Agency # 153.00

ARKANSAS ETHICS COMMISSION

RULES OF PRACTICE AND PROCEDURE

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I. DESCRIPTION

The Arkansas Ethics Commission ("Commission") is composed of five appointed Commissioners who enforce certain ethics, conflicts of interest, lobbying, campaign, campaign finance, and ballot question laws within the State of Arkansas. In accordance with these rules of practice and procedure, the Commission issues advisory opinions and legal interpretations of law, and acts as fact-finder and sanctioning body with respect to allegations of violations of laws under its jurisdiction. Information may be obtained from the Commission by written request. The Commission staff, which may consist of a director, staff attorney(s), director(s) of compliance and others, acts as the administrator and operating entity of the Commission. This staff, or members thereof, may make office administrative procedure, act as spokesman for the Commission, receive correspondence and correspond on behalf of the Commission, provide legal and other research to the Commission, investigate allegations of violations of laws under the Commission's jurisdiction, and perform such other functions as the Commission deems appropriate. These rules of practice and procedure shall govern all proceedings before the Commission and shall be applicable to any complaints filed or initiated after the effective date hereof. In accordance with Ark. Code Ann. § 25-15-204(d), any person may petition the Commission for the issuance, amendment, or repeal of any rule.

II. COMMISSION & STAFF

A. <u>Commission Organization</u>

(1) The Commission shall consist of five (5) Commissioners who shall be appointed as follows:

- one member by the Governor of the State of Arkansas
- one member by the Lieutenant Governor of the State of Arkansas
- one member by the Attorney General of the State of Arkansas
- one member by the Speaker of the Arkansas House of Representatives
- one member by the President Pro Tempore of the Arkansas Senate

(2) Pursuant to Ark. Code Ann. § 7-6-217(b)(1), the Commission shall, at all times, have among its members:

- one member of a minority race
- one woman
- one member of a minority political party

(3) Each Commissioner has a responsibility to attend all regular and special meetings of the Commission. Any Commissioner who fails to attend three (3) consecutive regular meetings shall be subject to removal from the Commission pursuant to Ark. Code Ann. § 25-17-211.

(4) In accordance with Ark. Code Ann. § 7-6-217, Commissioners shall be appointed for terms of five (5) years and they shall continue to serve until their successors have been appointed and taken the official oath. No person may be appointed to serve consecutive terms on the Commission; provided, however, that any Commissioner who has been appointed to serve two (2) years or less of an unexpired term shall be eligible for an appointment to a subsequent five (5) year term.

(5) The Commission shall annually elect one of its members to serve as chairman for a term of one (1) year. The Commission may elect a vice-chairman and such other officers as a majority of the Commissioners choose. The vice-chairman shall serve as chairman in the absence, disqualification, or disability of the chairman.

(6) The election of officers shall be conducted at the first regular meeting of the Commission following January 1 of each year. The Commission may form such committees or subcommittees as it deems necessary and/or appropriate to accomplish its legal aims and purposes. The Commission may appoint one or more of its members to an unofficial committee or subcommittee and may invite non-Commissioners to participate as unofficial committee or subcommittee members.

(7) At each meeting of the Commission, three (3) members shall constitute a quorum whether in person or by electronic or telephonic means. However, an affirmative vote of at least three (3) Commissioners physically present at a meeting is required before any sanction(s) can be imposed. The vote of each member voting on any action shall be a public record.

(8) A majority of the members of the Commission present shall vote on any matter before the Commission for any decision of the Commission to become effective. The following matters shall be by motion, followed by a second, in order for a vote of the Commission to be valid:

a. all matters requiring affirmative action by the full Commission or one of its members;

b. all decisions on public positions taken by the full Commission;

c. all decisions on advisory opinions and declaratory orders; and

d. all decisions regarding findings of fact and conclusions of law or other actions regarding a person accused of violating any laws under the Commission's jurisdiction.

(9) The Commission may, by majority vote, delegate the execution of any official duty or action to its chairman, one of its members, or the director.

(10) A vacancy on the Commission shall not impair the right of the Commission to exercise its statutory powers and authority, subject to the requirement that a quorum be present and participating before any action of the Commission shall be considered valid.

(11) No Commissioner shall be a federal, state or local government official or employee, an elected public official, a candidate for public office, a lobbyist as defined in Ark. Code Ann. § 21-8-402(11), or an officer or paid employee of an organized political party as defined in Ark. Code Ann. § 7-1-101(26).

(12) Each Commissioner, during the entire term of his or her service on the Commission, shall be prohibited from participating in, raising funds for, making contributions to, providing services to, or lending his or her name in support of any candidate for election to a state, district, county, municipal, or school board office or in support of a ballot issue or issues submitted or intended to be submitted to voters of the State of Arkansas, excluding the exercise of the right to vote or the mere signing of an initiative or referendum petition. This prohibition shall not extend to the spouse or family members of a Commissioner nor to his or her business partners or professional associates.

(13) Unless required for the disposition of *ex parte* matters authorized by law, the Commissioners shall not communicate, directly or indirectly, in connection with any issue of fact with any person, including the complainant and the respondent nor, in connection with any issue of law, with either the complainant or respondent, or their representatives, except upon notice and opportunity for the complainant and respondent to participate.

B. <u>Staff Organization</u>

(1) The Commission shall employ a director who shall serve at the will and pleasure of the Commission.

(2) The director shall employ a staff, with the consent of the Commission, to assist in the administration of the Commission office.

(3) The director shall be responsible to the full Commission and shall not be answerable to any member thereof. The director shall ensure, however, that the chairman of the Commission is advised of the progress and conduct of the employees and operation of the Commission office.

(4) Though the director's hiring of staff shall be with the consent of the Commission, such employees, once approved for employment, shall be the responsibility of the director in matters

common to an employer/employee relationship, and the director shall be responsible to the Commission for the actions of employees on the staff.

(5) Each member of the Commission staff, during the entire term of his or her service on the Commission, shall be prohibited from participating in, raising funds for, making contributions to, providing services to, or lending his or her name in support of any candidate for election to a state, district, county, municipal or school board office or in support of a ballot issue or issues submitted or intended to be submitted to the voters of the State of Arkansas, excluding the exercise of the right to vote or the mere signing of an initiative or referendum petition. This prohibition shall not extend to the spouse or family members of the employee.

C. <u>Meeting Times and Sites</u>

(1) Meetings shall be regularly scheduled and held, subject to cancellation or re-scheduling by majority vote of the members. The date, time and place of each regular meeting shall be furnished to anyone who requests the information. Should there fail to be a quorum at a scheduled meeting, then such meeting may be rescheduled by the chairman provided all members are given reasonable notice of the date, time, and place of the rescheduled meeting. Special meetings of the Commission may be called by the chairman, provided that the majority of the members of the Commission so consent. Commissioners may call a meeting by written request to the chairman of any three Commissioners. In the event of a special meeting, notification of the date, time and place of the meeting shall be given, at least two (2) hours before the meeting takes place, to the news media located in the county in which the meeting is to be held and those located elsewhere that cover regular meetings of the Commission and have requested to be so notified.

(2) The Commission may vary its meeting site to accommodate its needs and accomplish its purposes.

(3) The director shall prepare a proposed agenda for each regular meeting, and the proposed agenda shall be distributed to the Commission members prior to any such meeting. Any

Commissioner may add items to the agenda by notification to the director twenty-four (24) hours before the scheduled meeting date. Any item may be added to the agenda at any time with the unanimous consent of the Commission.

D. Meeting Procedure

(1) All meetings of the Commission shall be governed by Robert's Rules of Order, except as may be modified by a majority of the Commission members and by these rules of practice and procedure.

(2) Any Commissioner who has an actual conflict of interest in any proceeding before the Commission shall recuse voluntarily from any involvement in the matter. If a majority of the Commissioners determines that one of its members has such a conflict, they may, by affirmative vote, disqualify said member from participation in the matter.

(3) All meetings of the Commission, except as provided in subparagraph (D)(4) of this section or Ark. Code Ann. § 25-19-106(c), shall be open to the public.

(4) Any portion of a Commission meeting at which citizen complaints, including those filed by the Commission, are considered shall be in confidential session and not open to the public. Following any such confidential session, the Commission shall reconvene in public to vote on any matters constituting final action.

(5) All records generated or accepted by the Commission and its staff shall be open to public inspection, except for: (a) matters which are parts of confidential investigations or inquiries, and (b) the advice and opinions of the director or staff attorney(s) when acting as the Commission's counsel on matters which may be considered to have occurred in an attorney-client relationship.

(6) All proceedings, records, and transcripts of any investigations or inquiries shall remain confidential and not subject to disclosure, unless: (a) the respondent requests disclosure of the documents; (b) there is a public hearing before the Commission; or (c) there is judicial review of a Commission decision. Provided, however, that the Commission may, through its members or staff, disclose confidential information to proper law enforcement officials, agencies, and bodies or as may be required to conduct its investigation. Moreover, thirty (30) days after any final adjudication in which the Commission makes a finding of a violation, all records relevant to the investigation and upon which the Commission based its decision, except working papers of the Commission and its staff, shall be open to public inspection.

III. GENERAL ADMINISTRATION

(1) The Commission shall delegate to the director the authority to operate the Commission office, with his or her duties enumerated by the Commission. Such duties shall include, but not be limited to, the following:

a. Conducting general administration of the Commission office and its staff in a business-like and efficient manner. The director shall periodically report to the Commission concerning the conduct and operation of the office;

b. Managing the appropriated budget of the Commission, and ensuring that all expenditures from budgeted money are made within the law and general purposes of the Commission. The director shall periodically report to the Commission concerning the financial status of the office;

c. Preparing and maintaining files and records on the activities, matters, and persons coming under the authority and responsibility of the Commission. The Director shall be the "custodian" of the Commission's records as that term is defined in Ark. Code Ann. § 25-19-103;

d. Preparing reports, studies, opinions, policy statements, legal interpretations, and other matters as required by the Commission;

e. Receiving and responding to correspondence on behalf of the Commission on matters relating to official Commission business;

f. Managing travel, logistics, expenses, and reimbursement for Commissioners and staff and scheduling seminars and training by or for the Commission; and

g. Ensuring that the Commission office and its employees reflect good character, comply with the law, and carry out other duties as may, from time to time, be enumerated by the Commission.

IV. MATTERS BEFORE THE COMMISSION

A. Advisory Opinions

(1) Advisory opinions, except those issued by the Commission on its own initiative, shall be issued only in response to a written request setting forth an inquiry into matters falling under the jurisdiction of the Commission.

(2) The Commission may, on its own initiative, direct the staff to prepare a draft opinion, or it may accept a draft advisory opinion from the staff without first receiving a request when the Commission determines the subject of the draft opinion is of such public concern that an advisory opinion would benefit the public.

(3) No advisory opinion shall be valid, official, or have any effect unless same has been approved by a vote of a majority of a quorum of the Commission.

(4) Any citizen shall be entitled to request an advisory opinion from the Commission. Any request which meets these procedural guidelines shall be responded to within ninety (90) days, unless good cause be shown.

(5) The response to opinion requests shall be prepared by the Commission staff and shall be presented by staff to the full Commission for its consideration within the time limit set forth above, unless good cause be shown.

(6) The Commission is not bound by or obligated to release the conclusions or language of the staff's draft opinion but may alter, amend, add to, or strike any portion of the draft opinion, or may order that said draft opinion be tabled for future consideration or that it be rewritten to comply with the Commission's directives, as the Commission shall so decide.

(7) No draft opinion prepared by the Commission staff shall be considered an official opinion until it has received an affirmative vote of a majority of a quorum of the Commission.

(8) The Commission may reconsider, withdraw, or amend prior opinions upon request of a citizen, or on its own motion, on a majority vote of a quorum of the Commission. In such event, written notice shall be mailed to the citizen who originally requested the opinion at the last address which that citizen provided to the Commission.

(9) All advisory opinions issued by the Commission shall be made available for public inspection.

B. <u>Declaratory Orders</u>

(1) The Commission shall, upon the filing of a petition for declaratory order by any person subject to the Commission's jurisdiction, promptly issue a declaratory order as to the applicability of any rule, statute, or order enforced by it. Said petition shall contain the name, mailing address, telephone number, and signature of the person requesting the order and a full and

complete statement of the facts or circumstances applicable to that person. Such declaratory orders shall have the same status as final orders of the Commission in cases of adjudication.

(2) No declaratory order shall be valid, official, or have any effect unless same has been approved by a vote of a majority of a quorum of the Commission.

(3) The Commission is not bound by or obligated to release the conclusions or language of the staff's draft order but may alter, amend, add to, or strike any portion of the draft order, or may table said draft order for future consideration or request that it be rewritten to comply with the Commission's directives, as the Commission shall so decide.

(4) No draft order prepared by the Commission staff shall be considered an official order until it has received an affirmative vote of a majority of a quorum of the Commission.

(5) The Commission may reconsider, withdraw, or amend prior orders upon request of a citizen, or on its own motion, on a majority vote of a quorum of the Commission.

(6) All declaratory orders issued by the Commission shall be made available for public inspection.

C. Monitoring Compliance with Ethics and Disclosure Laws-Corrective Action Letters

(1) The Commission, through its staff, shall periodically review documents required to be filed under the laws enforced by the Commission.

(2) Persons who have failed to file, filed late, or filed incomplete, false, or materially misleading documents may be contacted in writing by the Commission or its staff and advised to take corrective action. The contact and advice may be in lieu of, or in addition to, other action(s) by the Commission under Ark. Code Ann. § 7-6-218(b)(4).

(3) If the Commission or its staff determines from a review of documents or is notified by the Secretary of State, a county clerk, or city clerk or recorder that a person required to file documents under the Commission's jurisdiction has failed to file, filed late, or filed incomplete, false, or materially misleading documents, the Commission may contact the person and advise him or her to take corrective action as to the document(s) required to be filed. The contact and advice may be in lieu of, or in addition to, other action(s) by the Commission under Ark. Code Ann. § 7-6-218(b)(4).

(4) Corrective action letters shall be public records. However, the sending of a corrective action letter is not tantamount to the finding of a violation by the Commission. Instead, such letters are a means of seeking public disclosure. The taking of corrective action is not an admission of a violation and is a factor to be considered by the Commission in determining whether to take other action(s) under Ark. Code Ann. § 7-6-218(b)(4).

V. FILING OF COMPLAINT

A. Citizen Complaint

(1) Any citizen may file a complaint with the Commission against a person alleged to have violated one or more of the laws over which the Commission has jurisdiction. The Commission staff has prepared a citizen complaint form which may be furnished free of cost to any citizen.

(2) A complaint must be filed within four (4) years after the alleged violation occurred. If the alleged violation is the failure to file a report or the filing of an incorrect report, the complaint must be filed within four (4) years after the date the report was due.

(3) A valid complaint to the Commission must:

a. Clearly set forth the name(s) of the person(s) alleged to have violated laws under the Commission's jurisdiction;

b. Clearly set forth the facts the complainant believes constitute a violation of laws under the Commission's jurisdiction; and

c. Be signed under penalty of perjury.

(4) A complaint meeting the foregoing requirements shall be accepted by the staff of the Commission provided it is written on a Commission complaint form or is otherwise reduced to writing.

(5) Any Commissioner who shall receive a written complaint or evidence relevant to an on-going complaint investigation shall immediately transfer same to the director of the Commission for proper handling. If, however, the written complaint is against the director or other staff member, the Commissioner shall not release same to the director, except as provided in these rules.

B. <u>Complaints Against Staff or Commissioners</u>

(1) Complaints against the director or any staff member of the Commission shall be filed with the chairman of the Commission.

(2) Complaints against any Commissioner shall be filed with the director of the Commission, or with any of the remaining Commissioners.

C. <u>Filing of Complaint by Commission</u>

(1) For purposes of filing a citizen complaint, the Commission shall be considered a citizen.

(2) The director, a staff attorney, or a director of compliance may, in his or her official capacity, sign a citizen complaint on behalf of the Commission after:

a. Notifying the chairman of the name of the individual alleged to have committed a violation and the nature of the alleged violation; and

b. Receiving the consent of the chairman to proceed with an investigation.

(3) Once filed, a complaint will be handled in the same manner as any other complaint received from a citizen.

D. <u>Affirmative Defense Concerning Discovery of Unintentional Error in Report Required Under Subchapter 2 of Chapter 6, Title 7 of the Arkansas Code</u>

(1) It is an affirmative defense to prosecution or disciplinary action if a person who is required to file a report under Subchapter 2 of Chapter 6, Title 7 of the Arkansas Code amends the report within thirty (30) days of discovering or learning of an unintentional error in the report. If a complaint alleges a person committed a reporting error, the director shall notify the person who is the subject of the complaint of the existence of this affirmative defense. In addition, the director shall notify the person who is the subject of the complaint of the date, time, and place of the meeting at which the allegation will be considered for a determination of whether or not the alleged error in the report was unintentional and whether or not the filing of an applicable amendment occurred within the required thirty (30) day time period.

(2) In the event the Commission determines that the reporting error was unintentional and the filing of an applicable amendment occurred within the required thirty (30) day time period, the Commission shall not proceed with an investigation of an alleged unintentional error in a report filed under Subchapter 2 of Chapter 6, Title 7 of the Arkansas Code. If the Commission does not proceed with an investigation of an alleged unintentional error in a report, the person shall not be considered to have committed a violation of the applicable statute under Subchapter 2 of Chapter 6, Title 7 of the Arkansas Code. However, assertion of the affirmative defense provision contained herein shall not be construed to (i) remove the duty to file a report required

by Subchapter 2 of Chapter 6, Title 7 of the Arkansas Code, or (ii) authorize a person to knowingly fail to file a report required by Subchapter 2 of Chapter 6, Title 7 of the Arkansas Code.

(3) Upon a determination by the Commission that an assertion of the above-described affirmative defense is not valid, the director shall cause an investigation to be commenced concerning the allegation in accordance with the procedure set forth in section VI of these rules.

E. Affirmative Defense Concerning Discovery of Unintentional Error in Statement of Financial Interest Required Under Subchapter 7 of Chapter 8, Title 21 of the Arkansas Code

(1) It is an affirmative defense to prosecution or disciplinary action if a person who is required to file a Statement of Financial Interest ("SFI") under Subchapter 7 of Chapter 8, Title 21 of the Arkansas Code amends the SFI within thirty (30) days of discovering or learning of an unintentional error in the SFI. If a complaint alleges a person committed a reporting error, the director shall notify the person who is the subject of the complaint of the existence of this affirmative defense. In addition, the director shall notify the person who is the subject of the complaint of the date, time, and place of the meeting at which the allegation will be considered for a determination of whether or not the alleged error in the SFI was unintentional and whether or not the filing of an applicable amendment occurred within the required thirty (30) day time period.

(2) In the event the Commission determines that the reporting error was unintentional and the filing of an applicable amendment occurred within the thirty (30) day time period, the Commission shall not proceed with an investigation of an alleged unintentional error in a SFI filed under Subchapter 7 of Chapter 8, Title 21 of the Arkansas Code. If the Commission does not proceed with an investigation of an alleged unintentional error in a SFI, the person shall not be considered to have committed a violation of the applicable statute under Subchapter 7 of Chapter 8, Title 21 of the Arkansas Code. However, assertion of the affirmative defense provision contained herein shall not be construed to (i) remove the duty to file a SFI required by

Subchapter 7 of Chapter 8, Title 21 of the Arkansas Code, or (ii) authorize a person to knowingly fail to file a SFI required by Subchapter 7 of Chapter 8, Title 21 of the Arkansas Code.

(3) Upon a determination by the Commission that an assertion of the above-described affirmative defense in not valid, the director shall cause an investigation to be commenced concerning the allegation in accordance with the procedure set forth in section VI of these rules.

F. Affirmative Defense Concerning Discovery of Unintentional Violation of Gift Prohibition Set Forth in Ark. Const. Art. 19, § 30

(1) It is an affirmative defense to prosecution or disciplinary action if a person elected or appointed to an office under Ark. Const. Art. 19, § 30(a) takes one (1) of the following actions within thirty (30) days of discovering or learning of an unintentional violation of the gift prohibition set forth in Ark. Const. Art. 19, § 30: (i) Returns the gift to the donor; or (ii) If the gift is not returnable, pays the donor consideration that is equal to or greater than the value of the gift. If a complaint alleges a person committed a violation of Ark. Const. Art. 19, § 30, the director shall notify the person who is the subject of the complaint of the existence of this affirmative defense. In addition, the director shall notify the person who is the subject of the complaint of the date, time, and place of the meeting at which the allegation will be considered for a determination of whether or not the alleged violation was unintentional and whether or not the applicable action occurred within the required thirty (30) day time period.

(2) In the event the Commission determines that the violation of Ark. Const. Art. 19, § 30 was unintentional and the aforementioned action is taken within the required thirty (30) day time period, the Commission shall not proceed with an investigation of an alleged violation of the gift prohibition set forth in Ark. Const. Art. 19, § 30. If the Commission does not proceed with an investigation of an alleged unintentional violation, the person shall not be considered to have committed a violation of the gift prohibition set forth in Ark. Const. Art. 19, § 30. However, assertion of the affirmative defense provision contained herein shall not be construed

to authorize a person to knowingly or willfully solicit or accept a gift in violation of Ark. Const. Art. 19, § 30.

(3) Upon a determination by the Commission that an assertion of the above-described affirmative defense in not valid, the director shall cause an investigation to be commenced concerning the allegation in accordance with the procedure set forth in section VI of these rules.

VI. INVESTIGATION PROCEDURE

(1) Every document the Commission receives which purports to be a complaint, whether sworn or unsworn, shall, upon receipt, be stamped with the current date, then forwarded to the director.

(2) The director shall determine if the document meets the requirements of a valid complaint set forth in subparagraph A(3) of section V. If the director determines that the document does not constitute a valid complaint, he or she shall advise the complainant in writing specifically why the document fails to meet the requirements of a valid complaint.

(3) Upon a determination that a valid complaint has been received, the director shall cause an investigation to be commenced concerning the allegations of the complaint. As part of that investigation, the director shall request that the complainant submit any and all evidence he or she may have concerning the matter(s) alleged. The Commission's staff (and not the complainant) shall be responsible for conducting the investigation.

(4) Each such investigation must be assigned a case number and, thereafter, all records, documents, and other evidence collected must be maintained in the file to which such case number is assigned.

(5) The director shall notify the person accused that he or she is under investigation, and the nature of the investigation pursuant to Ark. Code Ann. § 7-6-218(b)(1)(B). If during the process of

the investigation, evidence of other potential violations is discovered, the director shall notify the respondent of same in writing if an investigation of said potential violations is pursued. When notifying the respondent of an investigation, the director shall inform the respondent that he or she has a right to submit any and all evidence which may serve to rebut or mitigate the alleged violation(s).

(6) The Commission's staff shall present a preliminary report of its investigation, including a recommendation that the investigation either be continued or that the complaint be dismissed, to the Commission within sixty (60) days of the filing of the complaint, unless good cause be shown. After being presented the preliminary report, the Commission shall decide whether to dismiss the complaint or direct the staff to complete the investigation. If the Commission directs staff to complete the investigation, the director shall notify the respondent in writing of this decision.

(7) If, during the course of the investigation, the Commission has reason to believe that any person filed or caused to be filed a complaint against another which he or she knows or should know contains a false material allegation, the Commission may forward all documents and other evidence of same to the appropriate law enforcement authority with such recommendations as it deems appropriate.

(8) In any case in which the Commission has dismissed a complaint, the respondent may request in writing that the Commission make a finding as to whether or not the complaint filed was frivolous (*i.e.*, clearly lacking any basis in fact or law). Upon receipt of such a request, a copy shall be furnished to the complainant and he or she shall have ten (10) calendar days to submit a written response. As part of that response, the complainant may request a hearing on the issue of whether or not the complaint was frivolous. At such a hearing, both the respondent and the complainant shall have the right to be represented by counsel. If no hearing is requested, the question of whether or not the complaint filed was frivolous shall be decided on the written submission(s). In the event the Commission finds that the complaint was frivolous, the respondent may file a complaint seeking sanctions as provided in Ark. Code Ann. § 7-6-218(b)(4).

(9) The director, a staff attorney, or a director of compliance of the Commission may issue subpoenas for documents, persons, books, or other records relevant to complaint investigations and may take sworn statements and administer oaths in connection therewith. The director shall also be empowered to issue subpoenas on behalf of the respondent so as to ensure all relevant evidence may be obtained in any investigation. Any decision by the director to deny the respondent a requested subpoena shall be in consultation with the chairman of the Commission.

(10) When in the course of an investigation the Commission issues subpoenas to financial institutions for records or information regarding a person who is the subject of the investigation, the Commission shall provide the subject of the investigation with reasonable notice of the subpoenas and an opportunity to respond.

(11) All proceedings, records, and transcripts of any investigations or inquiries shall be kept confidential by the Commission, unless: (i) the respondent requests disclosure of documents relating to investigation of the case; or (ii) the respondent requests a public hearing, see subparagraph (1) of section VII; or (iii) there is judicial review of a Commission decision pursuant to Ark. Code Ann. § 25-15-212, see subparagraph (3) of section X. Provided, however, that the Commission may, through its members or staff, disclose confidential information to proper law enforcement officials, agencies and bodies or as may be required to conduct its investigation. Moreover, thirty (30) days after any final adjudication in which the Commission makes a finding of a violation, all records relevant to the investigation and upon which the Commission based its decision, except working papers of the Commission and its staff, shall be open to public inspection.

(12) The Commission's staff shall not detail evidence of an ongoing investigation to the Commissioners after being directed to complete an investigation pursuant to subparagraph 6 of this section.

(13) After completing its investigation, staff shall prepare a final report of the investigation to be submitted to the Commission in connection with determining whether or not probable cause exists for a finding of a violation.

(14) The respondent and the complainant, if applicable, shall be notified in writing by the director, a staff attorney, or a director of compliance of the date, time and place of the meeting at which the complaint will be considered for a probable cause determination. The respondent and the complainant may choose to attend and/or be represented by counsel. The respondent may offer testimony and other evidence at the meeting at which the complaint is considered for a probable cause determination. The complainant may address the Commission but shall not be responsible for presenting any evidence. Such responsibility rests with the Commission's staff. When the matter comes before the Commission for a probable cause determination, it will be handled in confidential session and not be open to the public. At the meeting at which the complaint is considered for a probable cause determination, staff shall present a final report of its investigation to the Commissioners together with any other information staff deems appropriate.

(15) If the Commission finds that probable cause exists for a finding of a violation, the Commission shall issue a written Offer of Settlement to the respondent stating the finding(s) of the Commission and the proposed sanction(s). The issuance of an Offer of Settlement shall not mean that the Commission has found that the respondent has committed a violation but, rather, that probable cause has been found to exist. If the Commission does not find probable cause, it shall dismiss the complaint.

(16) Any person who wishes to accept the Commission's Offer of Settlement shall do so in writing within ten (10) calendar days from the issuance of the offer. The acceptance of an Offer of Settlement shall be the equivalent of a final adjudication in which the Commission made a finding of a violation and shall constitute final action for purposes of appeal under the Administrative Procedure Act. If accepted, the Offer of Settlement shall be deemed a public record.

(17) If the respondent neither accepts the Offer of Settlement nor requests a public hearing (in accordance with subparagraph (1) of section VII) within ten (10) calendar days from the issuance of the Offer of Settlement, then the Commission shall set the complaint for final adjudication hearing. Said hearing shall be conducted in the same manner as provided for in

subparagraphs (4) through (12) of section VII, except that the final adjudication hearing shall be held in confidential session. The respondent and the complainant, if applicable, shall be given written notice of the date, time, and place of the hearing pursuant to Ark. Code Ann. § 25-15-208(a)(2). Once a matter has been scheduled for a final adjudication hearing, the respondent, upon written request, shall be permitted to review the entire investigative file with the exception of working papers of the Commission and its staff. Following the final adjudication hearing, the Commission shall prepare a final order setting forth its findings of fact and conclusions of law based upon the evidence presented at the final adjudication hearing. The Commission shall not be bound by the terms of the Offer of Settlement in issuing the final order.

(18) All investigations commenced as a result of any complaint must be completed within two hundred ten (210) days from the date of receipt of the complaint upon which the investigation is based, except that, if a public hearing or other hearing of adjudication is conducted, all action on the complaint by the Commission shall be completed within two hundred forty (240) days. Provided, however, that such time shall be tolled during the pendency of any civil action, civil appeal, or other judicial proceedings, involving those particular Commission proceedings.

(19) The Commission, in a document, shall advise the complainant and the respondent of the final action taken together with the reasons for the action. Said document shall be a public record.

(20) Nothing herein shall prohibit the Commission from informally disposing of a complaint by stipulation, settlement, consent order, or default pursuant to Ark. Code Ann. § 25-15-208(b). Any settlement agreement entered into between the Commission and a respondent shall be deemed a public record.

VII. PUBLIC HEARING

(1) Any respondent who has received an Offer of Settlement from the Commission shall have the right to request a public hearing pursuant to Ark. Code Ann. § 7-6-218(b)(2). The request must be in writing and received by the Commission no later than ten (10) calendar days from the issuance of the Commission's Offer of Settlement.

(2) In the event the respondent requests a public hearing, the confidentiality requirements of Ark. Code Ann. § 7-6-218(b)(3)(B) shall not prohibit documents and other evidence gathered in the investigation from being made a part of the record at the hearing.

(3) Upon receiving a request for a public hearing, the director shall set a date, time and place for the hearing, and written notice shall be given to the respondent and complainant, if applicable, pursuant to Ark. Code Ann. § 25-15-208(a)(2). A written notice of public hearing is a public document. Once a matter has been scheduled for a public hearing, the respondent, upon written request, shall be permitted to review the entire investigative file with the exception of working papers of the Commission and its staff.

(4) The respondent shall have the right to appear in person before the Commission at the public hearing, to be represented by counsel, to present such documentary, oral or other evidence as he or she may have in support of his or her position, to cross-examine witnesses, and to present argument on all issues involved. The complainant shall have the right to appear in person before the Commission at the public hearing, to be represented by counsel, and to address the Commission. The complainant shall not be responsible for presenting any evidence. Such responsibility rests with the Commission's staff.

(5) The director, a staff attorney, or a director of compliance shall appear at the public hearing for purposes of presenting evidence concerning the alleged violation(s) of the respondent. Whichever of these individuals presents such evidence shall not be present while the

Commissioners conduct their deliberations, nor shall said individual assist the Commission in preparation of the final order. In addition, a staff member who, in his or her official capacity, has signed a citizen complaint form on behalf of the Commission, shall not be present while the Commissioners conduct their deliberations, nor shall said individual assist the Commission in the preparation of the final order.

(6) The chairman of the Commission or, at his or her request, one of the other Commissioners, shall preside at the public hearing and, as the presiding officer, rule on motions and objections, and admit or deny evidence into the record. The presiding officer is charged with maintaining the decorum of the public hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly. The presiding officer shall conduct the public hearing in the following manner:

a. Order of Proceedings.

1. The presiding officer will give an opening statement, briefly describing the nature of the proceedings.

2. The parties are to be given the opportunity to present opening statements.

3. The parties will be allowed to present their cases in the sequence determined by the presiding officer.

4. Each witness shall be sworn or affirmed by the presiding officer and be subject to examination and cross-examination as well as questioning by the Commission. The presiding officer may limit questioning in a manner consistent with law.

5. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

b. Evidence.

1. The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.

2. Stipulation of facts between the parties is encouraged. The Commission may make a decision based upon stipulated facts.

3. A party seeking admission of an exhibit must provide a copy of each exhibit at the public hearing. The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.

4. Any party may object to specific evidence or to request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which the action is based shall accompany such an objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

5. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

6. Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

(7) If a party fails to appear or participate in an adjudication after proper service of notice, the Commission may proceed with the public hearing and render a decision in the absence of the party.

(8) The hearing will be recorded and a record maintained in accordance with Ark. Code Ann. § 25-15-208(a)(5) in the event judicial review is sought under Ark. Code Ann. § 25-15-212.

Following the presentation of all evidence, the Commission may convene to executive session for the purpose of conducting its deliberations, provided that, upon completion of the executive session, the Commission shall convene in public to vote upon the final action.

(9) The decision of the Commission, after a public hearing, shall be reduced to a final order signed by the chairman of the Commission, containing written findings of fact and conclusions of law, separately stated, in accordance with Ark. Code Ann. § 25-15-210(b)(2). Findings of fact shall be based exclusively on the evidence and on matters officially noticed. All such decisions of the Commission shall be made available for public inspection.

(10) The respondent shall be served either personally or by mail with a copy of any decision or order.

(11) Any final order of the Commission shall constitute an adjudication for purposes of judicial review under Ark. Code Ann. § 25-15-212.

VIII. RENDERING OF DECISION

(1) The Commission will review the evidence, testimony, documents and any other matters presented at the public hearing and thereafter render a decision. In rendering its decision, the Commission will not be bound by the terms of its Offer of Settlement.

(2) If the Commission finds that the respondent did not commit a violation, it shall issue a final order in which the Commission finds that the respondent did not violate any laws under the jurisdiction of the Commission and that the complaint shall be dismissed.

(3) If the Commission finds that the respondent did commit a violation, it shall do one or more of the following unless good cause be shown for the violation:

a. Issue a final order in which the Commission finds that there is sufficient evidence to show that a violation of law under the jurisdiction of the Commission occurred and that the respondent shall be issued a public LETTER OF CAUTION;

b. Issue a final order in which the Commission finds that there is sufficient evidence to show that a violation of law under the jurisdiction of the Commission occurred and that the respondent shall be issued a public LETTER OF WARNING;

c. Issue a final order in which the Commission finds that there is sufficient evidence to show that a violation of law under the jurisdiction of the Commission occurred and that the respondent shall be issued a public LETTER OF REPRIMAND;

d. In a final order in which the Commission finds that there is sufficient evidence to show that a violation of Ark. Code Ann. § 19-11-718 has occurred, the Commission may also declare that the special state employee has been removed from the covered board and a vacancy exists.

e. Report its findings and other evidence to the proper law enforcement authorities along with recommendations on criminal prosecution (in exercising this power, the Commission is not required to make a finding of a violation of the laws under its jurisdiction);

f. Impose a fine of not less than fifty dollars ($50.00) nor more than two thousand dollars ($2,000.00) for negligent or intentional violation of a law or laws under the Commission's jurisdiction;

g. The Commission may impose single or multiple sanctions against a respondent found to have committed multiple violations;

h. Impose a late filing fee not exceeding fifty dollars ($50.00) for each day a statement of organization or financial report remains unfiled by a ballot question committee or legislative question committee;

i. Impose a late filing fee not exceeding twenty-five dollars ($25.00) for each day a required amendment of the information contained in a statement of organization remains unfiled by a ballot question committee or legislative question committee; and

j. Order the respondent to file or amend a statutorily required disclosure form.

(4) In determining the type(s) of sanction(s) to impose, if any, after making a finding of a violation, the Commission may consider all of the surrounding circumstances including, but not limited to, the following:

a. The seriousness of the violation;

b. The presence or absence of any intention to conceal, deceive or mislead;

c. Whether the violation was negligent or intentional;

d. Whether the respondent demonstrated good faith by consulting the Commission staff or any other government agency;

e. Whether the violation was isolated or part of a pattern;

f. Whether the respondent has previously been found to have violated a law under the Commission's jurisdiction;

g. Whether the respondent, upon learning of a reporting violation, voluntarily took corrective action to provide full disclosure; and

h. Whether the respondent has shown good cause for the violation.

(5) In the event a fine is not paid in a timely fashion, the Commission shall be authorized to file suit in accordance with Ark. Code Ann. § 7-6-217(g)(8)(A) to obtain a judgment for the amount of said fine. The Commission shall also be authorized to file suit in accordance with Ark. Code Ann. § 7-6-217(g)(8)(A) to enforce an order of the Commission requiring the filing or amendment of a statutorily required disclosure form.

IX. DEFINITIONS OF PUBLIC LETTERS

(1) **Caution** is defined as: a written disposition of an allegation against any person which is advisory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of law, and further advising the respondent not to engage in the same activity again. A caution may include a requirement that the respondent take corrective action as to the improper activity.

(2) **Warning** is defined as: a written disposition of an allegation against any person which is condemnatory in nature, expressing strong disapproval for the respondent's misconduct and expressing the view that the misconduct undermines public confidence in the integrity of the governmental process. A warning may include a requirement that the respondent take corrective action as to his or her misconduct, and may also include notice to any public official, public agency, professional association or other entity to which the respondent is a member or is employed.

(3) **Reprimand** is defined as: a written disposition of an allegation against any person which is condemnatory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of the law and constitutes activity which is below the standard of conduct expected of persons under the jurisdiction of the Commission. The reprimand will require the respondent to refrain from engaging in the same activity again. A **reprimand** may include a requirement that the respondent take corrective action as to his or her misconduct and may also

include notice to any public official, public agency, professional association or other entity to which the respondent is a member or is employed. A **reprimand** shall be considered more severe than a **caution or warning.**

X. JUDICIAL REVIEW

(1) Any person who has been sanctioned, fined and/or found to have violated a law under the Commission's jurisdiction shall have the right to file a petition for review, within thirty (30) days of service of the Commission's final order, with an appropriate Circuit Court pursuant to Ark. Code Ann. § 25-15-212.

(2) A person filing a petition for review must serve the Commission with a copy of same in accordance with the Arkansas Rules of Civil Procedure.

(3) Upon receipt of a petition for review, the Commission staff shall prepare and transmit the entire record of the proceeding to the reviewing court within thirty (30) days, or within such further time as the court may allow, but not exceeding an aggregate of ninety (90) days. By stipulation of the parties, the record may be shortened. Once prepared, the record shall be subject to public disclosure.

XI. FORMS AND INSTRUCTIONS

The Commission has prepared or utilizes the following forms and instructions: Ballot Question Financial Report of Individual or Elected Official, Ballot Question Committee Financial Report, Ballot Question Committee (BQC) Statement of Organization, Ballot Question Committee (BQC) Notice of Dissolution, Campaign Contribution and Expenditure Report for County, Municipal and School Board Candidates (form and instructions), Campaign Contribution and Expenditure Report for State and District Candidates (form and instructions), Final Campaign Contribution and Expenditure Report for State and District Candidates (form and instructions), Campaign Contribution and Expenditure Report for Debt Retirement,

Carryover Fund Reporting Form (and instructions), Citizen Complaint Form, County Political Party Committee Registration Form, County Political Party Committee Quarterly Reporting Form, County Political Party Committee Notice of Termination, Disclosure by Legislator Pursuant to Ark. Code Ann. § 21-8-803, Disclosure by Member (or Member-Elect) of the Arkansas General Assembly Pursuant to Ark. Code Ann. § 21-8-901, Disclosure by Board Member Pursuant to Ark. Code Ann. § 19-11-718, Exploratory Committee Registration Form, Exploratory Committee Contribution and Expenditure Report, Independent Expenditure Committee Registration, Independent Expenditure Report for Committees, Individuals, and Other Entities, Legislative Question Financial Report of Individual or Elected Official, Legislative Question Committee Financial Report, Legislative Question Committee (LQC) Statement of Organization, Legislative Question Committee (LQC) Notice of Dissolution, Lobbyist Activity Report, Lobbyist Registration Form, Lobbyist Notice of Termination, Local-Option Ballot Question Financial Report of Individual or Elected Official, Local-Option Ballot Question Committee Financial Report, Local-Option Ballot Question Committee (L-OBQC) Statement of Organization, Local-Option Ballot Question Committee (L-OBQC) Notice of Dissolution, Political Action Committee (PAC) Registration Form, Political Action Committee (PAC) Quarterly Reporting Form, Political Action Committee Notice of Termination, Political Party Quarterly Reporting Form, Quarterly Disclosure Form (certain designated officials), and Statement of Financial Interest (form and instructions). Copies of same are set forth in the appendix hereto. Moreover, the Commission has participated in the publication of the following document(s) prepared by the State Board of Election Commissioners: Running for Office, A "Plain English" Handbook for Candidates.

APPENDIX - Forms Listing

Ballot Question Financial Report of Individual or Elected Official
Ballot Question Committee Financial Report
Ballot Question Committee (BQC) Statement of Organization
Ballot Question Committee (BQC) Notice of Dissolution
Campaign Contribution and Expenditure Report
County, Municipal and School Board Candidates (form and instructions)
Campaign Contribution and Expenditure Report - State and District Candidates (form and instructions)
Final Campaign Contribution and Expenditure Report
- State and District Candidates (form and instructions)
Campaign Contribution and Expenditure Report for Debt Retirement
Carryover Fund Reporting Form (and instructions)
Citizen Complaint Form
County Political Party Committee Registration Form
County Political Party Committee Quarterly Reporting Form
County Political Party Committee Notice of Termination
Disclosure by Legislator Pursuant to Ark. Code Ann. § 21-8-803
Disclosure by Member (or Member-Elect) of the Arkansas General Assembly Pursuant to Ark. Code Ann. § 21-8-901
Disclosure by Board Members Pursuant to Ark. Code Ann. § 19-11-718
Exploratory Committee Registration Form
Exploratory Committee Contribution and Expenditure Report
Independent Expenditure Committee Registration
Independent Expenditure Report for Committees, Individuals, and Other Entities
Legislative Question Financial Report of Individual or Elected Official
Legislative Question Committee Financial Report
Legislative Question Committee (LQC) Statement of Organization
Legislative Question Committee (LQC) Notice of Dissolution
Lobbyist Activity Report
Lobbyist Registration Form
Lobbyist Notice of Termination
Local-Option Ballot Question Financial Report of Individual or Elected Official
Local-Option Ballot Question Committee Financial Report
Local-Option Ballot Question Committee (L-OBQC) Statement of Organization
Local-Option Ballot Question Committee (L-OBQC) Notice of Dissolution
Political Action Committee (PAC) Registration Form
Political Action Committee (PAC) Quarterly Reporting Form
Political Action Committee Notice of Termination
Political Party Quarterly Reporting Form
Quarterly Disclosure Form (certain designated officials)
Statement of Financial Interest (form and instructions)