

Albany County Ethics Commission Regulations Governing Complaints and Investigations

Statutory Authorization:

The Albany County Ethics Commission (“Commission”) is authorized by Section 18.5(3)(a) and (e) of Local Law No. 8 for 2011 (“Ethics Law”) to prescribe and promulgate rules and regulations governing its duty to review sworn complaints and conduct investigations alleging violations of the Ethics Law.

The following regulations implement Section 20 of the Ethics Law and establish the Ethics Commission’s procedure for complaints and investigations.

Regulations:

1. The Commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a sworn complaint, in writing, that states the name of a person alleged to have committed a violation of the Ethics Law and the specific factual allegations or details of the violation. The Commission’s complaint form is available on the Albany County Ethics Commission website.
2. If the Commission determines the complaint, which is received and described in paragraph 1 above, does not allege facts sufficient to constitute a violation, the Commission shall dismiss the complaint, notify the complainant and respondent of such dismissal, and provide a copy of the complaint to the respondent. The entire matter shall be stricken from the public record unless the respondent, by written authorization to the Commission, waives the confidentiality of the existence of the complaint and authorizes the release of the complaint and records related thereto.
3. After receiving such a complaint as described in paragraph 1 above, the Commission may, upon a majority vote of the total membership of the Commission, undertake action in the Preliminary Review Phase to determine whether a substantial basis exists to conclude that a violation of the Ethics Law has occurred.
4. If on its own initiative the Commission has reason to believe a violation of the Ethics Law has occurred, the Commission may prepare a complaint and, upon a majority vote of the total membership of the Commission, undertake

action in the Preliminary Review Phase to determine whether a substantial basis exists to conclude that a violation of the Ethics Law has occurred.

5. If the Commission votes to undertake the Preliminary Review Phase as provided in paragraphs (3) or (4) above, within 15 days of such vote, the Commission shall notify the respondent and provide a copy of the complaint, a general statement of the applicable law with respect to the complaint or alleged violation, a copy of the Regulations Governing Complaints and Investigations, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel.
6. During the Preliminary Review Phase, the Commission may seek, solicit, or subpoena any records or other additional information, administer oaths, conduct voluntary interviews, and compel testimony as necessary to determine whether a substantial basis exists to conclude that a violation of the Ethics Law has occurred.
7. At any point during the Preliminary Review Phase, the Commission and respondent may negotiate and agree to a settlement in conformance with the Ethics Law without further proceedings.
8. After the Preliminary Review Phase, the Commission shall review and adopt a written document containing its preliminary findings of fact, conclusions of law, and a determination of whether a substantial basis exists to conclude a violation of the Ethics Law has occurred (“Substantial Basis Determination”).
9. The Preliminary Review Phase begins on the date the Commission votes to undertake the Preliminary Review Phase and ends on the date the Commission adopts the Substantial Basis Determination.
10. All information, communications, investigatory actions, and records, including complaints, shall remain confidential during the Preliminary Review Phase.
11. The Substantial Basis Determination, in whole or in part, may be publicly available in accordance with Article 6 of the Public Officers Law.
12. If the Commission determines that a substantial basis does not exist as set forth in the Substantial Basis Determination, the Commission shall dismiss

the complaint as described in paragraphs (3) and (4) above and so notify the respondent and complainant with a copy of the Substantial Basis Determination.

- 13.If the Commission determines that a substantial basis exists to conclude that a violation has occurred as set forth in the Substantial Basis Determination, the Commission may commence the Investigation Phase. Accordingly, the Substantial Basis Determination may contain an order setting forth a date for an administrative hearing before an administrative hearing officer. Such administrative hearing shall not be open to the public except as provided in Section 27 of the Ethics Law. At this point in the Investigation Phase, the Commission may waive the hearing if the respondent takes immediate action to remedy or correct the alleged violation, including a settlement agreement in conformance with the Ethics Law.
- 14.If an administrative hearing is going to be held in the Investigative Phase, both the Commission and respondent shall have the right to counsel, give sworn testimony, to produce witnesses, to present documentary evidence and to examine opposing witnesses and evidence. All evidence considered by the Commission will be made available to the respondent and made part of the record in the proceedings.
- 15.No later than thirty days after the conclusion of the administrative hearing, the administrative hearing officer shall issue to the Commission an Interim Decision and Hearing Report that includes the administrative hearing officer's findings of fact, conclusions of law, and recommended civil penalty or other action as provided in the Ethics Law.
- 16.No later than thirty days after the issuance of the Interim Decision and Hearing Report, the Commission, by majority vote, shall issue a Final Decision and Recommendation setting forth its findings of fact and conclusions of law, and may include an order requiring disciplinary action, civil penalty, damages, civil forfeiture and/or injunctive relief as provided in the Ethics Law. The Final Decision and Recommendation shall refer to and include the Interim Decision and Hearing Report.
- 17.In accordance with Section 20 of the Ethics Law, any person filing a sworn complaint with the Commission shall be notified in writing of the disposition of such complaint.

18. At any time during these foregoing proceedings, the Commission may refer the information obtained to the appropriate law enforcement agency.

19. The Commission shall not act on a complaint filed more than four years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation.

Approved:

Shari Calnero, Chair
Bernard J. Malone, Jr.
Michael Rest
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Dated: September 12, 2017