286.11, Florida Statutes (sunshine law)

Probable Cause Hearing

Rule 5.5 Scope of Probable Cause Determination

“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 and recommendation of the Advocate, before the probable cause determination.”

Probable Cause Determination

Rule 5.6 Probable Cause Determination

“At a hearing 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...occurred; may order a public hearing in the matter; or may enter into such stipulations and settlements as it finds to be just...In making the determination, the Commission may consider:

1. The sufficiency of the evidence...as contained in the complaint and the Advocate’s probable cause determination;
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...

See also, **sec. 2-260(c)**

Finding of Probable Cause

Rule 5.8

Upon written request within 30 days, Respondent may request a final hearing. The Commission may set a final hearing on its own motion.

Rule 5.9

Upon request by Respondent or motion by the COE the final hearing must be held within 90 days of the probable cause determination unless extended for good cause.

See, sec. 2-260(c)

Pre-hearing matters Sec. 2-260(g)-(l)

- (g) Subpoenas- investigative & to compel attendance
- (h) Subpoenas- for discovery/depositions, documents (upon written request of advocate or respondent)
- (i) Subpoenas- for public hearing (advocate and respondent list of witnesses)
- (j) Pre hearing motions -The chair, or member of the commission designated by the chair, conducts proceedings and issues orders as are deemed necessary to dispose of issues raised by motions – no hearing is required for motions.)
- (k) Pre hearing conferences –The chair, or member designated by the chair, may conduct prehearing conferences to clarify the issues, dispose of motions, discuss settlement, examine exhibits and documents, exchanging witness lists, and resolving other matters

See, also **Rules of Procedure 6.6-6.16**

Motion to dismiss filed by Advocate

“After probable cause is found and a public hearing is ordered...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...The motion shall be heard by the commission on ethics...”

Sec. 2-260.1(f), Rule of Procedure 6.13

Public Hearings

Rule 6.1

Public Hearings may be conducted by the full commission or by a three member panel of commissioners designated by the chair or his or her designee.

Rule 6.2

“The person accused of a violation of an ordinance under the Commission’s jurisdiction shall be the *only* party...”

Public Hearing Procedures

Sec. 2-260.1, also see Rules 7.1-7.3

- (a) Presentation of the case. The advocate shall present his or her case first. Respondent may then present his or her case. Rebuttal evidence may be permitted in the discretion of the commission on ethics.
- (b) Opening and closing statements. Opening and closing statements may be presented by the advocate and the respondent.
- (c) **Sec. 2-260.1(3)** 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

Public Hearing Procedures

Sec. 2-260.1(c)(4), also see Rule 7.3(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 itself to support a finding. The rules of privilege shall be effective to the same extent that they are...recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The commission on ethics 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 a person, however, for any reason permissible...under the Florida Rules of Civil Procedure.”

Dismissal

At any time the commission **may**:

- a) Dismiss a complaint should it determine that the public interest would not be served by proceeding further;
- b) Dismiss a complaint and issue a “letter of instruction to the respondent” when the violation was inadvertent, unintentional or insubstantial.

Sec. 2-260.3

Public order imposing penalty

Upon completion of the hearing, the COE “shall make a finding and public report as to whether any provision within its jurisdiction has been violated.” A violation must be based on “competent substantial evidence in the record.” Final order must be rendered within 12 months unless good cause shown. Additionally, the public report contains:

- 1-The appropriate penalty
- 2-Determination as to whether violation was intentional or unintentional

Sec. 2-260.1(g), Rules 7.5, 8.1-8.2

Settlements

Rule 6.16 a): The COE may enter into a settlement agreement with the Respondent “as it finds to be just and in the best interest of the citizens of Palm Beach County

Rule 6.16 b): The Advocate may enter into settlement negotiations but must present all settlement proposals to the COE for consideration and approval

Rule 10.5: The Advocate may enter into settlement negotiations for restitution prior to a restitution hearing. All proposals must be presented to the COE for consideration and approval.

Appeals

Sec. 2-260.10

- (a) Any final order may be appealed to the circuit court. COE shall provide the index and record according to Florida Rules of Appellate Procedure. COE may charge Respondent for transmission of the record (fee may be waived if Respondent is indigent)
- (b) Costs or fees may not be assessed against the COE
- (c) A final order may not be suspended or stayed unless by order of the COE or appellate court.

Also, see Rules 9.1, 9.2 & 9.3