

## **ETHICS COMMITTEE MEETING**

**May 29, 2014**

### **ITEM 10: RULES OF PROCEDURE**

The procedures were developed in 1993 to supplement the Ethics Act and provide a “road map” for operations. The latest revision was in October 2013.

#### **Section 10, Advisory Opinions**

Staff is recommending adding Subsection (b)(3) to address confidentiality when off-site communication is required during an Executive Session.

#### **Section 11, Disclosures**

Staff is recommending several changes that will clarify the process of reviewing disclosures, assessing late disclosure fines, and late letters.

##### **Section 11(a), Forms**

- Clarified that the committee also approves all disclosure forms.
- Deleted language regarding requesting additional information and created a new Section 11(b).

##### **Section 11(b), Review of Disclosures**

- Added this new section.
- Clarified that committee staff is authorized to request additional information for purposes of clarification and compliance with the Act. Previously Section 11(a) read, “The committee was authorized . . .

##### **Section 11(e), Review of Confidential Disclosures and a Request to Refrain from Making a Disclosure**

- Updated this section to include the process for a request to refrain from making a disclosure under AS 24.60.105(d) effective on August 22, 2012.
- Added language to define the process when the chair and committee administrator are unable to determine if the disclosure meets statutory requirements. The matter will be referred to the Full Committee for consideration in an executive session.

##### **Section 11(g), Late Disclosures**

- Divided the section into two section; Subsection 11(g) titled “Late Disclosures” and Subsection 11(h) titled Late Disclosure Fines
- Subsection 1 adds language clarifying what information is included on the “late disclosure list.”

- Subsection 2 adds language:
  - Referring to the “late disclosure list” and states a break in service does not invalidate a “first late disclosure.”
  - Stipulating the late letter shall inform legislators and legislative staff of the process to appeal a fine.

#### Section 11(h), Late Disclosure Fines

- Added language making it clear the committee chair and administrator have the authority to impose fines.
- Added language to Subsection that the chair will determine if the disclosure was inadvertent or willful.

#### Section 11(i), Requirements After Leaving Office or Employment with the Legislature

- Added to Subsection (1) additional clarifying information for the notification process to legislators who leave office.
- Added to Subsection (2) additional language that makes it clear the Legislative Personnel Office or other hiring agency within the legislature is responsible for notifying employees leaving legislative employment.
- Added to Subsection (2) language that clarifies the letter should be sent to employees terminating employment and employees going on lay-off status.
- Added to Subsection (2) that the Ethics Office will update the letter annually.

New language: underlined and bold type.

Deleted language: bracketed, italics, and bold type.

## 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 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.

(b) CONFIDENTIALITY:

(1) The requester and, if applicable, anyone else named in the request must 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.

(3) **When off-site communication is required during an Executive Session, the communication shall be conducted under the requirements of Section 6, Teleconference.**

(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.

New language: underlined and bold type.

Deleted language: bracketed, italics, and bold type.

## SELECT COMMITTEE ON LEGISLATIVE ETHICS RULES OF PROCEDURE

### SECTION 11 DISCLOSURES

- (a) FORMS: The committee will provide **and approve forms** for each type of disclosure. The committee will accept electronic forms and signatures. *[The committee is authorized to request additional information for the purpose of clarification.]*
- (b) **REVIEW OF DISCLOSURES: Committee staff is authorized to request additional information for the purpose of clarification and compliance with the Ethics Act.**
- (c) 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.
- (d) 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.
- (e) **REVIEW OF CONFIDENTIAL DISCLOSURES AND A REQUEST TO REFRAIN FROM MAKING A DISCLOSURE**: The Chair and the [committee] Ethics Administrator shall review confidential disclosures **and requests to refrain from making a disclosure** filed under the requirements of AS 24.60.080(c)(6) and (d) **and AS 24.60.105(d)** on a quarterly basis. **If the chair and Ethics Administrator are unable to determine that the disclosure or request meets statutory requirements, the matter will be referred to the Full Committee for consideration in an executive session.**
- (f) 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.

(g) LATE DISCLOSURES: Committee staff will mark as “late” disclosures received more than 5 days late.

- (1) **First Late Disclosure:** *[Staff]* **The Ethics Administrator** 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 **late disclosures including the name, type of disclosure, date disclosure received, number of days late, date of letter of notification and any other clarifying information.** *[all those who have received the letter of notification.]*
- (2) **Subsequent Late Disclosures:** Upon receipt of a **subsequent [second]** late disclosure report from an individual on the list described in **[# 2] subsection (g)(1).** *[staff]* **the Ethics Administrator** will notify the committee chair of intent to impose a fine and send a letter notifying the discloser of the fine due **pursuant to AS 24.60.260(c) and Section (h).** **A break in service does not invalidate a “first late disclosure.”** *[\$2.00 per day, maximum of \$100].* **The letter will include a statement notifying legislators and legislative employees a fine may be appealed before the Full Committee.** 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 **which is** presented at committee meetings and recorded in the minutes.

**(h) LATE DISCLOSURE FINES – Pursuant to AS 24.60.260(c)**

- (1) **Fines – The committee chair and Ethics Administrator are authorized to determine the appropriate fine for late disclosures.**
  - A. **Late Disclosure: A person may be fined \$2.00 a day for a maximum of \$100 per late disclosure.**
  - B. **Inadvertent Late Disclosure: A person may be fined a maximum of \$25 if the committee chair determines the late disclosure was inadvertent.**
  - C. **Willful Late Disclosure: A person may be fined \$100 a day for a maximum of \$2,500 if the committee chair determines the late disclosure was willful.**
- (2) **Unpaid Fines:** 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.

(i) 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. AS 24.60.210(a).

- (1) Legislators: The Ethics office shall notify legislators within two weeks after leaving office of the requirement to file final disclosures. The letter will contain a listing of all disclosures filed for the current calendar year along with a copy of the actual disclosures. Blank [d]isclosure forms will be included in the packet.
- (2) Legislative Employees: The Legislative Personnel Office or other hiring agency within the legislature shall notify legislative employees, whether terminating employment or going on lay-off status, of the requirement to file final disclosures. The Ethics office shall provide [t]he Legislative Personnel Office, or other hiring agency within the legislature, a standardized letter that informs [shall notify] employees leaving Legislative employment of the requirement to file final disclosures. The letter shall be updated annually by the Ethics office. The letter shall [will] be included with the employee's last paycheck per LAA Personnel internal policies.