



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-052

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. In s. ETH 21.03 (1), the section requires a complaint to contain certain content, including a concise statement of facts supporting each alleged violation that differentiates between personal knowledge and other information and belief under par. (c). However, the subsection does directly require a complaint to allege a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats., or to identify a particular statute that was violated. If the intent is to require complainants to clearly identify the violation at issue, this should be enumerated as a separate requirement under par. (c), and the requirement for “a concise statement of facts” should be renumbered as par. (d).

b. In s. ETH 21.03 (2) (intro.), a phrase indicating the applicability and relationship of the subunits should be added. For example, depending on the commission’s intent, the phrase “any of the following applies” could be inserted before the colon. [s. 1.11 (2), Manual.]

c. In s. ETH 21.03 (3), a subsection title should be inserted, for consistency with subs. (1) and (2). [s. 1.10 (2) (a) 2., Manual.]

d. In s. ETH 21.04 (1) (intro.) and (2) (intro.), it appears that the phrase “all of” should be inserted in both instances before the phrase “the following”. Also, in sub. (1) (b) (intro.), an introductory statement should be added to specify that the notice shall inform the complainant of any (or all?) of the following applicable information. The introductory statement should end with a colon. [s. 1.11 (2) and (3), Manual.]

e. In s. ETH 21.06 (intro.), the phrase “any of the following” should be added.

f. In s. ETH 21.30 (2) (a) (intro.) and 2. (intro.), introductory statements should be added, and each statement should end with a colon.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. ETH 21.02 (2) (c), the section requires the administrator to conduct a preliminary review of a complaint and dismiss the complaint if it fails to meet certain requirements, including that it “does not contain sufficient allegations”. Presumably, par. (c) refers to insufficient

allegations to establish that a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats., has potentially occurred. However, this could be stated explicitly.

b. In s. ETH 21.02 (5), the rule creates a definition of “formal opinion” that refers to an opinion issued under s. 19.46 (2) (c), Stats. The statutory language in par. (a) of that provision also allows for an individual to request formal advisory opinion. Should the definition of “formal opinion” refer to an opinion issued under s. 19.46 (2) (a) **and** those issued under par. (c)?

c. In s. ETH 21.02 (10), the rule creates a definition of respondent that means a “person” alleged to have committed a violation of campaign finance, lobbying, or ethics laws. Is this use of “person” intended to include committees, political parties, and conduits, which would allow complaints to be filed against these entities? Does the rule assume that the general definition of “person” under s. 990.01 (26), Stats., incorporates these entities and would permit complaints to be filed against them? Regardless, it may be helpful to a reader to create a separate definition of “person” within s. ETH 21.02 and to explicitly include a reference to these entities.

d. In s. ETH 21.30 (1) (b), the section requires any written advice issued by the administrator to be consistent with prior commission opinions, statutes, and case law “as required by s. 19.46 (2) (b) 1., Stats.”, in addition to constitutional law. The cited section does not require consistency with prior opinions, statutes, or case law. Instead, the cited section permits the administrator to issue informal written advice if authorized to do so by the commission. If the purpose of the citation is to indicate that the administrator may only issue written advice if authorized to do so by the commission, then this idea should be referenced earlier in the subsection.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. ETH 21.04, the introductory language and language of sub. (1) are inconsistent. The introductory language refers to events that must occur “after preliminary review of a complaint”, while subs. (1) and (2) require written notice within five days “of receipt of the complaint”. Is the intent that notice be sent within five days after the *preliminary review* is completed? Or, is the intent that the notice be sent within five days after the complaint is *received* (regardless of when the preliminary review occurs)? This should be clarified.

b. In s. ETH 21.06 (intro.), the rule provides that the administrator may request certain items “before a determination of reasonable suspicion”. Does this refer to the administrator making a determination of reasonable suspicion? Or, alternatively, does it simply allow the administrator to request certain information before the commission makes the reasonable suspicion determination? This should be clarified.

c. In s. ETH 21.06 (intro.), the rule permits the administrator to request certain information. Is the administrator requesting that the complainant provide this information? Is the administrator themselves obtaining the enumerated documents, e.g., requesting documents from a state agency or local government official? Does the rule intend to allow for either? This could be clarified.

d. In s. ETH 21.30, the section addresses requests for formal and informal opinions, but a reader may have difficulty determining the difference between the two. It may be helpful to state within the “General Provisions” section that a person may request either a formal or an informal opinion and potentially address the differences, such as the ability in the formal opinion process to request a hearing, and reiterating that the administrator issues some informal opinions while the commission itself issues formal opinions.