

Pre-hearing

1. Exchange of documents/Pretrial Motions

Reg. 2016-2 (f) provides, in pertinent part:

- Unless good cause is shown to extend the time, the Respondent shall be given at least two weeks' notice prior to the scheduled Probable Cause proceedings;
- Probable Cause proceedings before the Ethics Commission will consist of a review of the Investigator's report and legal counsel's recommendation(s), as well as presentation to the Ethics Commission by the Investigator, the Commission's legal counsel, and Respondent (and/or Respondent's attorney); and
- Respondent or Respondent's attorney may submit a written statement, present legal arguments, and introduce oral and written evidence in response to the allegations.
 - a. The Commission shall provide Respondent and/or their attorney with notice of the Probable Cause proceeding at least fourteen (14) days in advance of the scheduling of the hearing and provide the Respondent/attorney with a copy of the Investigator's Report.
 - b. At least five (5) days in advance of the scheduled Probable Cause proceeding, the Respondent, either themselves or through counsel, may provide the Commission with any written statement, summary of their legal arguments, and identify any witnesses they intend to call at the Probable Cause hearing.
 - c. The Respondent may also file any prehearing motion at least five (5) days in advance of the scheduled Probable Cause proceeding.¹ Any pretrial motion shall be disposed of by order of the Commission with or without oral argument in the Commission's discretion. Nothing herein shall prevent or require the filing of a written objection to any such motion.
 - d. The above deadlines may be extended by order of the Chair at their sole discretion.

2. Subpoena

In accordance with Section 17-33(i)(2) and Reg. 2016-2(f), the Commission, through the issuance of subpoenas by its counsel, may compel the attendance of witnesses and require the production of documents, provided however, that the Commission shall not issue any subpoenas until it has found in its Initial Determination

¹ Analogous to R.I. State Ethics, § 3.17.

hearing that the Complaint alleges facts that if, true, are sufficient to constitute a violation of the Code of Ethics.

Hearing

1. Witnesses.

In accordance with Reg. 2016-2(f), the Probable Cause proceedings shall be conducted in executive session, consistent with R.I. Gen. Laws § 42-46-5(a).

Only the following people may be present during the Probable Cause Proceeding: members of the Commission, the Commission’s legal counsel, the Investigator, the Respondent, the Respondent’s attorney, and any witnesses that are called by either the Investigator or the Respondent. Potential witnesses are to be sequestered and may not be present during any other witness’s testimony.

2. Presiding Officer.

The Chair of the Commission, or the Chair’s designee, shall act as the presiding officer.²

3. Presumption of Innocence and Burden of Proof.

There shall be a presumption of innocence on the part of any person alleged to have violated the Code of Ethics, and the burden of proving that the person has violated the provisions of this chapter shall be upon those who allege the violation or violations.³ The standard of proof that must be met to establish a violation of the Code of Ethics is a preponderance of evidence (*i.e.*, that the Commission as factfinder concludes, based on the evidence, that there is a greater than 50% chance that the allegations of the complaint are true and that there has been a violation of the Code of Ethics).

4. Evidence.⁴

a. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in administrative proceedings shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules,

² Analogous to R.I. State Ethics § 3.22.A.

³ Analogous to R.I. State Ethics § 3.21(4).

⁴ Analogous to R.I. State Ethics § 3.23

evidence not admissible under strict rules of evidence may be admitted, if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and generally admissible in administrative proceedings.

b. The Commission shall give effect to the rules of privilege recognized by law. Objections to the introduction of evidence may be made and shall be noted on the record and the Commission may permit offers of proof to be made. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

c. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy to the original.

d. Notice may be taken of judicially cognizable facts. The civil standard of proof, preponderance of the evidence, shall apply.

5. Stenographic Record.⁵

An audio recording shall be made of all evidentiary hearings conducted pursuant to this Regulation. If the Respondent desires a stenographic record of the recording, they must make arrangements with the stenographer and bear all costs.

6. Motion to Dismiss.

At any point during the Probable Cause proceeding, the Commission may entertain a motion to dismiss the Complaint and conclude that there has not been a violation of the Code of Ethics.

7. Reading of Complaint.⁶

Unless waived by Respondent, the presiding officer shall read aloud the Complaint. The Respondent shall then either admit or deny whether they have committed a violation of the Code of Ethics.

⁵ Analogous to R.I. State Ethics, § 3.22.J.

⁶ Analogous to R.I. State Ethics, § 3.22.D, except that the state code describes a reading of the "Finding of Probable Cause."

Attachment: Revised Protocol for Ethics Commission Probable Cause (34388 : Providence Ethics Commission 2021-11-01 Handout)

8. Opening Statement.⁷

The Investigator or their designee may make an opening statement. The Respondent and/or counsel may next make an opening statement or delay such statement until the presentation of the Respondent's case.

9. Testimony and Order of Proceeding

a. Oral evidence shall be taken only upon oath or affirmation.⁸

b. The Respondent may either represent themselves, or appear through counsel.⁹ Any references to the "Investigator" for purposes of the Probable Cause proceeding refers to either the Investigator or their designee.

c. After the opening statement(s), if any, the Investigator shall proceed with their case-in chief. The Investigator may call witnesses or introduce written documentary evidence. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Notwithstanding the foregoing, leading questions should be allowed on cross-examination or when a party calls a hostile witness, or a witness identified with an adverse party.¹⁰

d. The Respondent shall be entitled to cross-examine any witnesses called by the Investigator. The Investigator shall then be entitled to conduct a redirect examination of the witness. Such redirect examination should not go beyond the subject matter of the cross-examination and matters affecting the witness's credibility. The Respondent may then conduct a re-cross examination, which should not go beyond the subject matter of the re-direct examination and matters affecting the witness's credibility.

e. Upon conclusion of questioning of any witness by the Investigator and Respondent, the Commission may ask questions of each witness.¹¹ At the conclusion of the Commission's questioning, the Investigator and then the Respondent may examine the witnesses within the scope of the questions posed by the Commission.

⁷ Analogous to R.I. State Ethics, § 3.22.E.

⁸ Analogous to R.I. State Ethics, § 3.22D.

⁹ Analogous to R.I. State Ethics, § 3.22

¹⁰ Analogous to Fed.R.Civ.P. 611(c).

¹¹ Analogous to R.I. State Ethics § 3.22.H.

f. Upon the conclusion of the Investigator’s case-in-chief, the Respondent may present their case-in-chief. They shall be entitled to call witnesses or introduce written documentary evidence in support of their case. Leading questions should not be used on direct examination except as necessary to develop the witness’s testimony. Notwithstanding the foregoing, leading questions should be allowed on cross-examination or when a party calls a hostile witness, or a witness identified with an adverse party. The parties may question each witness as described above (i.e., the same rules regarding direct, cross, re-direct, and re-cross examination apply to both parties, namely, the Investigator and the Respondent).

g. Upon conclusion of the Respondent’s case-in-chief, the Investigator may conduct a rebuttal case, which shall be limited to evidence or testimony introduced in the Respondent’s case-in-chief.

h. Upon conclusion of each party’s case, such party shall rest. Upon the close of all evidence, the Respondent may make a closing argument, followed by a closing argument by the Investigator. ¹²

i. The Probable Cause proceeding may be continued to a subsequent date by motion and vote of the Commission.

Deliberations

1. Within thirty (30) days of the conclusion of the Probable Cause proceeding, the Commission shall convene in Executive Session and begin deliberations on the evidence and proceed to determine whether there has been a violation of the Code of Ethics.¹³

2. The Law Department, as legal counsel to the Commission may not participate in the deliberations of the Commission. Counsel shall respond to questions of law posed by Commission members.¹⁴

Findings of Fact/Conclusions of Law

¹² Analogous to R.I. State Ethics § 3.22.I.

¹³ Analogous to R.I. State Ethics, § 3.24.A (except omitting language regarding a “knowing and willful” violation of the State Code). The City Ordinance provides for penalties for a violation of a knowing and willful violation or an intentional or negligent ethics violation. See 17-33(h).

¹⁴ Analogous to R.I. State Ethics, § 3.24.B.

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1. A finding of probable cause to believe that the Respondent has violated the Code of Ethics may issue only upon a vote of the majority of the members of the Commission.¹⁵
2. In accordance with Reg. 2016-2(f), the Commission shall report its findings in open session within ninety (90) days of the completion of the Probable Cause Proceeding. The Commission shall thereafter issue its written decision.
3. The written decision shall contain findings of fact and conclusions of law, and shall be reviewed by all members participating in the deliberations. The decision is rendered on the date on which the presiding officer affixes their signature.
4. Any member(s) of the Commission in the minority may append a minority report to the written decision. Only the written decision, representing the majority opinion of the Commission, shall represent the Commission’s decision regarding the alleged ethics violation.
5. The written findings shall be forwarded to the Complainant and the Respondent promptly after having been issued.¹⁶

Enforcement

1. Consistent with Reg. 2016-2(f), upon a finding that there is probable cause to believe that the Code of Ethics has been violated, the Commission shall take one or more of the following actions:
 - a. Refer the matter to the City Solicitor for review and potential prosecution in the Providence Municipal Court, and request a report from the City Solicitor as to actions taken within sixty (60) days of referral;
 - b. In the case of matters involving employees within the personnel system established by Article IX of the Providence City Charter, also refer the matter to the human resources department for appropriate disciplinary action;

¹⁵ See Reg. 2016-2(f).

¹⁶ See Reg. 2016-2(f).

- c. In the case of matters involving sworn personnel of the public safety department, also refer the matter to the Commission or Public Safety for appropriate disciplinary action; and
 - d. In the case of matters involving employees or officials (other than sworn personnel of the public safety department) not subject to the personnel system established by Article IX of the Charter, also refer the matter to appointing authority, for appropriate disciplinary action.
2. Consistent with 17-33(h)(2), upon a finding that any person intentionally or negligently violated the Code of Ethics, the Commission shall refer the matter to the City Solicitor and order the commencement of a civil action in Providence municipal court for an amount of up to two hundred and fifty dollars (\$250.0) for each violation as well as the pecuniary value of any unjust enrichment realized by the violator or a business association of the violator as the result of their violation of the Code, as found by the Commission.
 3. Consistent with 17-33(h)(1), upon a finding that any person knowingly and willfully violated the Code of Ethics, the Commission shall refer the matter to the Office of the Attorney General, or other appropriate person or agency, recommending the commencement of criminal action alleging that the Respondent has committed a misdemeanor that is punishable by a fine of not more than five hundred dollars (\$500.00) and/or imprisonment of not more than thirty (30) days.
 4. Any sanction issued against any party by the Commission shall be appealable to the judicial branch as provided by law.¹⁷

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¹⁷ Language from R.I. Const. Art. II, § 8, addressing the creation of the RI State Ethics Commission.