

## **ETHICS COMMITTEE MEETING**

**October 28, 2013**

### **ITEM 9: RULES OF PROCEDURE**

Staff is recommending several changes to the Committee's Rules of Procedure. The procedures were developed in 1993 to supplement the Ethics statutes and provide a "road map" for operations. The latest revision was in September 2011.

**NOTE:** All references to "Ethics Code" will be changed to "Ethics Act". Statutory language was officially added in 2006 citing AS 24.60 as the Legislative Ethics Act.

#### **ITEM 9(a): Section 2 Administrative Policies**

- Adding a new section (g) to address procedures for vetting proposals for statutory changes to the Ethics Act.
  - Attached is Item 11 from the February 26, 2013 meeting and minutes.
- Adding new section (h) to address procedures for the annual benefit and loan review required under AS 24.60.050.

#### **ITEM 9(b): Section 5 Executive Sessions**

- Rewrote the entire section for clarity and to better reflect the current operation of the committee.
- There are now 4 sections: (a) General Guidelines; (b) Limitations; (c) Exceptions to (a); and (d) Recording of Executive Sessions.
- Subsection (b) is divided into 5 exception areas and each is specifically defined.
  - Legislators
  - Witness
  - Person providing clarifying information
  - Subject of a complaint
  - Requester of a confidential advisory opinion
    - Previously the requester was not allowed in an executive session to present the advisory opinion request but could only be present to 'provide clarifying information' if asked by the committee.
    - Several requesters have commented that the process is unfair in that s/he is not allowed to explain the reason for the request and offer their comments such as is allowed in a non-confidential request held in an open meeting.

#### ITEM 9(c): Section 6 Teleconference

- Removed outdated language.
- Clarified that only the deliberation and voting phase of the complaint process must be conducted in person.
- Added that the subject of a complaint has the right to request a meeting with the committee if a written request is received within 20 days after receiving the decision. The meeting may be by teleconference.

#### ITEM 9(d): Section 10 Advisory Opinions

- Added a new section (b) addressing confidentiality.
- Moved language from section (a) to a new section (e) addressing a request to withdraw the opinion.

#### ITEM 9(e): Section 11 Disclosures

- Updated language in section (b) based on current practice.
- Changed the review of confidential disclosures from yearly to quarterly for timeliness in the event there is a question.

#### ITEM 9(f): Section 13 Potential Complaints

- Sections (a), (b), and (c) were each written as one paragraph and difficult to read.
- Subdivided each section for clarity.
- Clarified and updated some of the terms.
- No major changes.

#### ITEM 9(g): Section 14 Complaints

- Subdivided section (e) for clarity.

#### ITEM 9(h): Section 17 Complaints – Decisions

- Updated language.
- Added a new subsection (a) to address procedures for notifying the subject of a complaint of the option to appear before the committee before a final decision is made on the complaint.
- Added a new subsection (g) addressing procedures for referrals to other agencies as required under AS 24.60.170(l). Included a statement that all materials forwarded shall be reviewed by the committee's legal counsel for compliance with the Act's provisions of confidentiality.

## **ETHICS COMMITTEE MEETING    Minutes – February 26, 2013**

### **11. PROCEDURE TO ADDRESS RECOMMENDATIONS FOR CHANGES TO AS 24.60:**

Chair Thomas stated that presently, there are no internal procedures or formal policy in place to follow when someone recommends statutory changes to the Ethics Act. There are occasions when suggestions or recommendations are made by legislators, employees, the public, or committee members, or during ethics training or an Ethics Committee meeting. Some recommendations have been made by the committee and are forwarded prior to Legislative Session. There are occasions where the committee may not want to be the body that presents the change and may prefer that a legislator take it up instead. Chair Thomas noted that they may want to add to the procedures that suggestions or recommendations be addressed in the month of September, or once a year, prior to start of session. Ms. Anderson added that the committee has not been able to respond to legislators who made a request for a change to the Ethics statute at legislator training this year because there are no procedures in place. Ms. Anderson recommended that the committee formally develop procedures and add them to the committee's Rules of Procedures.

Representative Tuck suggested that the committee be a vehicle when recommending changes, but not "the" vehicle. Legislators should be the ones to carry the bill to the Legislature. He also stated that he felt that the Ethics Committee should be able to recommend changes to the statute on its own or continue requesting advisory opinions.

Representative Millett asked if there was any reason why suggestions couldn't be forwarded to the Senate President and Speaker of the House. Chair Conner responded that was the committee's procedure in the past. Ms. Anderson stated that she has made recommendations as well as the Chair based on repeated phone calls or statutes that need to be changed or clarified. Member Cook added that the advisory opinions may be an interim step to making changes in statute.

Senator Fairclough was in support of establishing a process. She stated that she hoped that if the committee made a specific recommendation based on a suggestion brought to the committee, or a complaint, or if issues were being raised, or if multiple advisory opinions needed to be addressed to clarify statutes, that the committee would move the recommendation forward rather than a legislator carrying the bill. In the areas in which the committee would not want to be involved in carrying legislation, the committee may want to consider addressing the letter to the Speaker or President, or the Rules Committee for consideration. Senator Gardner agreed with Sen Fairclough. The committee should state where there are problems or gray areas or conflicts. She also stated that as far as making policy changes, she was not sure they should come from the committee itself.

Chair Thomas restated that they need to formalize the process. For instance, the established time each year for the committee to review recommendations is in September, or whatever is decided. Senator Gardner suggested that suggestions or recommendations be required to be submitted in writing. Representative Millett suggested that the committee discuss suggestions more often than once a year either at a specific meeting for discussion about proposed legislation or incorporating them into a regular committee meeting. The Chair offered to work with Ms. Anderson on a list of procedures and add it to the next committee meeting's agenda. The committee accepted the offer.

## **ETHICS COMMITTEE MEETING – February 26, 2013**

### **Agenda Item 11.) Procedure to Address Suggestions for Statutory Changes**

**ISSUE:** Periodically legislators, legislative employees, the public, and committee members suggest changes to the Legislative Ethics Act. What procedure should be followed when this occurs? The committee does not have an internal procedure or a formal policy in place. Staff suggests the committee develop a formal policy to be included in Section 2, Administrative Policies, of the Committee's Rules of Procedure.

**Relevant Statute:** *AS 24.60.150(b)(1) "The committee may recommend legislation to the legislature the committee considers desirable or necessary to promote and maintain high standards of ethical conduct in government."*

Recently at ethics training, several legislators offered suggestions for changes to the Act. They specifically asked if the Ethics Committee would forward their recommendations to the Legislature. No commitment was made by Ethics staff. (The recommendations were: increase the \$250 gift limit, clarify the use of state resources and secondary campaign activity, report gifts of travel/hospitality only when received from other than a state department, and remove the confidential gift disclosure requirement.)

#### **DISCUSSION:**

Questions to consider:

- Should the Ethics Committee be the vehicle to move recommendations for statutory change if the recommendation comes from other than the committee?
- What criteria should be used to evaluate recommendations that are submitted to the committee for consideration? For instance, AS 24.60.150(b)(1) uses the terms "desirable or necessary to promote and maintain high standards of ethical conduct in government."
- Should the recommendation be forwarded to the chair of the committee or the entire committee for consideration?
- Should recommendations be placed on the next committee agenda for consideration, if timely?
- Suggest recommendations always be in written form and state who is making the recommendation and why. If a person verbally suggests a change and does not follow through with a written request, suggest that no action be taken by the committee.
- What type of response should be sent to the person making the recommendation? For example a response stating no action taken because – and list the reasons or a response stating your recommendation was forwarded to the committee for consideration.

#### **ACTION:**

Options: Develop a formal policy, develop an internal procedure, or take no action.

New language: **bold and underlined** Deleted language: [bracketed and yellow]

## SECTION 2 ADMINISTRATIVE POLICIES

(a) AUTHORIZATION: Any authority delegated to the Chair, may be re-delegated to the Vice-Chairs. The Chair may authorize or delegate authority: to approve travel/per diem for members, staff time sheets; ability to incur and be reimbursed for expenses, and purchases less than \$400; to negotiate with and retain professional service contractors; issue and sign subpoenas; and to approve/disapprove payment of professional contract invoices.

(b) COMMUNICATION:

- (1) The chair is the official spokesperson for the full committee and is responsible for communication, both verbal and written, which is shared with those covered by the Ethics Act [CODE], the public, the press, and other interested parties. The chair of the Senate Subcommittee and the chair of the House Subcommittee are responsible for communication with respect to these committees. The chairs may delegate this responsibility as necessary.
- (2) Committee members are not precluded from talking to the public, the press, and other interested parties on matters of which they have a personal opinion unless prohibited under confidentiality provisions. Committee members are not authorized to issue informal Ethics advice or act as the official spokesperson for the committee unless delegated to do so by the chair or vice chair.
- (3) Staff is authorized to communicate with the public, the press and other interested parties at any time on informational and procedural matters. With permission of the chair, staff may communicate on all issues considered public relating to the committee.
- (4) Staff is authorized by provisions in AS 24.60 to communicate with those covered by the Ethics Act [CODE] at any time and provide informal advice when requested under AS 24.60.158.

(c) CONTRACTS: Contracts with the committee must receive approval, in a public meeting, of a majority of the members of the full committee if it is an issue under the jurisdiction of the full committee or a majority of the members of the subcommittee if it is an issue under the jurisdiction of the subcommittee. Members of the full committee and members of the subcommittees delegate authority to the chair of the appropriate committee or subcommittee to serve as Project Director for approved contracts. The chair may approve extensions of contracts until the next meeting after notification to committee members and majority approval. The extended contract shall then be placed on the appropriate committee agenda in a public meeting for a majority vote of the full committee.

(d) PUBLIC MEMBER VACANCIES: The nomination process for vacancies on the committee for public members is dictated by AS 24.60.130. The committee establishes the following policy for notification of vacancies on the committee:

- (1) By November 1 of the year prior to the vacancy, a notice will be placed on the committee website announcing the vacancy or vacancies.

- (2) Notices will also be sent to all legislators and Legislative Information Offices for posting.
- (3) Other means of notification may be utilized as well.

(e) COMPASSIONATE GIFT APPROVAL: A compassionate gift may not be solicited, accepted, or received unless a written request has been approved in writing by the chair of the legislative council, and the committee chair or vice-chair has approved in writing the decision of the chair of the legislative council. AS 24.60.075

(1) Upon receipt of the request and written approval from the chair of the legislative council, the committee chair or vice-chair shall review the request to verify the requirements of AS 24.60.075(e) were met.

(2) The chair or vice-chair shall consult with the chair of the legislative council if necessary and issue a letter to the requester either approving or denying the request. A copy of the letter will be sent to the chair of the legislative council. An explanation of AS 24.60.075 and the reporting requirements will be included with the letter.

(f) INTERNSHIP PROGRAM APPROVAL: On June 26, 2009, the committee granted authority to the Administrator to approve educational and government agency internship programs under AS 24.60.080(h). The Administrator will review all documentation provided and consult with the Chair prior to approving the internship program. Committee members will be notified of all internship programs approved. Backup materials will be available upon request. Educational and government agency internship programs will be evaluated based on the requirements set out in AS 24.20.062(2) and/or Advisory Opinion 94-03. Interns will be notified of the requirement to attend Ethics training.

(g) PROCEDURE TO ADDRESS PROPOSALS FOR STATUTORY CHANGES:  
Pursuant to AS 24.60.150(b)(1), "The committee may recommend legislation to the legislature the committee considers desirable or necessary to promote and maintain high standards of ethical conduct in government."

(1) The committee will consider suggestions and recommendations in written format only.

(2) On an annual basis, the committee will review proposals for statutory changes received from committee members, committee staff, and others. The committee will review the proposals at a committee meeting held during the last quarter of the calendar year. The committee may meet at other times as necessary.

(3) After reviewing the proposals, the committee will forward recommendations for statutory changes to the speaker, senate president, and rules chairs prior to the beginning of the regular legislative session with an explanation of why the committee believes these changes would meet the provisions of AS 24.60.150(b)(1).

(h) BENEFIT AND LOAN ANNUAL REVIEW: The committee shall review all state benefit and loan programs and state loans on an annual basis pursuant to the requirements of AS 24.60.050.

(1) A letter shall be sent to all state departments in mid October asking for a review of programs and loans to determine if there were any changes to eligibility requirements or if any new programs and loans were introduced the previous year that meet reporting requirements or if any were removed or became inactive.

**(2) A report shall be submitted to the committee for review. The committee must approve all significant changes to the list.**

**(3) The committee shall publish a list of programs and loans requiring disclosure in the yearly Standards of Conduct Handbook distributed to all legislative offices at the beginning of the legislative session and post the list on the committee's web site.**

## SECTION 5 EXECUTIVE SESSIONS

**(a) GENERAL GUIDELINES: Under AS 24.60.037(b) of the Open Meetings Guidelines, the Alaska State Legislature Uniform Rules control the procedure for conducting executive sessions.**

**(b) LIMITATIONS:** Attendance at executive sessions will be limited to members of the committee, **legal counsel**, and essential personnel as determined by the committee. [IN CASES OF DISCUSSION, INVESTIGATION, DATA GATHERING, INTERVIEWS, DELIBERATIONS OR DECISION-MAKING ON COMPLAINTS PRIOR TO PROBABLE CAUSE DETERMINATION, NEITHER THE SUBJECT OF THE COMPLAINT, NOR ANY OTHER LEGISLATOR NOT ON THE APPROPRIATE COMMITTEE SHALL BE ALLOWED IN THE EXECUTIVE SESSION.]

**(c) EXCEPTIONS to (b) Limitations:** [THE ONLY EXCEPTIONS TO (A) ABOVE:]

**(1) Legislators:**

a. **Under AS 24.60.170(l), "All [complaint] meetings of the committee before the determination of probable cause are closed to . . . legislators who are not members of the committee.**

b. **Legislators requesting to be an observer in an executive session will be bound by the prohibitions and penalties outlined in AS 24.60.060, confidential information, and the Ethics Committee confidentiality standards.**

**(2) Witness:** **A legislator, [OR] legislative employee, or other individual** who is a witness and is requested to be present at the executive session by the committee;

**(3) Person providing clarifying information: A person requested by the committee to provide clarifying information concerning the issue before the committee.**

**(4) Subject of a complaint:** **The subject of the complaint[, WHO WILL HAVE AN OPPORTUNITY] pursuant to the requirements and stipulations outlined in AS 24.60.170(d), TO EXPLAIN THE CONDUCT ALLEGED TO BE A VIOLATION [OF THIS CHAPTER TO THE COMMITTEE IN EXECUTIVE SESSION, AT A TIME SET BY THE COMMITTEE. THE SUBJECT MAY CHOOSE TO GIVE A WRITTEN EXPLANATION.]** The subject may choose to be accompanied by legal counsel or another person who may also present arguments before the committee pursuant to AS 24.60.170(r). [THE CHOICE OF COUNSEL OR ANOTHER PERSON IS NOT SUBJECT TO REVIEW AND APPROVAL OR DISAPPROVAL BY THE COMMITTEE.]

**(5) Requester of a confidential advisory opinion: A legislator, legislative employee, ethics committee public member, or a newly elected legislator may present the request to the committee and answer questions by committee members.**



(c) ADVISORY OPINIONS: [IN DISCUSSIONS ON ADVISORY OPINION REQUESTS, THE COMMITTEE'S LEGAL ADVISOR AND ESSENTIAL PERSONNEL WILL BE ALLOWED IN THE EXECUTIVE SESSION BUT NO OTHER INDIVIDUALS UNLESS REQUESTED TO BE PRESENT BY THE COMMITTEE TO PROVIDE CLARIFYING INFORMATION CONCERNING THE OPINION. NO ONE OTHER THAN THE COMMITTEE'S LEGAL ADVISOR AND ETHICS STAFF WILL BE ALLOWED IN THE EXECUTIVE SESSION FOR DELIBERATIONS AND VOTING ON THE OPINION. IF THE REQUESTER WAIVES CONFIDENTIALITY IN WRITING, THE ISSUE WILL BE DISCUSSED IN PUBLIC SESSION.]

(d) LEGISLATOR IN ATTENDANCE: EXCEPT AS PROVIDED IN (A) ABOVE, UNDER AS 24.60.037 OF THE OPEN MEETINGS LAW, ANY LEGISLATOR CAN REQUEST TO BE IN THE SESSION AS AN OBSERVER BUT WILL BE BOUND BY THE ETHICS COMMITTEE CONFIDENTIALITY STANDARDS.]

(d) RECORDING OF EXECUTIVE SESSIONS: Executive sessions will not be tape-recorded. The Ethics Administrator's notes will be kept on file for five years.

## SECTION 6 TELECONFERENCE

(a) NON-CONFIDENTIAL: Use of teleconference or telephonic equipment to communicate with off-site members or persons designated by the committee is permitted for non-confidential business.

(b) ADVISORY OPINIONS: Discussion of **confidential** advisory opinions in executive session, which may require off-site communication with a legal advisor, **a committee member, essential personnel, a person providing clarifying information, or the requester of the opinion** is allowed if [NO PORTABLE, CELLULAR, PARTY LINE OR SPEAKER PHONES ARE USED AND] the committee and caller verify no one else can listen in and the [BRIDGE FOR] teleconference **connection** is secure.

(c) COMPLAINTS:

- (1) Use of teleconference or telephonic equipment is only permitted for the initial review of the complaint and/or discussion of the Scope of Investigation unless the subject of the complaint, in written form, waives the in-person participation requirement by committee members in advance of the meeting.
- (2) Rules under (b) of this subsection are adhered to when a teleconference occurs [OR TELEPHONIC EQUIPMENT IS USED].
- (3) **Committee** deliberations and voting must be conducted in person **for the decision phase of the complaint process.**
- (4) **Within 20 days after receiving the decision, the subject of a complaint has the right to request a confidential in-person meeting or teleconference meeting with the committee at which time the committee shall explain the reasons for the decision.**

## SECTION 10 ADVISORY OPINIONS



(a) **FORMAT:** A request for an advisory opinion by a person eligible to make a request, **or by** the Ethics Committee **and** [OR] the Alaska Public Offices Commission under AS 24.60.160, may be filed with the committee in any written form, including electronic transmission. The committee will provide written guidelines to each person making a request. **[THE REQUESTER MAY WITHDRAW THE REQUEST AT ANY POINT PRIOR TO THE COMMITTEE'S RENDERING OF AN OPINION.]**

**(b) CONFIDENTIALITY:**

**(1) The requester and, if applicable, anyone else named in the request must both waive confidentiality pursuant to AS 24.60.160(b) for the request to be heard in a public session.**

**(2) When confidentiality is not waived, the request will be heard in executive session under the requirements of Section 5, Executive Sessions.**

(c) **RESPONSE:** The committee's sixty day period to respond begins upon receipt at the committee office. The document will be dated and marked confidential, unless the requester waives confidentiality in writing.

If the request is clearly answerable in statute and does not require a formal opinion, a letter will be sent to the requester outlining the statutory response. The requester may either withdraw the request or maintain the request, after receipt of the statutory response letter.

If the facts presented are not sufficient to allow the committee to render an opinion, a letter will be sent requesting additional information, noting the timeline and, if necessary, requesting an extension for response.

The committee will send a confidential copy of the inquiry and a letter requesting a draft advisory opinion to LAA Legal Counsel. If LAA Legal Counsel is unable to or has a conflict in drafting the opinion, committee staff or outside legal counsel will draft the opinion.

(d) **REQUEST FOR EXTENSION:** The committee will send a letter to the requester acknowledging receipt of the request, requesting an extension if the full committee is not able to meet within the sixty day period or if the period prior to the meeting does not allow adequate time to prepare a draft opinion. The requester will be advised when the committee is scheduled to meet to discuss the opinion.

**(e) REQUEST TO WITHDRAW: The requester may withdraw the request at any point prior to the committee's rendering of an opinion.**

(f) **EXTENSION DENIAL:** If the requester does not grant an extension, at the discretion of the committee chair, a draft advisory opinion may be prepared and provided to all members of the committee. Members will be asked to concur or not concur in writing including counterpart. If a quorum of members who acknowledged receipt of the draft concurs, the draft is adopted as a tentative advisory opinion of the committee, which does not bind the committee unless formally adopted at a committee meeting. A copy of the tentative advisory opinion shall be made available to the requester, with an accompanying letter explaining the tentative status. If any member, who acknowledged receipt of the draft, objects to the adoption of the draft, the

committee shall meet to discuss the opinion request.

(g) DELIBERATIONS/VOTING ON ADVISORY OPINIONS: Unless the requester has waived confidentiality, discussion and deliberations on advisory opinions are to be conducted in executive session. Upon completion of deliberations, the committee will reconvene in open session and the chair will announce the advisory opinion number and the general topic. The committee will vote to concur or not concur with the draft advisory opinion. The published opinion will reflect the vote.

(h) ISSUANCE OF ADVISORY OPINIONS: Opinions are issued under guidelines set forth in AS 24.60.150(a)(2) and AS 24.60.160(b).

(1) Opinions released to the public must contain sufficient deletions to prevent disclosing the identity of the person or persons involved.

(2) If the requester did not waive confidentiality, the public opinion may be a summary of the confidential opinion released to the requester.

(3) Confidential opinions may contain additional information and clarifying statements. A confidential opinion is not a public document and may not be released by the committee. However, the requester may waive confidentiality and release the opinion.

(i) SUMMARY/PUBLICATION: The committee shall publish its advisory opinions rendered in the prior period as specified in AS 24.60.150(a)(2). The committee will also prepare a letter of transmittal, a cover page identifying committee members and contents, and a table of contents. Copies will be prepared by the Legislative Print Shop. The committee will distribute the opinions. The committee will summarize advisory opinions, when appropriate, in the bi-monthly newsletter.

(j) CLOSURE: All information concerning the request, with the exception of the publishable advisory opinion, shall be designated "closed" upon adoption of a formal advisory opinion and scheduled for destruction 5 years and 6 months thereafter. LAA Legal Services will destroy their copies of any confidential documents related to the opinion in accordance with their destruction policies.

## SECTION 11 DISCLOSURES

(a) FORMS: The committee will provide forms for each type of disclosure. The committee will accept faxed forms and faxed signatures. The committee is authorized to request additional information for the purpose of clarification.

(b) RECORD: The committee will maintain a public record and log of those disclosures that are not confidential by law and a confidential record and log of those which fall under AS 24.60.080(c)(6). Committee staff will mark the date of disclosure on all disclosure reports received. The date of disclosure is considered the date the form is faxed, sent via email through the on-line filing system, sent as a PDF attachment to an email, postmarked for mailing, pouched, or hand delivered.

(c) PUBLICATION: During session, a copy of public disclosures requiring publication will be sent to the clerk of the appropriate body following a schedule mutually agreed upon by the clerks of both bodies and committee staff. During the interim, the record will be kept by the committee and sent to the clerk of the appropriate body the first week of the legislative session. A listing of disclosures will be posted on the committee website. The list will be updated monthly during session and as needed during the interim. Committee staff will send copies of disclosures to the Alaska Public Offices Commission as required under AS 24.60.080.

(d) REVIEW OF CONFIDENTIAL DISCLOSURES: The Chair and the committee administrator shall review confidential disclosures filed under the requirements of AS 24.60.080(c)(6) and (d) on a quarterly [YEARLY] basis [UNDER AS 24.60.080(c)(6)].

(e) CLOSURE: The public disclosure files may be destroyed 5 years and 6 months after the end of the legislature in which they were filed and published. The disclosures under AS 24.60.080(c)(6) are not considered closed until 5 years and 6 months from date of receipt by the committee, at which time they will be destroyed.

(f) LATE DISCLOSURES:

- (1) Committee staff will mark as "late" disclosures received more than 5 days late.
- (2) Staff will send a letter notifying the discloser of receipt of the late report and alerting the discloser of a future monetary fine if any subsequent reports are late. Letter will include an offer for the discloser to explain lateness. Staff will keep a list of all those who have received the letter of notification.
- (3) Upon receipt of a second late disclosure report from an individual on the list described in #2, staff will notify the committee chair of intent to impose a fine and send a letter notifying the discloser of the fine due (\$2.00 per day, maximum of \$100). Fines will begin on the 6<sup>th</sup> day after the due date. Letter will explain payment is to be made to LAA but sent to the Ethics Committee for recording. Staff will forward the payment to LAA. Late filers will be noted in the Staff Report presented at committee meetings and recorded in the minutes.
- (4) Committee staff will mail a certified letter to individuals with unpaid fines. If the fine is not paid within 30 days from date the certified letter is received, committee staff will automatically refer the matter to the Attorney General's office for collection. The names of those late in payment or those who refuse to make payment will be listed in the following month's Ethics Committee newsletter along with the notation the matter has been referred to the Attorney General's office for collection.

(g) REQUIREMENTS AFTER LEAVING OFFICE OR EMPLOYMENT WITH THE LEGISLATURE: Within 90 days after leaving service or employ with the Legislature (includes a public member of the committee), a final disclosure report(s) is required for the period that begins on the last day of the last period for which the person filed a report and ends on the date of the person's last day of service.

- (1) The Ethics office shall notify legislators leaving office of the requirement to file final disclosures. The letter will contain a listing of all disclosures for the calendar year. Disclosure forms will be included in the packet.

(2) The Legislative Personnel Office, or other hiring agency within the legislature, shall notify employees leaving employment of the requirement to file final disclosures. The letter will be included with the employee's last paycheck.

### SECTION 13 POTENTIAL COMPLAINTS

**(Note: Subsections (a), (b), and (c) were each written as all one paragraph. Subdivided the subsections for better clarity and reading and clarified some terms as well.)**

(a). ANONYMOUS INFORMATION: Anonymous information concerning potential violations received by the committee will be treated confidentially, except as provided in (c) below.

(1) Anonymous information provided only verbally will not be considered, except as provided in (c) below. Committee staff or members will provide information on the complaint process and requirements to the caller.

(2) If anonymous information is received concerning a potential violation and **[IF]** a complaint based on that information is not received within 30 days, committee staff and the appropriate committee chair will review anonymous tangible information as to credibility, seriousness and jurisdiction.

(A) If the information **[IT]** is found to be sufficient, **it** **[THE INFORMATION]** will be forwarded to the appropriate committee for review. Copies of the information will not be made available to the subject unless a complaint is filed.

(B) If the committee determines **not** to **[NOT]** consider the anonymous information, the matter **[IT]** will be considered closed and scheduled for destruction two years and six months from the date of receipt of the information or at a later date if the committee specifically designates.

(b). INFORMATION FROM A KNOWN SOURCE: The committee will treat all material information received concerning potential violations of the Ethics Act **[CODE]** as confidential, except as provided in (c) below.

(1) Information provided only verbally will not be considered, except as provided in (c) below. Committee staff or members will provide information on the complaint process and requirements to the known source.

(2) If information from a known source is received concerning a potential violation and a complaint is not received within 30 days, committee staff and the appropriate committee chair will review the tangible information as to credibility, seriousness and jurisdiction. **[AND]**

(A) If the information **[IT]** is found to be sufficient, **it** **[THE INFORMATION]** will be forwarded to the appropriate committee.

(i) The committee will review the information and make a determination as to whether to return the information to the source, with or without a recommendation to file a complaint.

(ii) The committee may retain the information as support documentation.

(iii) The source of the information will be notified, when possible, if a complaint has otherwise been initiated. The source will not receive a copy of the complaint or any other confidential information.

(B) If the committee determines not to [NOT] consider the information, it will be considered closed and scheduled for destruction two years and six months from the date of receipt of the information or at a later date if the committee specifically designates.

(c). INFORMING THE SUBJECT OF INFORMATION PROVIDED UNDER (a) OR (b) ABOVE: The committee authorizes committee staff to contact the subject of the written or verbal information received under (a) or (b) above. The contact may occur at any point after receipt of the information and prior to a formal complaint being filed if the information appears to allege a possible violation of the Ethics Act [CODE].

(1) Whether the action has already occurred or whether it is for a future action, there is no confidential provision in the Act that precludes Ethics staff from taking proactive steps, if they feel it is necessary, to promote compliance with the Act.

(A) The purpose of the contact would be to inform the subject there exists a perception by an unnamed source a violation has occurred. Staff will clarify to the subject the purpose of the contact is limited to alerting the subject of the existence of the perception, that a violation of the Act may occur or has occurred, and the call itself has no effect on whether or not a complaint may be filed.

(B) Staff has no statutory investigatory authority under this subsection and therefore information and/or documentation provided by the subject of the inquiry is voluntary.

(C) The contact does not obligate the subject to take any action, remedial or otherwise; however, corrective action will be strongly recommended if there may be validity to the allegations.

(2) The identity of the person providing the information, if known, will be kept confidential.

(A) The person making the inquiry, if known, will be notified of action taken by the subject of the inquiry, if any.

(B) The person has the option to file a complaint or may indicate the issue has been explained and/or resolved. Staff should neither advocate for or against filing a complaint.

(3) Staff is authorized to conduct a preliminary examination of the factual scenario(s) and present [ITS] findings to the committee as outlined in (a) and (b) of this section.

(4) This procedure will be called the "Heads Up Policy." Legislators and staff will be apprised of this policy during mandatory Ethics training classes held pursuant to AS 24.60.150 and AS 24.60.155.

## SECTION 14 COMPLAINTS

(a) PROCESS: The committee shall furnish forms to any person upon request. A complaint may be filed in any written form as long as it is signed under oath, pursuant to AS 24.60.170(b).

(1) Complaints improperly submitted will be returned, with all accompanying materials, with instructions for proper filing, and, without reference to the specifics of the complaint. The committee will retain only the cover letter.

(2) Invalid complaints will be returned to the complainant without action. A complaint is considered invalid if an alleged violation is not specified, if an alleged violator is not



identified, if the committee lacks jurisdiction over the allegation or if the allegation does not allow the committee to act.

- (3) Complaints dismissed for lack of jurisdiction, due to insufficient credible information that could be uncovered to warrant further investigation, as frivolous on its face or if the allegation, even if true, would not constitute a violation of the Act, that are re-filed by the same complainant containing substantially the same allegations and information, will be returned to the complainant without action.
- (4) Complaints filed, during a campaign period, against a candidate for state office will be processed as specified in AS 24.60.170(o).
- (5) Complaints against a candidate for state office which are pending at the beginning of a campaign period will be processed as specified in AS 24.60.170(p).
- (6) Committee staff will immediately, upon receipt of a complaint, notify the complainant of the provisions in AS 24.60.170(l).

(b) RECEIPT: Upon receipt of a sworn valid complaint, the committee staff will mark the document "confidential", log in the complaint, assign a control number and file the complaint with the appropriate committee chair. Staff will transmit a copy to the subject of the complaint by certified mail and restricted delivery with a return receipt to be signed by the subject. Staff will notify the complainant via letter that the complaint has been received.

(c) PRELIMINARY EXAMINATION OF COMPLAINT: Before the committee considers a complaint, staff will conduct a preliminary examination of the complaint to determine and make a recommendation to the committee as to whether, based on the information and evidence on hand:

- (1) the act(s) complained of is within the jurisdiction and time limitation of the committee under AS 24.60 and;
- (2) there is specific and credible information to indicate that an investigation is warranted.

(d) WAIVER OF CONFIDENTIALITY BY SUBJECT OF COMPLAINT: Under the complaint provisions outlined in AS 24.60.170:

- (1) The subject of a complaint may waive confidentiality of proceedings at any point in the proceedings under AS 24.60.170 or at the close of the proceedings. The subject may not waive the committee's duty of confidentiality. The subject of a complaint may waive confidentiality only for those materials and proceedings pertaining to him or her. The subject may not waive confidentiality for others, including those involved or assisting in the committee's investigation of the complaint.

(A) Express Waiver – The subject of a complaint shall be provided with a Waiver of Confidentiality form explaining the nature and extent of the right to confidentiality of the complaint process. The form shall also include an express waiver statement indicating the subject freely and voluntarily waives the right to confidentiality proceedings and would like all further proceedings to be conducted in a public forum. If the subject chooses to expressly waive confidentiality, the waiver statement must be signed and dated.

(B) Implied Waiver – The Waiver of Confidentiality form will contain information explaining an implied waiver of confidentiality. An implied waiver is a course of conduct which evidences an intention to waive confidentiality provisions or is inconsistent with any other intention than a waiver. To prove an implied waiver,

there must be clear, direct, unequivocal conduct indicating a purpose to abandon or waive confidentiality. The committee shall investigate all occurrences of this nature to determine if the conduct supports a finding of an implied waiver.

- (2) If confidentiality is waived prior to a decision by the committee, the committee will treat any proceedings related to the complaint consistent with the provisions of AS 24.60.170(m) in that meetings of the committee be public, and documents presented at the meeting and motions filed in connection with the meeting are subject to public inspection. Under a waiver of confidentiality, deliberations of the committee will be conducted in closed session with the statement of the motion and vote held in public session. The subject may not waive, in whole or in part, the committee's confidentiality obligations as set forth in AS 24.60.170.
- (3) If confidentiality is waived after a decision by the committee, the committee will release copies of all the following documents, after ensuring release of documents will not infringe upon an individual's constitutional right to privacy, including:
  - (A) Public documents which are part of the investigative file e.g. reports filed with the Alaska Public Offices Commission.
  - (B) Materials submitted to the committee by the subject of the complaint.
  - (C) The formal complaint, with deletions if necessary, accompanying documents and correspondence from the complainant.
  - (D) The resolution identifying the scope of the investigation.
  - (E) Correspondence from the committee to the subject of the complaint and/or the complainant.
  - (F) A statement of the motion and record of the vote taken to reach the final decision.

The committee reserves discretion to determine which documents are subject to public inspection. The committee will not release investigative files, notes from deliberations held in confidential sessions or documents produced by legal counsel, protected by attorney-client privilege, unless the committee reviews the materials, removes any information that would infringe upon the constitutional right of privacy of an individual and formally adopts a motion to release the identified materials.

(e) RESPONSE BY THE SUBJECT OF A COMPLAINT: The committee may invite the subject of a complaint to appear before the appropriate committee or representatives of the committee, to meet with the assigned investigator and/or to respond in writing at any time after receipt of the complaint.

- (1) The committee is not limited to one response from the subject of a complaint; request for information may be on-going.
- (2) Pre-investigative contact with the subject may be made for the purposes of defining the scope of the investigation.

(f) COMPLAINT AGAINST A REHIRED EMPLOYEE: The committee may consider a complaint filed against a person previously employed by the legislative branch of government who has been rehired in the legislative branch, within the time limitations specified in AS 24.60.170(a).



(g) COMMITTEE RESTRICTIONS: Committee members should avoid ex parte communication with the committee's counsel, the subject of the complaint, the subject's counsel and others providing information on the merits of the matter.

## SECTION 17 COMPLAINTS - DECISIONS

### (a) COMMITTEE MEETINGS - Subject of the Complaint:

(1) A letter shall be sent notifying the subject of the complaint of the committee meeting date, time, and location along with a brief outline of the committee process and a copy of the subject's interview transcript.

(2) Pursuant to the provisions of AS 24.60.170(d), the committee shall afford the subject of the complaint an opportunity to explain the conduct alleged to be a violation of AS 24.60.

(A) The subject may appear in person at a time set by the committee or may choose to provide a written statement.

(B) The subject may choose to be accompanied by legal counsel or another person who may also present arguments before the committee pursuant to AS 24.60.170(r).

(b) PUBLIC DECISIONS AND ORDERS: Reports on decisions will include the names of committee members in attendance and the vote on the specific decision, if publicly determined. Decisions requiring public release will be transmitted in the fastest mode possible in the following order,

- (1) Subject of the complaint.
- (2) Speaker of the House and Senate President
- (3) Members of the committee
- (4) Complainant
- (5) Media request list

A formal copy will be sent to the Senate Secretary, Senate President, House Clerk, and Speaker of the House via pouch or mail.

(b) DISMISSAL PRIOR TO INVESTIGATION: Complaints dismissed after a preliminary investigation under AS 24.60.170(c) for lack of jurisdiction, due to insufficient credible information that could be uncovered to warrant further investigation, as frivolous on its face or if the allegation, even if true, would not constitute a violation of the Act, will not be made public. However, the subject of the complaint has the right to waive confidentiality under the provisions of Section 14(d). The committee will only notify the complainant and the subject of the complaint. The notification will only contain the determination that the complaint is dismissed based on the grounds as stated above.

### (c) DISMISSAL FOR LACK OF PROBABLE CAUSE:

- (1) If the committee determines, after investigation, that there is not probable cause to believe the subject has violated the Ethics Act [CODE], the committee shall issue a dismissal order and decision dismissing the complaint for lack of probable cause explaining the dismissal under AS 24.60.170(f). The dismissal order and decision shall

identify the subject of the complaint and the allegations made against the subject. The dismissal order and decision shall be sent to the subject of the complaint and the complainant.

- (2) The committee will publicly issue a dismissal order and decision for lack of probable cause following delivery of a copy to the subject of the complaint and the complainant. The dismissal order and decision shall be open to inspection and copying by the public.

(d) DETERMINATION OF PROBABLE CAUSE:

- (1) If the committee finds probable cause, the committee shall issue a written decision explaining the finding of probable cause under AS 24.60.170(g). The decision shall identify the subject of the complaint and the allegations made against the subject. The decision shall be sent to those identified in (a) of this section [THE SUBJECT OF THE COMPLAINT AND THE COMPLAINANT].
- (2) In cases under AS 24.60.170(g) where the committee finds probable cause of a violation and recommends corrective action(s), the following information will be included with the recommendation in the public decision:
  - (A) An explanation of the subject's right to request, within 20 days after receiving the decision, a confidential in-person meeting or teleconference meeting with the committee at which the committee shall explain the reasons for the decision [ITS EXPLANATION].
  - (B) Requirement for the subject to submit a letter to the committee, within 20 [30] days from the date of receipt of the public decision, either accepting the corrective actions or requesting a public hearing.
  - (C) If the subject accepts the recommended corrective actions, the letter must also contain a statement acknowledging the violation.
  - (D) Each recommended corrective action must include a date by which the action [IT] must be accomplished or a statement specifying the period of time that the corrective action remains in effect. (e.g. if the action is a commitment to file timely disclosures, the decision would include a statement "for as long as the subject serves in the legislature").
  - (E) The public decision must state when and how compliance with the recommendations will be reviewed. (e.g. the committee will review the status of the recommended actions by (date) or the committee authorizes the chair to review the status by (date) and to report any non-compliance to members.)
  - (F) The public decision may also include the statement; "If the actions have not been completed as specified, the committee may issue formal charges on the complaint".
- (3) The committee will publicly issue a decision of probable cause following notification to the subject of the complaint and the complainant. The decision shall be open to inspection and copying by the public.

(e) ANNUAL PUBLICATION: The committee will publish public decisions on an annual basis.

(f) WAIVER OF CONFIDENTIALITY:

See Section 14(d), COMPLAINTS, concerning waiver of confidentiality.

**(g) REFERRAL OF COMPLAINT TO OTHER AGENCIES – AS 24.60.170(I):**

- (1) Criminal Activity: If, in the course of an investigation or probable cause determination, the committee finds evidence of probable criminal activity, the committee shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency.**
- (2) Campaign Activity: If the committee finds evidence of a probable violation of AS 15.13, State Election Campaigns, the committee shall transmit a statement to that effect and factual findings limited to the probable violation to the Alaska Public Offices Commission.**
- (3) Statement and Factual Findings: All materials to be forwarded shall be reviewed by the committee's legal counsel for compliance with the confidentiality provisions in AS 24.60.170.**