

Bluebook

A Guide to Indiana State Ethics Laws



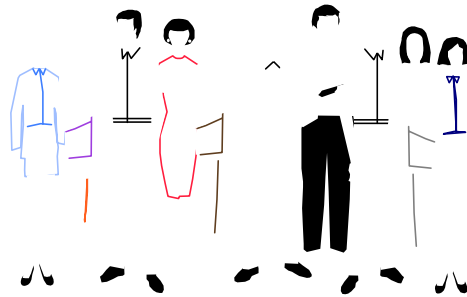
For
State Officers & Employees
of the Executive & Administrative Branch
of State Government

July 2001

INTRODUCTION

This is a guide for state officers and employees in the executive and administrative branch of Indiana state government. Those affected should read it carefully as it explains the ethics rules and laws found in IC 4-2-6 and 40 IAC 2 (these are included in the appendices). Employees & officers are responsible for knowing these laws as well as the specific policies and procedures of one's agency.

As we do our work, it is important that the public has the highest degree of confidence in our conduct. This guide deals with ethics laws that are the minimum standards, and we need to live up to them. But our goal should be to do more than is required, more than just not acting illegally. Our goal should be the highest ethical standards of public service.



While this publication intends to be clear and concise, of necessity it is general and simplified. It does not replace the actual laws and rules, nor does it explain all the ethical restrictions. Additionally, the rules and laws in place do not provide guidance for all the situations that may be confronted.

If you have questions (most of us do from time to time), you should contact your supervisor, agency head, ethics officer, or the State Ethics Commission. We urge you to ask before you do something, rather than need to try to explain what you did.

If we want Hoosiers to view us as public servants worthy of their trust, we must each exercise good judgment and common sense. Your fellow employees depend on you to make lawful, ethical decisions.

This guide provides general information only and does not have the force and effect of law. To obtain more information or to check for revisions to these rules, call the Indiana State Ethics Commission at (317) 232-3850. You may also visit or Web site: www.state.in.us/ethics.

*You may reproduce this guide in whole or in part for use by your agency.
A Web-based version, with links to laws, definitions and opinions, is available on our Web site.*

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General Standards of Conduct

These rules promote the principle that public office is a public trust. Where government is based upon the consent of its citizens, these citizens are entitled to have complete confidence in the integrity of their government. Thus, the business of the state is conducted in such a manner as to reassure the citizens of Indiana that the character and conduct of its officials and employees are above reproach.

In order to meet this objective, employees are required to:

- carry out their duties impartially.
- make decisions and policies within the proper channels of government.
- guard against using public office for private gain.
- avoid performing or engaging in actions, transactions, or involvements which have the potential to become a conflict of interest.

The ethics rules apply not only to official actions but also to personal activities that are related to work for state government.

Gifts, Entertainment, Food & Drink

You may not solicit or accept any gift (or favor, service, entertainment, food or drink) under circumstances in which it can reasonably be inferred the gift could influence you to give special consideration to an action in your official capacity. The State Ethics Commission has allowed gifts of nominal value such as a key chain, pencil, or calendar.



Example: An employee inspects a business for health and safety violations. She may not accept a \$20 gift certificate from the business.

Relatives

If the above rule would prohibit a gift from a relative, an exception allows the gift or gifts to be accepted if under \$250 in value. If the value is more than \$250, you need to ask the State Ethics Commission for a waiver.

Waivers

The State Ethics Commission is authorized to grant waivers for a legitimate public purpose.

Political contributions not gifts

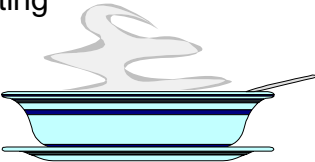
You may accept political contributions that are reported in accordance with law.

From one with a business relationship with your agency

You may not accept any gifts valued at more than \$25 in a calendar year from a person or business having a business relationship with your agency or office unless your state officer, your agency head, or your ethics officer (if there is one) approves in writing and sends the approval to the State Ethics Commission.

Example: The office manager for health and safety may not accept gifts with a value of more than \$25 in a calendar year from a business inspected by inspectors in her division, unless the agency head approves.

There are some exclusions to this:

- (a) gifts from charitable, benevolent, or religious organizations and from public agencies or institutions,
- (b) food and drink consumed at a public meeting to which 25 or more people are invited (such as a reception for public officials or a meeting you are attending or at which you are making a presentation in your official capacity), 
- (c) mementos of nominal value received at public ceremonies or commemorating official business,
- (d) invitations or tickets to charitable or political fundraising events, if you are given the invitations or tickets by the charitable or political entity (You may not accept invitations or tickets to a charitable or political fundraising event from someone who has a business relationship with your agency.),
- (e) reasonable courtesies extended to you during negotiations related to an economic development project, and
- (f) nominal entertainment or personal mementos exchanged on a reciprocal basis in a social relationship (but not if deducted as a business expense).

Reporting

Even if a gift is acceptable, if you are one of those individuals required to file a financial disclosure statement, you will have to report any gift valued at more than \$100.

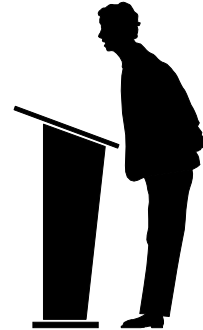
Honoraria

The Commission's definition of an honorarium is payment of money for an appearance, a speech, or an article.

You are not permitted to accept such payment for anything which could be considered part of your official duties.

You are permitted to accept payment for something not connected with your official duties. The work on it must be done on your own time and without the use of state resources.

Example: The program manager for traffic safety is asked to give a speech to a garden club on hybrid tea roses. He may accept the honorarium of \$25.



Even when you are not permitted to receive an honorarium, you are permitted to accept payment or reimbursement for actual travel expenses when those have not been paid by the state.

Other Resources:

The State Ethics Commission has issued several official advisory opinions on this subject. See Commission Advisory Opinions #93-I-9 and #90-I-9. These are available from our Web site, or by calling the office. Note that advisory opinions only apply based on the facts and circumstances presented to the Commission at the time.

Appearances, Activities & Expenses

You may not accept such expenses as hotel, travel, or meals from a source other than state government for attending a conference, convention, or seminar if it could reasonably be inferred the acceptance could influence you in your official capacity.

Example: The Deputy Commissioner for Financial Operations of the Bureau of Motor Vehicles wrote the specifications for new computers for her department. A computer company that is bidding for the contract wants to pay her way to attend a convention for state motor vehicle departments in Dallas. She may not accept payment for hotel, meals, and travel.

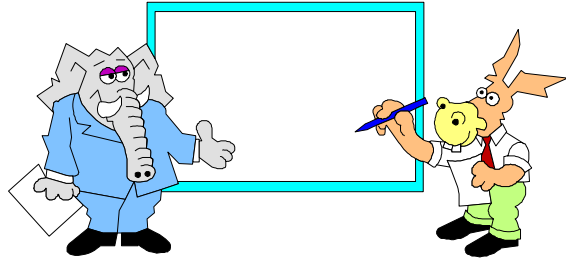
Even if it could not influence you in your official capacity, you may only accept payment of expenses from one who has a business relationship with your agency if you have approval from your state officer, your agency head or agency ethics officer (if there is one) in writing and the approval is sent to the State Ethics Commission.

Example: The same computer company offers to pay the way of the Director of the Public Affairs Division of the Bureau of Motor Vehicles to attend the convention for state motor vehicle departments in Dallas. He may not accept unless the agency head approves in writing and sends the approval to the State Ethics Commission.

Political Activity

On duty or acting in official capacity

You may not engage in any political activity when on duty or acting in an official capacity. This includes soliciting political contributions from another employee or any other person.



When not on duty

You may engage in political activity when not on duty (but certain state employees are covered by the federal Hatch Act and are restricted in what they can do by it) except as follows:

At no time may you solicit political contributions from those who have a business relationship with your agency or from state employees you supervise.

Federal Hatch Act

The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants. There is a misperception that the Hatch Act only applies if one's salary is federally funded. The Act may apply more broadly than that.

Covered state and local employees may:

- run for public office in nonpartisan elections.
- actively campaign for candidates for public office in partisan and nonpartisan elections.
- contribute money to political organizations and attend political fundraising functions.

Covered state and local employees may not:

- be a candidate for public office in a partisan election. (Note that this does not eliminate being a candidate for school board, a non-partisan office in Indiana).
- use official authority or influence to interfere with or affect the results of an election or nomination.
- directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

The Hatch Act is a federal statute, not one under the jurisdiction of the State

Ethics Commission. Any interested party may request advisory opinions from the Office of Special Counsel, Hatch Act Unit, 1730 M Street, N.W., Suite 300, Washington, D.C. 20036-4505. Telephone: 800-85-HATCH (800-854-2824) or 202-653-7143. You may also visit the Web site of the U.S. Office of Special Counsel at: www.osc.gov.

Other Resources:

For a more complete discussion of this subject (including special restrictions affecting employees in certain Indiana state agencies), see our "Political Activity Guide," another publication of the Indiana State Ethics Commission.

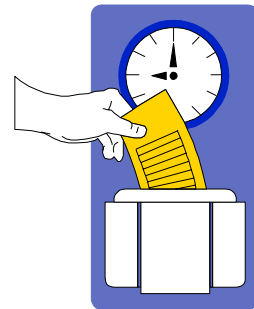
Moonlighting

You may have a second job only if it is compatible with your agency rules and your state responsibilities.

However, the second job must not:

- impair your independence of judgment,
- pose a likelihood of conflict of interest, or
- create an incentive to disclose confidential information.

→The same is true even for outside volunteer activity.



If you are considering outside employment or other activity, you may be required to get approval by your agency. Ask your supervisor or agency's Ethics Officer.

If you question whether you are permitted to have the job according to these rules, you should ask the State Ethics Commission for an advisory opinion. Moonlighting cases are frequently very fact-sensitive and the Commission decides each individually.

Even if you are permitted to have a second job, you are not permitted to use state time, personnel, or other resources for that job.

Other Resources:

The State Ethics Commission has issued several official advisory opinions on this subject. See Commission Advisory Opinions #97-I-5 and #91-I-13. These are available from our Web site, or by calling the office. Note that advisory opinions only apply based on the facts and circumstances presented to the Commission at the time.

Also, for more discussion of this subject, see our guide, "Seeking Outside Employment," another publication of the Indiana State Ethics Commission.

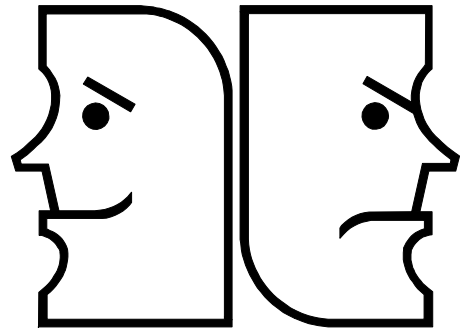
Conflict Of Interest

As a state employee or officer you may not participate in a decision of any kind in which you, your spouse, or minor child has a financial interest.

"Conflict of interest" means a situation in which your private financial interest may influence your judgment in the performance of your state duties.

You could have a financial interest through such things as the following:

- A purchase, sale, lease, contract, option or other transaction
- Property or services
- Employment or prospective employment for which negotiations have begun
- Owning more than 1% of the common stock of a corporation



In other words, a state employee or state officer may not participate in any decision, even informally, on a matter in which he or she has a financial interest.

Advisory opinions

If you think you may have a conflict of interest, you should ask your ethics officer or the State Ethics Commission for an opinion. These cases are usually very fact-sensitive and the Commission decides on the facts of each case.

May be screened

If it is determined that a conflict of interest or potential conflict of interest exists, you may, if possible, be screened from participating in the matter. For example, your supervisor could assign someone else your duties that create a conflict of interest for you.

→ Be especially aware of the likelihood for conflict of interest when discussing employment possibilities with someone over whom you exercise some discretion in your official capacity. Job negotiations create a financial interest. Once that occurs, any further action as a state employee or officer affecting that entity is a conflict of interest.

Example: A family caseworker made referrals to non-profit organizations which were under contract with her agency. She was offered a job with one of those organizations, quickly accepted, and gave her state agency two weeks notice. From the time she began job negotiations with that contractor until she left state employment, she should not have been making referrals or other decisions affecting that entity. Because she was not screened from these

decisions, she had a conflict of interest. She was fined by the Ethics Commission.

Other Resources:

The State Ethics Commission has issued a number of official advisory opinions on this subject. These include Commission Advisory Opinions #93-I-3, #93-I-21, #94-I-7, and #97-I-7. These are available from our Web site or by calling the office. Note that advisory opinions only apply based on the facts and circumstances presented to the Commission at the time.

Criminal Conflict of Interest Law (IC 35-44-1-3)

In addition to the civil conflict of interest law (IC 4-2-6-9, discussed above), there is a criminal conflict of interest law which applies to all public servants in Indiana (including those under the jurisdiction of the State Ethics Commission). This law says that you may not knowingly or intentionally have a financial interest in or derive a profit from a contract or purchase connected with an action by your agency. In certain circumstances, filing a prescribed disclosure form with the State Board of Accounts is a partial solution. Those under the jurisdiction of the State Ethics Commission should contact this agency for more information. Other public servants may wish to contact the State Board of Accounts or consult with an attorney.

Compensation for Official Duties

Solicitation or Acceptance

You may not solicit or accept compensation other than your state paycheck for doing your state duties.

Pay or Offer to Pay

You may not pay or offer to pay other state employees or a state officer compensation for doing their duties.

Other Resources:

The State Ethics Commission has issued official advisory opinions on this subject. These include Commission Advisory Opinions #99-I-2 and #90-I-1, which are available from our Web site or by calling the office. Note that advisory opinions only apply based on the facts and circumstances presented to the Commission at the time.

Information of a Confidential Nature

You may not benefit from information of a confidential nature or permit any other person to benefit except as permitted by law.

You may not divulge information of a confidential nature except as permitted by law.

Other Resources:

For a more complete discussion of this subject, see our Confidential Information Guide, another publication of the Indiana State Ethics Commission. Also, the State Ethics Commission has issued advisory opinions on this subject. These include Commission Advisory Opinion #97-I-5, which is available from our Web site or by calling the office. Note that advisory opinions only apply based on the facts and circumstances presented to the Commission at the time.

Special Terms or Benefits

In your personal dealings, you are not permitted to receive any special terms or benefit not available to others from anyone with a business relationship to your agency.

Use of State Property, Personnel & Time

You may not use state materials, funds, property, personnel, facilities or equipment for anything other than state business, unless the use is permitted by written policy or regulation.

You are not permitted to do or direct others to do work other than state duties during working hours, unless written policy or regulation permits it.

Examples:

- A department supervisor asked another employee, on state time, to make a sign for a political booth. The Ethics Commission fined the supervisor.
- A department employee allowed a not-for-profit organization to use the office copier because he felt the organization's goals were in the public interest. He was fined by the Ethics Commission.
- An attorney with a state agency used an office fax machine to relay a document pertaining to an outside legal matter to a court official. She was fined for doing so.
- Another attorney was sanctioned for, among other things, using his state telephone number in a letterhead that he used for outside legal work.

Other Resources:

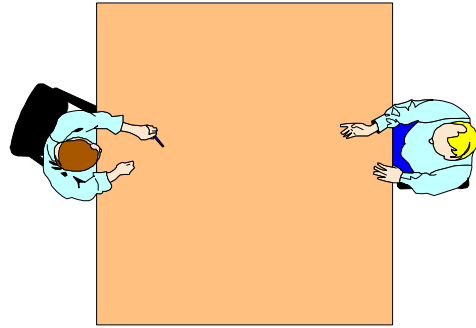
For related information, see our guide, "Using State Stationery," another publication of the Indiana State Ethics Commission. This is a PDF file.

Post-Employment Restrictions

Negotiating for Future Employment

It is a conflict of interest for you as a state officer or employee to participate in any decision concerning an organization with which you are negotiating for a job. Therefore, you are not permitted to negotiate for employment in certain circumstances, unless you can be screened in the performance of your state duties. Ask your supervisor before

negotiating for future employment that could place you in a conflict of interest situation. (See Bluebook discussion under "Conflict of Interest.")



Basic rule

A former employee is prohibited from representing or assisting a person regarding a particular matter in which the employee participated personally and substantially for one year after the former employee had responsibility for that particular matter. Contact the State Ethics Commission for advice on this complex statute.

Waiver

Your agency head or a state officer may waive the post-employment restriction if what you would be doing is not adverse to the public interest.

Contracting with Agency

Nothing in this law prevents an agency from contracting directly with a former employee.

Other Resources:

For more discussion on this subject, see our guide, "Leaving State Government," another publication of the Indiana State Ethics Commission.

The State Ethics Commission has issued advisory opinions on this subject. These include Commission Advisory Opinions #99-I-1, #96-I-11, #94-I-6, and #92-I-7, which are available from our Web site or by calling the office. Note that advisory opinions only apply based on the facts and circumstances presented to the Commission at the time.

Criminal Profiteering Law (IC 35-44-1-7)

The profiteering law says that for one year after leaving state service, you may not knowingly or intentionally have a financial interest in a contract or purchase with the agency where you worked if you approved, negotiated, or prepared the terms or specifications while you were a state employee.

Nepotism

You are not permitted to employ or supervise certain relatives. Those relatives are father, mother, brother, sister, uncle, aunt, husband, wife, son, daughter, son-in-law, daughter-in-law, niece or nephew.

Advisory Opinions:

The State Ethics Commission has issued several advisory opinions on this subject. These include Commission Advisory Opinions #97-I-6 and #94-I-1, which are available from our Web site or by calling the office. Note that advisory opinions only apply based on the facts and circumstances presented to the Commission at the time.

Financial Disclosure

State officers, candidates for most statewide offices, executive branch agency heads, and certain employees are required to file financial disclosure statements. Such disclosure statements are public records and are used to identify conflicts of interest. These disclosures are available for public inspection at the Ethics Commission Office.

For more discussion of this subject, see our guide on “Frequently Asked Questions about Financial Disclosure Statements.”

State Ethics Commission

The State Ethics Commission is responsible for rulemaking, training, advising, and investigating matters pertaining to ethics and related rules governing official conduct of state officers, employees, or special state appointees.

You are encouraged to seek guidance whenever you have questions about what you should do. Ask the State Ethics Commission, your supervisor, or your agency's ethics officer.

Complaints & Investigations

Ethics Commission investigations can be triggered in three ways: (1) at the request of the governor, (2) by a formal, signed complaint, or (3) on its own initiative, which the Commission may do based on information it receives in any way.

An investigation is confidential until the Commission determines that probable cause of a violation exists. It then schedules a public hearing and notifies the person being investigated (the “respondent”). An investigation

may also become public if the respondent chooses to have it made public. This confidentiality protects the reputation of someone falsely accused.

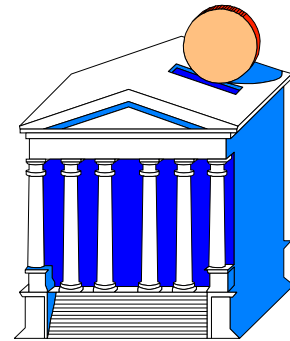
If the Commission finds that probable cause of a violation exists, then the respondent has due process rights to be represented by counsel, call witnesses, introduce exhibits, and cross-examine witnesses.

For more discussion of this subject, see our guide, "Frequently Asked Questions about Investigations," another publication of the Indiana State Ethics Commission.

Penalties

When violations are found, the Ethics Commission is authorized to levy civil penalties (fines) and to recommend to an appointing authority sanctions such as a reprimand, suspension, or dismissal.

In some instances, the Ethics Commission may cancel a contract or bar someone from entering a contract with state government for up to two years. There are also fines for late filings of financial disclosure statements.



Advisory Opinions

Most of us working for the public will sooner or later find ourselves facing an ethics dilemma of some sort. It might concern whether we can accept a favor or gift from an agency contractor or vendor. Perhaps it will arise in connection with a second job – or volunteer work. Maybe a spouse's business wants to do business with your agency.

One of the primary functions of the Ethics Commission is to respond to questions from state employees and others regarding how a particular situation might be analyzed under state ethics rules – and to offer advice.

This can happen in a number of ways, ranging from very informal to official written opinions. In many cases, questions can be answered with a telephone call or a visit with Commission staff. In other cases, employees might want to get a written opinion from the staff; this is still an “unofficial” opinion, yet documents that advice was sought and what the response was.

An “official” advisory opinion is one that is presented to the five-member Commission at its monthly meeting. These generally are given in situations that are less clear or for which there is little precedent. It also provides the requestor with legal protection if questions later arise about that situation.

To get an official advisory opinion of the State Ethics Commission, send a letter to the agency. It must be received more than a week before a meeting. Then you are asked to appear before the State Ethics Commission at its meeting where you will explain the situation and will likely be asked questions. The meeting is a public session and the Commission will usually provide its answer at that time (with a written version of the opinion sent later).

If you are unsure which level of response is most appropriate to your situation, give the Ethics Commission a call (317-232-3850). The most important thing is that you seek advice before engaging in a potentially questionable activity.

Also See:

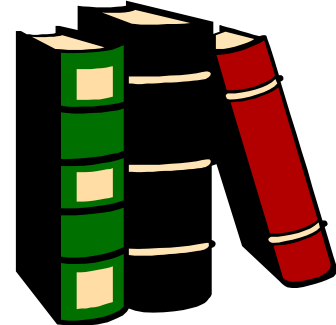
To view Official Advisory Opinions issued in the past by the Ethics Commission, visit our Web site. Keep in mind, however, that every situation is unique and that responses to one person do not necessarily transfer to another, due to sometimes subtle differences in facts between situations.

Other Sources of Information

Ethics, Conduct and Related Matters

State officers and state agencies may adopt policies, rules, or regulations concerning ethics so long as they are at least as strict as the Ethics Commission's rules.

Applicable law that is ethical in nature may also be found in procurement, personnel, and travel rules as well as in open meetings, open records, and criminal law. The statutes creating some agencies contain ethical prohibitions. Also, some employees may be subject to a code of professional responsibility.



Information on Related Offices:

Legislative Branch of State Government

- Ethics matters for legislators are the responsibility of Indiana Senate and House of Representative. Inquiries may be addressed to:
Chairperson
Senate Ethics Committee
State House
Indianapolis, IN 46204
Phone: (317) 232-9400, (800) 382-9467

Chairperson
House Public Policy, Ethics & Veterans Affairs Comm.
State House
Indianapolis, IN 46204
Phone: (317) 232-9600, (800) 382-9842

- Legislative Statements of Economic Interest are filed with:

Senate Secretary
Indiana State Senate
State House
200 West Washington Street
Indianapolis, IN 46204
(317) 232-9420 or (800) 382-9467

Principal Clerk
Indiana House of Representatives
State House
200 West Washington Street
Indianapolis, IN 46204
(317) 232-9974 or (800) 382-9842
http://www.state.in.us/legislative/econ_interest.html

- Lobbyist Registrations & Reports:
Indiana Lobby Registration Commission
251 N. Illinois, Suite 975
Indianapolis, IN 46204
(317) 232-9860
<http://www.state.in.us/ilrc>

Judicial Branch of State Government

- Complaints regarding the Judiciary:
Counsel
State Court Administrator's Office
115 West Washington Street, Suite 1080
Indianapolis, IN 46204
(317) 232-2542
<http://www.state.in.us/judiciary/admin/judicial/index.html>
- Complaints regarding attorneys in private practice:
Executive Secretary
Disciplinary Commission of the Supreme Court
115 West Washington Street, Suite 1060
Indianapolis, IN 46204
(317) 232-1807

Public Access (Public Records & Meetings)

Public Access Counselor
Indiana Government Center South, W074

402 West Washington Street
Indianapolis, IN 46204
(317) 233-9435 / (800) 228-6013
<http://www.state.in.us/pac/index.html>

Election Administration and Campaign Finance

Co-Directors
Indiana Election Division
Office of Secretary of State
302 W. Washington Street, E204
Indianapolis, IN 46204
(317) 232-3939 / (800) 622-4941
<http://www.state.in.us/sos/elections/>

Indiana State
Ethics Statutes
IC 4-2-6

Note: Italicized words are defined terms

Indiana Code 4-2-6: Ethics

4-2-6-1	Definitions
4-2-6-2	Commission; creation; membership; vacancies
4-2-6-2.1	Commission; compensation; expenses
4-2-6-2.5	Commission; jurisdiction
4-2-6-3	Rules; code of ethics; adoption
4-2-6-4	Commission; powers and duties
4-2-6-4.5	Violations reported; report to commission of action taken
4-2-6-5	State officers and employees; compensation for official duties
4-2-6-6	State officers and employees; compensation as a result of confidential information
4-2-6-7	State officers and employees; excess compensation for sale or lease
4-2-6-8	Financial disclosure; person required to file
4-2-6-9	Conflicts of financial interest
4-2-6-10	Repealed
4-2-6-11	Post employment restriction
4-2-6-12	Violations; penalties
4-2-6-13	Retaliation prohibited
4-2-6-14	Interference prohibited

As of July 1, 2001

4-2-6-1 Definitions

Sec. 1. As used in this chapter, and unless the context clearly denotes otherwise:

(1) "**Agency**" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic set up as an instrumentality of the state that chooses to be under the jurisdiction of the state ethics commission. The term does not include any of the following:

- (A) The judicial department of state government.
- (B) The legislative department of state government.
- (C) A state educational institution (as defined in IC 20-12-0.5-1).
- (D) A *political subdivision*.
- (E) A private nonprofit government related corporation.

(2) "**Appointing authority**" means the chief administrative officer of an *agency*. The term does not include a state officer.

(3) "**Assist**" means to:

- (A) help;
- (B) aid;
- (C) advise; or
- (D) furnish information to;

a *person*. The term includes an offer to do any of the actions in clauses (A) through (D).

- (4) "**Business relationship**" means dealings of a *person* with an *agency* seeking, obtaining, establishing, maintaining, or implementing:
- (A) a pecuniary interest in a contract or purchase with the *agency*; or
 - (B) a license or permit requiring the exercise of judgment or discretion by the *agency*.
- (5) "**Commission**" refers to the state ethics commission created under section 2 of this chapter.
- (6) "**Compensation**" means any money, thing of value, or financial benefit conferred on, or received by, any *person* in return for services rendered, or for services to be rendered, whether by that *person* or another.
- (7) "**Employee**" means an individual, other than a state officer, who is employed by an *agency* on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an *agency* for *personal* services for more than thirty (30) hours a week for more than twenty-six weeks during any one (1) year period.
- (8) "**Employer**" means any *person* from whom a state officer or *employee* or the officer's or *employee's* spouse received *compensation*. For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.
- (9) "**Financial interest**" means an interest:
- (A) in a purchase, sale, lease, contract, option, or other transaction between an *agency* and any *person*; or
 - (B) involving *property* or services.
- The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or *employee* in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the *employee*, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state *employee*.
- (10) "**Information of a confidential nature**" means information:
- (A) obtained by reason of the position or office held; and
 - (B) which
 - (i) a public *agency* is prohibited from disclosing under IC 5-14-3-4(a);
 - (ii) a public *agency* has the discretion not to disclose under IC 5-14-3-4(b) and that the *agency* has not disclosed; or
 - (iii) the information is not in a public record, but if it were, would be confidential.
- (11) "**Person**" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, or corporation, whether or not operated for profit, or a governmental *agency* or *political subdivision*.
- (12) "**Political subdivision**" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.
- (13) "**Property**" has the meaning set forth in IC 35-41-1-23.
- (14) "**Represent**" means to do any of the following on behalf of a *person*:
- (A) Attend an *agency* proceeding.
 - (B) Write a letter.
 - (C) Communicate with an *employee* of an *agency*.

- (15) "**Special state appointees**" means a *person* who is:
- (A) not a state officer or *employee*; and
 - (B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:
 - (i) is authorized by statute or executive order; and
 - (ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.
- (16) "**State officer**" means any of the following:
- (A) The governor.
 - (B) The lieutenant governor.
 - (C) The secretary of state.
 - (D) The auditor of state.
 - (E) The treasurer of state.
 - (F) The attorney general.
 - (G) The superintendent of public instruction.
- (17) The masculine gender includes the masculine and feminine.
- (18) The singular form of any noun includes the plural wherever appropriate.

4-2-6-2 Commission; creation; membership; vacancies

- Sec. 2. (a) There is created a state ethics commission.
- (b) The Commission is composed of five (5) members appointed by the governor.
- (c) No more than three (3) Commission members shall be of the same political party. A person who:
- (1) holds an elected or appointed office of the state;
 - (2) is employed by the state; or
 - (3) is registered as a lobbyist under IC 2-7-2-1;
- may not be a member of the Commission. The governor shall designate one (1) member of the Commission as the chairman. Each appointment to the Commission is for a period of four (4) years. A vacancy shall be filled by the governor for the unexpired term.
- (d) The governor and state budget *agency* shall provide such rooms and staff assistance as the *commission* may require.

4-2-6-2.1 Commission; compensation; expenses

Sec. 2.1. Each member of the *commission* is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). A member is entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget *agency*.

4-2-6-2.5 Commission; jurisdiction

- Sec. 2.5 The *commission* has jurisdiction over the following *persons*:
- (1) A current or former *state officer*.
 - (2) A current or former *employee*.
 - (3) A *person* who has or had a *business relationship* with an *agency*.
 - (4) A special state appointee.

4-2-6-3 Rules; code of ethics; adoption

Sec. 3. The *commission* shall adopt rules under IC 4-22-2 establishing a code of ethics for the conduct of state business. The code of ethics must be consistent with state law.

4-2-6-4 Commission; powers and duties

Sec. 4. (a) The *commission* may do any of the following:

- (1) Upon a vote of four (4) members, or upon the written request of the governor, initiate and conduct an investigation.
- (2) Receive and hear any complaint which alleges a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of *state officers, employees, or special state appointees*.
- (3) Obtain information and, upon a vote of four (4) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued.
- (4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, *employees*, and *special state appointees*, including whether additional specific state officers or *employees* should be required to file a financial disclosure statement under section 8 of this chapter.
- (5) Adopt rules under IC 4-22-2 to implement this chapter;
- (6) Prescribe and provide forms for statements required to be filed under this chapter.
- (7) Accept and file information:
 - (A) voluntarily supplied; and
 - (B) that exceeds the requirements of this chapter;
- (8) Inspect financial disclosure forms.
- (9) Notify *persons* who fail to file forms required under this chapter.
- (10) Develop a filing, a coding, and an indexing system required by this chapter and IC 35-44-1-3.
- (11) Conduct research.
- (12) Prepare interpretive and educational materials and programs.

(b) The *commission* shall do the following:

- (1) act as an advisory body by issuing advisory opinions to interpret this chapter, the *commission's* rules, or any other statute or rule establishing standards of official conduct upon:
 - (A) request of:
 - (i) a state officer or a former state officer;
 - (ii) an *employee* or a former *employee*;
 - (iii) a *person* who has or had a *business relationship* with an *agency*; or
 - (iv) a special state appointee; or
 - (B) motion of the *commission*.
- (2) conduct its proceedings in the following manner:
 - (A) When a complaint is filed with the *commission*, the *commission* may:
 - (i) reject, without further proceedings, a complaint that the *commission* considers frivolous or inconsequential;
 - (ii) reject, without further proceedings, a complaint that the *commission* is satisfied has been dealt with appropriately by an agency;
 - (iii) upon the vote of four (4) members, determine that the complaint does not allege facts sufficient to constitute a violation of this chapter or the code of ethics and dismiss the complaint; or
 - (iv) forward a copy of the complaint to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the *appointing authority*, or other appropriate *person* for action, and stay the *commission's* proceedings pending the other action.
 - (B) If a complaint is not disposed of under clause (A), a copy of the complaint shall be sent to the *person* alleged to have committed the violation.
 - (C) If the complaint is not disposed of under clause (A), or when the *commission* initiates an investigation on its own motion or upon request of the governor, the *commission* shall promptly investigate the alleged violation. If, after the preliminary investigation, the *commission* finds by a majority vote that probable cause exists to support an alleged violation, it shall convene a public hearing on the matter within sixty

(60) days after making the determination. The respondent shall be notified within fifteen (15) days of the *commission's* determination. The *Commission's* evidence relating to an investigation is confidential until the earlier of:

- (i) the time the respondent is notified of the hearing; or
- (ii) the time the respondent elects to have the records divulged.

However, the *commission* may acknowledge the existence and scope of an investigation or that the *commission* did not find probable cause to support an alleged violation.

(D) If a hearing is to be held, the respondent may examine and make copies of all evidence in the *commission's* possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

(E) After the hearing, the *commission* shall state its findings of fact. If the *commission*, based on competent and substantial evidence, finds by a majority vote that the respondent has violated this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, *employees*, or *special state appointees*, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the *commission* members and shall be made public. The report may make a recommendation for the sanctions to be imposed by the *appointing authority* or state officer for the violation, including:

- (i) a letter of counseling;
- (ii) a reprimand;
- (iii) a suspension with or without pay; or
- (iv) the dismissal of an *employee*.

(F) If the *commission*, based on competent and substantial evidence, finds by a majority vote a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, *employees*, or *special state appointees*, the *commission* may also take any of the actions provided in section 12 of this chapter.

(G) The report required under clause (E) shall be presented to:

- (i) the respondent;
- (ii) the *appointing authority* or state officer of the *employee*, former *employee*, or special state appointee; and
- (iii) the governor.

(H) The *commission* may also forward the report to any of the following:

- (i) the prosecuting attorney of each county in which the violation occurred.
- (ii) the state board of accounts.
- (iii) the state personnel director.
- (iv) The attorney general.
- (v) A state officer.
- (vi) The *appointing authority*.
- (vii) Any other appropriate *person*.

(I) If the *commission* finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

(3) maintain an index of conflict of interest disclosures received by the *commission* under IC 35-44-1-3.

(c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the *commission* concerning the case of a respondent that are not confidential under subsection (b)(2)(C) shall be available for inspection and copying in accordance with IC 5-14-3.

4-2-6-4.5 Violations reported; report to commission of action taken

Sec. 4.5 Whenever an *appointing authority* or a state officer receives a report under section 4(b)(2)(G) of this chapter, the *appointing authority* or state officer shall report to the *commission* the action taken in

response to the report. The *commission* may require in the report that the *appointing authority* or the state officer submit the response required by this section in a reasonable, specified amount of time. *As added by*

4-2-6-5 State officers and employees; compensation for official duties

Sec. 5. No state officer or *employee* shall solicit or accept *compensation*, other than that provided for by law for such office or employment for the performance of his duties; it shall be unlawful for any *person*, other than state officers or *employees* performing their duties in making payments to state officers or *employees* as provided by law, to pay, or offer to pay, any state officer or *employee* any *compensation* for the performance of his official duties.

4-2-6-6 State officers and employees; compensation as a result of confidential information

Sec. 6. No state officer or *employee*, former state officer or *employee*, or special state appointee shall accept any *compensation* from any employment, transaction or investment which was entered into or made as a result of material *information of a confidential nature*

4-2-6-7 State officers and employees; excess compensation for sale or lease

Sec. 7. A state officer or *employee* may not receive *compensation*:

- (1) for the sale or lease of any *property* or service which substantially exceeds that which the state officer or *employee* would charge in the ordinary course of business; and
- (2) from any *person* whom he knows or, in the exercise of reasonable care and diligence should know, has a *business relationship* with the *agency* in which the state officer or *employee* holds a position.

4-2-6-8 Financial disclosure; person required to file

Sec. 8. (a) The following persons shall file a written financial disclosure statement:

- (1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.
- (2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.
- (3) Any *person* who is the *appointing authority* of an *agency*.
- (4) The director of each division of the department of administration.
- (5) Any purchasing agent within the procurement division of the department of administration.
- (6) An *employee* required to do so by rule adopted by the *commission*.

(b) The statement shall be filed with the *commission* as follows:

- (1) Not later than February 1 of every year, in the case of the state officers and *employees* enumerated in subsection (a).
- (2) Before filing a declaration of candidacy under IC 3-8-2, petition of nomination under IC 3-8-6, or declaration of intent to be a write-in candidate under IC 3-8-2-2.5, or before a certificate of nomination is filed under IC 3-8-7-8, in the case of a candidate for one (1) of the state offices.
- (3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.
- (4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.

The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or *employee* who leaves office or employment, the period since a previous statement was filed:

- (1) The name and address of any *person* known:

(A) to have a *business relationship* with the *agency* of the *state officer* or *employee* or the office sought by the candidate; and

(B) from whom the state officer, candidate, or the *employee*, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).

(2) The location of all real *property* in which the state officer, candidate, or the *employee* or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars (\$5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or the *employee's* net worth or the net worth of that individual's spouse or unemancipated children. An individual's primary personal residence need not be listed, unless it also serves as income property.

(3) The names and the nature of the business of the *employers* of the state officer, candidate, or the *employee* and that individual's spouse.

(4) The following information about any sole proprietorship owned or professional practice operated by the state *officer*, candidate, or the *employee* or that individual's spouse:

(A) The name of the sole proprietorship or professional practice.

(B) The nature of the business.

(C) Whether any clients are known to have had a business relationship with the agency of the state officer or employee or the office sought by the candidate.

(D) The name of any client or customer from whom the state officer, candidate, employee, or that individual's spouse received more than thirty-three percent (33%) of the state officer's, candidate's, employee's, or that individual's spouse's nonstate income in a year.

(5) The name of any partnership of which the state officer, candidate, or the *employee* or that individual's spouse is a member and the nature of the partnership's business.

(6) The name of any corporation (other than a church) of which the state officer, candidate, or the *employee* or that individual's spouse is an officer or director and the nature of the corporation's business.

(7) The name of any corporation in which the state officer, candidate, or the *employee* or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000). A time or demand deposit in a financial institution or insurance policy need not be listed.

(8) The name and address of the most recent former *employer*.

(9) Additional information that the *person* making the disclosure chooses to include.

Any such state officer, candidate, or *employee* may file an amended statement upon discovery of additional information required to be reported.

(d) A *person* who:

(1) fails to file a statement required by rule or this section in a timely manner; or

(2) files a deficient statement;

upon a majority vote of the *commission*, is subject to a civil penalty at a rate of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

(e) A *person* who intentionally or knowingly files a false statement commits a Class A infraction.

4-2-6-9 Conflicts of financial interest

Sec. 9. A state officer or *employee* may not participate in any decision or vote of any kind in which the state officer or the *employee* or that individual's spouse or unemancipated children has a *financial interest*.

4-2-6-10 Repealed

4-2-6-11 Post employment restriction

Sec. 11. (a) This section applies only:

- (1) to a former state officer or former *employee*; and
- (2) during the period that is twelve (12) months after the date the former state officer or former *employee* had responsibility for the particular matter.

(b) As used in this section, "legislative matter" has the meaning set forth in IC 2-2.1-3-1.

(c) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(d) A former state officer or former *employee* may not *represent* or *assist a person* regarding a particular matter involving a specific party or parties:

- (1) that was under consideration by the *agency* that was served by the state officer or *employee*; and
- (2) in which the officer or *employee* participated personally and substantially through:
 - (A) a decision;
 - (B) an approval;
 - (C) a disapproval;
 - (D) a recommendation;
 - (E) giving advice;
 - (F) an investigation; or
 - (G) the substantial exercise of administrative discretion.

(e) An *appointing authority* or state officer of the *agency* that was served by the former state officer or former *employee* may waive application of this section if the *appointing authority* or state officer determines that representation or assistance of a former state officer or former *employee* is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the *commission*.

(f) This section does not prohibit an *agency* from contracting with a former state officer or *employee* to act on a matter on behalf of the *agency*.

4-2-6-12 Violations; penalties

Sec. 12. If the *commission* finds a violation of this chapter, a rule adopted under this chapter, or any other statute or rule governing official conduct of state officers, ~~or~~ *employees*, or *special state appointees* in a proceeding under section 4 of this chapter, the *commission* may take any of the following actions:

- (1) Impose a civil penalty upon a respondent not to exceed the greater of:
 - (A) three (3) times the value of any benefit received from the violation; or
 - (B) ten thousand dollars (\$10,000).
- (2) Cancel a contract.

(3) Bar a *person* from entering into a contract with any *agency* for a period specified by the *commission*. The period specified by the *commission* may not exceed two (2) years from the date the action of the *commission* is effective.

4-2-6-13 Retaliation prohibited

Sec. 13. (a) Subject to subsection (b), a state officer or *employee* shall not retaliate or threaten to retaliate against an *employee* or a former employee because the *employee* or former employee did any of the following:

- (1) Filed a complaint with the *commission*.
- (2) Provided information to the *commission*.
- (3) Testified at a *commission* proceeding.

(b) Notwithstanding subsection (a), a state officer or an *employee* may take appropriate action against an *employee* who took any of the actions listed in subsection (a) if the *employee*:

- (1) did not act in good faith; or
- (2) knowingly or recklessly provided false information or testimony to the *commission*.

4-2-6-14 Interference

Sec. 14. A person may not do any of the following:

(1) Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a commission proceeding or investigation to do any of the following:

- (A) Withhold or unreasonably delay the production of any testimony, information, document, or thing.
- (B) Avoid legal process summoning the person to testify or supply evidence.
- (C) Fail to appear at a proceeding or investigation to which the person has been summoned.
- (D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

(2) Alter, damage, or remove a record, document, or thing except as permitted or required by law, with the intent to prevent the record, document, or thing from being produced or used in a commission proceeding or investigation.

(3) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

Indiana State Ethics Commission
Administrative Rules
40 IAC 2

TITLE 40: STATE ETHICS COMMISSION

40 IAC 2-1-1	Name of rule
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40 IAC 2-1-12	Repealed
40 IAC 2-1-13	Repealed
40 IAC 2-1-14	Severability of title
40 IAC 2-2	Advisory Opinions before the State Ethics Commission
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40 IAC 2-4	Financial Disclosure to the State Ethics Commission
40 IAC 2-5	General Procedural Provisions of the State Ethics Commission

40 IAC 2-1-1 Name of rule

Sec. 1. The name of this rule shall be the Indiana code of ethics for the conduct of state business. (*State Ethics Commission; 40 IAC 2-1-1; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-2 Other sources

Sec. 2. An administrator of a state *agency* or a state officer may adopt policies, rules, or regulations concerning the subject matter of this rule provided that the policies, rules, or regulations are at least as strict as this rule. All such policies, rules or regulations shall be filed with the ethics commission, but failure to file does not affect the validity of such policies, rules, or regulations as applied to the *agency's* or state officer's *employees*. (*State Ethics Commission; 40 IAC 2-1-2; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-3 Purpose

Sec. 3. (a) This section is intended as a guide to those under the jurisdiction of the state ethics commission and is not a basis for sanctions by the state ethics commission. This section is aspirational in character and represents the objective toward which every public servant should strive. Sections 6 through 9 of this rule are mandatory in character and state minimum levels of conduct below which those under the jurisdiction of the state ethics commission may not fall without being subject to sanctions by the state ethics commission.

(b) The purpose of this rule is to set ethical standards for the official conduct of the current and former officers and *employees* of the executive and administrative branches of state government and for *persons* who have or had a *business relationship* with an *agency* so that the general public will have confidence that the conduct of state business is always conducive to the public good. This rule promotes the principle that public office is a public trust where government is based upon the consent of its citizens who are entitled to have complete confidence in the integrity of their government. Thus, the business of the state will be conducted in such a manner as to reassure the citizens of Indiana that the character and conduct of its officials and *employees* are above reproach.

(c) The following are goals toward which those under the jurisdiction of the state ethics commission should strive:

(1) Duties should be carried out impartially.

(2) Decisions and policy should not be made outside of proper channels of state government.

(3) Public office should not be used for private gain.

(4) Public confidence in the integrity of government is essential to the exercise of good government.

(5) Actions, transactions, or involvements should not be performed or engaged in which have the potential to become a conflict of interest.

(d) This rule is not meant to unduly restrict or limit the behavior of the officers and *employees* of this state during the time when they are not on duty. Each state officer and *employee* retains lawful rights and privileges as a private citizen to interests of a personal or private financial nature. These rights and privileges will be honored by the *commission* to the extent that they are compatible with an individual's public office or employment. (*State Ethics Commission; 40 IAC 2-1-3; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-4 Definitions

Sec. 4. (a) The definitions in this section apply throughout this article.

(b) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a counsel, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term does not include any of the following:

(1) The judicial department of state government.

(2) The legislative department of state government.

(3) Separate bodies corporate and politic.

(4) A state educational institution, as defined in IC 20-12-0.5-1.

(c) "Appointing authority" means the chief administrative officer of an *agency*. The term does not include a state officer.

(d) "Business relationship" means dealings an *agency* has with a *person* seeking, obtaining, establishing, maintaining, or implementing:

(1) a pecuniary interest in a contract or purchase with an *agency*; or

(2) a license or permit requiring the exercise of judgment or discretion by the *agency*.

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

(f) "Compensation" means any money, thing of value, or financial benefit conferred on or received by any *person* in return for services rendered, or for services to be rendered, whether by that *person* or another.

(g) "Conflict of interest" means a situation in which the private *financial interest* of a state officer, an *employee*, or the spouse or unemancipated child of a state officer or *employee*, may influence the state officer's or *employee's* judgment in the performance of a public duty.

(h) "Employee" means an individual, other than a state officer, who is employed by an *agency*. The term includes, for the limited purposes of this rule, an individual who contracts with an *agency* for personal

services for more than thirty (30) hours a week for more than twenty-six (26) weeks during any one (1) year period.

(i) "Ethics" means the principles of conduct governing an individual or group.

(j) "Financial interest" means an interest:

(1) in a purchase, sale, lease, contract, option, or other transaction between an *agency* and any *person*; or

(2) involving *property* or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of the state officer or *employee* in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the *employee*, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation.

The term does not include an interest that is not greater than the interests of the general public or any state officer or any state *employee*.

(k) "Gift" means the transfer or promise of a transfer of something of value regardless of the form without adequate and lawful consideration or consideration less than that required of others who are not *employees*, including the full or partial forgiveness of indebtedness, which is not extended to others who are not state *employees* on the same terms and conditions. However, "gift" does not include gifts from relatives of less than two hundred fifty dollars (\$250) or campaign contributions subject to IC 3-9-2.

(l) "Honorarium" means a payment of money for an appearance, a speech, or an article but does not include payment or reimbursement of travel expenses for a state *employee*.

(m) "Information of a confidential nature" means information:

(1) obtained by reason of the position or office held; and

(2) which:

(A) a public *agency* is prohibited from disclosing under IC 5-14-3-4(a);

(B) a public *agency* has the discretion not to disclose under IC 5-14-3-4(b) and that the *agency* has not disclosed; or

(C) the information is not in a public record, but if it were, would be confidential.

(n) "Moonlighting" means any activity for *compensation* by a state *employee* outside of state employment.

(o) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, or corporation, whether or not operated for profit, or a governmental *agency* or *political subdivision*.

(p) "Property" has the meaning set forth in IC 35-41-1-23.

(q) "Public official" means anyone who holds a public office, elected or appointed, at the federal, state, county, or local level.

(r) "Relative" means any person related as father, mother, step-father, step-mother, brother, sister, step-brother, step-sister, uncle, aunt, husband, wife, son, daughter, step-child, son-in-law, daughter-in-law, grandchild, step-grandchild, niece, or nephew.

(s) "State officer" means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.

(t) "Travel expenses" means transportation, lodging, and meals. It may be actual travel expenses or an amount approximating those expenses which would be allowed by state travel policies and procedures authorized under IC 4-13-1-4(7).

(u) The masculine gender includes the masculine and feminine.

(v) The singular form of any noun includes the plural wherever appropriate. (*State Ethics Commission; 40 IAC 2-1-4; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-6 Acceptable gifts, favors, services, entertainment, food, drink, and honoraria

Sec. 6. (a) A state *employee* or the spouse or unemancipated child of a state *employee* shall not solicit, accept, or receive, nor shall a donor offer, directly or indirectly, any gift, favor, service, entertainment, food, or drink, under circumstances in which it can reasonably be inferred that the thing of value would influence the *employee* to give special consideration to an action by such *employee* in his official capacity. This section does not prohibit normal gift-giving from relatives of gifts with an aggregate value of less than two hundred fifty dollars (\$250) or political contributions subject to IC 3-9-2 which are reported in accordance with applicable law. In addition, this section does not prohibit contributions which are accepted by an *agency* in accordance with applicable law. This section may be waived by the state ethics commission for a legitimate public purpose.

(b) Without the written approval of the *employee's appointing authority* or the state officer, an *employee* shall not accept for personal use any gifts, favors, services, entertainment, food, or drink valued at a total of more than twenty-five dollars (\$25) in a calendar year from a *person* or business that has a *business relationship* with the *employee's agency*. An *appointing authority* or state officer may designate no more than one (1) person to exercise approval on behalf of the *appointing authority* or state officer. Such designation shall be in writing and filed with the *commission*. The following shall not be subject to this section:

- (1) Gifts from charitable, benevolent, or religious organizations and from public agencies or institutions.
- (2) Food or drink consumed at a public meeting to which twenty-five (25) or more individuals are invited. A meeting will be considered public if:
 - (A) the event is a reception or other gathering for public officials;
 - (B) the *employee* is giving a speech or participating in a presentation in the *employee's* official capacity; or
 - (C) the meeting has a formal program that the *employee* is attending to assist him or her in performing official duties.
- (3) Mementos or souvenirs of nominal value received at public ceremonies or commemorating official business.
- (4) Invitations or tickets to charitable or political fundraising events if the invitations or tickets are given by the charitable or political entity sponsoring the event. This exception does not apply to a gift of tickets from a *person* with a *business relationship* with the *employee's agency*.
- (5) Food or drink consumed by an *employee* or other reasonable courtesies extended to an *employee* during negotiations or other activities related to an economic development project.
- (6) Personal social relationships whereby nominal entertainment expenses are incurred or nominal personal mementos are exchanged on a reciprocal basis, so long as such expenses or mementos are not deducted as a business expense.

If a state officer or an *appointing authority* approves in writing the receipt of a gift subject to this rule, the written approval shall be filed with the *commission* within thirty (30) days of receipt of the gift, and shall identify the *employee*, the nature and value of the gift, and the donor of the gift. The *commission* may review such written approvals and require of the state officer or *appointing authority* an explanation of the reason for the approval.

(c) An *employee* shall not accept an honorarium for anything which may be considered part of the *employee's* official duties. A state *employee* may accept an honorarium or fee for activities not done in connection with the *employee's* official duties which are prepared on the *employee's* own time and without the use of state resources so long as the *employee* is not participating by reason of state employment, provided the *employee* shall not accept an honorarium from any *person* over whom the *employee* has decision making authority. A state *employee* may accept reimbursements for travel expenses incurred when the *employee* is not being paid or reimbursed by the state and when an honorarium is not permitted. (*State Ethics Commission; 40 IAC 2-1-6; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2327; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-7 Appearances, activities and expenses

Sec. 7. (a) A state officer or *employee* shall not solicit or accept payment from any *person* for expenses, including but not limited to any lodging, travel expenses, registration fees, food, or drink for appearance at any meeting, convention, conference, seminar, or similar activity for himself or herself or the individual's spouse or unemancipated child under circumstances in which it can reasonably be inferred that the thing of value would influence the state officer or *employee* in his or her official capacity. This section does not prohibit contributions which are accepted by an *agency* in accordance with applicable law.

(b) Without the written approval of the *employee's appointing authority* or the state officer, an *employee* shall not accept payment of expenses, including but not limited to lodging, travel expense, registration fees, food, or drink for attending events concerning state business from a *person* who has a *business relationship* with the *employee's agency*. An *appointing authority* or state officer may designate no more than one (1) person to exercise approval on behalf of the *appointing authority* or state officer. Such designation shall be in writing and filed with the *commission*.

(c) If a state officer or an *appointing authority* approves in writing the payment of expenses subject to this rule, the written approval shall be filed with the *commission* within thirty (30) days of the event or receipt of the expenses, whichever comes first, and shall identify the *employee*, the amount of the expenses, and the setting of the event. The *commission* may review such written approvals and require of the state officer or *appointing authority* an explanation of the reason for the approval.

(d) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer or *employee* or their official representatives on behalf of the state, such person is requested to remit to the treasurer of the state any such amounts. The treasurer of the state shall quietus such funds into the general fund. (*State Ethics Commission; 40 IAC 2-1-7; filed Mar 10, 1988, 2:00 p.m.; 11 IR 2328; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-7.1 Political activity

Sec. 7.1. (a) A state *employee* shall not engage in political activity including solicitation of political contributions from another *employee* or any other *person* when on duty or acting in an official capacity.

(b) This section does not prohibit a state *employee* from engaging in such activity when not on duty.

(c) A state *employee* shall not solicit political contributions at any time from:

- (1) *persons* whom the *employee* knows to have a *business relationship* with the *employee's agency*; or
- (2) state *employees* directly supervised by the *employee*.

(*State Ethics Commission; 40 IAC 2-1-7.1; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-8 Moonlighting

Sec. 8. A state *employee* shall not engage in outside employment or other outside activity not compatible with *agency* rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the *employee* to disclose confidential information acquired as a result of official duties.

(*State Ethics Commission; 40 IAC 2-1-8; filed Mar 10, 1988, 2:00 p.m.; 11 IR 2328; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-9 Conflict of interest; prohibitions

Sec. 9. (a) A state officer or *employee* shall not engage in conduct that constitutes a conflict of interest. It is the state officer's or *employee's* duty to determine if a potential conflict of interest exists, to avoid the conflict, if possible, or, where applicable, to disclose a conflict as follows:

(1) A state officer or *employee* may seek an advisory opinion to determine whether a conflict of interest exists using the procedure in 40 IAC 2-2.

(2) If the state officer or *employee* determines that a conflict of interest or potential conflict of interest exists, that individual shall, if possible, be screened from participating in the matter and the matter shall be assigned to another individual who does not have a conflict of interest.

(3) The state officer or *employee* may make a disclosure under IC 4-2-6-9 or IC 35-44-1-3, where applicable.

(b) A state officer or *employee* shall not solicit or accept *compensation* other than that provided for by law for such state officer or *employee* for the performance of official duties.

(c) A state officer or *employee*, other than in performing duties in making payments to other state officers or *employees* as provided by law, shall not pay or offer to pay any state officer or *employee* any *compensation* for the performance of official duties.

(d) A state officer or *employee* shall not benefit from, or permit any other *person* to benefit from, *information of a confidential nature* except as permitted or required by law.

(e) A state officer or *employee*, in personal dealings, with a *person* who has a *business relationship* with the *employee's agency*, shall not receive any special terms or benefit not available to others not employed with the *agency*.

(f) A state officer or *employee* shall not make use of state materials, funds, *property*, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written *agency*, departmental, or institutional policy or regulation, considering the cost and the benefit by such use.

(g) A state officer or *employee* shall not engage in, or direct others to engage in work other than the performance of official duties during working hours, except as permitted by general written *agency*, departmental, or institutional policy or regulation.

(h) A state officer or *employee* shall not divulge *information of a confidential nature*, except as permitted by law.

(*State Ethics Commission; 40 IAC 2-1-9; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2329; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-1-14 Severability of title

Sec. 14. If any provision of this title or the application thereof to any *person* or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable. (*State Ethics Commission; 40 IAC 2-1-14; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2330; filed Oct 22, 1991, 11:10 a.m.*)

Rule 2. Advisory Opinions before the State Ethics Commission

40 IAC 2-2-1 Procedure

Sec. 1. (a) The *commission* may render advisory opinions with respect to the interpretation and applicability of IC 4-2-6, this title, and any other statute or rule governing official conduct of state officers or *employees*.

(b) An advisory opinion may be requested by any state officer, *employee*, former state officer or *employee*, *person* who has or had a *business relationship* with an *agency*, *commission* member, or *commission employee*.

(c) Requests for opinions shall be in writing and signed by the *person* making the request and shall be designated an inquiry. The inquiry shall state the official status of the *person* making the request and shall state all material facts necessary for the *commission* to understand the circumstances and render a complete opinion. The request must relate to a real set of circumstances. Upon receipt of a letter of inquiry, the *commission* shall send an informational copy to the relevant state officer or *appointing authority*, if any.

(d) The *person* requesting the advisory opinion shall receive notice from the staff of the time and place to appear before the *commission*. The name of the *person* filing the inquiry shall appear on the agenda of the meeting.

(e) In an emergency situation, the chairman and the director shall decide whether to add to the agenda a request which was received less than seven (7) days before a meeting of the *commission*.

(f) The director shall mail a copy of the letter of inquiry to the *commission* members approximately seven (7) days before the *commission's* meeting. The person requesting the opinion shall be asked to appear before the *commission* at its meeting to answer questions. The *commission* shall decide in public meeting by vote of a majority of *commission* members present.

(g) Following the *commission's* decision, the *commission* staff shall prepare a written advisory opinion. A copy shall be mailed to the person requesting an opinion. A copy of the opinion shall be sent to the state officer or *appointing authority*, if any. The 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 opinion have been disclosed to the *commission*.

(h) Any opinion rendered by the *commission*, until amended or revoked, is binding on the *commission* in any subsequent allegations concerning the person who requested the opinion and who acted on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion or testimony before the *commission*. (*State Ethics Commission; 40 IAC 2-2-1; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-2-2 Appeal from advisory opinions

Sec. 2. (a) The person who made an inquiry and any person directly affected by the *commission's* advisory opinion may appeal to the *commission* for reconsideration or clarification of the advisory opinion.

(b) Any such appeal shall be made, in writing, to the *commission* within fifteen (15) days of receipt of the advisory opinion letter. (*State Ethics Commission; 40 IAC 2-2-2; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-2-3 Failure to comply; investigation

Sec. 3. If a person who has requested an advisory opinion has been advised that he or she has a conflict of interest and to remove himself or herself from any conflict or potential conflict of interest and has failed to do so after having been given a reasonable opportunity to do so, the *commission* may review the matter to determine compliance with the advisory opinion and, in executive session, vote to initiate an investigation. (*State Ethics Commission; 40 IAC 2-2-3; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-2-4 Signed by director

Sec. 4. All opinions rendered by the *commission* shall be signed by the director. (*State Ethics Commission; 40 IAC 2-2-4; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-2-5 Others may provide information

Sec. 5. The *commission* may permit or request any *person* to submit memoranda, briefs, or other relevant material or to provide oral information relevant to its determination. (*State Ethics Commission; 40 IAC 2-2-5; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-2-6 Public record

Sec. 6. The *commission* staff will periodically publish for distribution the accumulated 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.)

Rule 3. Adjudication Proceedings before the State Ethics Commission

40 IAC 2-3-1 Applicable statutes and rules

Sec. 1. (a) All proceedings before the state ethics commission shall be governed by IC 4-21.5, IC 4-2-6, 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.

(b) The basic purpose of this rule is to supplement the statutes and other rules stated in subsection (a). (State Ethics Commission; 40 IAC 2-3-1; filed Oct 22, 1991, 11:10 a.m.)

40 IAC 2-3-2 Investigations

Sec. 2. (a) The *commission* shall enforce the statutes and rules under its jurisdiction primarily by means of its own independent staff investigations and *commission* hearings. The process may include confidential *commission* determination of sufficient evidence to warrant an investigation, confidential investigation and *commission* determination of probable cause, and public hearing.

(b) An investigation may be initiated by any of the following:

- (1) The *commission*.
- (2) Request of the governor.
- (3) A complaint filed by an individual with direct knowledge of facts central to an alleged violation.

(c) The procedure for investigation on *commission* initiative shall be as follows:

(l) The *commission* may use information received in any way to form the basis for an investigation.

When information is received, the director shall first determine whether the information indicates a possible violation of statute or rule within the *commission's* jurisdiction. If the information indicates a possible violation of statute or rule within the *commission's* jurisdiction, the director may instruct the *commission's* investigator to do preliminary factfinding or refer the matter to an appropriate investigative authority. In either case, the *commission* shall be informed at its next meeting of the action taken. The factfinding shall be for the purpose of providing the *commission* with verified information by determining if the allegation's facts are correct. Upon completion of this preliminary factfinding, the matter shall be brought to the *commission* for determination under IC 4-2-6-4(a)(l) whether the *commission* wants to initiate an investigation.

(2) The investigation is initiated by adoption of a resolution of the *commission* stating the nature and scope of the investigation and actions or activities to be investigated.

(3) A copy of the resolution stating the nature of the investigation and a general statement of the applicable statute or rule with respect to the investigation shall be sent to the respondent.

(d) The procedure for investigation on receipt of a request of the governor shall be as follows:

- (1) The director shall instruct the *commission's* investigator to proceed with an investigation or shall refer the matter to an appropriate investigative authority. In either case, the *commission* shall be informed at its next meeting of action taken.
- (2) A copy of the governor's request for an investigation shall be sent to the respondent.

(e) Investigation on receipt of a complaint shall be as follows:

(l) All complaints to be considered by the *commission* shall be filed in writing with the *commission* and shall contain the following:

- (A) The name and address of the person or persons who filed the complaint.

- (B) The name and address of the person against whom the complaint is filed.
- (C) The state government position, if applicable, held by the person against whom the complaint is filed.
- (D) A clear and concise statement of the facts upon which the complaint is based.
- (E) Which sections of statute or rule are alleged to be violated.
- (F) A statement of the facts as to which the complainant has personal knowledge.
- (G) The names and addresses of other persons having personal knowledge of the acts complained of and the nature and extent of each person's knowledge.
- (H) Verification under penalty of perjury that the facts stated are true to the best of the complainant's knowledge and the signature of the complainant.

(2) The complaint shall include the following: "If the *commission* finds, after preliminary investigation, that probable cause exists to support the alleged violation, I agree to be called as a witness to testify to the charge above set forth, under oath. The state ethics *commission* requests you keep confidential the filing of this complaint and facts involved, except from those people directly involved in the investigation of this matter."

(3) A complaint dismissed under IC 4-2-6-4(b)(2)(A)(i) or IC 4-2-6-4(b)(2)(A)(ii) will not again be entertained by the *commission* unless the *commission* is provided with new facts which materially add to the complaint.

(f) Upon receipt of a copy of the resolution of the *commission*, a copy of the request of the governor to initiate an investigation, or a copy of the complaint, the respondent may respond in writing within twenty (20) days to the allegations if he or she so desires.

(g) During investigations, the procedure shall be as follows:

(1) The scope of investigations shall be limited to the allegations, but shall include an investigation of all facts and persons materially related to the allegations at issue.

(2) If, during the course of an investigation, evidence of a wrongful act not materially related to the allegations at issue is discovered, such evidence shall be reported to the *commission* in a separate report. The wrongful act shall not be further investigated in the absence of direction from the *commission* with respect thereto. Upon receipt of a separate report containing evidence of the wrongful act not materially related to the allegations at issue, the *commission* may:

- (A) forward evidence of the *commission* of a crime to the appropriate law enforcement official;
- (B) forward evidence of the *commission* of any other wrongful act to the appropriate disciplinary or law enforcement official; or
- (C) decide to initiate its own investigation.

(h) At the conclusion of its investigation, the *commission* shall make a determination of whether or not probable cause exists to believe that a violation of IC 4-2-6-4, 40 IAC 2-1, or any other statute or rule governing official conduct of state officers or *employees* has occurred. The procedure shall be as follows:

(1) If the *commission* determines that probable cause does not exist to believe a violation has occurred, the *commission* shall immediately send written notice of such a determination to the respondent and, if a complaint has been filed, to the party who made the complaint or, if the investigation was initiated at the governor's request, to the governor.

(2) If the *commission* determines that there is probable cause to believe that a violation has been committed, it shall state the name of the person alleged to have committed a violation, a citation to the statute or rule that may have been violated, and the particulars of the alleged violation or violations which may include violations the *commission* has, as a result of its investigation, probable cause to believe have occurred which were not contained in the complaint, resolution, or governor's request. The director shall notify the respondent, the complainant, and the office or *appointing authority*, if any, of the date, time, and place of the public hearing. The respondent shall be mailed a written notice by certified mail, return receipt requested, in accordance with IC 4-2-6-4(b)(2)(C) and IC 4-21.5-3.

(i) An investigation conducted prior to a probable cause finding shall be confidential except the respondent may, in writing at any time, elect to waive the confidentiality protection of IC 4-2-6-4. If the respondent has agreed in writing to waive confidentiality, the *commission* may in its discretion release any information

at any time. The *commission* may deem public statements by a respondent concerning the substance of the investigation to be a waiver of confidentiality. In any case, the identity of the complainant or information as to how the investigation was initiated shall be disclosed to the respondent.

- (1) During an investigation, the procedures concerning confidentiality shall be as follows:
 - (A) If the investigation is confidential, the allegations and any information supplied to or received from the *commission* shall not be disclosed during the investigation to any third party by the *commission*, or a staff member except as necessary to conduct the investigation.
 - (B) An *employee* of the *commission* may acknowledge the existence and scope of an investigation along with a statement that no finding of probable cause has been made and that no adverse inference of impropriety or guilt should be drawn from the decision to investigate.
- (2) From the initiation of an investigation and during the pendency of an investigation until a finding of probable cause has been made, the proceedings of the *commission* shall be in executive session, and the activities of *commission* staff in connection with the investigation shall be confidential.
- (3) If the *commission* determines that no probable cause exists, all records of the investigation shall be kept confidential by the *commission* unless the respondent has waived confidentiality. The respondent may request that any of the persons interviewed be informed that the *commission* did not find probable cause. The respondent is not entitled to examine documents or records obtained or prepared by the *commission* in connection with the investigation, unless the respondent has waived confidentiality. An *employee* of the *commission* may acknowledge that the *commission* did not find probable cause to support an alleged violation.
- (4) No provisions of this section shall prevent the *commission* from forwarding a copy of a complaint or any other relevant information to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the *appointing authority*, or other appropriate authority for action, and staying the *commission's* proceedings pending the other action.

(j) After a reasonable period of time, the *commission* may review the matter again if the *person* or *agency* to which the complaint was forwarded fails or refuses to take action in regard to the matter and the *commission* may vote to proceed. (*State Ethics Commission; 40 IAC 2-3-2; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-3-3 Agreed settlements

Sec. 3. (a) The *commission* may resolve cases through agreements with respondents.

(b) In negotiations to settle under this section, if the negotiations occur before a vote to find probable cause and schedule a public hearing, the chairman or his designee will represent the *commission*. If the negotiations occur after a vote to find probable cause and schedule a public hearing, the chairman shall designate a person to represent the *commission*. At an informal conference to negotiate, no record shall be made and no statement made by any person at such conference shall be used as evidence in any subsequent public hearing or proceeding.

(c) If the respondent and the chairman or his designee concur that an agreed settlement would be appropriate, they may submit a proposal in writing to the *commission* for its approval or disapproval by majority vote. If the time of the agreed settlement is prior to a vote of the *commission* that probable cause exists to support an alleged violation, the *commission* vote on approval of the agreed settlement shall be in executive session unless the respondent has waived confidentiality. If the time of the agreed settlement is after the *commission* has voted that probable cause exists to support an alleged violation, the vote on approval or disapproval of the agreed settlement shall be taken at an open meeting. In either case, the *commission* shall state its findings in writing in a report, signed by a majority of the *commission* members. The report may make a recommendation for the sanctions to be imposed as authorized in IC 4-2-6-4(b)(2)(E) or IC 4-2-6-12.

(d) The report containing findings of fact and recommendations shall be open to public inspection as a public record and shall be presented to those listed in IC 4-2-6-4(b)(2)(G). (*State Ethics Commission; 40 IAC 2-3-3; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-3-4 Public hearings

Sec. 4. (a) The following are discovery and prehearing rights:

- (1) The respondent may:
 - (A) be represented by counsel;
 - (B) exercise all discovery provisions of rules 26 through 37 of the Indiana Rules of Trial Procedure; and
 - (C) file with the *commission* a motion for any order or action not inconsistent with law or this article, for example, motion to dismiss, motion for more definite statement, motion to enlarge time, or motion for summary judgment.
- (2) Motions may be made in writing at any time after the commencement of the adjudicatory proceeding, or they may be made during a prehearing conference.
- (3) The original of a written motion shall be filed at the *commission's* office and a copy served on all persons designated in section 5(a) of this rule or their attorneys.
- (4) The person who is to preside at the hearing, which may be the chairman of the *commission*, his designee, or the administrative law judge for the hearing, shall generally rule on motions. However, any action which would terminate the adjudicatory proceeding may be taken only by the *commission*.
- (5) On motion of a party or the *commission's* own motion, a prehearing conference may be held in conformance with IC 4-21.5-3-18 and IC 4-21.5- 3-19.
- (6) Unless otherwise ordered by the presiding officer as a result of a prehearing conference, the *commission* and respondent or counsel for respondent shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing.
- (7) Upon motion of a party or the *commission's* own motion, the *commission* may consolidate for hearing two (2) or more allegations or cases against different persons if the *commission* determines that there is substantial identity of facts arising out of a common transaction or event or if 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.
- (8) Ex parte communications are governed by IC 4-21.5-3-11.

(b) Procedures at the hearing shall be as follows:

- (1) Public hearings and prehearing matters may be conducted by any of the following:
 - (A) The full *commission*.
 - (B) One (1) or more *commission* members acting as administrative law judges.
 - (C) Another individual, not necessarily an *employee* of the *commission*, appointed by the *commission*, acting as an administrative law judge under IC 4-21.5-3-9.
- (2) Hearings shall be as informal as may be reasonable and appropriate under the circumstances.
- (3) The person presiding, which may be the *commission* chairman, his designee, or the administrative law judge, shall conduct the hearing making all decisions regarding admission or exclusion of evidence or any other procedural matters. The order of proceeding is at the discretion of the presiding officer.
- (4) The respondent shall be afforded appropriate due process protection consistent with IC 4-21.5-3, including the following:
 - (A) The right to be represented by counsel.
 - (B) The right to call and examine witnesses.
 - (C) The right to introduce exhibits.
 - (D) The right to cross-examine witnesses.
- (5) *Commission* members shall be disqualified in accordance with IC 4-21.5-3-9 through IC 4-21.5-3-13.

(c) After the hearing, the procedure shall be as follows:

- (1) Deliberation and discussion of a report at the conclusion of the public hearing may be conducted in executive session. Vote on the report shall be conducted in a public meeting.

- (2) A report by less than the full *commission* serving as administrative law judges or by another individual who has been appointed to be an administrative law judge shall be a recommended report and shall be transmitted to the full *commission* and served upon the respondent.
- (3) In regard to a recommended report, the parties may present briefs or request oral argument under IC 4-21.5-3-28.
- (4) The final report shall be adopted by the *commission* at a public meeting. The *commission* is the ultimate authority under IC 4-21.5.
- (5) Findings shall be made on a preponderance of the evidence and it shall require the concurrence of at least three (3) members of the *commission* to find a violation or impose a penalty.
- (6) The report shall be signed by the *commission* members present and voting at the public meeting, transmitted by certified mail to the respondent, return receipt requested, and shall be made available to the public, to those persons required to receive the report under IC 4-2-6-4(b)(2)(G) and may be forwarded to any of the persons listed in IC 4-2-6-4(b)(2)(H).

(*State Ethics Commission; 40 IAC 2-3-4; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-3-5 Service

Sec. 5. (a) Motions and petitions shall be served on the respondent, complainant, if any, and any intervenors.

(b) Petitions for intervention shall comply with IC 4-21.5-3-21. (*State Ethics Commission; 40 IAC 2-3-5; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-3-6 Form of pleadings

Sec. 6. (a) There are no specific requirements of form for any pleading or other paper except as provided for by this section.

(b) Cases shall be titled "In the Matter of."

(c) The title provided for shall appear at the upper left portion of the initial page of any pleading or paper (other than exhibits) filed. The initial page of any pleading or paper (other than exhibits) shall show, opposite the title, the file number, if known, assigned by the *commission*.

(d) The *commission* prefers that all papers filed in proceedings be on paper eight and one-half (8 1/2) inches by eleven (11) inches.

(e) Motion 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 by counsel. (*State Ethics Commission; 40 IAC 2-3-6; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-3-7 Witness expenses

Sec. 7. (a) State officers or *employees* who are required to appear before the *commission* shall be paid for the time spent to appear by the office or *agency* which employs them. State travel expenses of state officers or *employees* who are required to appear before the *commission* shall be paid by the office or *agency* which employs them.

(b) Any person who is not a state officer or an *employee* of the state who is subpoenaed to testify at a public hearing shall be entitled to mileage and expense reimbursement as allowed by the state travel rules and the per diem allowance for witnesses in state courts. The person shall be paid by the party at whose request the witness is subpoenaed. (*State Ethics Commission; 40 IAC 2-3-7; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-3-8 Subpoenas

Sec. 8. (a) At any stage of an investigation or public hearing, the *commission* may issue a subpoena.

(b) The *commission* shall issue a subpoena on request of the respondent to compel appearance of witnesses at a deposition or public hearing held in accordance with IC 4-2-6-4(b) if the witness' testimony is

reasonably necessary for resolution of the matter. (*State Ethics Commission; 40 IAC 2-3-8; filed Oct 22, 1991, 11:10 a.m.*)

Rule 4. Financial Disclosure to the State Ethics Commission

40 IAC 2-4-1 Persons required to file by rule

Sec. 1. Under IC 4-2-6-8(a)(6), the following persons are required to file a written financial disclosure statement:

- (1) Members of the alcoholic beverage commission.
- (2) Members of the worker's compensation board.
- (3) Members of the Indiana utility regulatory commission.
- (4) Any person with final purchasing authority within the Indiana commission for higher education and the department of transportation.

(*State Ethics Commission; 40 IAC 2-4-1; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-4-2 Processing violations

Sec. 2. (a) This section shall apply to the processing of violations under IC 4-2-6-8.

(b) The following are procedures for staff audit:

- (1) After financial disclosure statements are submitted, the staff will review and audit all forms to ensure that they are complete, legible, and filed properly and in a timely manner. The staff person conducting this audit will examine each statement to determine that all information required is complete according to instructions and that all necessary information is included.
- (2) If a statement is not complete, the staff person will notify the person who filed the statement and afford the person the opportunity to provide the requested information or the form may be returned to the person for completion.
- (3) At the discretion of the director, a field audit to examine the accounts and documents supporting the information on the financial disclosure statement may be conducted.

(c) The following are procedures in the event of failure to comply:

- (1) Whenever a person required to file has not done so, the *commission* shall initiate an investigation and conduct its proceedings in compliance with IC 4-2-6-4(b)(2)(C).
 - (2) An investigation under this subsection shall remain confidential until the *commission* finds probable cause to believe that a violation of IC 4-2-6-8 has occurred.
 - (3) If at the conclusion of its investigation the *commission* determines that probable cause exists to believe that a violation of IC 4-2-6-8 has occurred, the respondent shall be notified that subject to the approval of the *commission*, he or she may consent to an entry of a finding that he or she has committed a violation as alleged and further consent to the imposition of a penalty or a fine as determined under IC 4-2-6-8(d) through IC 4-2-6-8(e). Such consent shall be filed on a form provided by the *commission* and shall contain a waiver of the respondent's right to appear at a public hearing. If the respondent consents and the *commission*, by majority vote, accepts the consent entry, the *commission* may impose the penalties listed in IC 4-2-6-8(d) through IC 4-2-6-8(e).
 - (4) In the event the respondent fails to consent to a finding of a violation, the *commission* shall convene a public hearing under IC 4-2-6-4(b)(2)(D) through IC 4-2-6-4(b)(2)(E), and under IC 4-2-6-4(b)(2)(G) through IC 4-2-6-4(b)(2)(H) and may impose sanctions under IC 4-2-6-8(d) through IC 4-2-6-8(e).

(d) Any fines imposed by the *commission* shall be made payable to the state of Indiana and submitted to the state ethics commission. (*State Ethics Commission; 40 IAC 2-4-1; filed Oct 22, 1991, 11:10 a.m.*)

Rule 5. General Procedural Provisions of the State Ethics Commission

40 IAC 2-5-1 Notice of meetings and agendas

Sec. 1. (a) The *commission* shall give notice of meetings and emergency meetings in conformance with IC 5-14-1.5. *Commission* staff shall prepare an agenda listing specific items to be considered. The

commission shall adopt an agenda at the beginning of its meeting and may make changes in the agenda for good cause.

(b) The director or his or her designee shall sign on behalf of the *commission* notices of meetings. (*State Ethics Commission; 40 IAC 2-5-1; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-5-2 Rulemaking

Sec. 2. Proceedings held for the adoption, amendment, or repeal of a *commission* rule shall be conducted according to the provisions of IC 4-22. (*State Ethics Commission; 40 IAC 2-5-2; filed Oct 22, 1991, 11:10 a.m.*)

40 IAC 2-5-3 Meeting by telephone and other communications media technology

Sec. 3. The *commission* may utilize telephone conference calls, speaker phone, and other communications media technology as it becomes available to conduct *commission* business when necessary due to emergencies of the situation. However, it is the *commission* view that the public interest is best served by having public hearings held in person, rather than by use of communication media technology. (*State Ethics Commission; 40 IAC 2-5-3; filed Oct 22, 1991, 11:10 a.m.*)

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

Sec. 5. The 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.*)