

# WV Ethics Commission

## MAKING AND RESOLVING ETHICS COMPLAINTS

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### MAKING A COMPLAINT

Anyone may file a complaint with the Ethics Commission, if he or she has information that a public servant has violated the Ethics Act. No particular form or format is required, but a complaint must be in writing and must be verified by oath or affirmation. The Commission also has authority to initiate complaints if it receives credible information which, if true, would merit an inquiry into whether a violation of the Ethics Act had occurred.

It is not enough to complain that a public servant has acted improperly. A complaint must also state facts showing that the misconduct violated one of the Act's specific rules or that it was motivated by private financial gain for the public servant, or the private financial gain of a friend, relative or crony.

Violations of the Act occurring prior to July 1, 2005 are subject to a one year statute of limitations. For violations occurring after July 1, 2005, a two year statute of limitations applies. All complaints must be filed within the applicable statute of limitations or the Commission loses jurisdiction and cannot act. A complaint is considered actually filed when it is received by the Commission. Filing via facsimile or electronic mail is not permitted.

### GROUNDS FOR A COMPLAINT

The Ethics Act establishes a code of conduct for public servants at W.Va. Code § 6B-2-5. The code includes several specific rules, e.g., a prohibition against private financial interests in public contracts and a general prohibition against the use of their public positions for their own private financial gain or that of another. It is not enough to complain that a public servant is guilty of misconduct, it must also appear that the misconduct violated one of these rules.

Misconduct resulting from negligence, incompetence, ignorance, insensitivity or personal animosity does not constitute a violation of the Ethics Act, unless it violates one of the rules contained in W.Va. Code § 6B-2-5. Even criminal misconduct will not be an Ethics Act violation, unless it constitutes a violation of one of those rules.

### PROBABLE CAUSE REVIEW BOARD

Once the Commission receives a verified complaint, it is referred to the Probable Cause Review Board. This Board consists of three members who have been appointed by the Governor with the advice and consent of the Senate. The Board must determine whether there is probable cause to believe that a material violation of the Ethics Act has occurred.

The Board, assisted by staff members and Board personnel, will conduct an investigation. Its proceedings are confidential. The person complained against will be given a copy of the complaint and may make a personal appearance before the Board, or simply make a written response to the complaint, but may not take any other part in the proceedings.

Investigations by the Commission's investigators are conducted as discretely as possible. The necessity of interviewing witnesses and obtaining records will, however, alert some members of the public to the existence of an investigation.

If, following its investigation, the Board finds probable cause, the Commission's staff prepares a Statement of Charges against the person accused. This is much like the indictment returned by a grand jury in a criminal case.

## **CONFIDENTIALITY**

To protect against public disclosure of unwarranted or frivolous complaints, the Act requires that, to the extent possible, all information relating to a filed complaint be kept confidential until the Review Board has finished its investigation and found probable cause.

The Commission is not even permitted to acknowledge the existence of a complaint until the Review Board has found probable cause, although it may, at the written direction of the person complained against, release information relating to an investigation.

## **HEARING BOARD**

The members of the Ethics Commission constitute a hearing board to adjudicate the case. Their decision is based on evidence taken at a public trial prosecuted by the Commission's attorney before a hearing examiner. It is not necessary for the complainant to appear at the hearing unless it is requested that he or she appears as a witness. A complainant need not be represented by counsel at the hearing.

If seven of the twelve commissioners find beyond a reasonable doubt that the accused has committed a material violation of the Ethics Act the Commission has authority to impose one or more of the following sanctions:

1. Public reprimand;
2. Cease and desist order;
3. Order of restitution;
4. Fines not to exceed \$ 5,000 per violation (\$ 1,000.00 if violation occurred prior to 07-01-05); and/or
5. Reimbursement to the Commission for the actual costs of investigating and prosecuting a violation (this sanction is not applicable to violations occurring prior to 07-01-05).

The Commission may also **recommend** to the appropriate governmental authority that the person be discharged or removed from office.

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In addition to these sanctions, a violation of some of the provisions of the Ethics Act constitutes a misdemeanor criminal violation with penalties of up to one year in jail. The Commission has no criminal jurisdiction, but if its proceedings uncover evidence of a criminal violation of any nature, the Commission can defer its own action and refer the matter to a county prosecuting attorney for criminal action.

## **CONCILIATION AGREEMENT**

The Act authorizes the Commission to enter into Conciliation Agreements with persons who are the subject of an investigation. This Agreement allows a person to resolve a Complaint by administrative settlement agreement. The inconvenience, expense and attendant notoriety of public hearings are avoided.

Such Agreements can be entered into at any stage of an investigation or proceeding. The cooperation of the accused and the savings of time and expense are matters to be considered by the Commission in establishing the penalties to be imposed. Although public hearings may be avoided by the Agreement, the Agreement itself must be made public.

## **BAD FAITH COMPLAINT**

If the Commission finds by clear and convincing evidence that a person filed a complaint or provided information which resulted in an investigation knowing that material information provided was not true, or if a complaint was made or information provided in reckless disregard for the truth or falsity, then the Commission shall order the person to reimburse the accused for his or her reasonable costs incurred, including the accused's attorney fees. The Commission may also order the complainant or informant to reimburse the Commission for its actual costs of investigation and may further decline to process any more complaints filed by that person.

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For more information please contact the WV Ethics Commission, 210 Brooks St., Suite 300  
Charleston, WV 25301, phone (304) 558-0664