

# CHAPTER 52

## State Ethics Commission

(Statutory Authority: 1976 Code §§ 2-7-10 et seq. and 8-13-100 et seq.)

### ARTICLE 1 ADMINISTRATION

#### **52-100. State Ethics Commission.**

- A. The State Ethics Commission offices are located in Columbia, South Carolina.
- B. The Commission transacts business weekdays 8:30 a.m. to 5:00 p.m. excluding State Holidays.
- C. The State Ethics Commission remains in continuous session and meets regularly to transact business that comes before it.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### ARTICLE 2 GENERAL

#### **52-201. Purpose and Scope.**

A. The purpose of these regulations is to set forth the procedures under which the State Ethics Commission administers the Ethics, Government Accountability, and Campaign Reform Act of 1991 (hereinafter the Act). These regulations shall be liberally construed to accomplish the intent and purpose of the Act and secure the just, speedy, and efficient determination of any action brought before the Commission.

B. These regulations repeal and replace Chapter 52 of the South Carolina Code of Regulations, 1976.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

#### **52-202. Severability.**

A. If any provision, or the application of any provision, of this Chapter is determined to be invalid, null, or void, such determination shall not affect or invalidate any other provision, or the application of any other provision, of this Chapter, and to this end, the provisions or the application of any of the provisions of this Chapter shall be deemed severable.

B. [Reserved]

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

#### **52-203. Definitions.**

A. Masculine words, whenever used in this Chapter, shall include the feminine and neuter, and the singular includes the plural, unless otherwise specified.

B. The following words or terms, when used in this Chapter, shall have the following meanings unless the context clearly requires a different meaning or a different definition is adopted for a particular provision.

(1) "Act" means The Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended.

(2) “Approving Official” means the Governor, statewide constitutional officer, President Pro Tempore of the Senate, or Speaker of the House as provided in § 2-17-90(A)(6).

(3) “Calendar Year” means January 1 through December 31.

(4) “Commission” means the State Ethics Commission.

(5) “Complainant” means any person, including the Commission, who files a formal complaint alleging a violation of the Act.

(6) “Facts Sufficient” means a preliminary determination based on the face of the complaint of jurisdiction over the Respondent and whether the facts plead, if true, would constitute a violation of the Act.

(7) “Final disposition” means an order, subject to appeal, and consent orders.

(8) “Formal Advisory Opinion” means a written binding opinion of the Commission.

(9) “Groundless complaint” means a complaint dismissed due to lack of facts sufficient or upon a majority vote of the Commission or a Commission panel.

(10) “Informal Advisory Opinion” means a non-binding staff opinion issued under these regulations.

(11) “Paper” means any form, pleading, notice, order or other written document.

(12) “Probable Cause” means a determination that it is more likely than not that a violation of the Act will be found.

(13) “Request for Remediation” means a request to remedy the infraction charged in the notice of hearing.

(14) “Respondent” means a person charged in a complaint with a violation of the Act.

(15) “State or Local Economic Development” means a project approved as such pursuant to S.C. Code § 2-17-90 (A)(6) or (E).

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52–204. Official Forms and Documents.**

A. The Commission prepares and approves all forms required under the Act.

B. A person shall use a Commission form and shall not substitute another document for a form unless permitted by these Regulations or approved by the Commission. Photocopying or reproduction of a form on paper the same size and color is permitted, provided content is not altered.

C. All filings required under the Act shall be made by filing the original form or paper with the Commission.

D. Each information blank on a form shall be completed. Failure to provide all requested information on a form shall result in the filing being refused. The Commission may return an incomplete form to the sender with an explanation of its deficiency.

E. The following forms are available from the Commission. The Commission’s forms are adopted by the Commission for use in complying with the registration and disclosure requirements of the Act.

(1) Campaign Disclosure Form;

(2) Candidate’s Roster;

(3) Committee Statement Of Organization Form;

(4) Complaint Form;

(5) Consultant Disclosure Form;

(6) Contract Disclosure Form;

(7) Lobbyist Disclosure Form;

(8) Lobbyist Registration Form

(9) Lobbyist’s Principal Registration Form;

(10) Lobbyist’s Principal Disclosure Form;

(11) Rating Entity Registration Form;

- (12) State Agency Lobbyist Registration Form;
- (13) Statement of Economic Interests Form; and
- (14) Successful Candidate's Roster.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-205. Date of Filing with the Commission Defined.**

A. The date of filing a form or paper with the Commission by first class mail, certified mail, hand delivery, or private courier is the date of receipt in the Commission's offices as indicated by the date stamped on the form or paper by an official Commission stamp; provided, however, a document accompanied by an affidavit of service shall receive the filing date set forth by affidavit.

B. To meet a filing deadline, a paper transmitted by facsimile is filed the date of receipt of the facsimile in the Commission's offices if the original signed paper is filed within ten days of the original filing deadline. The Commission shall consider a facsimile not to have been received if the original paper is not filed within ten days.

C. A form which is returned to the sender as incomplete is deemed filed on the initial date of receipt if the completed form is refiled with the Commission within ten days. A form which has been returned for completion and which is not refiled with the Commission within ten days shall be deemed not to have been filed.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-206. Method of Service.**

A. The Commission serves hearing notices, Commission decisions and orders, and penalty assessment letters for late filing by certified mail, return receipt requested. Service is complete upon receipt as shown by the return receipt.

B. All other papers required to be served prior or subsequent to a hearing notice may be served by the Commission or the parties by depositing a copy in the United States mail, first class postage affixed thereto, and addressed to the recipient's last known address.

(1) Service by United States Postal Service, first class mail, is complete upon mailing.

(2) When service is by first class mail, 5 days shall be added to the prescribed period.

C. Whenever service cannot otherwise be made, the Commission may effect service by publication.

D. The person serving the paper shall certify the manner and date of service by attaching a certificate of service to or on the paper.

E. When a party is represented by an attorney, service shall be made on the attorney. When a party is pro se, service shall be made on the party.

F. In a contested case proceeding, the original paper shall be filed with the Commission and a copy served on the parties.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-207. Effect of Signature.**

A. All papers, including Commission forms, shall be signed by the filer, the party or by the party's attorney, and must show the address and telephone number of the filer, party or attorney.

B. The signature constitutes a certificate that the signer has read the document, knows the contents, that the contents are true as stated, except as to matters based on information and belief, and to those matters, the signer believes them to be true.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-208. Computation of Time.**

A. In computing any period of time prescribed or allowed by these regulations or statutes, the day of the act, event or default after which the period of time begins to run is not included. The last day is included unless it is a Saturday, Sunday or a State or Federal Holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday or State or Federal holiday.

## B. Extension of Time.

(1) In a contested case proceeding, when by these regulations, statute, notice or order of the Commission, an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for all parties for an additional period not exceeding the original time.

(2) In matters other than contested case proceedings, the Executive Director or his designee is authorized to extend the period of time as permitted by these regulations or statutes.

(3) In all other cases, the chair of the Commission panel or chair of the Commission may extend the period of time as permitted by these regulations, statutes or within his discretion.

C. The time for filing a request for Commission review or an appeal to Circuit Court is jurisdictional and may not be extended by consent or order.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-209. Motions and Other Papers.**

A. Any application to the Commission for an order shall be made by motion and state with particularity the grounds and relief or order sought.

B. The requirement of writing is fulfilled if the motion is stated in a written notice of motion. The rules applicable to captions and other matters of form provided by the S.C. Rules of Civil Procedure apply.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-210. Notice of Representation.**

A. In a contested case, the Complainant and the Commission is represented by the Commission's attorney in addition to counsel for the Complainant, if any.

B. Other parties may be represented as follows:

(1) Individuals may appear on their own behalf;

(2) A member of a partnership may represent the partnership;

(3) An officer of a corporation, trust, committee or association may represent the corporation, trust, committee or association;

(4) An officer or employee of any governmental unit, agency, or authority may represent, appear and testify for that unit, agency, or authority;

(5) An attorney may represent any party.

C. Each attorney or other representative of a person or entity shall file a notice of appearance. The notice must indicate the person or entity on whose behalf the appearance is made. An individual acting in a representative capacity may be required to demonstrate authority to act in that capacity.

D. An attorney or other representative of a person or entity must file a written notice of intent before withdrawing from participation in the proceeding.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-211. Subpoenas.**

A. A party may obtain a subpoena from the Commission signed but otherwise in blank.

B. The party shall serve a subpoena and file proof of service when necessary.

C. A person to whom a subpoena has been issued may move before a Commission panel for an order quashing or modifying the subpoena.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-212. Amendments to Forms.**

A. A form required to be filed under the Act may be amended at any time to report new and previously undisclosed information, information which by inadvertence and/or reasonable neglect was not previously reported, or supplemental information which at the time of the original filing was required to be disclosed but unavailable.

B. The filing of an amended form shall not be construed as an admission or expunge the filer from sanction for improper or late filing; provided, however, the fact that the amendment was filed may be taken into consideration in a proceeding to enforce compliance with the Act.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **ARTICLE 3 ADVISORY OPINIONS**

#### **52-301. Advisory Opinions, Generally.**

A. An informal or formal advisory opinion may be requested by any person to whom the Act could reasonably be expected to apply. The request must be in writing and relate prospectively to a real or hypothetical set of facts or circumstances.

B. The Commission will not issue an advisory opinion to a third party about another person without authorization from the affected person.

C. It shall be the general practice of the Commission to consider advisory opinion requests having prospective application only. An opinion request requiring consideration of past conduct and/or events may be referred to the appropriate supervisory office and an investigation of any potential violation may be conducted.

D. A person requesting an advisory opinion may request confidentiality in which case his name and governmental entity will not be disclosed in the advisory opinion. Upon a majority vote of the Commission members present, a confidential advisory opinion may be discussed in executive session.

E. A request for opinion shall include the signature, address, and telephone number of the requestor and shall set forth a complete set of facts and circumstances giving rise to the request. Failure to disclose relevant information may void the opinion.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

#### **52-302. Informal Advisory Opinions.**

A. Upon receipt of a request for opinion, the Commission will provide an informal advisory opinion, if appropriate. When a person receives an informal advisory opinion and believes the facts or law are contrary to the informal opinion, a formal opinion may be requested by writing the Commission and providing additional information and citation to law the requestor believes controlling, if any.

B. The full Commission will take the request for formal advisory opinion under consideration and issue a formal advisory opinion.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

#### **52-303. Formal Advisory Opinions.**

A. A formal advisory opinion shall be considered by the Commission at a public meeting. The person whose conduct is the subject of the request may appear at the meeting.

B. The Commission's written opinion will be provided to the requestor and made public unless the affected parties request confidentiality.

C. Formal advisory opinions are the final opinion of the Commission unless new and material facts are submitted which, in the opinion of staff and upon a majority vote of the Commission, warrant reconsideration.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **ARTICLE 4 LOBBYISTS, LOBBYIST'S PRINCIPALS AND RATING ENTITIES**

#### **52-401. General.**

A. This Article governs the registration and disclosure requirements of lobbyists, lobbyist's principals and rating or ranking entities.

B. Only the original of a Commission form should be submitted for filing.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52–402. Lobbyist’s and Lobbyist’s Principal Registration, Termination, Supplemental Registration, Record Keeping, and Reregistration Requirements.**

A. Lobbyists and lobbyist’s principals shall register with the Commission.

(1) Registration is made by fully completing the appropriate form and filing the original along with the applicable filing fee with the Commission.

(2) If a partnership, committee, association, corporation, labor organization, or any other organization or group of persons registers as a lobbyist or lobbyist’s principal, then it must identify each person who will act as a lobbyist on its behalf during the covered period.

(3) Each lobbyist, except full-time State employees whose activities are limited to efforts on behalf of that particular State agency and the State, shall pay the statutory filing fee at the time of registration.

(4) A registration form which is not fully completed or is not accompanied by a filing fee for each lobbyist and each lobbyist’s principal shall not be accepted by the Commission for filing.

B. Each lobbyist and lobbyist’s principal who intends to cease lobbying shall notify the Commission in writing of the intent to terminate lobbying within ten days after ceasing lobbying.

(1) A notice of intent to terminate is made by filing a letter with the Commission. The notice is effective upon filing with the Commission unless a later date is indicated.

(2) The lobbyist and lobbyist’s principal shall report lobbying activity and expenditures for any reporting period during which the lobbyist or lobbyist’s principal was registered on the next regularly scheduled report.

(3) Reregistration within the same calendar year may be made by filing a new original registration statement and payment of a filing fee.

C. A lobbyist and/or lobbyist’s principal shall file an amended registration statement indicating any substantial change in the information contained in the prior registration statement immediately but no later than fifteen days from the date of the change.

(1) To report a substantial change to a previously filed registration statement, file a Lobbyist’s Registration Statement or Lobbyist’s Principal Registration Statement with the word “AMENDED” boldly appearing on the face of the statement.

(2) An additional filing fee is not required to file an amended registration statement.

(3) The lobbyist and lobbyist’s principal shall be bound to the matters contained in its registration form until an amended form is filed with the Commission. A lobbyist or lobbyist’s principal’s activity outside the matters previously registered or conducted by persons who are not disclosed on the registration statement shall be deemed to constitute lobbying activity without proper registration.

D. Each lobbyist and lobbyist’s principal shall maintain for a period of not less than four years records of their activity and provide the records upon written request to the Commission without charge.

E. Registration or reregistration by a lobbyist or lobbyist’s principal will not be accepted until the reporting requirements provided under the Act and these regulations are met.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52–403. Lobbyists and Lobbyist’s Principal Reporting Requirements.**

A. Each lobbyist and each lobbyist’s principal, except as provided in subparagraph (C) below, shall no later than April tenth and October tenth of each year, file a report with the Commission covering the lobbyist’s and lobbyist’s principal’s expenditures arising during the filing period.

B. The filing periods are from January first to March thirty-first for the April tenth report and from April first to September thirtieth for the October tenth report. Any lobbying activity which is not reported on the October tenth report, which is not reported on a statement of termination, and which arises after September thirtieth must be reported on the December thirty-first report and filed no later than the last day of the year in which the activity or expenditure occurred.

C. Economic Development. When an approving official determines that the confidentiality of a state or local economic development project would be compromised by disclosure under this regulation

and the approving official indicates by prior written approval that disclosure of the information would jeopardize the negotiations in an economic development project, the following action must be taken:

(1) The approving official must state in writing that disclosure of information would jeopardize negotiations in an economic development project. The prior written approval must state the approving official authorizes non-disclosure, generally list the economic development project, provide the public official's or public employee's name and governmental entity, and bear the date of the writing and signature of the approving official. The approving official's prior written approval is confidential and must be boldly marked as such.

(2) If the approving official has given his approval, the lobbyist's principal must file a confidential disclosure form marked boldly "Confidential Economic Development" and report the amount of the expense(s) associated with the recipient and information about the expenditure at the time he files his April tenth, October tenth or December thirty-first reports. The confidential disclosure form shall be filed in addition to the disclosure reports required by these regulations and the Act.

(3) A public official or public employee who is required to file a statement of economic interests and who accepts from a lobbyist's principal in conjunction with an economic development project lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal must report this information as required by the Act and Regulation 52-603.

(4) Confidential forms are not part of the public record until the approving official determines that public disclosure is appropriate and notifies the Commission in writing that public disclosure is appropriate.

D. State Agency or Department's Filing of Lobbyist's Principal Disclosure Forms. If the State is a lobbyist's principal, the State Agency or department shall file no later than April first, October first, and December thirty-first of each year a Lobbyist Principal Disclosure Form with the Commission covering that agency's lobbying during that filing period.

(1) Failure to file the required registration form is subject to sanction in the same method, manner and amount as provided for lobbyists and lobbyist's principals.

(2) [Reserved]

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-404. Registration of Rating or Ranking Entities.**

A. An entity which ranks or rates the actions, vote, or failure to act or vote of the Governor, the Lieutenant Governor, or a member or committee of the General Assembly as to any action, vote, or failure to act or vote by these public officials and which disseminates its rankings or ratings to the general public must no later than April first of each year file a Rating Entity Registration Form with the Commission.

B. Failure to file the required registration form is subject to sanction in the same method, manner and amount as provided for lobbyists and lobbyist's principals.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-405. Administrative Enforcement of Registration and Reporting of Lobbyists, Lobbyist's Principals and Rating Entities Activities and Expenditures.**

A. In addition to any other penalty provided by law, the Commission shall assess a civil penalty in the amount authorized by the Act if a required form is not filed within ten days after the statutory deadline.

(1) After the statutory deadline and the expiration of ten days, the Commission will notify the filer by certified mail that the required statement has not been filed and that a statutory fine has been assessed.

(2) If the required report is not received within ten days of receipt of the certified mail notice, the fine shall increase, in an amount provided by statute, for each additional calendar day in which the required statement is not filed.

B. After the expiration of the ten day period, the Commission may enroll the fine in the State's Set off Debt Collection System or take such other action to enforce the administrative action process including reducing the penalty to judgment.

C. A person or entity fined under this regulation may request review by the Commission by filing the form and requesting Commission review in writing.

D. Payment of the fine without filing the required form does not in any way excuse or exempt any person from the filing requirements of the Act. Failure to file the required report may result in a complaint action being initiated.

E. Neither a lobbyist or lobbyist's principal may register or reregister until the reporting requirements are complied with in full; provided, however, a lobbyist or a lobbyist's principal may register or reregister as provided in R. 52-405C.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **ARTICLE 5**

### **CAMPAIGN PRACTICES AND REPORTS**

#### **52-501. General.**

A. The Article governs the campaign practices and reporting requirements of all committees and all candidates for public office in this State except for members of or candidates for the office of State Senator or State Representative; members of or candidates for Federal office; members of or candidates for the Judiciary; however, probate judges are subject to these regulations.

B. The Commission's Committee Statement of Organization and Campaign Disclosure Forms are the forms adopted by the Commission for use in complying with the registration and disclosure requirements of the Act.

C. Committee Statement of Organization and Campaign Disclosure Forms must be typed or printed in ink, fully completed and signed. Campaign Disclosure Forms may be accompanied by computer printouts if the format and style of the printout has received prior approval of the Executive Director.

D. All candidates or committees must maintain and preserve all records substantiating the information required by this Article and the Act for four years. These records shall be made available to the Commission upon request without charge.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

#### **52-502. Responsibility of Persons Accepting Declarations of Candidacy or Petitions for Nomination.**

A. This regulation applies to candidates to publicly elected offices and does not apply to persons appointed or elected on advice and consent of either or both houses of the General Assembly and/or the Governor.

B. A Statement of Economic Interests shall be filed as follows:

(1) A public official who has filed a Statement of Economic Interests in the same calendar year as his declaration for candidacy or petition for nomination shall complete the first page [hereinafter "information page"] of the Commission's Statement of Economic Interests only and file the first page of the Statement with the official with whom the candidate files a declaration of candidacy or petition for nomination.

(2) A person who has not filed a Statement of Economic Interests in the same calendar year as his declaration for candidacy or petition for nomination shall complete the entire Statement of Economic Interests Form for the preceding calendar year and file the entire Statement with the official with whom the candidate files his declaration of candidacy or petition for nomination.

C. No later than five business days after the candidacy books close, the official receiving the declarations of candidacy or petitions for nomination shall file a copy of the Information Page and completed Statements of Economic Interests with the Commission along with the Roster of Candidates.

D. A write-in candidate who is elected to public office shall file a Statement of Economic Interests prior to taking the oath of office or assuming the duties of office and file the Statement with the Commission. The Campaign Disclosure reporting requirements shall attach at that time and all contributions and expenditures shall be reported and continue to be reported as provided herein.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.



### **52-503. Committees Receiving or Spending Funds to Influence Elections Must Register.**

A. A committee must file an initial Statement of Organization and an amended Statement of Organization to record a change in any information previously reported in the initial Statement of Organization.

(1) A Statement may be amended by marking the form "AMENDED" and completing and filing the form.

(2) The amended form must be filed with the Commission no later than ten days from the date of the change(s).

B. Failure to file or file an amended form shall be deemed failure to comply with the registration requirements of the Act and subject to sanction as provided herein.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-504. Candidate's and Committee's Campaign Reports.**

A. Contributions and expenditures to candidates and committees are reported on the Commission's "Campaign Disclosure Form." This form is the official form required to be filed to satisfy the reporting requirements under the Act.

B. Quarterly Reports. After filing an "initial" Campaign Disclosure Form, updated Quarterly Campaign Disclosure Forms must be filed for each calendar quarter both before and after the election.

(1) Calendar quarters are January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

(2) The quarterly reports must be filed no than ten days following the end of the quarter, e.g., April 10, July 10, October 10, and January 10.

(3) For each calendar quarter, complete the Campaign Disclosure Form reporting transactions occurring during the quarter.

C. Statement of Inactivity. The pre-election report and each quarterly report are required even when there have been no contributions or expenditures.

D. Final Report. A candidate or committee must continue to file Campaign Disclosure Forms until the candidate or committee no longer accepts contributions, incurs expenditures, or pays for expenditures incurred.

(1) Committees may dissolve only after no longer accepting contributions, incurring expenditures, or paying for expenditures incurred. If a committee owes or is owed money, the committee may dissolve but must report the status of the debt annually on a Campaign Disclosure Form until all debts are resolved. The method of resolution to eliminate these debts, including contributions accepted and payment for expenditures incurred, must be stated on the report.

(2) A final report may be filed at the time or before a scheduled filing is due. The form must be marked "Final" and include a list of the material assets worth one hundred dollars or more and state their disposition.

(3) A Final Campaign Disclosure report may only be filed when there are no further contributions being solicited or made, there are no outstanding obligations, and the account balance is zero.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-505. Committees Registered with the Federal Election Commission.**

A. Committees registered with the Federal Election Commission may, in lieu of filing the Campaign Disclosure Form, file a copy of the appropriate FEC report.

B. A committee electing this method of reporting shall adhere to the deadlines established by the Act and these regulations for filing a Campaign Disclosure Form.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-506. Administrative Enforcement of Candidate's and Committee's Registration and Reporting Requirements.**

A. In addition to any other penalty provided by law, the Commission shall assess a civil penalty as provided in the Act against any person or committee who fails to file or files late a registration form or disclosure form.

(1) After the statutory deadline and the expiration of five days, the Commission will notify the filer by certified mail that the required form has not been filed and that a statutory fine has been assessed.

(2) If the required report is not received within ten days of receipt of the certified mail notice, the fine shall increase, in an amount provided by statute, for each additional calendar day in which the required statement is not filed.

B. After the expiration of the ten day period, the Commission may enroll the fine in the State's Set off Debt Collection System or take such other action to enforce the administrative action process including initiating a complaint and/or reducing the penalty to judgment.

C. A person or entity fined under this regulation may request Commission review by filing the form and requesting Commission review in writing.

D. Payment of the fine without filing the required report does not in any way excuse or exempt any person or entity from the filing requirements of the Act. Failure to file the required report may result in a complaint action being initiated.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## ARTICLE 6

### STATEMENT OF ECONOMIC INTERESTS AND CONTRACT DISCLOSURE FORMS

#### **52-601. General.**

A. The Commission's Statement of Economic Interests Form and the Contract Disclosure Form are the official forms required to be filed with the Commission in order to comply with the disclosure requirements required under the Act and this Regulation.

B. The original and one copy of the form shall be filed as provided in these regulations and the Act.

C. The Statement of Economic Interests reporting period is the previous calendar year from January 1, through December 31. The first Statement of Economic Interest is required to be filed upon taking the oath of office or being employed with the State or political subdivision. Thereafter, an annual updated Statement is required to be filed with the Commission no later than April 15. The Contract Disclosure Form reporting period is for the fiscal year of July 1, through June 30 of each year and is due on June 30 of each year.

D. A person required to file a Statement who is no longer in office on April 15 of the year following the first filing, is not required to file an updated Statement.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

#### **52-602. Persons Required to File Statements of Economic Interests and Agencies Required to File Contract Disclosure Forms.**

A. The Commission sends each governmental entity an Entity Listing Form annually. The Entity Listing Form solicits information about those persons associated with the governmental entity who are registered with the Commission as required to file a Statement of Economic Interests.

(1) The governmental entity's chief administrative official or employee, by whatever title, shall review the Entity Listing Form and determine its correctness.

(2) Within thirty days, the chief administrative official shall certify the Entity Listing showing official's, member's, or employee's filing status, their names and addresses, any additional persons associated with the governmental entity who are required to file a Statement of Economic Interest, and return the Form to the Commission.

B. When a person required to file a Statement of Economic Interests leaves office or employment, his governmental entity shall notify the Commission in writing within thirty days of the person's name and address and date of separation from government.

C. When a person is employed, contracts with, or is retained by a governmental entity in a position where a Statement of Economic Interests is required, the governmental entity shall notify the Commission of the person's name, address and position and the person shall file a Statement of Economic Interests.

D. The Commission directs communications about the filing, failure to file or failure to file timely Statement of Economic Interests to the person required to file when known to the Commission. It shall be the concurrent responsibility of the governmental entity to assure filing and disclosure of Economic Interests; provided, however, the governmental entity shall not be subject to sanction in matters involving an individual's responsibility to file a Statement.

E. All state agencies or other entities existing by state law that receive an annual appropriation must file a Contract Disclosure Form with the Commission listing all contracts for public relations, communications, and legislative strategy services, if required by the Annual Appropriations Act.

(1) The form shall include the terms, conditions, and amounts expended.

(2) Each agency or other entity shall file a Contract Disclosure Form each June 30 reporting transactions occurring during the proceeding fiscal year.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-603. Confidential Statements of Economic Interests.**

A. A public official or public employee who is required to file a statement of economic interests and who accepts from a lobbyist's principal pursuant to Section 2-17-90(A)(6) lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal must report this information on his Statement of Economic Interests unless pursuant to Section 2-17-90(E), the approving official determines that the confidentiality of a state or local economic development project would be compromised by disclosure. If the approving official determines that the confidentiality of a state or local economic development project would be compromised by disclosure, the following action must be taken:

(1) The approving official must give prior written approval, stating that disclosure of information would jeopardize negotiations in an economic development project. The prior written approval must state the approving official authorizes non-disclosure, generally list the economic development project, provide the public official's or public employee's name and governmental entity, and bear the date of the writing and signature of the approving official.

(2) The approving official's prior written approval is confidential. It must be marked "Confidential" and filed with the "Confidential" Statement of Economic Interests as provided below.

(3) On or before April 15, the public official or public employee shall file a separate Statement of Economic Interests marked "Confidential" and attach to it a copy of the prior written approval. The public official or employee must disclose only the value of the thing of value received with a notation "for economic development - confidential".

(4) Confidential forms are not part of the public record until the approving official determines that public disclosure is appropriate and notifies the Commission in writing that public disclosure is appropriate.

B. If the approving official refuses to approve non-disclosure, the public official or public employee must report the receipt of anything of value on his annual Statement of Economic Interests form.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-604. Reporting by Persons Not Required to File a Statement of Economic Interest.**

A. A public official or public employee who is not required to file a Statement of Economic Interests but who is paid or reimbursed actual expenses for a speaking engagement must report the information in writing to the chief administrative official or employee of the agency with which the public official or public employee is associated.

B. Failure to report may result in late filing penalties as provided in R. 52-506 or a complaint action being instituted.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-605. Approval for Out-of-State Expenses.**

A. If out of state expenses are incurred by a public official or public employee for speaking before a public or private group prior written approval for the payment or reimbursement must be obtained from the appropriate approving official prior to incurring the expense or receiving reimbursement.

B. A copy of the written approval for out of state expenses must be attached to the Statement of Economic Interests.

C. If the official or employee does not file a Statement of Economic Interests, the approval must be maintained by the approving official.

D. Failure to report as provided herein may result in the assessment of a late filing penalty.

**HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.**

## **52-606. Consultant's Disclosure Forms.**

A. A consultant shall file the original and one copy of a Consultant's Disclosure Form no later than twenty-one days after entering into a contractual relationship with the State or a political subdivision of the State.

B. A consultant shall file an original and one copy of an updated Consultant's Disclosure Form no later than ten days from the date the consultant knows or should have known that a new economic interest(s) in an entity with whom he is consulting has arisen and in which the consultant or a member of the consultant's immediate family has economic interests:

(1) where the entity's bid was evaluated by the consultant and who was subsequently awarded the contract by the State, county, municipality, or a political subdivision of any of these entities that contracted with the consultant; or

(2) where the entity was awarded a contract by the consultant.

C. Failure to file may result in imposition of a penalty as provided in R. 52-506.

**HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.**

## **52-607. Candidates' and Incumbents' Statements of Economic Interests.**

A. This regulation governs the filing of a Statement of Economic Interest for all candidates for public office in this State except for members of or candidates to the office of State Senator and State Representative, candidates to or members of Federal office, candidates for or members of the judiciary except for probate judges and persons who are public officials and have filed a statement in the same calendar year as the year in which they file a declaration for candidacy or petition for nomination.

B. A Statement of Economic Interests shall be filed as follows:

(1) A public official who has filed a Statement of Economic Interests in the same calendar year as his declaration for candidacy or petition for nomination shall complete the first page [hereinafter "information page"] of the Commission's Statement of Economic Interests only and file the first page of the Statement with the official with whom the candidate files a declaration of candidacy or petition for nomination.

(2) A person who has not filed a Statement of Economic Interests in the same calendar year as his declaration for candidacy or petition for nomination shall complete the entire Statement of Economic Interests Form for the preceding calendar year and file the entire Statement with the official with whom the candidate files his declaration of candidacy or petition for nomination.

C. No later than five business days after the candidacy books close, the official receiving the declarations of candidacy or petitions for nomination shall file a copy of the Information Page and completed Statements of Economic Interests with the Commission along with the Candidates Roster.

D. The Commission will review the Candidate's Roster and Statements of Economic Interests, Information Pages and certify to the election official that the candidates have properly filed in which case the candidates' names may appear on the election ballot. Any candidate who fails to file a Statement of Economic Interests shall not have his name appear on the election ballot. It is the responsibility of the official receiving the declaration of candidacy or petition for nomination to insure that each candidate has filed.

(1) An individual who becomes a candidate other than by filing shall, no later than fifteen business days after becoming a candidate, file a Statement of Economic Interests for the preceding calendar year with the Commission.

(2) If a candidate files for office before January first of the year in which the election is held, he must file a supplementary statement of economic interests with the Commission covering the preceding calendar year no later than April first of the year in which the election is held.

(3) A candidate who is not a public official otherwise filing a statement has the same disclosure requirements as a public official with the exception of reporting gifts.

E. On the fifth day following the election, the election official shall file a Successful Candidate Roster with the Commission providing the successful candidate's name and elected position.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-608. Administrative Enforcement.**

A. In addition to any other penalty provided by law, the Commission may impose a penalty as provided in R. 52-506 for failure to file or filing late the forms required under this regulation and the Act.

B. [Reserved]

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **ARTICLE 7 CONTESTED CASE PROCEDURE**

### **52-701. General.**

A. These regulations contain the procedures established by the commission for contested case hearings before the Commission.

B. Hearings will be conducted as expeditiously and efficiently as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-702. Initiating a Complaint.**

A. A complaint may be filed against any person covered by the Act except members of the General Assembly. The Ethics Committees of the respective Houses of the General Assembly have jurisdiction over candidates for and members of the General Assembly.

B. Jurisdiction over complaints concerning an Administrative Law Judge or Probate Judge or candidates for the office of Administrative Law Judge or Probate Judge extend to allegations of the campaign practices, campaign disclosure, and disclosure of economic interests provisions of the Act.

C. For purposes of the statute of limitations the date on which a complaint is filed in the Commission offices is the date the action is commenced.

D. The Commission's Complaint Form is the official form for use in filing a complaint. The Form must be completed in full and contain a statement of facts concerning the allegations forming the foundation of the complaint. The complaint must identify the Respondent with specificity and bear the signature of the Complainant.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-703. Parties to the Proceeding.**

A. Upon receipt of a complaint, the complaint shall be captioned to show the name of the person against whom the complaint is filed as the Respondent and the person, if any, filing the complaint as the Complainant.

B. The Commission may file a complaint on its own motion in which case the Commission's name shall be shown in the complaint as the Complainant.

C. In any proceeding before the Commission, the Commission may take such action as it deems necessary and appropriate to accomplish the purposes and intent of the Act including dismissing, settling, prosecuting, and referring for indictment violations of the Act with or without the consent of the person, if any, filing the complaint.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-704. Complaint Procedures.**

A. Upon receipt of a complaint, the Commission sends a copy of the complaint to the Respondent advising that a complaint has been received.

(1) The Executive Director or his designee reviews the complaint and determines if there are facts sufficient to warrant going forward with an investigation.

(2) If the Executive Director or his designee determines the facts are not sufficient, the complaint is dismissed; the parties notified; and the matter is stricken from the public record. The existence of a complaint and dismissal remains confidential unless the Respondent waives confidentiality in writing.

(3) A complaint which has been dismissed may be refiled to allege new or additional facts.

B. If the Executive Director or his designee determines there are facts sufficient, the Respondent and Complainant are notified and the complaint is referred to Commission staff including any other State agencies as may be deemed necessary for investigation.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-705. Investigation of Complaints.**

A. The purpose of an investigation is to determine whether probable cause exists to believe a violation of law has occurred which may subject the Respondent to sanctions by the Commission, criminal prosecution by the State, and/or civil liability, as appropriate.

B. The notice of investigation may request information and documents, by subpoena or otherwise, which shall be supplied by any person.

C. The investigation shall consider the allegations raised in the complaint or information; any timely received written response of the Respondent; any oral response received from the Respondent; other evidence submitted by any person to the Commission and other evidence gathered by the Commission.

(1) During the investigation, the Commission may interview witnesses, issue subpoenas for persons and documents, and take such other action as is necessary to prepare a preliminary determination of the facts relating to the issues alleged in the complaint.

(2) If, in the course of the investigation, other issues involving potential violations of the law are found, those issues shall likewise be investigated.

(3) After completion of the investigation, the Commission staff will present a written report of investigation to the Commission with findings of fact, conclusions of law and a recommendation whether probable cause exists.

(a) If the Commission determines that probable cause exists, it shall issue a notice of hearing and convene a formal hearing before a panel of three Commissioners.

(b) If the Commission determines that probable cause does not exist, it shall dismiss the complaint. If the complaint is found groundless by a vote of the Commission, the complaint shall be dismissed and stricken from public record. All records of a complaint found to be groundless shall remain confidential unless the Respondent waives confidentiality in writing. A complaint which has been dismissed may be refiled to allege new or additional facts.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **52-706. Amendment and Withdrawal of Complaint.**

A. A complaint may be amended at any time prior to a hearing on the merits with proper notice to all parties.

B. At the hearing, the complaint may be amended with the approval of the hearing panel. When a complaint is amended, either party may request a continuance pursuant to R. 52-715.

C. Complaints may be withdrawn at any time prior to a determination of probable cause. After a determination of probable cause, a complaint may be withdrawn only upon approval of the Commission.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-707. Hearing Notice.**

A. A notice of hearing is issued at least thirty days before the scheduled hearing. The Notice contains the file number, the name and address of the Commission's attorney, and the date, time and place at which the Respondent shall appear and defend the charges alleged in the notice.

B. The notice shall notify the Respondent that in case of his failure to appear, judgment by default will be rendered against him.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-708. Request for Remediation.**

A. Upon a finding of probable cause and the issuance of a hearing notice, a request to remedy the alleged violation may be made.

B. Upon receipt of a request for remediation, the Respondent may take the remedial action recommended by the Commission to cure the infraction including payment of a fine or reimbursement to a governmental entity.

(1) Compliance with the request for remediation and proof thereof obviates the need for a hearing and the Commission shall by order dismiss the action.

(2) The order shall be a public record and the final disposition of the matter.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-709. Respondent's Answer to Complaint.**

A. Upon the issuance of a hearing notice, the Respondent may, but is not required, to file an answer.

B. Each allegation made in the complaint and hearing notice is deemed denied; provided, however that special and affirmative defenses shall be made by responsive pleading no later than 30 days from the date of service of the hearing notice.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-710. Discovery.**

A. In addition to the information previously gathered in the course of the investigation, the parties may engage in additional discovery.

B. All parties to the proceedings are entitled to engage in discovery as provided in the Administrative Procedures Act and the Act to the extent that depositions may be taken. The rules concerning the taking of and use of depositions as stated in the South Carolina Rules of Civil Procedure shall apply.

C. Upon motion of any party, the Commission may grant the use of interrogatories and requests for admissions under the South Carolina Rules of Civil Procedure.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-711. Admission of Expert's Reports and Other Forms of Written Evidence.**

A. Expert's reports and other evidence in written form including affidavits may be considered at the hearing as provided below.

(1) A notice and a copy of the writing must be served on the Commission and any other counsel of record or parties appearing pro se at least seven days before the scheduled hearing.

(2) The notice shall contain a complete copy of the writing to be offered at the hearing and state the name, address, telephone number and title of the person making the writing, whether the written report is being offered as expert's evidence and, if so, the qualifications of the expert, including but not limited to the expert's curriculum vitae.

(3) The opposing party may stipulate in writing to admit the writing into evidence. Failure to file a written stipulation of agreement shall be deemed an objection to admit the writing.

B. Failure to provide at least seven days notice of the intent to offer a writing may result in the writing not being admitted unless (1) the opposing party consents and the terms of the agreement are filed with the Commission; (2) the author of the writing, including experts, attends the hearing and

testifies; (3) the deposition of the writer is held before the hearing and the deposition is filed by a time set certain.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-712. Presentation of Evidence.**

A. All available evidence and testimony shall be presented at the scheduled hearing or a party must move for adjournment.

B. Adjournment may be granted in order to take the testimony by deposition or at a hearing reconvened at a later date.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-713. Conduct of Hearings.**

A. A hearing is held before three members of the State Ethics Commission randomly selected from the entire Commission membership. One Commissioner is designated the Panel Chair who shall have the authority to hear preliminary and interlocutory matters and take such other action as is necessary to conduct the hearing.

B. Commission hearings are held in executive session unless the Respondent moves for an open hearing.

C. In the event that a hearing panel member is unable to attend a hearing, the hearing will proceed with the remaining members present. The absent member will be provided the record of the hearing prior to entering his vote.

D. In the event that a hearing panel member is unable to render a decision due to illness or incapacity, the Panel Chair shall draw the name of another Commission member to review the record and enter his vote.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-714. Burden of Proof.**

A. The Commission panel shall consider the evidence and testimony presented at the hearing and enter their decision with a statement of the findings of fact, conclusions of law and other matters pertinent to the questions at issue. The decision and order shall be filed with the record and copy served on the parties.

B. The burden is on the Complainant to establish by the preponderance of evidence the facts required to find a violation of the Act.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-715. Continuance, Postponement and Adjournment.**

A. The Panel Chair may grant a continuance, postpone a hearing or adjourn a hearing to a later date or to a different place by order or upon motion at a hearing.

B. Failure of a party to appear at a hearing may result in the Hearing Panel basing its decision on a review of available documentation and the presentation of evidence.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-716. Final Disposition and Order.**

A. At the close of the case, the Commissioners shall confer and together enter their decision by written order.

B. The panel's decision and order shall be the final disposition of a complaint.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-717. Record of Hearing and Transcripts.**

A. The Commission will cause all proceedings to be recorded and maintained for a period of four years after the completion of the proceeding.



B. A person may request a transcript of a hearing by writing the Commission. The Commission will cause a transcript of the proceedings to be prepared at the requestor's expense. The Commission may request payment in advance.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-718. Confidentiality of Proceedings.**

A. No person associated with a complaint including the Complainant, Respondent, counsel, counsel's staff, Commission members or employees, reporters or investigators, shall mention the existence of the proceedings or disclose any information pertaining thereto except to persons directly involved including witness and potential witnesses, and then only to the extent necessary for investigation and disposition of the complaint. Witnesses and potential witnesses shall be bound by these confidentiality provisions.

B. The Respondent may waive the confidentiality of the proceeding in writing filed with the Commission.

C. The requirements of confidentiality do not apply to the following:

(1) Providing the identity of the Complainant to the Respondent.

(2) Disclosing information by the Commission or its staff necessary to conduct an investigation and hearing, to issue subpoenas, and any other action related to the contested case proceedings.

(3) Referring or releasing information to another prosecuting authority.

D. These confidentiality provisions apply to an order as a result of a hearing or otherwise setting forth findings of fact and conclusions of law that the complaint was groundless. When there is a finding of a violation as to any allegation, the order including findings and conclusions of any non-violation shall be a public record.

E. The final disposition of a complaint must contain a finding that the complaint was groundless in order for the matter to be stricken from the public record.

F. After the final disposition of a matter where a violation is found, the Commission shall prepare a public record which shall consist of the pleadings and record of the hearing. The Commission's internal and investigatory papers including attorney work product shall not be made part of the public record.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

#### **Ethics Commission Opinions**

City council member who has complaint filed against him may request council in executive session to provide legal counsel for his defense without providing details of complaint. Open session vote can then be taken without

disclosing nature of complaint or of agency with which complaint was filed. Op S.C. St. Ethics Comm., SEC AO92-130, June 9, 1992 (under former regulation 52-3.9).

### **ARTICLE 8**

#### **APPELLATE PRACTICE**

### **52-801. Filing an Appeal.**

A. The Respondent may request a review of the panel's decision and order by filing a request for review in writing with the Commission within ten days of the date of service of the panel's decision and order. The ten day period is jurisdictional and may not be extended.

B. The grounds for review must be set out in detail. Each question must direct the Commission's attention to a finding of fact or conclusion of law the appellant believes in error. Reference to evidence must be by title and exhibit number.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-802. Notice of Appellate Hearing.**

A. The Commission serves a notice of appeal hearing at least thirty days prior to the date of the appellate hearing.

B. The notice states the date, place and time of the hearing. The Appellant shall file a brief within ten days of the date of service of the notice.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-803. Briefs.**

A. The appellant shall file the brief with proof of service with the Commission within ten days of the date of service of the Appellate Hearing notice.

B. The Commission may file a responsive brief and proof of service on the Appellant within ten days of the service of the appellant's brief.

C. The Appellant may file a reply brief with proof of service within ten days of service of the Commission's responsive brief, if any. No further briefs are permitted unless requested by the Commission.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-804. Oral Argument.**

A. Oral argument will be granted unless waived in writing prior to the scheduling of same.

B. The appellant shall open and close the argument. The opening argument shall include a statement of the relevant facts. Unless otherwise permitted by the Commission, counsel will not be permitted to read from books, briefs, records, or authorities cited. If any party fails to appear, the Commission will hear argument on behalf of the parties present. If no party appears, the case will be decided on the briefs unless the Commission shall otherwise order.

C. The length of time allotted for oral argument shall be determined by the Commission. The Commission shall notify all parties of the time allotted at the call of the case.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-805. Composition of the Panel for Full Commission Review.**

A. Full Commission review is conducted by a panel of the remaining members of the commission excluding the original hearing Commissioners. The order of review panel is the final disposition of the case.

B. The Commissioners reviewing the case may confer and receive advice from an attorney assigned to it by the Attorney General's office, if any.

C. A majority vote of the review panel shall constitute the decision of the panel. The original hearing Commissioners' decision is neither a vote, nor shall it be considered as a vote, of the Commission's final decision.

D. If a commissioner is temporarily incapacitated or otherwise unable to appear at oral argument, review may be conducted by the remaining Commissioners and the absent Commissioner may cast his vote based on the record.

E. The three member panel decision and order may be modified in whole or in part by the Commission on review. On review, the Commissioners shall issue its order per curiam. An individual commissioner may file a dissenting opinion.

F. If the Appellate Panel cannot agree, the Panel may remand the matter to a hearing panel with instructions.

G. If a member of the Appellate Panel fails to register a vote within 60 days of the date of the review, the Commissioner is deemed to have abstained and his vote recorded accordingly.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-806. Standard of Review.**

A. The Commission shall review the three member hearing panel's decision and order and reconsider the evidence, receive further evidence, rehear the parties or their representatives, and enter an order amending, affirming or modifying the panel's decision.

B. The review is based on the record and oral argument, if any, presented to the Commission.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-807. Additional Evidence.**

A. When additional evidence is necessary for the completion of the record in a case on review, the Commission may, in its discretion, order such evidence taken before a single commissioner or a panel.

B. A party seeking to admit additional evidence into the record shall file a motion and affidavit with the Commission.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **ARTICLE 9 BLIND TRUSTS**

### **52-901. General.**

A. A Blind Trust is any trust in which a public official, public member, public employee, candidate for elective office, or a member of his household has a beneficial interest in the principal or income and the trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser who (a) is independent of and not associated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party; (b) is not or has not been an employee of any interested party, or any organization affiliated with any interested party, and is not a partner of or involved in any joint venture or other investment with any interested party; and (c) is not a relative of any interested party.

B. [Reserved]

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-902. Requirements of Trust Instrument.**

A. The trust instrument which establishes the trust must provide:

(1) that the trustee has full and complete authority to manage and control, including the transfer and sale of the assets of the trust, without consulting or notifying any interested party;

(2) the trust does not contain any asset the holding of which by any interested party is prohibited by any law or regulation;

(3) the trust tax return is prepared by the trustee or his designee, and any information relating thereto is not be disclosed to any interested party (except as may be used to itemize trust income summarized in appropriate categories); and

(4) a prohibition concerning communication between the trustee and any interested party concerning the holdings or sources of income of the trust except amounts of cash value or net income or loss; however, such report must not identify any asset or holding.

B. A copy of the trust instrument must be filed by the public official, public member, public employee, or candidate for elective office with the appropriate supervisory office along with a listing of all assets or holdings transferred or to be transferred at the time of originating the trust instrument. The trust instrument and list of assets must be filed, (1) when the trust is established or (2) prior to the public official, member or employee assuming the duties of office, whichever is later.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **52-903. Effect.**

A. A public employee, public member or public official is not be prohibited from taking actions or making decisions concerning a financial interest in a blind trust organized and administered in accordance with this regulation, provided that the Commission has on file the material required in this regulation.

B. [Reserved]

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

**ARTICLE 10**  
**EFFECTIVE DATE**

**52-1001. Repeal of Existing Regulations and Adoption of Articles 1 through 10, Inclusive.**

A. Existing Regulations 52-1.1 through 52-10.1 inclusive, are repealed and replaced upon adoption of these Regulations pursuant to the Administrative Procedures Act.

B. The Regulations in Chapter 52, Articles 1 through 10, inclusive shall apply to all matters filed or arising after the effective date of these Regulations.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.