

## **ARTICLE 2. STATE OFFICERS AND EMPLOYEES**

### **Rule 1. Indiana Code of Ethics for the Conduct of State Business**

*NOTE: IC 4-2-6-3 was repealed by P.L.222-2005, SECTION 50, effective May 11, 2005.*

#### **40 IAC 2-1-1 Name of rule (Repealed)**

Sec. 1. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-1-2 Other sources (Expired)**

Sec. 2. *(Expired under IC 4-22-2.5, effective January 1, 2008.)*

#### **40 IAC 2-1-3 Purpose (Repealed)**

Sec. 3. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-1-4 Definitions (Repealed)**

Sec. 4. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-1-5 Policy statement (Repealed)**

Sec. 5. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

#### **40 IAC 2-1-5.5 Ethics education (Repealed)**

Sec. 5.5. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-1-6 Acceptable gifts, favors, services, entertainment, food, drink, and honoraria (Repealed)**

Sec. 6. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-1-7 Appearances; activities; expenses (Expired)**

Sec. 7. *(Expired under IC 4-22-2.5, effective January 1, 2012.)*

#### **40 IAC 2-1-7.1 Political activity (Repealed)**

Sec. 7.1. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-1-8 Moonlighting (Repealed)**

Sec. 8. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-1-9 Conflict of interest; prohibitions (Repealed)**

Sec. 9. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-1-10 Report of possible conflicts; advice from commission (Repealed)**

Sec. 10. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

**40 IAC 2-1-11 Violations; complaints and investigations (Repealed)**

Sec. 11. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

**40 IAC 2-1-12 Compliance of appointing authority (Repealed)**

Sec. 12. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

**40 IAC 2-1-13 Statements of economic interest (Repealed)**

Sec. 13. *(Repealed by State Ethics Commission; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211)*

**40 IAC 2-1-14 Severability of title (Repealed)**

Sec. 14. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

**Rule 2. Advisory Opinions before the State Ethics Commission**

**40 IAC 2-2-1 Procedure**

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 1. (a) The commission may render formal advisory opinions in accordance with IC 4-2-6-4(b)(1).

(b) A person requesting a formal advisory opinion shall submit a written request that is signed by the person making the request. The request shall include the official position of the person making the request and disclose all material facts necessary for the commission to understand the circumstances and render a complete opinion. The request must relate to an actual set of circumstances that applies to the requesting party. An agency ethics officer may submit a request on behalf of his or her agency or an employee of the agency.

(c) The person requesting the formal advisory opinion shall appear before the commission. The commission staff shall send to the person making the request notice of the date, time, and place to appear before the commission. The name of the person filing the request shall appear on the agenda of the meeting.

(d) In an emergency situation, the commission chair and the state ethics director shall decide whether to add to the agenda a request that was received less than ten (10) calendar days before a commission meeting.

(e) The commission shall render its opinion in a public meeting by vote of a majority of commission members present.

(f) Following the commission's decision, the commission staff shall prepare a written formal advisory opinion. The commission staff shall send a copy of the formal advisory opinion to the person who requested the formal advisory opinion and to the state officer or appointing authority of the person requesting the formal advisory opinion, if any. Reliance upon a formal advisory opinion is conditioned upon the following:

(1) The facts and circumstances actually exist.

(2) All of the relevant facts and circumstances related to the formal advisory opinion have been disclosed to the commission.

(g) A formal advisory opinion rendered by the commission is binding on the commission in any subsequent allegations concerning the person who requested the opinion and who acted on the advice given by the commission in good faith, unless the person requesting the formal advisory opinion omitted or misstated material facts in the request for the formal advisory opinion or testimony before the commission. *(State Ethics Commission; 40 IAC 2-2-1; filed Oct 22, 1991, 11:10 a.m.: 15 IR 204; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

**40 IAC 2-2-2 Request for reconsideration or clarification of formal advisory opinions**

Authority: IC 4-2-6-4  
Affected: IC 4-2-6

Sec. 2. (a) The person who requested a formal advisory opinion or on whose behalf the formal advisory opinion was requested may ask that the commission reconsider or clarify the opinion.

(b) The commission must receive any such request in writing within fifteen (15) days of when the commission sends the written formal advisory opinion to the person who made the request.

(c) The commission shall consider the request for reconsideration or clarification and:

- (1) vote to confirm the existing formal advisory opinion;
- (2) amend the existing formal advisory opinion; or
- (3) issue a new formal advisory opinion.

*(State Ethics Commission; 40 IAC 2-2-2; filed Oct 22, 1991, 11:10 a.m.: 15 IR 204; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

**40 IAC 2-2-3 Failure to comply; investigation (Repealed)**

Sec. 3. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

**40 IAC 2-2-4 Signed by director**

Authority: IC 4-2-6-4  
Affected: IC 4-2-6

Sec. 4. All formal advisory opinions rendered by the commission shall be signed by the state ethics director. *(State Ethics Commission; 40 IAC 2-2-4; filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

**40 IAC 2-2-5 Others may provide information**

Authority: IC 4-2-6-4  
Affected: IC 4-2-6

Sec. 5. The commission may permit or request any person to submit memoranda, briefs, or other relevant material or to provide oral testimony relevant to its determination in rendering a formal advisory opinion. *(State Ethics Commission; 40 IAC 2-2-5; filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

**40 IAC 2-2-6 Public record**

Authority: IC 4-2-6-4  
Affected: IC 4-2-6

Sec. 6. The commission staff will periodically publish for distribution the accumulated formal advisory opinions with the names removed in a format explaining the facts, the question, and the commission's opinion. *(State Ethics Commission; 40 IAC 2-2-6; filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

**Rule 3. Adjudication Proceedings before the State Ethics Commission**

**40 IAC 2-3-1 Applicable statutes and rules**

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 4-2-7; IC 4-21.5; IC 5-14-1.5

Sec. 1. All proceedings involving ethics complaints before the commission shall be governed by IC 4-21.5, IC 4-2-6, IC 4-2-7, IC 5-14-1.5, this rule, and any applicable rule adopted by the commission. On any procedural matter not dealt with by these statutes and rules, the commission shall be guided to the extent practicable by the Indiana Rules of Trial Procedure. (*State Ethics Commission; 40 IAC 2-3-1; filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

**40 IAC 2-3-1.5 Definitions**

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 4-2-7; IC 4-21.5

Sec. 1.5. The following definitions apply throughout this article:

(1) "Administrative law judge" means a member of the commission who is appointed by the commission to function as an administrative law judge under IC 4-21.5.

(2) "Code of ethics" means standards set forth in IC 4-2-6 and 42 IAC 1 that govern the conduct for those persons listed in IC 4-2-6-2.5.

(3) "Commission" means the state ethics commission established under IC 4-2-6-2.

(4) "Inspector general" means the office established under IC 4-2-7-2.

(5) "Recommended report" means an administrative law judge's order that is not a final order under IC 4-21.5-3-29.

(6) "Report" means the commission's final order under IC 4-21.5-3-27 and IC 4-21.5-3-28.

(7) "Respondent" means an individual against whom the inspector general has filed an ethics complaint.

(*State Ethics Commission; 40 IAC 2-3-1.5; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

**40 IAC 2-3-2 Investigations (Repealed)**

Sec. 2. (*Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

**40 IAC 2-3-2.3 Investigations**

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 4-2-7-3; IC 4-21.5-3

Sec. 2.3. The state ethics director shall refer any request for investigation that is received by the commission to the inspector general consistent with IC 4-2-7-3. (*State Ethics Commission; 40 IAC 2-3-2.3; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

**40 IAC 2-3-2.5 Complaint filed by the inspector general**

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 4-2-7-5

Sec. 2.5. (a) The inspector general may seek probable cause from the commission to file a complaint within the commission's jurisdiction at the conclusion of an investigation.

(b) If the commission finds probable cause for a complaint under the code of ethics, the inspector general may file a complaint with the commission. (*State Ethics Commission; 40 IAC 2-3-2.5; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

**40 IAC 2-3-3 Agreed settlements**

Authority: IC 4-2-6-4  
Affected: IC 4-2-6

Sec. 3. (a) The commission may consider an agreed settlement entered into by the inspector general and the respondent to an ethics complaint in a public meeting. The commission may accept or reject an agreed settlement by majority vote.

(b) No statement made by any person during settlement negotiations shall be used as evidence in any subsequent public hearing or proceeding.

(c) The commission shall document its approval or rejection of the agreed settlement in a written report, signed by a majority of the commission members.

(d) The report shall be open to public inspection as a public record and be presented to those individuals listed in IC 4-2-6-4(b)(2)(J). The commission may present the report to those individuals listed in IC 4-2-6-4(b)(2)(K). (*State Ethics Commission; 40 IAC 2-3-3; filed Oct 22, 1991, 11:10 a.m.: 15 IR 207; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

**40 IAC 2-3-4 Public hearings (Repealed)**

Sec. 4. (*Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

**40 IAC 2-3-4.1 Public hearings**

Authority: IC 4-2-6-4  
Affected: IC 4-2-6-12; IC 4-21.5-3

Sec. 4.1. (a) Upon a finding of probable cause, the commission shall set a public hearing on the matter.

(b) Prior to the public hearing, the commission shall:

(1) send a copy of the complaint filed by the inspector general to the respondent pursuant to service requirements under IC 4-21.5-3-1; and

(2) serve notice of a public hearing to the respondent in accordance with the requirements set forth in IC 4-21.5-3-20.

(c) The respondent may be represented by counsel, who shall file a written appearance with the commission.

(d) The parties or counsel for either party may:

(1) exercise all discovery provisions under Trial Rules 26 through 37; and

(2) file motions in writing at any time after the filing of the complaint.

All appearances and filings must be filed with the commission in writing, with a copy served to the respondent or the respondent's counsel and the inspector general's counsel.

(e) There are no specific requirements of a form for any pleading, except:

(1) cases shall be titled "In the Matter of";

(2) the title provided for shall appear at the upper left portion of the initial page of any pleading or paper (other than exhibits) filed;

(3) the initial page of any pleading or paper (other than exhibits) shall show, opposite the title, the case number assigned by the commission, if known; and

(4) motions and petitions shall contain the name, address, and phone number of the person filing, including any counsel representing a party, and shall be signed by the person filing or counsel.

(f) Public hearings may be conducted by either:

(1) the commission; or

(2) one (1) or more commission members acting as administrative law judges.

(g) On motion of a party or the commission chair, the commission chair or an administrative law judge may consolidate hearings on two (2) or more allegations or cases against different persons if:

(1) it is determined that there is substantial identity of facts arising out of a common transaction or event; or

(2) the respondent is the same person although the violations alleged arose from different complaints, transactions, or events.

Consolidation shall not be ordered if consolidation will substantially prejudice the right of any party.

(h) The commission chair or an administrative law judge for the hearing shall rule on all motions, except for any motions or actions that would terminate the adjudicatory proceeding. Any motion or action that would terminate the adjudicatory proceeding may be taken only by the commission.

(i) Unless otherwise ordered by the commission chair or administrative law judge, the inspector general and respondent or counsel for respondent shall exchange exhibits and the names and addresses of witnesses at least ten (10) days prior to the public hearing.

(j) After the hearing, the commission chair or the administrative law judge may request that the interested parties submit proposed findings of fact and conclusions of law for the commission's acceptance, rejection, or modification.

(k) If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a recommended report to the full commission and all interested parties.

(l) The finding of a violation by the commission must be based on a preponderance of the evidence and be supported by a majority vote. If the commission finds a violation, the commission may set a penalty as provided in IC 4-2-6-12.

(m) The commission shall state its findings in a written report supported and signed by a majority of the commission. The final report shall be adopted by the commission at a public meeting. The report shall be made public and served upon the respondent and all interested parties. *(State Ethics Commission; 40 IAC 2-3-4.1; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-3-5 Service *(Repealed)***

Sec. 5. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-3-6 Form of pleadings *(Repealed)***

Sec. 6. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-3-7 Witness expenses *(Repealed)***

Sec. 7. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

#### **40 IAC 2-3-8 Subpoenas *(Repealed)***

Sec. 8. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

### **Rule 4. Financial Disclosure to the State Ethics Commission**

#### **40 IAC 2-4-1 Persons required to file by rule *(Expired)***

Sec. 1. *(Expired under IC 4-22-2.5, effective January 1, 2008.)*

#### **40 IAC 2-4-2 Processing violations *(Repealed)***

Sec. 2. *(Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA)*

### **Rule 4.5. Fines**

#### **40 IAC 2-4.5-1 Fines**

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 1. Any fine imposed by the commission under IC 4-2-6-8 or IC 4-2-6-12 shall be made payable to the commission and

remitted to the general fund. (*State Ethics Commission; 40 IAC 2-4.5-1; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

## **Rule 5. General Procedural Provisions of the State Ethics Commission**

### **40 IAC 2-5-1 Notice of meetings and agendas (*Repealed*)**

Sec. 1. (*Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

### **40 IAC 2-5-2 Rulemaking (*Repealed*)**

Sec. 2. (*Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

### **40 IAC 2-5-3 Meeting by telephone and other communications media technology (*Repealed*)**

Sec. 3. (*Repealed by State Ethics Commission; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

### **40 IAC 2-5-4 Certification of documents and records**

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 5-14-3

Sec. 4. The state ethics director is authorized to copy and certify all documents and records of the commission, which may be released in accordance with public records laws. (*State Ethics Commission; 40 IAC 2-5-4; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA; filed Aug 28, 2019, 9:51 a.m.: 20190925-IR-040190265FRA*)

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