

Clearinghouse Rule 22-052

SS# 041-20, Wisconsin Administrative Register No. 773A4, 06/22/2020

WISCONSIN ETHICS COMMISSION Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes an order to repeal and recreate ETH 21.30; and to create ETH 21.02, 21.03, 21.04, 21.05, 21.06, 21.07, 21.08, 21.09, and 21.10, relating to the processes for complaints and requests for advice.

RULE SUMMARY

- A. **Statutes interpreted:** ss. 19.46(2) and 19.49(2), Stats.
- B. **Statutory authority:** The Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

11.1304 Duties of the ethics commission. The commission shall:
(17) Promulgate rules to administer this chapter.

s. 19.48(1), Stats.:

19.48 Duties of the ethics commission. The commission shall:
(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

227.11 Extent to which chapter confers rule-making authority.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

- C. **Explanation of agency authority:** The Wisconsin Ethics Commission is charged with investigating violations of the laws it administers under s. 19.49(2)(a), Stats. It is also required to review requests for an advisory opinion under s. 19.46(2)(a)1., Stats. Pursuant to the above grants of authority, the Commission is empowered to promulgate rules to promote the orderly administration of these processes.

- D. **Related statute(s) or rule(s):** ss. ETH 1.96 and ETH 6.03.
- E. **Plain language analysis:** The proposed rule would clarify and further establish the procedures to be followed to submit a complaint to the Wisconsin Ethics Commission under s. 19.49 (2) (b), Stats. It would also clarify the procedures to be followed to request either a formal or informal opinion of the Commission pursuant to s. 19.46 (2), Stats.
- F. **Summary of, and comparison with, existing or proposed federal regulations:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.
- G. **Comparison with similar rules in adjacent states:**

Illinois

Complaints regarding campaign finance shall be filed in writing [10 ILCS5/9-20(1)]. Minimum requirements for a verified complaint include the name of the candidate or chairman or treasurer of a political committee against whom the complaint is directed [10 ILCS5/9-20(2)], the statutory provisions which are alleged to have been violated [10 ILCS5/9-20(3)], and the time, place, and nature of the alleged offense [10 ILCS5/9-20(4)]. The complaint shall be verified, dated, and signed by the person filing the complaint [10 ILCS5/9-20(4)]. Verified complaints received by the Secretary of State are processed in the following manner: a copy of the complaint is served by the Board of Elections to the complainant and respondent, and a closed preliminary hearing, with reasonable notice, is held to provide an opportunity for the complainant and respondent to testify at the hearing, and the Board determines if the complaint appears to have been filed on justifiable grounds [10 ILCS5/9-21]. The Board may dismiss the complaint if the Board fails to determine that the complaint was filed on justifiable grounds [10 ILCS5/9-21]. The parties to the complaint may dispose of the complaint by written stipulation, agreed settlement, or consent order [10 ILCS5/9-21]. The Board shall render its final judgement within 60 days of the date the complaint is filed, except that during the 60 days preceding the date of the election in reference in which the complaint is filed, the Board shall render its final judgement within 7 days of the date the complaint is filed, and during the 7 days preceding such election, the Board shall render such judgement before the date of such election, if possible [10 ILCS5/9-21]. The Board of Elections shall establish and maintain on its official website a searchable database, accessible to the public, of each complaint filed with the Board with respect to which Board action was taken, and the database must be updated within 5 business days after an action is taken or penalty is imposed [10 ILCS5/9-23.5].

Complaints regarding suspected violations of the Illinois Governmental Ethics Act (5 ILCS 420) are authorized under 5 ILCS 420/25-45, 5 ILCS 420/25-50, and the Operational Rules of the Illinois Legislative Ethics Commission R1-1 et. seq. A standard case initiation form is authorized under R17-5 and available to the public on the Illinois Office of the Legislative Inspector General webpage. Complainants shall file complaints with the Office of the Legislative Inspector. Minimum requirements for a complete case initiation form include the name of the employee or officer who is alleged to have committed a violation [R17-10(a)],

the identity of the state agency that employs the employee or officer [R17-10(b)], the name, address, and telephone number of the complainant [R17-10(c)], the date and time of the alleged violation [R17-10(d)], a description of the facts and circumstances that surrounded the alleged violation [R17-10(e)], the names of any other person who witnessed or participated in the alleged violation [R17-10(f)], an address to which the completed case initiation form may be mailed [R17-10(g)], a statement of the confidentiality of the identity of the complainant [R17-10(h)], a statement that the Legislative Inspector General's investigatory files and reports are confidential and exempt from disclosure under the Freedom of Information Act [R17-10(i)], a statement that allegations, pleadings, and related documents are exempt from disclosure under the Freedom of Information Act so long as the Commission does not make a finding of a violation [R17-10(j)], a statement that penalties may be imposed for intentionally making a false report alleging a violation [R17-10(k)], and any other information that the Legislative Inspector General reasonably requires [R17-10(l)]. Upon receipt of a completed case initiation form, the Legislative Inspector General shall create an investigation file [R17-15(a)] and commence an investigation with advance notice to the Commission [R17-25]. Only the Legislative Inspector General may bring actions before the Legislative Ethics Commission [5 ILCS 420/25-45(a)]. Cases before the Commission are commenced by the filing of a petition for leave to file a complaint with the Commission [R20-15(a)], with the Legislative Inspector General designated as the petitioner and the person alleged to have violated the act designated as the respondent [R20-15(b)]. Complaints must be filed with the Commission within 18 months after the most recent act of the alleged violation except where there is reasonable cause to believe that fraudulent concealment has occurred [5 ILCS 420/25-50(c)]. A respondent may file objections to the petition within 30 days after notice of the petition has been served on the respondent [5 ILCS 420/25-50(c-10)(e)] [R20-30]. Within 60 days after the time for a respondent to file an objection to the petition has expired, the Commission shall meet to review the sufficiency of the petition [R20-35(a)]. If the petition is sufficient, the Commission shall notify the parties by certified mail and schedule a hearing within 4 weeks after the date of the notice [5 ILCS 420/25-50(f)] [R20-35(b)]. All hearings are closed to the public [5 ILCS 420/25-50(g)] [R20-55(b)]. Within 60 days after the hearing, the Commission shall enter a decision [5 ILCS 420/25-50(h)] [R20-60(a)]. The decision shall include a description of the alleged misconduct, the decision of the Commission, including any fines levied and any recommendations of discipline, and the reasoning for that decision [R20-60(b)]. All decisions shall be sent to the parties, including the Legislative Inspector General, the ultimate jurisdictional authority, the head of the appropriate state agency, and the Attorney General [R20-60(d)]. Within 30 days after the issuance of a final decision that concludes that a violation occurred, the Commission shall make public the entire record of proceedings before the Commission, the decision, any recommendation, any discipline imposed, and the response from the agency head or ultimate jurisdictional authority to the Legislative Ethics Commission [5 ILCS 420/25-50(l)].

Iowa

Complaints regarding suspected violations of the Iowa Campaign Disclosure Act (Iowa Code § 68A) and the Iowa Government Ethics and Lobbying Act (Iowa Code § 68B) are authorized under Iowa Code § 68B.32B and Iowa Administrative Code 351-9.1 et seq. A

standard complaint form is authorized under Iowa Code § 68B.32B(1) and Iowa Administrative Code 351-9.1(1), and available to the public on the Iowa Ethics and Campaign Disclosure Board webpage. Minimum requirements for a valid complaint include name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge [Iowa Code § 68B.32B(1)]. Submitted complaints received by Board are processed in the following manner. Board staff shall determine if the complaint is sufficient and refer the complaint for legal review [Iowa Code § 68B.32B(2)]. If Board staff determine that the complaint is insufficient, then the complaint is returned to the complainant with a statement of deficiency and description of cure [Iowa Code § 68B.32B(2)]. If legal counsel determines that the complaint contains a legally sufficient allegation, then the complaint is deemed accepted [Iowa Administrative Code 351-9.1(2)]. If legal counsel and the Board determine that the complaint does not contain a legally sufficient allegation, then the complaint is dismissed [Iowa Code § 68B.32B(6)] [Iowa Administrative Code 351-9.1(2)]. Legal sufficiency of a complaint is determined by facts that would establish a violation of a provision of statute or rule [Iowa Code § 68B.32B(4)(a)], facts that would establish that the conduct providing the basis for the complaint occurred within 3 years of the complaint [Iowa Code § 68B.32B(4)(b)], and facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board [Iowa Code § 68B.32B(4)(c)]. The Board provides a copy of the accepted complaint to the respondent within 3 working days of the acceptance determination [Iowa Code § 68B.32B(3)]. Legally sufficient complaints are referred to Board staff for investigation of probable cause [Iowa Code § 68B.32B(6)] [Iowa Administrative Code 351-9.2(1)]. Complete investigations with probable cause determination are reported to the Board for action [Iowa Code § 68B.32B(8)] [Iowa Administrative Code 351-9.2(4)]. The Board may redirect the matter for further investigation [Iowa Administrative Code 351-9.2(5)(a)], dismiss the matter for lack of probable cause to believe a violation has occurred [Iowa Administrative Code 351-9.2(5)(b)], dismiss the matter without determination regarding probable cause as an exercise of administrative discretion [Iowa Administrative Code 351-9.2(5)(c)], make a determination that probable cause exists to believe a violation has occurred and direct administrative resolution of the matter [Iowa Administrative Code 351-9.2(5)(d)], or make a determination that probable cause exists to believe a violation has occurred and direct the issuance of a statement of charges to initiate a contested case proceeding [Iowa Administrative Code 351-9.2(5)(e)]. If the Board determines that probable cause exists to believe that a violation of any statute or rule under its jurisdiction has occurred, except for a late-filed disclosure report, the Board may order administrative resolution of the violation by imposing a civil penalty not to exceed \$500 [Iowa Administrative Code 351-9.4(7)]. At any stage during the investigation or after the initiation of a contested case proceeding, the Board may approve a settlement regarding an alleged violation [Iowa Administrative Code 351-9.2(10)]. The entire record of any contested case proceeding initiated by the Board shall be a public record [Iowa Code § 68B.32B(11)].

Michigan

Complaints regarding suspected violations of the Michigan Campaign Finance Act (Act 388 of 1976) are authorized under MCL § 169.215 Section 15 and the Michigan Department of State Elections Division Campaign Financing Administrative Rules R169.51, R169.52, R169.53, R169.54, R169.55, and R169.56. A standard complaint form is authorized under MCL § 169.215 Section 15(7) and available to the public on the Elections Division Campaign Finance webpage. Complainants may file typewritten or handwritten complaints [R169.52(1)] with the Secretary of State in person or by mail [R169.51]. Minimum requirements for a valid complaint include the complainant's signature [MCL § 169.215 Section 15(6)(a)], the complainant's name, address, and telephone number [MCL § 169.215 Section 15(6)(b)], the complainant's certification that any factual contention is or is not supported by evidence [MCL § 169.215 Section 15(6)(c)], the name and address of the alleged violator, a description in reasonable detail of the alleged violation, and an identification of all available evidentiary material [R169.52(2)]. Complainants who file a complaint with a false certification are responsible for a civil violation [MCL § 169.215 Section 15(8)] and may incur penalties that include payment to the Secretary of State some or all of the expenses incurred as a result of the complaint filing [MCL § 169.215 Section 15(16)(a)] or payment to the respondent some or all of the expenses, including reasonable attorney fees, incurred as a result of the complaint filing [MCL § 169.215 Section 15(16)(b)]. Incomplete, illegible, indefinite, or unsigned complaints may be summarily dismissed, and the complainant notified of dismissal in writing as to the reason for dismissal [R169.53]. Valid complaints received by the Secretary of State are processed in the following manner. Respondents are given notice of the complaint, including a copy of the complaint, within 5 business days. Respondents are given 15 business days to submit a response to the complaint, with an additional 15 business days extension granted for good cause. Complainants are provided the respondent's complaint response and provided 10 business days from the date of response mailing to submit a rebuttal statement, with an additional 10 business days extension granted for good cause. Respondents are provided with the complainant's rebuttal statement [MCL § 169.215 Section 15(5)]. The Secretary of State is obliged to communicate to a respondent that a complaint has been made alleging possible violation of the act or rules [R169.54(a)], the specifics of the alleged violation [R169.54(b)], the identity of the complainant [R169.54(c)], and the provision of rules relative to complaints and investigations [R169.54(d)]. No later than 45 business days following receipt of a rebuttal statement, or if no rebuttal statement is received, the Secretary of State shall post on the Secretary's website whether there may be reason to believe that a violation of the act or rule occurred [MCL § 169.215 Section 15(10)]. The Secretary of State may conduct a preliminary review of an alleged violation to determine if there may be reason to believe that a violation of the act or rule has occurred [R169.55(1)]. The Secretary of State may commence, with notice given, a hearing to determine whether a violation of the act or rule has occurred [MCL § 169.215 Section 15(10)] [R169.55(3)(a)], attempt to correct the violation by conference, conciliation, or persuasion [MCL § 169.215 Section 15(10)] [R169.55(3)(b)] [R169.56(2)], or dismiss the allegation with notice given to complainant and respondent [R169.55(2)] [R169.56(1)]. If a conciliation agreement is signed, the Secretary of State is obliged to post the agreement on the Secretary's website within 30 days [MCL § 169.215 Section 15(10)]. Within 30 days of determination that a violation of the act or rule has occurred, the Secretary

of State shall post on the Secretary's website any complaint, response, rebuttal statement, and any correspondence between the Secretary of State and the complainant or respondent [MCL § 169.215 Section 15(10)]. If the Secretary of State determines that a violation of the act or rule has occurred, the respondent may be assessed a civil fine not more than triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation [MCL § 169.215 Section 15(11)]. The Secretary of State may refer the matter to the attorney general for enforcement of a criminal penalty [MCL § 169.215 Section 15(13)] [R169.56(3)].

Complaints regarding suspected violations of the Michigan Standards of Conduct for Public Officers and Employees Act (Act 196 of 1973) are authorized under MCL § 15.345 Section 5 and the Michigan State Board of Ethics Administrative Rules R15.1, R15.1a, R15.2, R15.3, R15.4, R15.5, R15.6, R15.7, R15.8, R15.9, R15.10. A standard complaint form is authorized under MCL § 15.346 Section 6, R15.1a, and R15.5 and available to the public on the State Board of Ethics webpage. Complainants shall file complaints in writing [R15.5(2)(a)] with the Executive Secretary at the Board of Ethics office [R15.5(2)(f)]. Minimum requirements for a valid complaint include the specification of one or more standards of prohibited conduct outlined in section 2 of the Act [MCL § 15.342 Section 2], include evidentiary facts supporting the complaint allegations [R15.5(2)(c)], contain a statement that the complainant or designee has read the complaint and believes the alleged violations to be true [R15.5(2)(d)], and contain the signature of the complainant or designee before a notary [R15.5(2)(e)]. Complaints may be dismissed if the Board of Ethics lacks jurisdiction over the person subject to the complaint [R15.5(11)(a)], if the Board lacks jurisdiction over the subject matter [R15.5(11)(b)], if the complainant lacks the legal capacity to file the complaint [R15.5(11)(c)], if the complainant is barred because of release, prior judgement, or other disposition of the claim before the complaint was filed [R15.5(11)(d)], if the complaint on its face fails to state a claim of unethical conduct [R15.5(11)(e)], if one or more complaints regarding the same matter are pending [R15.5(4)(a)], or if the Board previously addressed the subject matter [R15.5(4)(b)]. Valid complaints received by the Board of Ethics are processed in the following manner. Respondents are promptly served a copy of the complaint [R15.5(5)]. Respondents are given 21 calendar days to file an answer to the complaint with the Executive Secretary, with additional time granted for good cause [R15.5(6)]. A copy of the respondent's answer is served to the complainant [R15.5(6)]. Complainants and respondents are given 21 calendar days before the date of the Board meeting scheduled to address the complaint to file any additional written information [R15.5(8)]. Opposing parties are given 14 days before the date of the Board meeting to file responses to the additional written material [R15.5(8)]. Upon expiration of the time provided for all submissions, the Board is presented with all materials for its consideration [R15.5(9)]. The Board may schedule a hearing [R15.5(13)] [R15.8] and the complainant and respondent shall have an opportunity to address the Board to address the complaint [R15.5(10)]. The complainant and respondent have the right to be represented at the hearing by legal counsel [R15.5(10)]. The Board shall issue a complaint decision and transmit copies of the decision to the complainant, respondent, and other persons as the Board directs [R15.5(14)]. The Board shall publish its decisions and opinions, including dissents, and make them available for the public at its office, on its website, and in the appropriate state agencies [R15.5(19)(1)].

Advisory opinions relating to matters affecting the ethical conduct of a public officer or employee are authorized under MCL § 15.345 Section 5(1)(e) and R15.6. Requests for advisory opinion must be made in writing and filed at the Board of Ethics office with the Executive Secretary [R15.6(1)]. The Board may dismiss a request for an advisory opinion if one or more requests regarding the same matter are pending [R15.6(3)(a)] or if the Board previously addressed the subject matter [R15.6(3)(b)]. The Board shall schedule a meeting to address the advisory opinion and shall afford the person requesting the opinion or the person subject to the request to speak at the meeting [R15.6(5)]. The Board may schedule a hearing to resolve the request for advisory opinion [R15.6(8)] or may issue an opinion without a hearing [R15.6(7)]. The Board may issue an advisory opinion decision if the Board lacks the jurisdiction over the person subject to the advisory opinion [R15.6(6)(a)], the Board lacks jurisdiction over the subject matter [R15.6(6)(b)], the person asserting the claim lacks the legal capacity to file the request for an advisory opinion [R15.6(6)(c)], the request for advisory opinion is barred because of release, prior judgement, or other disposition of the claim [R15.6(6)(d)], or if the request for advisory opinion on its face fails to delineate any unethical conduct [R15.6(6)(e)]. The Executive Secretary shall transmit copies of the Board's order to the party filing the request, the person subject to the request, and other persons as the board directs [R15.6(9)].

Minnesota

Complaints regarding suspected violations of the Minnesota Campaign Finance and Public Disclosure law (Minnesota Statute § 10A) and Minnesota Fair Campaign Practices law (Minnesota Statute § 211B) are authorized under Minnesota Statute § 10A.022(3), Minnesota Statute § 211B.32(1), and Minnesota Campaign Finance and Public Disclosure Board Administrative Rule R4525.0200. A standard complaint form is authorized under R4525.0200(2) and available to the public on the Minnesota Campaign Finance and Public Disclosure Board webpage. Complaints must be submitted in writing [R4525.0200(2)] to the Board [R4525.0200(1)]. Complaints regarding a violation of Minnesota Fair Campaign Practices law must be filed within one year after the occurrence of the act or failure to act unless the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during the one-year period [Minnesota Statute § 211B.32(2)]. Minimum requirements for a complete complaint include the name and address of the person making the complaint, the name and address of the alleged violator, a description of the complainant's knowledge of the violation, any evidentiary material supporting the complaint, and the signature of the complainant or an individual authorized to act on behalf of the complainant [R4525.0200(2)]. Complaints alleging a violation of Minnesota Statute § 211B.32 must be made under oath [Minnesota Statute § 211B.32(3)]. Complaints alleging a violation of Minnesota Statute § 211B.32 must be accompanied by a \$50 filing fee [Minnesota Statute § 211B.32(5)] which may be refunded to a complainant who prevails on the merits of the complaint [Minnesota Statute § 211B.32(5)(c)]. Valid complaints received by the Board are processed in the following manner. Upon receipt of a written complaint, the Board promptly makes a determination whether the complaint alleges a prima facie violation [Minnesota Statute § 10A.022(3)(3)(c)] [Minnesota Statute § 211B.33(2)]. A complaint is dismissed if it does not allege a prima facie violation and the complainant is notified and given opportunity to cure [Minnesota Statute § 10A.022(3)(3)(c)]. The Board determines

within 45 days whether probable cause exists to believe the alleged prima facie violation warrants a formal investigation [Minnesota Statute § 10A.022(3)(3)(d)]. The respondent is given an opportunity to answer the complaint allegations and appear, with sufficient notice [Minnesota Statute § 10A.022(3)(3)(4)], before the Board to address the complaint [Minnesota Statute § 10A.022(3)(3)(e)][R4525.0200(6)]. Complaints under staff review may result in a determination of no violation [Minnesota Statute § 10A.022(3)(3)(3b)] or resolved by conciliation agreement [Minnesota Statute § 10A.022(3)(3)(3a)]. Complaints not dismissed or resolved by conciliation agreement are submitted to the Board for final determination [Minnesota Statute § 10A.022(3)(3)(3d)]. The Board's final determination must be issued at the conclusion of the investigation or within 60 days after the probable cause determination if the complaint alleges a violation of Minnesota Statute § 10A.25 or Minnesota Statute § 10A.27 [Minnesota Statute § 10A.022(3)(3)(e)]. Complaints alleging a violation of Minnesota Statute § 211B.33 may require an expedited probable cause hearing if the complaint was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates [Minnesota Statute § 211B.33(2)(b)]. A hearing before the Board or action concerning a complaint or investigation other than findings, conclusions, and orders or a conciliation agreement is confidential [Minnesota Statute § 10A.022(5)] [R.425.0200(5)]. Complaint matters before the Board may result in a criminal offense and may be prosecuted by a city or county attorney [Minnesota Statute § 10A.022(7)].

Advisory opinions may be requested from the Minnesota Campaign Finance and Public Disclosure Board by or on behalf of an individual or association who wish to use the opinion to guide the individual's or the association's own conduct. Requests for an advisory opinion must be made in writing and must be received at least 3 weeks before a Board meeting. Unless the requester consents to the publication of the requester's identity, the request and the opinion are non-public data.

H. Summary of factual data and analytical methodologies: Commission staff reviewed the complaint processes of other state agencies and other states' agencies that administer and enforce campaign finance, lobbying, and ethics laws. Commission staff also reviewed the processes by which an individual could request an advisory opinion of other states' agencies that provide for such a process.

I. Analysis and supporting documentation used to determine effect on small businesses:
N/A

J. Effect on small business: N/A

K. Agency contact person:

David P. Buerger
David.Buerger@wisconsin.gov
(608) 267-0951

L. Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule will be accepted and receive consideration if they are received by August 29, 2022. Written comments should be addressed by mail to: David Buerger, P.O. Box 7125, Madison, WI 53707-7125; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

SECTION 1. ETH 21.02 is created to read:

ETH 21.02 Definitions. As used in this chapter:

- (1) “Administrator” means an individual appointed by the commission pursuant to s. 15.62 (1) (b), Stats. or, upon delegation by the administrator, the assistant administrator or staff counsel.
- (2) “Assistant administrator” means an individual appointed by the administrator to serve as assistant administrator pursuant to s. 19.47 (2), Stats.
- (3) “Commission” means the Wisconsin Ethics Commission.
- (4) “Complainant” means a person filing a complaint with the commission under s. 19.49 (2) (b), Stats.
- (5) “Formal opinion” means an advisory opinion issued by the commission under s. 19.46 (2) (c), Stats.
- (6) “Informal opinion” means an advisory opinion issued by the commission, or by the administrator, assistant administrator, or staff counsel, as authorized by the commission, pursuant to s. 19.46 (2) (a) and (b), Stats.
- (7) “Local registrant” means an individual or organization registered with a filing officer other than the commission.
- (8) “Probable cause” means the facts, circumstances, and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.
- (9) “Reasonable suspicion” means specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant further investigation.
- (10) “Respondent” means a person alleged to have committed a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, by a complainant.
- (11) “Staff counsel” means an employee of the commission designated by the administrator to serve as legal counsel of the commission pursuant to s. 19.47 (2), Stats.
- (12) “Sufficient allegations” means allegations of fact and reasonable inferences drawn from those allegations that, if proven, would satisfy each element of the applicable law.

SECTION 2. ETH 21.03 is created to read:

ETH 21.03 Receipt and preliminary review of complaints.

(1) COMPLAINT FORM AND CONTENTS. A complaint shall be filed in writing. The complaint, together with all attachments shall not exceed 10 pages without prior approval of the administrator. A complaint shall include all of the following:

- (a) The full name and address of the complainant.
- (b) The full name and address of the respondent against whom the complaint is filed. If multiple persons are alleged to have committed a violation, a complainant shall file a separate complaint for each respondent.
- (c) A concise statement of the facts supporting each alleged violation that differentiates between statements based on personal knowledge and those based on information and belief. Statements not based on personal knowledge shall identify the source of the information.
- (d) Citation to any legal authority which the complainant relies on in support of their complaint. Citations to cases shall include a public domain cite, if available. Citations shall also include page or paragraph numbers, if appropriate.
- (e) Any relevant documentation supporting the allegations, if available.
- (f) The notarized signature of the complainant, the complainant's attorney, or other authorized person filing the complaint on behalf of the complainant.
- (g) If a complaint is filed by an attorney or other authorized person on behalf of the complainant, the attorney or other authorized person shall include a notice of representation that includes the name and address of the attorney or other authorized person.

(2) PRELIMINARY REVIEW. The administrator shall conduct a preliminary review of each complaint filed with the commission and shall dismiss a complaint or the relevant portion of a complaint if it does not comply with sub. (1) or if:

- (a) The complainant does not file the complaint within the time period specified by s. 19.49 (2) (f), Stats.
- (b) The commission does not have jurisdiction over the violation alleged.
- (c) The complaint does not contain sufficient allegations.

(3) The administrator shall inform the commission of each complaint that was dismissed under sub. (2) since its last meeting.

SECTION 3. ETH 21.04 is created to read:

ETH 21.04 Acknowledgement and notice of complaints. After preliminary review of a complaint under s. ETH 21.03 (2), the administrator shall:

(1) Send a written notice to the complainant within 5 calendar days of receipt of the complaint that provides the following:

- (a) An acknowledgement that the commission received the complaint.
- (b) A notice if the complaint or any portion of the complaint was dismissed under s. ETH 21.03 (2).

1. If the complaint or any portion of the complaint was dismissed for failure to comply with the requirements of s. ETH 21.03 (1), the notice shall include an explanation of the relevant requirements and inform the complainant that the complainant may re-file the complaint once it conforms to the requirements of s. ETH 21.03 (1).

2. If the complaint or any portion of the complaint was dismissed pursuant to s. ETH 21.03 (2) (a), the notice shall indicate the relevant deadline to file the complaint, if known.

3. If the complaint or any portion of the complaint was dismissed pursuant to s. ETH 21.03 (2) (b), the notice shall inform the complainant of the governmental agency with jurisdiction over the matter, if known.
 4. If the complaint or any portion of the complaint was dismissed pursuant to s. ETH 21.03 (2) (c), the notice shall specify what additional allegations would be required to satisfy each element of the applicable law, if known.
- (2) If the complaint was not dismissed, send a written notice to the respondent within 5 calendar days of receipt of the complaint that provides the following:
- (a) A statement that the respondent has 15 calendar days from receipt of the notice to submit a written response demonstrating to the commission that the commission should take no action against the respondent on the basis of the complaint.
 - (b) A notice that an extension of the deadline to file a written response may be granted by the administrator for good cause shown.
 - (c) If any portion of the complaint was dismissed upon preliminary review under s. ETH 21.03 (2), a statement describing which allegations have been dismissed.
 - (d) A copy of the complaint.

SECTION 4. ETH 21.05 is created to read:

ETH 21.05 Response form and contents. A response to a complaint, if any, shall be filed in writing. The response, together with all attachments shall not exceed 10 pages without prior approval of the administrator. A response, if any, shall include all of the following:

- (1) The case number assigned to the case.
- (2) A concise statement of the facts supporting the respondent's response to each alleged violation that differentiates between statements based on personal knowledge and those based on information and belief. Statements not based on personal knowledge shall identify the source of the information.
- (3) Citation to any legal authority which the respondent relies on in support of their response. Citations to cases shall include a public domain cite, if available. Citations shall also include page or paragraph numbers, if appropriate.
- (4) Any relevant documentation supporting the response, if available.
- (5) If a response is filed by an attorney or other authorized person on behalf of the respondent, the attorney or other authorized person shall include a notice of representation that includes the name and address of the attorney or other authorized person.

SECTION 5. ETH 21.06 is created to read:

ETH 21.06 Preliminary requests for information. Before a determination of reasonable suspicion, the administrator may request:

- (1) If the complaint alleges a violation by any local registrant, a copy of the campaign registration statement and any campaign finance reports filed by the local registrant.
- (2) If the complaint alleges a violation of s. 11.1303, Stats., any information or documentation related to the specifications provided in s. ETH 1.96.
- (3) Any public records or other publicly available information.

SECTION 6. ETH 21.07 is created to read:

ETH 21.07 Determination of reasonable suspicion.

(1) In making its determination as to whether reasonable suspicion of a violation exists, the commission may consider the complaint, the response, information provided upon request under s. ETH 21.06, publicly available information, and the analysis and recommendations of commission staff.

(2) If the commission finds no reasonable suspicion or fails to find there is reasonable suspicion that a violation has occurred or is occurring, the commission shall dismiss the complaint and the parties shall be notified pursuant to s. ETH 21.10.

(3) If the commission finds reasonable suspicion that a violation has occurred or is occurring, the commission may do any of the following:

- (a) Authorize an investigation by resolution. The resolution shall specifically set forth any matter that is authorized to be investigated.
- (b) Issue a written warning.
- (c) Extend a settlement offer.

SECTION 7. ETH 21.08 is created to read:

ETH 21.08 Determination of probable cause.

(1) At the conclusion of its investigation, the commission shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation has occurred or is occurring.

(2) In making its determination as to whether probable cause of a violation exists, the commission may consider the complaint, the response, information provided upon request pursuant to s. ETH 21.06, publicly available information, information obtained pursuant to an investigation, and the analysis and recommendations of commission staff.

(3) If the commission finds that no probable cause exists, it shall dismiss the complaint and the parties shall be notified pursuant to s. ETH 21.10.

(4) If the commission finds that there is probable cause to believe that a violation has occurred or is occurring, the commission may do any of the following:

- (a) Authorize the administrator to file a civil complaint against the alleged violator.
- (b) Issue a written warning.
- (c) Extend a settlement offer.
- (d) Refer the matter to one of the following:
 - 1. To the district attorney for the county in which the alleged violator resides.
 - 2. If the alleged violator is a nonresident, to the district attorney for the county where the matter arises.
 - 3. If the alleged violator is a district attorney, a circuit court judge, or a candidate for either such office, to the attorney general.

SECTION 8. ETH 21.09 is created to read:

ETH 21.09 Exercises of prosecutorial discretion. Pursuant to the authority granted in s. 19.49

(2) (b) 4., Stats., the commission may vote to terminate a complaint or investigation at any time notwithstanding a finding of reasonable suspicion or probable cause that a violation has occurred

or is occurring. If a complaint or investigation is terminated, it is deemed to be dismissed by the commission and the parties shall be notified pursuant to s. ETH 21.10.

SECTION 9. ETH 21.10 is created to read:

ETH 21.10 Notification of dismissal. After a determination that either no reasonable suspicion or no probable cause of a violation exists, or where any complaint is deemed to be dismissed by the commission, the administrator shall send a written notice to the complainant and respondent within 5 calendar days.

SECTION 10. ETH 21.30 is repealed and recreated to read:

ETH 21.30 Requests for written advice.

(1) GENERAL PROVISIONS.

(a) If a person requests in writing the commission's written advice regarding the propriety of a matter to which the person is or may become a party, the administrator may advise the person in writing.

(b) The written advice shall be consistent with all applicable formal advisory opinions issued by the commission, statute or other law, and case law as required by s. 19.46 (2) (b) 1., Stats. as well as the United States and Wisconsin constitutional law.

(c) Written advice prepared by the administrator has the full force and effect of written advice given by the ethics commission.

(2) REQUESTS FOR INFORMAL OPINIONS.

(a) If a person requests an informal opinion, the administrator shall determine whether the request can be answered by existing statute, opinion precedent, or case law.

1. If the request cannot be answered by existing statute, opinion precedent, or case law, the request shall be considered by the commission at its next regular meeting.

2. If the request can be answered by existing statute, opinion precedent, or case law, the administrator may issue an informal opinion on behalf of the commission.

a. Any such opinion shall include a notice to the requestor that the opinion shall be reported to the commission at its next regular meeting pursuant to s. 19.46 (2) (a) 4., Stats. The notice shall advise the requestor that if the commission disagrees with the opinion, the commission may withdraw the opinion, issue a revised opinion, or request an opinion from the attorney general. The notice shall also state that, if the opinion is withdrawn or revised, no person relying upon the withdrawn or revised opinion is exempted from prosecution under s. 19.46 (2) (a) 3., Stats. after withdrawal or revision. If the commission issues a revised opinion, the revised opinion provides exemption from civil or criminal prosecution under s. 19.46 (2) (a) 3., Stats.

b. Any such opinion shall be reported to the commission at its next regular meeting pursuant to s. 19.46 (2) (a) 4., Stats.

(b) The administrator, assistant administrator, or staff counsel may request any additional information from the requestor that is necessary to issue the opinion.

(3) REQUESTS FOR FORMAL OPINIONS.

(a) If a person requests a formal opinion or requests a review or modification of a previously issued formal opinion, the commission shall review the request and may issue a formal opinion.

(b) The administrator, assistant administrator, or staff counsel may request any additional information from the requestor that is necessary to issue the opinion.

(c) Any person requesting a formal opinion may request a public or private hearing before the commission to discuss the opinion pursuant to s. 19.46 (2) (b), Stats. Any such request for a hearing must be received no later than 21 calendar days prior to the requested hearing date.

The commission shall grant any such request for a public or private hearing.

(4) VOLUNTARY WAIVER OF CONFIDENTIALITY. In addition to waiver by making an opinion public or purporting to make an opinion public as provided in s. 19.55 (4) (b), Stats., a person who receives an informal or formal opinion may voluntarily waive confidentiality of the request and any records obtained or prepared by the commission in connection with the request for an informal or formal opinion by submitting a statement in writing to the administrator that the person is waiving confidentiality. Any records obtained or prepared by the commission includes the opinion.

SECTION 11. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.