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Michael F. Rivers, Sr.  
John Taliaferro (Jay) West, IV*

*Jennifer L. Dobson  
Research Director*

*Cathy A. Greer  
Administration Coordinator*

**Post Office Box 11867  
Columbia, South Carolina 29211  
Telephone: (803) 212-6810 • Fax: (803) 212-6811  
Room 228 Blatt Building**

*Charles L. Appleby, IV  
Legal Counsel*

*Lewis Carter  
Research Analyst/Auditor*

*Riley E. McCullough  
Research Analyst*

August 31, 2021

### VIA EMAIL

Meghan Walker, Director  
South Carolina Ethics Commission  
201 Executive Center Drive, Suite 150  
Columbia, South Carolina 29201  
[mwalker@ethics.sc.gov](mailto:mwalker@ethics.sc.gov); [ami@ethics.sc.gov](mailto:ami@ethics.sc.gov)

RE: Follow up to July 20, 2021, Subcommittee meetings

Dear Director Walker:

The Executive Subcommittee appreciates the State Ethics Commission (Commission) participation in the oversight process. As follow-up from the July 20, 2021, Subcommittee meeting, below are questions of interest to various members of the Subcommittee. Please provide this information by Monday, September 27, 2021.

As a reminder, formal written responses provided are considered sworn testimony. Additionally, please inform the Subcommittee, prior to responding, of any information requested that cannot be published online due to provisions in contract or law.

***Ethics Portal***

1. Please explain the following about the new filing system:
  - a. New features included and, for each, the purpose/goal sought by having it (e.g., Feature: option for registered user to receive text messages about filing deadlines; Purpose/goal: provide another avenue to inform registered users to prevent violation of act and penalties);
  - b. Issues, other than those stated above, agency hopes to address through the system (e.g., decrease cost per unit of sending correspondence, etc.); and
  - c. Measures the agency will utilize to evaluate the effectiveness of the new system, including the base values of those measures under the old system.
2. Will the new system have the following:
  - a. Frequently Asked Question section;
  - b. Ability for public or those registered in the system to submit questions electronically; and
  - c. Ability for individuals providing gifts to officials (i.e., those who have to report gifts) to enter the information about the gift in the site and click on the individuals it is given to as a way to automate that entry for the official so the official can then check whether they accepted it, and it needs to be officially added to their records, or they did not accept it, and it needs to be deleted. For example, elected officials may wish the individual/entity print a copy to show them it has been entered before receiving, or at the same time they receive, the gift.
3. Please provide an Excel document with all data fields in the new system (e.g., Have you paid registration fee? How much? From what fund? What is date of election? Mailing Address street; Mailing address city; Mailing address zip code; Term of Office), regardless of whether another agency may collect the same or similar data. For each field in which the agency believes one or more other state agencies may also collect the same, or a similar, data point, please type the name of the agency and, if known, how/when the agency would collect the data point. Please see example below. The agency may include additional columns, as needed, to provide further explanation.

<b>Data Point</b>	<b>Other Agency #1 with data</b>	<b>Other Agency #2 with data</b>	<b>Other Agency #3 with data</b>
Election Date	State Election Commission		
Term of Office	State Election Commission – For elected officials as part of candidate filing	Secretary of State’s Office – For appointed individuals	Governor’s office or other appointing entity – For appointed individuals
Mailing Address street	State Election Commission – For elected officials as part of candidate filing	Secretary of State’s Office – For elected officials and appointed individuals	Governor’s office or other appointing entity – For appointed individuals
Mailing Address city	State Election Commission – For elected officials as part of candidate filing	Secretary of State’s Office – For elected officials and appointed individuals	Governor’s office or other appointing entity – For appointed individuals
Registration Fee	State Election Commission – For elected officials as part of candidate filing		

4. Please list, and provide a summary, of each report those registered in the system will have the ability to view and print.
5. Please list, and provide a summary, of each report the agency will have the ability to view and print with aggregated information.

***Difference in Interpretation***

6. Please list all legal or practical interpretations that differed among the Commission, House Ethics Committee, and Senate Ethics Committee, that have been made uniform in the last three years.
7. Please list all interpretations that currently differ among the Commission, House Ethics Committee, and Senate Ethics Committee. For each, please include each entities interpretation.

***Definition of Committee***

8. Please provide a list of entities that continue to file documentation applicable to committees (e.g., statement of organization) and a list of entities that, after the court ruled the definition of “committee” unconstitutional, stopped filing applicable documents.
9. Please explain the agency’s understanding of why some entities continue to file the applicable documentation.

***Board Positions, Hearings, and General Enforcement***

10. How many vacancies currently exist on the Commission, if any? If none, on what date was the most recently appointed Commissioner appointed?
11. How can vacancies on the Commission impact its operations and effectiveness?
12. Would the agency oppose having the Commission meetings and hearings stream online?
13. Is it currently feasible to stream Commission meetings and hearings online? If no, why not?
14. For each of the last four years, please provide the number of individuals that received noncompliance letters and of those that received letters, the number that took the actions highlighted in the chart below:

Individual required to file...	Noncompliance letter directs individual to...	Option 1		Option 2		Option 3	
		Offender response	Agency response	Offender response	Agency response	Offender response	Agency response
Files report late	Pay penalty fee	Pays fee	No further action	Does not pay fee	Debt sent to DOR* + Added to Debtor's List^	No Option 3	
Does not file report completely or at all	Correct deficiency + pay penalty fee	Corrects deficiency + pays fee		Corrects deficiency, but does not pay fee		No response	Moves to complaint process^^
				Does not correct deficiency, but pays fee	Moves to complaint process^^		

15. Please list statutory methods of enforcing the Ethics Act granted to the Commission, House Ethics Committee, and Senate Ethics Committee.
16. Please explain why current methods may be limiting or not as effective as someone may believe from just reading the method.
17. Please answer the following about the debtors list:
  - a. How frequently is the debtors list online update?
  - b. Does the debtors list include legislators?
  - c. What actions does the agency take to update the list, including, but not limited to, removing deceased individuals?

- d. For all individuals currently on the debtors list, please provide an Excel chart that lists the following for each violation of each person:
  - i. Ethics Definition (e.g., candidate, elected official, appointed official, etc.), position, violation, year of violation, initial fine, fees accrued for failure to pay fine, number of correspondences Ethics Commission sent to individual regarding the issue, current method of enforcement agency is utilizing to collect the debt (e.g., GEAR, judgment, etc.), and current elected or appointed position held, if any.
  - ii. For any that relate to candidates, please indicate whether the individual was successful in winning election to the position for which they owe a debt.
- e. When someone downloads the list, after implementation of the new ethics portal, will it list the data below, separately for each violation of each person and, if not, what data will be available?
  - i. Ethics Definition (e.g., candidate, elected official, appointed official, etc.), position, violation, year of violation, initial fine, fees accrued for failure to pay fine, number of correspondences sent to individual regarding the issue, and current method of enforcement agency is utilizing to collect the debt (e.g., GEAR, judgment, etc.) and current elected or appointed position held, if any.
- f. What recommendations, if any, does the agency have to improve collection?

***Funding***

18. Please provide a list of entities that receive pass through funding from the Commission and for each, for the last three years, the following information:
  - a. whether the Commission requested the General Assembly provide funding for the entity;
  - b. information the receiving entity had to provide the Commission, if any, prior to receiving the funds;
  - c. whether the Commission has any control over how the receiving entity utilizes the funds;
  - d. name of the receiving entity;
  - e. amount received; and
  - f. copy of the information the receiving entity provided the Commission pursuant to Proviso 117.21.
19. What changes, including, but not limited to, additional funding, would be needed for the agency to monitor those that lobby local government (e.g., municipalities, counties, school boards, etc.)?

***Miscellaneous***

20. Please confirm the information included in Attachment A is accurate or provide revisions necessary to ensure it is accurate.

Additionally, the subcommittee welcomes any other input or feedback your office would like to provide. Thank you and your team for your service to the people of South Carolina.

Sincerely,



Joseph H. Jefferson, Jr.  
Subcommittee Chair

cc: The Honorable Wm. Weston J. Newton  
Executive Subcommittee

**Ethics Act Process Summary**

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## Ethics Act: Applies to

Ethics Act Definition	F&/or A <sup>6</sup>	Approx. #	Description	Examples
<b>Public Official:</b> Candidates	F&A	Unknown <sup>1</sup>	<ul style="list-style-type: none"> <li>Seek appointment, nomination, or election, etc.</li> </ul>	School Districts; City Councils; County Councils; Special Purpose Districts
Elected <sup>2</sup>	F&A	Unknown <sup>1</sup>	<ul style="list-style-type: none"> <li>State, county, municipality or political subdivision (except House members and Senators)</li> </ul>	County School District; City Council; North Greenville Fire District; House of Representatives
Appointed	F&A	Unknown <sup>1</sup>	<ul style="list-style-type: none"> <li>State, county, municipality or political subdivision position that pays more than per diem or expense reimbursement</li> </ul>	Commissioner on Public Service Commission; Spartanburg County Board of Voter Registration and Elections; Greenwood County Auditor
<b>Public Member:</b> Appointed (state board)	F&A	Unknown <sup>1</sup>	<ul style="list-style-type: none"> <li>Part-time position on a state board, commission, or council that pays no more than per diem or expense reimbursement</li> </ul>	Abbeville Area Medical Center Board; Columbia Housing Authority Board; State Election Commissioners
Appointed (non-state board)	A	Unknown <sup>1</sup>	<ul style="list-style-type: none"> <li>Part-time position on a non-state board, commission, or council that pays no more than per diem or expense reimbursement</li> </ul>	
<b>Public Employee:</b> Statement of Economic Interest (SEI) Filer	F&A	Unknown <sup>3</sup>	<ul style="list-style-type: none"> <li>Chief Administrative Official, Chief Financial Officer, Chief Procurement Officer, and Chief Administrative Official employed by state, county, municipality, or special purpose district/political subdivision</li> <li>Dept. of Transportation District Engineering Administrators</li> </ul>	
Non SEI Filer <sup>2</sup>	A	Unknown <sup>3</sup>	<ul style="list-style-type: none"> <li>All non-SEI employees of state, county, municipality, or special purpose district/political subdivision</li> </ul>	
<b>Lobbyist</b>	F&A	553 <sup>4</sup>	<ul style="list-style-type: none"> <li>Seek to influence action/vote, with/without compensation</li> </ul>	See Accountability Portal for full list
<b>Lobbyists Principal</b>	F&A	582 <sup>4</sup>	<ul style="list-style-type: none"> <li>Employ, appoint, or retain lobbyist</li> </ul>	Google, Dominion Energy, Broad River Electric, Bristol-Myers Squibb Company, Charter Schools USA, Christ Church Episcopal Church
<b>Committee</b> * <sup>5</sup>	F&A	Unknown	<ul style="list-style-type: none"> <li>Assoc., club, org., or group of persons seeking to influence outcome of elective office or ballot measure by receiving, contributing, or expending certain levels of money.</li> <li>Person who makes certain contributions or independent expenditures to influence outcome of an elective office</li> </ul>	Citizens for Life, Citizens for a Greater Midlands, We the People Aiken 2010, Pennies for Progress, Yes4Schools

<sup>1</sup> The Commission's electronic filing system is unable to break down its filers by public official, public member, or public employee. Recognizing that this type of data could be useful in the future, the Commission intends to discuss this with sc.gov as it moves forward in its implementation of the new filing system. <sup>2</sup> Candidates and elected House members and Senators, and their staff, fall under the purview of their respective House and Senate Ethics Committee for training and enforcement of filings. Investigations of complaints related to these individuals are performed by the State Ethics Commission. <sup>3</sup> The Commission is unable to determine the number of public employees that fall under its jurisdiction. There is no central database from which to derive this information.

<sup>4</sup> Lobbyist and Lobbyists Principal numbers are for registered Lobbyists and Lobbyists Principals. <sup>5</sup> The State Ethics Commission, House Ethics Committee, and Senate Ethics Committee are currently unable to enforce laws related to Committees because in 2010 a federal district court found the definition of "committee" was unconstitutional. South Carolina Citizens for Life v. Krawcheck, 759 F. Supp.2d 708 (D.S.C. 2010). <sup>6</sup> "F" means must register in Ethics Commission portal and submit one or more filings; "A" means must abide by prohibitions in Ethics Act.

## Information Available: Distribution and Content

Ethics Act Definition	Specific Communication	General Communication
<b>Public Official:</b> Candidates	<b>Newsletter</b> <u>Distributed:</u> <ul style="list-style-type: none"> <li>Physically given to county elections offices for county election offices to distribute</li> <li>Posted on Commission’s website</li> </ul> <u>Contains:</u> <ul style="list-style-type: none"> <li>Information on filing requirements</li> </ul>	<ul style="list-style-type: none"> <li>Website</li> <li>Social Media (reminders about filing deadlines)</li> <li>General Advice (via phone, email)</li> <li>Customer Training</li> </ul>
Elected		
Appointed		
<b>Public Member:</b> Appointed (state board) Appointed (non-state board)	<b>Newsletter</b> <u>Distributed:</u> <ul style="list-style-type: none"> <li>Posted on Commission’s website</li> </ul> <b>Letter</b> <u>Distributed:</u> <ul style="list-style-type: none"> <li>Emailed via address they provide to Governor’s Office at the time of their appointment (includes letter and digital copy of Public Members Newsletter)</li> </ul> <u>Contains:</u> <ul style="list-style-type: none"> <li>Congratulation on appointment</li> <li>Introduction to State Ethics Commission</li> <li>Information on filing requirements</li> </ul>	
<b>Public Employee:</b> SEI Filer	<b>Brochure</b> <u>Distributed:</u>	
Non SEI Filer	<ul style="list-style-type: none"> <li>Posted on Commission’s website</li> </ul> <u>Contains:</u> <ul style="list-style-type: none"> <li>Overview of the Ethics Act for public employees</li> </ul>	
Lobbyist		
Lobbyists Principal		

### Website

- Commission
- Advisory Opinions
- Brochures/Newsletters
- How to file a complaint
- Meeting agendas and minutes
- Complaints resolved index
- Information on reports filed with Commission
- Debtor's list
- Reports and policies
- Calendar

### Customer Training

- Free of charge
- Conducted by Executive Director or General Counsel
- In person or virtual
- Tailored to each group
- Consists of written material and oral presentation

## **Information Available: Advice (General, Informal Advisory Opinions, Formal Advisory Opinions)**

### **Informal Advisory Opinion**

#### *What are they?*

- Prospective non-binding opinions, written by staff, concerning requestor's actions
- Based on real or hypothetical circumstances

#### *Who can request one?*

- Any individual against whom the Ethics Reform Act can reasonably apply
- Most requestors are public officials, public members or public employees

#### *How are they distributed?*

- Returned directly to the individual that requested it
- Informal Advisory Opinions are not published on the Commission's website

### **Formal Advisory Opinion**

#### *What are they?*

- Prospective binding opinions, written by staff and approved by Commissioners, concerning the requestor's conduct
- Based on real or hypothetical circumstances

#### *Who can request one?*

- Any individual against whom the Ethics Reform Act can reasonably apply
- Most requestors are public officials, public members or public employees

#### *How are they distributed?*

- Published on the Commission's website
- Disseminated to public officials, public members and public employees via the Municipal Association, Association of Counties and School Board Association

## **Prohibited Actions: Applies to Everyone**

- Use of official position or office for financial gain
- Disclosure of confidential information for financial gain
- Receiving anything of value for speaking in an official capacity
- Receiving, offering, or giving anything of value to influence action of a public employee, member or official
- Receiving additional money for public assistance
- Representation of another by a public official, member or employee before certain governmental entities
- Future employment of public employees
- Use of governmental resources to influence the outcome of an election
- Violation of other laws under the Commission's jurisdiction
  - Judicial Canons as applied to Workers' Compensation Commissioners.
  - Judicial Canons as applied to Public Service Commissioner Commissioners.
  - Provisions of the South Carolina Lottery Education Act.



**Required Filings: Applies to Some, but not All**

	Public Officials - Candidates	Public Officials – Elected / Appointed	Public Members - Appointed	Public Employees	Lobbyists	Lobbyists Principals	Committee
Campaign Disclosure Reports	<input checked="" type="checkbox"/> (All)	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>
Statements of Economic Interests	<input checked="" type="checkbox"/> <sup>1</sup> (Partisan candidates only)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sup>2</sup>	<input checked="" type="checkbox"/> <sup>2</sup>			
Lobbyist and Lobbyist Principal Registration					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Lobbyist and Lobbyist Principal Disclosures					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Statement of Organization							<input checked="" type="checkbox"/>

Table Note: <sup>1</sup> Only candidates in partisan elections are required to file Statements of Economic Interest. <sup>2</sup> Statements of Economic Interests are filed annually by (1) public members appointed to a *state* board, commission, or council and DOT District Engineering Administrators, and (2) public employees who serve in the capacity of chief administrative officer or chief financial for their governmental entity as well as school district superintendents, county administrators, and city managers. Chief administrative officials for political subdivisions included in Section 8-13-1110(b) of the SC Code of Laws.

## Required Filings: Steps taken to ensure compliance

\*Note: These steps do not apply to House and Senate officials and staff. House and Senate Ethics Committees each have a similar, but different process.

	Daily Portal Reviews	Random Audits
<b>Daily Portal Review:</b> Review entries flagged the previous day by the Public Disclosure Accountability Reporting System	☑	
<b>Zip Code Audit:</b> Randomly pull and audit all filings for individuals, within a certain zip code, who are required to file		☑
<b>Request for Information Letter:</b> Send letter requesting additional information from individuals with questionable filings		☑
<b>Noncompliance Letter:</b> Send letter directing individual to amend or file and pay penalty fee	☑	☑

Individual required to file...	Noncompliance letter directs individual to...	Option 1		Option 2		Option 3	
		Offender response	Agency response	Offender response	Agency response	Offender response	Agency response
Files report late	Pay penalty fee	Pays fee		Does not pay fee	Debt sent to DOR <sup>1</sup>	No Option 3	
Does not file report completely or at all	Correct deficiency + pay penalty fee	Corrects deficiency + pays fee	No further action	Corrects deficiency, but does not pay fee	+ Added to Debtor's List <sup>2</sup>	No response	Moves to complaint process^^
				Does not correct deficiency, but pays fee	Moves to complaint process <sup>3</sup>		

<sup>1</sup>Unpaid late filing penalties are submitted to the Department of Revenue for collection through Governmental Enterprise Account Receivable (GEAR) and Setoff Debt.

<sup>2</sup>Debtor's List is published on the Commission's website and includes all individuals with debts to the Commission including GEAR, Setoff Debt, and debt filed as judgments with the county court. It was first published online in 2002 and created to inform the public of fines owed by public officials, public members and public employees.

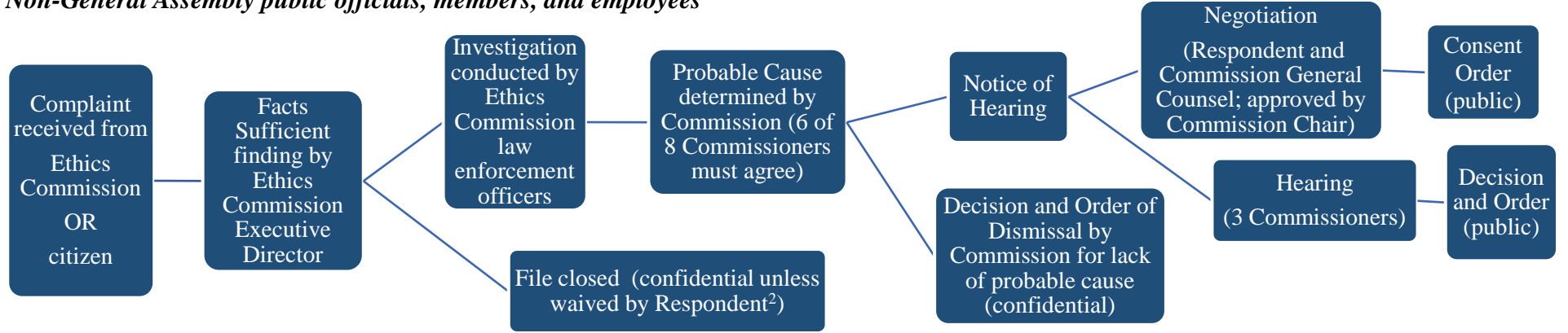
<sup>3</sup>Commission noncompliance staff create non-compliance complaints and submit them to the Executive Director for approval.

Prohibited Actions
Complaint – Investigation and Hearing – Order – Appeal

### Complaint Process: Flow Charts

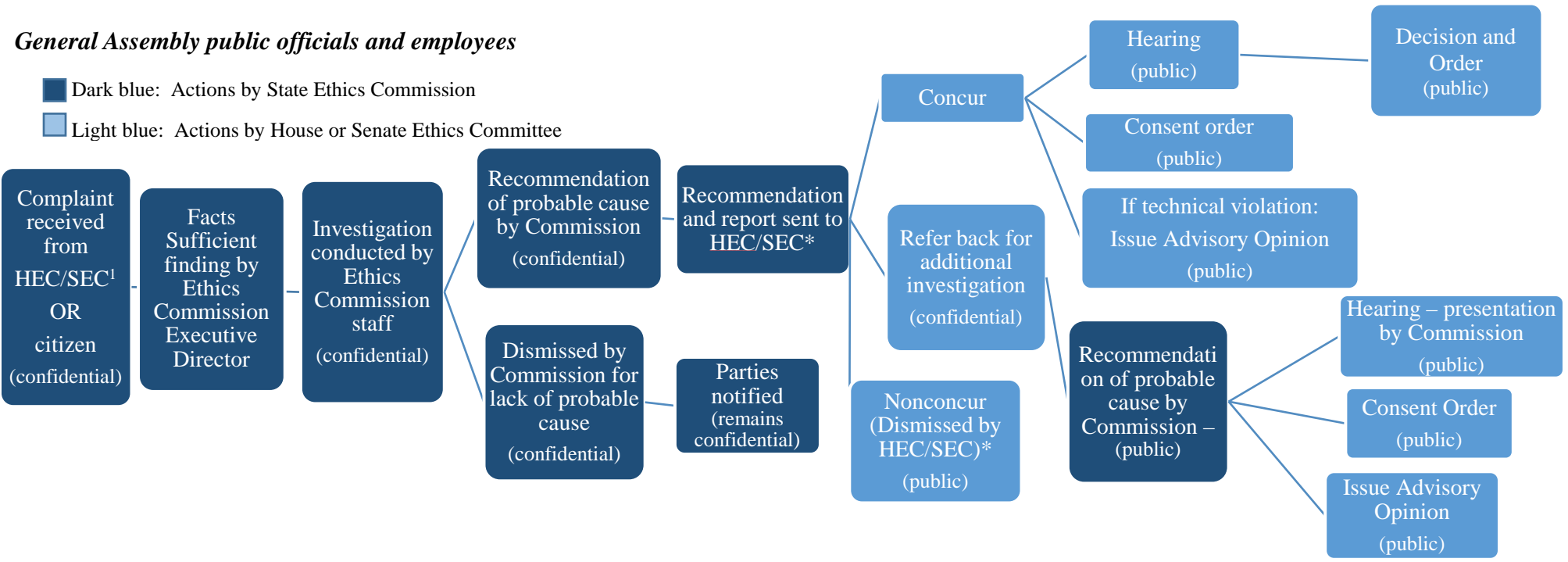
Required Filings
Reviews – Noncompliance Letter – Complaint – Investigation and Hearing – Order – Appeal

*Non-General Assembly public officials, members, and employees*



*General Assembly public officials and employees*

- Dark blue: Actions by State Ethics Commission
- Light blue: Actions by House or Senate Ethics Committee



<sup>1</sup> HEC/SEC: House of Representatives Ethics Committee, the supervisory authority for House members or staff, including staff elected to serve as officers of or candidates for the office. Senate Ethics Committee, which is the supervisory authority for Senators or staff, including staff elected to serve as officers of or candidates for the office of State Senator.

<sup>2</sup> Respondent: A person charged in a complaint with a violation of the Act.

## Complaint Process: Explanation

<i>Complaint</i>	<p><i>Who can file a complaint:</i></p> <ul style="list-style-type: none"><li>• Commission - Typically arise from an individual not curing deficiencies in required filings (e.g., statements of economic interests, etc.). Complaints also filed after preliminary investigations based upon information provided by a member of the public who is fearful of retaliation if a formal complaint is filed.</li><li>• Citizen – Must be notarized (a) Individual, on personal behalf; (b) Individual, on behalf of organization; (c) Individual, on behalf of governmental body</li><li>• House Ethics Committee</li><li>• Senate Ethics Committee</li></ul> <p><i>What must it include:</i></p> <ul style="list-style-type: none"><li>• Name, address and telephone number of a person alleged to have committed a violation (Respondent)</li><li>• Name, address and telephone number of the person making the complaint.</li><li>• Particulars of the alleged violation of the Ethics Reform Act or other provision of state law within the Commission’s jurisdiction.</li></ul> <p><i>Where is it available:</i></p> <ul style="list-style-type: none"><li>• Blank forms on Commission’s website. Verified complaints are sent to the Respondent and, when appropriate, the House of Representatives or Senate Ethics Committees. If probable cause is found, the complaint is made available to the public upon request.</li><li>• Information in submitted complaints are entered into the Ethics Commission case management system.</li></ul>
<i>Facts Sufficient finding</i>	<ul style="list-style-type: none"><li>• Chief investigator and Executive Director of Commission review only the facts as alleged in the complaint. If the facts as alleged were true would be a violation of the Act, it moves to the next step and an investigation is performed.</li></ul>
<i>Investigation</i>	<ul style="list-style-type: none"><li>• All of the Commission’s investigators are Class I certified law enforcement officers, who are required to maintain their law enforcement certification as well as participate in in-house training at the Commission</li><li>• Investigations include: Interviews of witness(es); Interview of Respondent (individual alleged to have committed violation); Collection of evidence including meeting minutes, bank records, audio and video recordings and social media postings; and Review of collected evidence</li><li>• Investigator provides a written summary including a recommendation as to whether probable cause is present</li></ul>

<i>Probable Cause Determined</i>	<ul style="list-style-type: none"> <li>• Ethics Commission staff present the investigators summary to the Commissioners.</li> <li>• Six of the Eight Commissioners must agree probable causes exists in order to notice a hearing</li> <li>• Probable cause means based on the evidence available more likely than not a violation of the Act will be found.</li> </ul>
<i>Hearing</i>	<p>Panel consists of three Commissioners selected at random to hear contested matters. During the hearing the following occurs:</p> <ul style="list-style-type: none"> <li>• Parties are permitted to make opening statements</li> <li>• Parties are permitted to call witnesses who are sworn and subject to cross-examination</li> <li>• Parties are permitted to introduce exhibits</li> <li>• Parties are permitted to make closing arguments</li> <li>• Hearing panel deliberates and issues a decision and order</li> </ul>
<i>Orders from Ethics Commission</i>	<p>An Order from the Commission (consent or otherwise), may include one or more of the following:</p> <ul style="list-style-type: none"> <li>• Enforcement/administrative fee, to include costs related to (1) investigator’s time, (2) mileage, meals, and lodging, (3) prosecutor’s time, (4) hearing panel travel, per diem, and meals, (5) administrative time, (6) subpoena costs/witness fees, (7) miscellaneous costs such as postage and supplies.<sup>1</sup></li> <li>• Civil penalty of up to \$2,000 for each violation.<sup>2</sup></li> <li>• Forfeiture of gifts, receipts, or profits, or the value thereof, obtained in violation of the Ethics Act.<sup>3</sup></li> <li>• Voiding non-legislative state action obtained in violation of the Ethics Act.<sup>4</sup></li> <li>• Late-filing penalties of up to \$5,000 per report, provided notification requirements are met.<sup>5</sup></li> <li>• Oral or written warning or reprimand.<sup>6</sup></li> </ul>
<i>Appeal</i>	<ul style="list-style-type: none"> <li>• Respondent may request a review of the panel’s decision and order within ten days of the date of service of the decision and order. The request must be made in writing.</li> <li>• The appellant must provide a written brief within ten days of date of service of the Appellate Hearing notice.</li> <li>• Group of Commissioners, not including the original hearing panel Commissioners review the hearing panel’s decision and order, reconsider the evidence, receive further evidence, rehear the parties, and enter an order amending, affirming or modifying the panel’s decision.</li> </ul>
<i>Next step, if any?</i>	<ul style="list-style-type: none"> <li>• Explanation of next step, if any</li> </ul>

Table Note: <sup>1</sup> Section 8-13-130. <sup>2</sup> Section 8-13-320(10)(l). <sup>3</sup> Section 8-13-320(10)(l) and 8-13-780 <sup>4</sup>Section 8-13-320(10)(l). <sup>5</sup> Section 8-13-1510. <sup>6</sup> Section 8-13-780.