

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 340 Department or Agency Ethics Commission
Rule No. 340-X-1
Rule Title: General Operations
 New Amend Repeal Adopt by
Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? no

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? yes

Is there another, less restrictive method of regulation available that could adequately protect the public? no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? no

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? yes

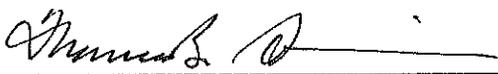
Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? yes

Does the proposed rule have an economic impact? no

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer 

Date 10/21/2019

(DATE FILED)

Alabama Ethics Commission

NOTICE OF INTENDED ACTION

AGENCY NAME:

Alabama Ethics Commission

RULE NO. & TITLE:

340-X-1 General Operations

INTENDED ACTION:

Repeal and New

SUBSTANCE OF PROPOSED ACTION:

The changes are to modify/update the rules related to handling cases before the Commission and Advisory Opinions; create an ex parte communications rule with respect to Commission members; create a process for allowing the electronic filing of complaints; define within the rules what is meant by "good cause" within the Ethics Act and FCPA; mandate electronic filing of SEIs beginning in 2021; create a rule which allows public agencies more freedom in determining acceptable use of public equipment, facilities and materials, and clarify how to determine the value of meals and de minimis items.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Views may be presented the following ways:

E-mail - info@ethics.alabama.gov

Mail - Alabama Ethics Commission

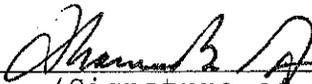
P.O. Box 4840

Montgomery, AL 36103-4840

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Thursday, December 5, 2019

CONTACT PERSON AT AGENCY: Thomas B. Albritton



(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

ALABAMA ETHICS COMMISSION
ADMINISTRATIVE CODE

CHAPTER 340-X-1
GENERAL OPERATIONS (REPEALED)

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340-X-1-.01 Policy For The Handling Of Cases Being Presented To The Alabama Ethics Commission.

(1) Not less than 45 days prior to any hearing before the commission, the respondent shall be given written notice that a complaint has been filed against him or her and shall be given a summary of the charges contained therein. The respondent shall have the right to be represented by retained legal counsel.

(2) The commission may not require the respondent to be a witness against himself or herself.

(3) Discovery. The commission shall provide discovery to the respondent pursuant to the Alabama Rules of Criminal Procedure.

(a) The respondent shall not be entitled to the commission's investigatory report, memoranda, witness lists, or other internal documents made by any employee or agent of the Ethics Commission in connection with the investigation of the case or the substance of any statements made by prospective witnesses.

(4) Evidence to be Considered.

(a) The commission shall consider evidence that the complainant or respondent wishes to offer. The commission may refuse to hear testimony or evidence that is merely cumulative in nature. The commission shall give testimony or evidence the weight it deems appropriate.

(b) The rules of evidence shall not be strictly applied and hearsay testimony or evidence may be considered by the commission.

(c) If evidence or issues are raised during a hearing that require additional investigation on the part of the commission staff, the commission may continue the hearing until the investigation is complete.

(d) The complainant may not raise additional issues or present additional evidence during the hearing before the commission that will require the hearing to be continued in order to allow the respondent to adequately respond.

(5) Conducting Hearings Before the Ethics Commission.

(a) Hearing conducted before the Alabama Ethics Commission are subject to the same restrictions relating to secrecy and non-disclosure as secret Grand Jury proceedings, specifically as provided in Code of Ala. 1975, Sections 12-16-214 to 12-16-216. There is no right of cross-examination of witnesses before the commission by either the complainants or the respondent.

(b) During the presentation of the complaint's case, the respondent or his or her attorney shall not be present in the hearing room. If the complainant has additional witnesses he or she wishes to offer, the complainant or his or her attorney or other representative shall not be present during the testimony or questioning of these witnesses by the commission or commission staff.

(c) At the conclusion of the complainant's case, the respondent shall be given an opportunity to testify. While the commission cannot compel a respondent to be a witness against himself or herself, if the respondent chooses to testify, the respondent will be subject to examination by the Ethics Commission.

(d) During the presentation of the respondent's case, the complainant or his or her attorney or representative shall not be present in the hearing room. If the respondent has

additional witnesses he or she wishes to offer, other than his or her own testimony, the respondent or his representative shall not be present during the testimony or questioning of these additional witnesses by the commission or commission staff.

(6) Continuances. Upon the timely request of the respondent, for good cause shown, a continuance of the hearing for not less than 30 days may be granted.

(7) Right of Appeal/Review.

(a) The respondent may request a reconsideration of the decision of the commission based on good cause shown.

(b) Good cause shown shall include, but not be limited to, additional evidence or information which was not available at the time of the initial hearing which more likely than not would have influenced the commission's decision.

(c) A request for reconsideration shall be filed with the commission within 30 days from the date of the initial ruling and shall require the consent of three commission members in order to be granted.

(8) Failure of Complainant to Appear Before Commission. The commission may in its discretion dismiss a case if a complainant fails or refuses to appear before the commission without showing good cause for failure to appear.

(9) Failure of Respondent to Appear Before Commission. The commission may proceed with a hearing when the respondent has failed or refused to appear before the commission if it be established that sufficient notification was given to the respondent.

(10) Administrative Resolution.

(a) Upon the respondent being notified of the complaint pending against him or her, the respondent shall also be informed of the Administrative Resolution provisions in the Ethics Law (assuming that Administrative Resolution would apply in the fact situation). The respondent shall also be provided a Request for Administrative Resolution form.

(b) If the respondent desires to have his or her case resolved administratively, the respondent shall fill out the Administrative Resolution Request form with the commission prior to the commencement of the hearing.

(c) The commission shall hear testimony necessary in order to make a determination of the appropriateness of an Administrative Resolution. The commission may by unanimous vote of the members present grant or deny Administrative Resolution based on the evidence presented.

(d) Upon the decision to grant the respondent's petition for Administrative Resolution, the commission shall forward the signed request to the district attorney for the appropriate jurisdiction of the Attorney General for final approval.

(e) If a respondent petitions for Administrative Resolution and the commission denies the request, the respondent's request for Administrative Resolution shall not be admissible in any further proceedings that arise from the hearing before the Ethics Commission.

Authors: James L. Sumner, Jr.; Hugh R. Evans, III

Statutory Authority: Code of Ala. 1975, §36-25-4.

History: Filed September 30, 1982. **Repealed and Replaced:** Filed February 11, 1998; effective March 18, 1998.

340-X-1-.02 Policy Regarding Reconsideration Of Advisory Opinions.

(1) The Alabama Ethics Commission may reconsider an Advisory Opinion upon the consent of at least three members of the Commission. Consent may be orally obtained and shall not require a meeting of the Ethics Commission.

(2) Reconsideration may be granted only for good cause shown. Good cause shall include, but shall not be limited to, new facts or evidence which support the reconsideration and which may materially affect the opinion.

(3) A request for reconsideration shall be made within 30 days of the Commission's rendering an advisory opinion.

(4) Review or appeal from any final action or decision of the Alabama Ethics Commission on an Advisory Opinion shall be filed in the Circuit Court of Montgomery County.

Authors: James L. Sumner, Jr.; Hugh R. Evans, III

Statutory Authority: Code of Ala. 1975, §36-25-4(a).

History: Filed September 30, 1982. **Repealed and Replaced:** Filed February 11, 1998; effective March 18, 1998.

340-X-1-.03 Policy Regarding Access To Commission Records.

(1) A person requesting to examine information on file with the Commission shall first complete a Request for Access to Commission Records form which requires the identification of the person making the request by name, address, occupation, and telephone number, and the identification of the records requested by individual name, and position or agency.

(2) The following records are available for public access:

- (a) Statements of Economic Interests
- (b) Notification of Contracts with the State or Any of its Agencies
- (c) Notification of Representation for a Fee
- (d) Lobbyist Registration Forms
- (e) Principal Form - Statement of Lobbyist Registration
- (f) Lobbyist Form - Quarterly Statement of Lobbying Activities
- (g) Principal Form - Quarterly Statement of Lobbying Activities
- (h) Supplements to Lobbyist/Principal Registration Statements or Quarterly Reports
- (i) Statement of Termination of Lobbying Activities

Authors: James L. Sumner, Jr.; Hugh R. Evans, III

Statutory Authority: Code of Ala. 1975, §§36-25-4(5).

History: Filed September 30, 1982. **Repealed and Replaced:** Filed February 11, 1998; effective March 18, 1998.

340-X-1-.04 Policy For Informal Opinions Relating To The Alabama Ethics Act.

(1) In order to facilitate the work of the Alabama Ethics Commission and to serve the public, the Director and General Counsel of the Alabama Ethics Commission are authorized to issue informal opinions to those covered and regulated by the

Alabama Ethics Act as to the meaning and application of the Act and that individual's or entity's compliance with the Act.

(2) Requests for informal opinions shall be in writing and shall state all of the facts relating to the request. A request contained in an email satisfies the requirement that the request be "in writing".

(3) All requests for informal opinions and the opinions themselves are confidential and will not be disclosed unless authorized by the individual or entity requesting the opinion.

(4) The effect of an informal opinion is prospective only and is based only on the facts presented.

(5) Informal Opinions do not have the force and effect of Formal Opinions issued by the Alabama Ethics Commission and do not provide legal immunity to the requesting party.

Author: John L. Carroll

Statutory Authority: Code of Ala. 1975, §36-25-4(a)(11).

History: New Rule: Filed April 1, 2015; effective May 6, 2015.

340-X-1-.05 Procedures For Pre-Certification Of A Function Or Activity.

(1) Code of Ala. 1975, §36-25-1(34)(b)(15) authorizes the Director of the Ethics Commission to pre-certify a function or activity. Anyone may invite a public official or public employee and their spouse to attend a pre-certified function or activity without violating the Alabama Ethics Act so long as the invitation is not for the purpose of corruptly influencing official action. A public official or public employee and their spouse may attend a pre-certified function or activity without violating the Alabama Ethics Act so long as the attendance at the function or activity would not constitute accepting something to corruptly influence their official action.

(2) In order to assist the director in determining whether an event or function should be pre-certified, an application seeking pre-certification shall

(a) Be made in writing to the Director at least 10 calendar days before the function or activity is to take place and

(b) Shall contain a statement of facts sufficient to show that the event or function should be pre-certified. The application should always state when the function or activity is to take place, specific information about who is invited as well as specific information about the purpose of the event and the event itself. If there is a formal agenda, a copy of the agenda should be attached to the application.

(3) Applications for pre-certification and their disposition will be posted on the website of the Alabama Ethics Commission.

(4) The website will also contain a chart summarizing the applications and dispositions for the applicable fiscal year.

Author: John L. Carroll

Statutory Authority: Code of Ala. 1975, §36-25-4(a)(11).

History: New Rule: Filed April 1, 2015; effective May 6, 2015.

340-X-1-.06 Policy For Liquidation Of Campaign Property. Ala. Code §17-5-7.2 (2015) states as follows:

(a) Except as provided in subsection (b), property purchased by or contributed to a principal campaign committee with a value of five hundred dollars (\$500) or more shall be liquidated at fair market value or donated to a qualified entity pursuant to subsection (a) of Section 17-5-7 not more than 120 days following the election. Any funds generated by the liquidation of the property shall be deposited in the candidate's principal campaign committee account.

(b) Property purchased by or contributed to a principal campaign committee that can be used by the person in the performance of his or her duties of the office he or she was elected to hold need not be liquidated as long as he or she holds office.

The Commission considers "property...with a value of five hundred (\$500) or more" to mean property with a reasonable fair market value of \$500 within the 120 days following an election, not the amount paid for the property prior to that time period. The Commission presumes the following property to fall below the threshold amount required for this chapter and, therefore, not required to be liquidated or donated.

1. Campaign signs, literature, stickers, t-shirts, etc. which upon the conclusion of the campaign have nominal value at best.

Chapter 340-X-1

Ethics

Author: Thomas B. Albritton, Director, Alabama Ethics Commission

Statutory Authority: Code of Ala. 1975, §36-25-4(11).

History: New Rule: Filed June 29, 2016; effective August 12, 2016.

**ALABAMA ETHICS COMMISSION
ADMINISTRATIVE CODE**

**CHAPTER 340-X-1
GENERAL OPERATIONS (NEW CHAPTER)**

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340-X-1-.01	<u>Policy For The Handling Of Cases Being Presented To The Alabama Ethics Commission.</u>

(1) Notice. Not less than 45 days prior to any hearing before the commission, the respondent shall be given written notice that a complaint has been filed against him or her and shall be given a summary of the charges contained therein. The respondent shall have the right to be represented by retained legal counsel. Notice is deemed sufficient if it is delivered by first class mail to the address at which the respondent regularly receives mail.

(2) The commission may not require the respondent to be a witness against himself or herself.

(3) Attendance at hearings. The presence of either the Complainant or the Respondent before the commission is not required. Neither the Complainant, the Respondent, nor their Representatives shall seek to influence the official action of a commissioner or commissioners through ex parte communications as referenced in Rule 340-X-1-.07 herein;

(4) Discovery. Upon written request, the commission shall provide discovery to the respondent pursuant to the Alabama Rules of Criminal Procedure. The respondent shall not be entitled to the commission's investigatory report, memoranda, witness lists, or other internal documents made by any employee or agent of the commission in connection with the investigation of the case or the substance of any statements made by prospective witnesses.

(5) Evidence to be Considered.

(a) The commission, within its discretion, determines what evidence it deems to be relevant, material, and what weight to assign to it.

(b) The rules of evidence shall not be strictly applied in any proceeding before the Commission, and hearsay testimony or evidence may be considered by the commission.

(c) Any evidence furnished to any commissioner directly is commission governed by Administrative Rule 340-X-1-.07.

(6) Conducting Hearings Before the Ethics Commission.

(a) Hearings conducted before the Alabama Ethics Commission are subject to the same restrictions relating to secrecy and non-disclosure as Grand Jury proceedings, specifically as provided in Code of Ala. 1975, Sections 12-16-214 to 12-16-216. There is no right of cross-examination of witnesses before the commission by either the complainants or the respondent.

(b) During the presentation of evidence to the commission, neither the respondent nor his or her attorney shall be present in the hearing room. If the complainant has additional witnesses he or she wishes to offer, that request can be made to the commission. If allowed, neither the complainant nor his or her attorney nor other representative shall be present during the testimony or questioning of these witnesses by the Commission or Commission staff.

(c) At the conclusion of the presentation of evidence to the commission, the respondent shall be given an opportunity to testify. While the commission cannot compel a respondent to be a witness against himself or herself, if the respondent chooses to testify, the respondent will be subject to examination by the commission or commission staff.

(d) During the respondent's presentation, neither the complainant nor his or her attorney or representative shall be present in the hearing room. If the respondent has additional witnesses he or she wishes to offer, that request can be made to the commission. If allowed, neither the respondent nor his or her attorney nor other representative shall be present during the testimony or questioning of these witnesses by the commission or commission staff.

(7) Continuances. Upon the timely request of the respondent, for good cause shown, a continuance of the hearing for not less than 30 days shall be granted. In addition, the commission may continue a hearing at the request of commission staff or of their own accord. Continuances which will result in the commission's loss of jurisdiction are not considered timely, but may be granted if the Respondent agrees to waive any objection to the commission's ability to hear the case past its 360-day deadline. For purposes of this Rule, what constitutes "good cause" shall be determined on a case-by-case basis by the staff in consultation with the Chairman of the commission.

(8) Administrative Resolution.

(a) Upon receiving notice of the complaint, the respondent shall also be informed of the Administrative Resolution provisions in the Ethics Law, if applicable.

(b) The commission shall hear testimony necessary in order to make a determination of the appropriateness of an Administrative Resolution. The commission may, by unanimous vote of the members present, grant or deny Administrative Resolution based on the evidence presented.

(c) Upon the decision to grant the respondent's petition for Administrative Resolution, the commission shall forward the signed request to the district attorney for the appropriate jurisdiction or the Attorney General for final approval.

Authors: Thomas B. Albritton; Cynthia Propst Raulston

Statutory Authority: Code of Ala 1975, §36-25-4.

History: Filed September 30, 1982.

Repealed and Replaced: Filed February 11, 1998; effective March 18, 1998.

Repealed and Replaced: Filed October 31, 2019; effective

340-X-1-.02 Policy Regarding Advisory Opinions.

(1) Requests for Advisory Opinions shall be made in writing on issues that are prospective only and shall be made no less than 14 days prior to the commission's scheduled meeting.

(2) The decision of whether and when to issue an Advisory Opinion is to be made in the discretion of the commission after consultation with the staff.

(3) The commission may self-generate Advisory Opinions.

(4) No requestor may have ex parte communications with any member of the commission regarding a formal advisory opinion, and the disclosure of such conversations is governed by Rule 340-X-1-.07.

(5) The commission may grant or deny a request for reconsideration of an Advisory Opinion upon the consent of at least three members of the commission, but may not consider the merits of the request or modify the Advisory Opinion outside a public meeting subject to the Open Meetings Act. The commission may grant or deny the request in writing either electronically or by mail and shall not require a meeting of the commission.

(6) A request for reconsideration shall be made by the individual to whom the Opinion is issued in writing and within 30 days of the commission's rendering an advisory opinion.

(7) The Advisory Opinion shall only be modified for good cause shown. For purposes of this rule, "good cause" shall include, but shall not be limited to, new facts or evidence which support the reconsideration, and which materially affect the opinion.

(8) Review or appeal from any final action or decision of the Alabama Ethics Commission on an Advisory Opinion shall be filed by the individual to whom the Opinion is issued in the Circuit Court of Montgomery County. For purposes of appeal or review, Advisory Opinions are considered appeals of a "contested case" under the Administrative Procedures Act.

Authors: Thomas B. Albritton; Cynthia Propst Raulston

Statutory Authority: Code of Ala 1975, §36-25-4 (a).

History: Filed September 30, 1982.

Repealed and Replaced: Filed February 11, 1998; effective March 18, 1998.

Repealed and Replaced: Filed October 31, 2019; effective

340-X-1-.03 Policy Regarding Access To Commission Records.

(1) A person requesting to examine information on file with the Commission shall first complete a Request for Access to Commission Records form which requires the identification of the person making the request by name, address, occupation, and telephone number, and the identification of the records requested by individual name, and position or agency.

(2) The following records are available for public access:

(a) Statements of Economic Interests

(b) Notification of Contracts with the State or Any of its Agencies

(c) Notification of Representation for a Fee

(d) Lobbyist Registration Forms

(e) Principal Form - Statement of Lobbyist Registration

(f) Lobbyist Form - Quarterly Statement of Lobbying Activities

(g) Principal Form - Quarterly Statement of Lobbying Activities

(h) Supplements to Lobbyist/Principal Registration Statements or Quarterly Reports

(i) Statement of Termination of Lobbying Activities

Authors: James L. Sumner, Jr.; Hugh R. Evans, III

Statutory Authority: Code of Ala. 1975, §§36-25-4(5).

History: Filed September 30, 1982.

Repealed and Replaced: Filed February 11, 1998; effective March 18, 1998.

340-X-1-.04 Policy For Informal Opinions Relating To The Alabama Ethics Act.

(1) In order to facilitate the work of the Alabama Ethics Commission and to serve the public, the Director and General Counsel of the Alabama Ethics Commission are authorized to issue informal opinions to those covered and regulated by the Alabama Ethics Act as to the meaning and application of the Act and that individual's or entity's compliance with the Act.

(2) Requests for informal opinions shall be in writing and shall state all of the facts relating to the request. A request contained in an email satisfies the requirement that the request be "in writing".

(3) All requests for informal opinions and the opinions themselves are confidential and will not be disclosed unless authorized by the individual or entity requesting the opinion.

(4) The effect of an informal opinion is prospective only and is based only on the facts presented.

(5) Informal Opinions do not have the force and effect of Formal Opinions issued by the Alabama Ethics Commission and do not provide legal immunity to the requesting party.

Author: John L. Carroll

Statutory Authority: Code of Ala. 1975, §36-25-4(a)(11).

History: New Rule: Filed April 1, 2015; effective May 6, 2015.

340-X-1-.05 Procedures For Pre-Certification Of A Function Or Activity.

(1) Code of Ala. 1975, §36-25-1(34)(b)(15) authorizes the Director of the Ethics Commission to pre-certify a function or activity. Anyone may invite a public official or public employee and their spouse to attend a pre-certified function or activity without violating the Alabama Ethics Act so long as the invitation is not for the purpose of corruptly influencing official action. A public official or public employee and their spouse may attend a pre-certified function or activity without violating the Alabama Ethics Act so long as the attendance at the function or activity would not constitute accepting something to corruptly influence their official action.

(2) In order to assist the director in determining whether an event or function should be pre-certified, an application seeking pre-certification shall

(a) Be made in writing to the Director at least 10 calendar days before the function or activity is to take place and

(b) Shall contain a statement of facts sufficient to show that the event or function should be pre-certified. The application should always state when the function or activity is to take place, specific information about who is invited as well as specific information about the purpose of the event and the event itself. If there is a formal agenda, a copy of the agenda should be attached to the application.

(3) Applications for pre-certification and their disposition will be posted on the website of the Alabama Ethics Commission.

(4) The website will also contain a chart summarizing the applications and dispositions for the applicable fiscal year.

Author: John L. Carroll

Statutory Authority: Code of Ala. 1975, §36-25-4(a)(11).

History: New Rule: Filed April 1, 2015; effective May 6, 2015.

340-X-1-.06 Policy For Liquidation Of Campaign Property. Ala. Code §17-5-7.2 (2015) states as follows:

(a) Except as provided in subsection (b), property purchased by or contributed to a principal campaign committee with a value of five hundred dollars (\$500) or more shall be liquidated at fair market value or donated to a qualified entity pursuant to subsection (a) of Section 17-5-7 not more than 120 days following the election. Any funds generated by the liquidation of the property shall be deposited in the candidate's principal campaign committee account.

(b) Property purchased by or contributed to a principal campaign committee that can be used by the person in the performance of his or her duties of the office he or she was elected to hold need not be liquidated as long as he or she holds office.

The Commission considers "property...with a value of five hundred (\$500) or more" to mean property with a reasonable fair market value of \$500 within the 120 days following an election, not the amount paid for the property prior to that time period. The Commission presumes the following property to fall below the threshold amount required for this chapter and, therefore, not required to be liquidated or donated.

1. Campaign signs, literature, stickers, t-shirts, etc. which upon the conclusion of the campaign have nominal value at best.

Author: Thomas B. Albritton, Director, Alabama Ethics Commission

Statutory Authority: Code of Ala. 1975, §36-25-4(11).

History: New Rule: Filed June 29, 2016; effective August 12, 2016.

340-X-1-.07 Policy Regarding Ex Parte Communications, Conflicts Of Interest, And Disqualification Of Commission Members.

(1) Members of the commission shall not engage in ex parte communications.

(2) "Ex parte communication" means any communication, whether verbal or written, and engaged in or received by a member of the commission outside an official meeting regarding

the merits of or any fact in issue relating to a pending matter before the commission or which may reasonably be expected to come before the commission in any proceeding. The term shall not include communications by or between commission members that do not violate Alabama's Open Meetings Act, or conversations between commission members and staff of the commission.

(3) In the case of ex parte communications, commission members shall publicly state, for inclusion in the official minutes of the commission, the name of the individual who initiated the ex parte communication, the date and time of the ex parte communication, the names of all individuals involved in the ex parte communication, and the subject matter discussed.

(4) Any person engaging in ex parte communications with a member of the commission, excluding a Respondent, may be disqualified from appearing before the commission in the matter by a majority vote of the commission. Violations of this Rule by any person subject to the Alabama Rules of Professional Responsibility shall be reported to the Alabama State Bar Office of General Counsel.

(5) Upon disclosure of an ex parte communication, or for any of the following reasons, members of the commission may voluntarily recuse themselves from the matter or be disqualified by a majority vote of the commission:

(a) When his or her participation in a proceeding would cause a reasonable person to question his or her impartiality, including but not limited to instances where:

1. The commissioner has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding whether it be through ex parte communications or otherwise;

2. The commissioner served as a lawyer for a Respondent, or a lawyer with whom he or she previously practiced law served as a lawyer for a Respondent, or the commissioner has been a material witness concerning the matter involving the Respondent;

3. The commissioner knows that he or she or a member of their family has any other interest that could be substantially affected by the outcome of the proceeding;

4. The commissioner or his or her spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding;

(ii) Is known by the commission member to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) Is to the commission member's knowledge likely to be a material witness in the proceeding;

5. Any reason determined by a majority vote of the commission to cause a reasonable person to question a commissioner's impartiality or the integrity of the commission itself.

(b) Once a member of the commission recuses or is disqualified from a proceeding for any reason, such member shall not subsequently be permitted to consider any aspect of such proceeding or participate or be present in hearings or discussions regarding the matter with other commission members or staff.

(c) Violations of this Rule do not invalidate official actions of the commission.

Authors: Thomas B. Albritton; Cynthia Propst Raulston

Statutory Authority: Code of Ala 1975, §36-25-4.

History: New Rule: Filed October 31, 2019; effective

340-X-1-.08 Signature Requirements For Complaints

The requirement that any complaint filed with the commission must be signed is met by use of an electronic signature. An electronic signature is considered to be the original signature upon the complaint for all purposes under Code of Alabama Title 36, Chapter 25. Electronic signatures shall either: (1) show an image of such signature as it appears on the original document or appended as an image file or (2) bear the name of the signatory preceded by an "/s/" typed in the space where the signature would otherwise appear, as follows: /s/ Jane Doe.

Authors: Thomas B. Albritton; Cynthia Propst Raulston

Statutory Authority: Code of Ala 1975, §36-25-4.

History: New Rule: Filed October 31, 2019; effective

340-X-1.09 Meaning Of "Good Cause"

For purposes of Ala. Code §§ 17-5-19.2 (Administrative Review of Civil Fines) and 36-25-15 (Statement of Economic Interests filing requirement for candidates), "good cause" exists:

(1) For lateness due to circumstances beyond the person's control.

(2) Examples of circumstances beyond the person's control include:

A. Acts of God;

B. Accident or injury;

C. Other cause which is reasonable, material and substantial under the circumstances and beyond the person's control.

(3) Examples of circumstances which are not beyond the person's control include:

A. Ignorance of the requirement;

B. Neglect on the part of the candidate or public official, election official or any of their offices, officers or employees.

(4) All requests for the finding of "good cause" shall be supported by affidavit or other sworn testimony.

(5) With respect to candidate filings of Statements of Economic Interests, the commission Director or General Counsel shall have the discretion to determine the existence of "good cause" or the lack thereof based on the facts as presented to the commission Director or General Counsel.

Authors: Thomas B. Albritton; Cynthia Propst Raulston

Statutory Authority: Code of Ala 1975, §36-25-4.

History: New Rule: Filed October 31, 2019; effective

340-X-1.10 Statements Of Economic Interests.

Beginning January 1, 2021, all Statements of Economic Interests as required by Code of Ala. 1975 36-25-14 and 15 shall be filed electronically through the commission's website. The commission staff may accept the filing of paper forms when the filer has no means to file electronically and that fact is confirmed through affidavit as supplied to the commission staff, affixed to the form, and upon the payment of a \$25.00 processing fee. A paper Statement of Economic Interests form will not be considered filed until such time as a complete form, with a properly executed affidavit and processing fee attached, has been properly addressed, postmarked, or the form is received by the commission and the processing fee is paid, whichever occurs first.

Authors: Thomas B. Albritton; Cynthia Propst Raulston

Statutory Authority: Code of Ala 1975, §36-25-4.

History: New Rule: Filed October 31, 2019; effective

340-X-1.11 Use of Public Resources.

For purposes of interpreting, investigating, and enforcing sections of the Ethics Act regarding the use of public equipment, facilities, materials or other public property, the commission shall consider whether the public official's office, board or commission, or the employee's public employer has a written policy which addresses and allows the usage.

Authors: Thomas B. Albritton; Cynthia Propst Raulston

Statutory Authority: Code of Ala 1975, §36-25-4.

History: New Rule: Filed October 31, 2019; effective

340-X-1.12 Limits for items of de minimis value, meals and disclosures under 36-25-19.

For purposes of compliance with the limits placed on items of de minimis value under Section 36-25-1(11) and meals as permitted by the Ethics laws, as well as required disclosures under Section 36-25-19, those limits should be calculated without respect to any tax or gratuity.

Authors: Thomas B. Albritton; Cynthia Propst Raulston
Statutory Authority: Code of Ala 1975, §36-25-4.
History: New Rule: Filed October 31, 2019; effective