

## Chapter ETH 21

### PRACTICE AND PROCEDURE

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**Note:** Chapter Eth 3 was renumbered chapter GAB 21 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 6. and 12., Stats., Register April 2008 No. 628. Chapter GAB 21 was renumbered Chapters EL 21 and ETH 21 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

#### ETH 21.02 Definitions. As used in this chapter:

(1) “Administrator” means an individual appointed by the commission pursuant to s. 15.62 (1) (b), Stats., or, upon delegation by the administrator, the assistant administrator or staff counsel.

(2) “Assistant administrator” means an individual appointed by the administrator to serve as assistant administrator pursuant to s. 19.47 (2), Stats.

(3) “Commission” means the Wisconsin Ethics Commission.

(4) “Complainant” means a person filing a complaint with the commission under s. 19.49 (2) (b), Stats.

(5) “Formal opinion” means a formal advisory opinion issued by the commission under s. 19.46 (2) (a) or (c), Stats.

(6) “Informal opinion” means an advisory opinion issued by the commission, or by the administrator, assistant administrator, or staff counsel, as authorized by the commission, pursuant to s. 19.46 (2) (a) and (b), Stats.

(7) “Local registrant” means an individual or organization registered with a filing officer other than the commission.

(8) “Person” includes any of the following:

- (a) An individual.
- (b) A candidate as defined by s. 11.0101 (1), Stats.
- (c) A candidate committee as defined by s. 11.0101 (2), Stats.
- (d) A conduit as defined by s. 11.0101 (7), Stats.
- (e) An independent expenditure committee as defined by s. 11.0101 (17), Stats.

(f) A legislative campaign committee as defined by s. 11.0101 (19), Stats.

(g) A political action committee as defined by s. 11.0101 (25), Stats.

(h) A political party as defined by s. 11.0101 (26), Stats.

(i) A recall committee as defined by s. 11.0101 (27), Stats.

(j) A referendum committee as defined by s. 11.0101 (28), Stats.

(k) An agency official as defined by s. 13.62 (3), Stats.

(l) An elective state official as defined by s. 13.62 (6), Stats.

(m) A legislative employee as defined by s. 13.62 (8m), Stats.

(n) A lobbyist as defined by s. 13.62 (11), Stats.

(o) A lobbying principal as defined by s. 13.62 (12), Stats.

(p) A local public official as defined by s. 19.42 (7x), Stats.

(q) An official required to file as defined by s. 19.42 (10), Stats.

(r) A state public official as defined by s. 19.42 (14), Stats.

(s) Any other person as defined by s. 990.01 (26), Stats.

(9) “Probable cause” means the facts, circumstances, and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.

(10) “Reasonable suspicion” means specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant further investigation.

(11) “Respondent” means a person alleged to have committed a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats., by a complainant.

(12) “Staff counsel” means an employee of the commission designated by the administrator to serve as legal counsel of the commission pursuant to s. 19.47 (2), Stats.

(13) “Sufficient allegations” means allegations of fact and reasonable inferences drawn from those allegations that, if proven, would satisfy each element of the applicable law.

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23; correction in (1), (11) made under s. 35.17, Stats., Register July 2023 No. 811.

**ETH 21.03 Receipt and preliminary review of complaints.** (1) **COMPLAINT FORM AND CONTENTS.** A complaint shall be filed in writing. The complaint, together with all attachments shall not exceed 10 pages without prior approval of the administrator. A complaint shall include all of the following:

(a) The full name and address of the complainant.

(b) The full name and address of the respondent against whom the complaint is filed. If multiple persons are alleged to have committed a violation, a complainant shall file a separate complaint for each respondent.

(c) An allegation of a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats.

(d) A concise statement of the facts supporting each alleged violation that differentiates between statements based on personal knowledge and those based on information and belief. Statements not based on personal knowledge shall identify the source of the information.

(e) Citation to any legal authority which the complainant relies on in support of their complaint. Citations to cases shall include a public domain cite, if available. Citations shall also include page or paragraph numbers, if appropriate.

(f) Any relevant documentation supporting the allegations, if available.

(g) The notarized signature of the complainant, the complainant’s attorney, or other authorized person filing the complaint on behalf of the complainant.

(h) If a complaint is filed by an attorney or other authorized person on behalf of the complainant, the attorney or other authorized person shall include a notice of representation that includes the name and address of the attorney or other authorized person.

(2) **PRELIMINARY REVIEW.** The administrator shall conduct a preliminary review of each complaint filed with the commission

and shall dismiss a complaint or the relevant portion of a complaint if it does not comply with sub. (1) or if any of the following applies:

(a) The complainant does not file the complaint within the time period specified by s. 19.49 (2) (f), Stats.

(b) The commission does not have jurisdiction over the violation alleged.

(c) The complaint does not contain sufficient allegations to establish that a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats., has potentially occurred.

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

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23.

**ETH 21.04 Acknowledgement and notice of complaints.** After preliminary review of a complaint under s. ETH 21.03 (2), but within 5 calendar days of receipt of the complaint, the administrator shall:

(1) Send a written notice to the complainant that provides all of the following:

(a) An acknowledgement that the commission received the complaint.

(b) A notice if the complaint or any portion of the complaint was dismissed under s. ETH 21.03 (2).

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

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

3. If the complaint or any portion of the complaint was dismissed pursuant to s. ETH 21.03 (2) (b), the notice shall inform the complainant of the governmental agency with jurisdiction over the matter, if known.

4. If the complaint or any portion of the complaint was dismissed pursuant to s. ETH 21.03 (2) (c), the notice shall specify what additional allegations would be required to satisfy each element of the applicable law, if known.

(2) If the complaint was not dismissed, send a written notice to the respondent that provides all of the following:

(a) A statement that the respondent has 15 calendar days from receipt of the notice to submit a written response demonstrating to the commission that the commission should take no action against the respondent on the basis of the complaint.

(b) A notice that an extension of the deadline to file a written response may be granted by the administrator for good cause shown.

(c) If any portion of the complaint was dismissed upon preliminary review under s. ETH 21.03 (2), a statement describing which allegations have been dismissed.

(d) A copy of the complaint.

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23.

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

(1) The case number assigned to the case.

(2) A concise statement of the facts supporting the respondent's response to each alleged violation that differentiates between statements based on personal knowledge and those based on information and belief. Statements not based on personal knowledge shall identify the source of the information.

(3) Citation to any legal authority which the respondent relies on in support of their response. Citations to cases shall include a public domain cite, if available. Citations shall also include page or paragraph numbers, if appropriate.

(4) Any relevant documentation supporting the response, if available.

(5) If a response is filed by an attorney or other authorized person on behalf of the respondent, the attorney or other authorized person shall include a notice of representation that includes the name and address of the attorney or other authorized person.

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23.

**ETH 21.06 Preliminary requests for information.** Before the commission makes a determination of reasonable suspicion, the administrator may request from any person any of the following:

(1) If the complaint alleges a violation by any local registrant, a copy of the campaign registration statement and any campaign finance reports filed by the local registrant.

(2) If the complaint alleges a violation of s. 11.1303, Stats., any information or documentation related to the specifications provided in s. ETH 1.96.

(3) Any public records or other publicly available information.

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23.

**ETH 21.07 Determination of reasonable suspicion.** (1) In making its determination as to whether reasonable suspicion of a violation exists, the commission may consider the complaint, the response, information provided upon request under s. ETH 21.06, publicly available information, and the analysis and recommendations of commission staff.

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

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

(a) Authorize an investigation by resolution. The resolution shall specifically set forth any matter that is authorized to be investigated.

(b) Issue a written warning.

(c) Extend a settlement offer.

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23.

**ETH 21.08 Determination of probable cause.** (1) At the conclusion of its investigation, the commission shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation has occurred or is occurring.

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

(3) If the commission finds that no probable cause exists, it

shall dismiss the complaint and the parties shall be notified pursuant to s. ETH 21.10.

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

(a) Authorize the administrator to file a civil complaint against the alleged violator.

(b) Issue a written warning.

(c) Extend a settlement offer.

(d) Refer the matter to one of the following:

1. To the district attorney for the county in which the alleged violator resides.

2. If the alleged violator is a nonresident, to the district attorney for the county where the matter arises.

3. If the alleged violator is a district attorney, a circuit court judge, or a candidate for either such office, to the attorney general.

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23.

#### **ETH 21.09 Exercises of prosecutorial discretion.**

Pursuant to the authority granted in s. 19.49 (2) (b) 4., Stats., the commission may vote to terminate a complaint or investigation at any time notwithstanding a finding of reasonable suspicion or probable cause that a violation has occurred or is occurring. If a complaint or investigation is terminated, it is deemed to be dismissed by the commission and the parties shall be notified pursuant to s. ETH 21.10.

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23.

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

**History:** CR 22-052: cr. Register July 2023 No. 811, eff. 8-1-23.

**ETH 21.30 Requests for written advice.** (1) GENERAL PROVISIONS. (a) A person may request either a formal or an informal advisory opinion of the commission. An informal opinion may be issued by the administrator and is issued only to the person requesting the opinion. A formal opinion is issued by the commission itself, allows an opportunity for a hearing, and the request and opinion are anonymized and published on the commission's Internet site.

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

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

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

(2) REQUESTS FOR INFORMAL OPINIONS. (a) If a person re-

quests an informal opinion, the administrator shall determine if any of the following applies:

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

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

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

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

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

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

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

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

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

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; am. Register, September, 1976, No. 249, eff. 10-1-76; am. Register, October, 1976, No. 250, eff. 11-1-76; am. Register, April, 1985, No. 352, eff. 5-1-85; correction made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726; CR 17-038: am. Register March 2018 No. 747 eff. 4-1-18; CR 22-052: r. and recr. Register July 2023 No. 811, eff. 8-1-23; correction in (1) (c), (2) (a) 2. a. made under s. 35.17, Stats., Register July 2023 No. 811.