

**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. If either the complainant or the respondent has witnesses he or she wishes to offer, that request can be made to the commission through the General Counsel who shall inform the commission of the request.

(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 from a complainant, the respondent or their representatives is 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, the only people permitted in the hearing room are the commission, its staff and the witness testifying. If the witness testifying is the respondent, then the respondent's retained counsel is permitted to be present for that testimony. Only the commissioners and the commission staff are permitted to examine witnesses.

(c) The respondent shall be given an opportunity to testify, but cannot be compelled to do so. If the respondent chooses to testify, the respondent shall be subject to examination 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) If applicable, the respondent shall be informed of the Administrative Resolution provisions in the Ethics Law.

(b) If petitioned to resolve a case administratively, 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 the petition for 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 petition to the district attorney for the appropriate jurisdiction or the Attorney General for final approval.

(d) 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.

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 April 13, 2020.

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 upon the affirmative vote of 4 members of the Commission to do so. Any self-generated opinion shall remain open for 60 days to allow public comment on the Opinion prior to adoption. Any person can appeal or request reconsideration of a self-generated opinion.

The requestor shall be given notice of and an opportunity to address the commission during any meeting at which the Opinion will be considered. Any written information relevant to the issues contained within the request, however, may be presented to the Director or the General Counsel of the commission who shall forward that information to the members of the commission for consideration. Moreover, the staff's draft of the Advisory Opinion shall be shared with the requestor or his or her representative in advance of the official consideration of that opinion in order to give the requestor an opportunity to address the commission in an informed manner. In the event any requestor requests a continuance of the consideration of that opinion, such continuance shall be granted.

(5) Any request for reconsideration shall be made in writing and within 30 days of the commission's rendering an Advisory Opinion by the individual to whom the Opinion is issued or anyone in a materially similar circumstance to that contained within the opinion, or in the case of a self-generated opinion, anyone.

(6) 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. The commission may grant or deny the request in writing either electronically or by mail and shall not require a meeting of the commission. The Commission may not consider the merits of the request or modify the Advisory Opinion outside a public meeting subject to the Open Meetings Act.

(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, or anyone in a materially similar circumstance to that contained within the opinion, or in the case of self-generated opinions anyone, 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.

(9) If any member of the commission is contacted directly regarding a formal advisory opinion, that communication, the name of the individual who initiated the communication, and the contents of the subject matter discussed shall be disclosed to the Director, the General Counsel and the other commission members.

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 April 13, 2020.

340-X-1-.03 Policy Regarding Access to Commission Records¹--Repealed

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".

¹ Deleted as unnecessary and in conflict with the requirements of 36-25-4.3

(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.

Repealed and Replaced: Filed October 31, 2019; effective April 13, 2020.

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.

Repealed and Replaced: Filed October 31, 2019; effective April 13, 2020.

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.

Repealed and Replaced: Filed October 31, 2019; effective April 13, 2020.

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

(1) No one may engage in ex parte communications with a member of the commission.

(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 investigation before the commission. 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 disclose to the Director, the General Counsel and the other commissioners, 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 contents of the subject matter discussed. If the ex parte communication involves the good name and character of an individual, relates to a criminal investigation protected by grand jury secrecy, or involves evidence or testimony presented during an administrative hearing as defined under the Open Meetings Act, the disclosure by the commissioner may be made in an executive session.

(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, and whose communication violates those Rules as well, shall be reported to the Alabama State Bar Office of General Counsel by the chairman of the commission.

(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 practices or 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 other reason determined by a majority vote of the commission.

(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 April 13, 2020.

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 April 13, 2020.

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 for lateness due to circumstances beyond the person’s control.

(1) 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.

(2) Examples of circumstances which are not beyond the person’s control include:

- A. Ignorance of the requirement;
- B. Neglect on the part of an election official or any of their offices, officers or employees.

- (3) All requests for the finding of “good cause” shall be supported by affidavit or other sworn testimony.
- (4) 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 April 13, 2020.

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 payable by cashiers check or money order. A paper Statement of Economic Interests form will not be considered filed until such time as a completed 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 April 13, 2020.

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 de minimis usage. This rule does not apply to policies related to use of human labor or time. The absence of a written policy does not create a presumption of a violation.

Authors: Thomas B. Albritton; Cynthia Propst Raulston

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

History: New Rule: Filed October 31, 2019; effective April 13, 2020.

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 April 13, 2020.