

ALASKA STATE LEGISLATURE SELECT COMMITTEE ON LEGISLATIVE ETHICS

R U L E S O F P R O C E D U R E

These procedures were developed to supplement the Ethics Statutes and provide a “road map” for operations.

The original procedures were adopted in 1993 and have been amended numerous times.

The latest revision was in January 21, 2020.

All actions were taken in open meetings.

P.O. Box 90251
Anchorage, AK 99509-0251
(907) 269-0150 FAX: 269-0152
E-Mail: ethics.committee@akleg.gov
Web Site: <http://ethics.akleg.gov>

**ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS
COMMITTEE RULES OF PROCEDURE**

INDEX

SEC. 1	SCOPE	1
SEC. 2	ADMINISTRATIVE POLICIES	1
SEC. 3	GUIDELINES	4
SEC. 4	MEETINGS/NOTICE	4
SEC. 5	EXECUTIVE SESSION	5
SEC. 6	TELECONFERENCE	6
SEC. 7	COMMITTEE MATERIALS/CORRESPONDENCE	6
SEC. 8	ATTORNEY-CLIENT PRIVILEGE	8
SEC. 9	INFORMAL ADVICE	8
SEC. 10	ADVISORY OPINIONS	9
SEC. 11	DISCLOSURES	11
SEC. 12	EDUCATION	13
SEC. 13	POTENTIAL COMPLAINTS	15
SEC. 14	COMPLAINTS	16
SEC. 15	COMPLAINTS - INVESTIGATIONS	21
SEC. 16	SUBPOENAS	22
SEC. 17	COMPLAINTS - DECISIONS	23
SEC. 18	COMPLAINTS – HEARING PROCEDURES	26
SEC. 19	COMPLAINTS – DISCOVERY	29

ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS
COMMITTEE RULES OF PROCEDURE

SECTION 1 SCOPE

- (a) These publicly adopted rules of procedure are intended to supplement the statutory procedures set forth in AS 24.60 and must be read in conjunction with those statutory procedures.
- (b) Committee rules of procedure may be modified, amended or repealed by a majority vote of the committee.
- (c) The term ‘committee’ [AS 24.60.990(a)(3)] means Select Committee on Legislative Ethics and includes, when appropriate, the senate and house subcommittee.

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 \$2,000 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, 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 and Rules of Procedure, Section 9 Informal Advice, to communicate with those covered by the Ethics Act 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 received. The requirements for requesting a compassionate gift under AS 24.60.075 are outlined in Advisory Opinion 19-06.

- (1) Upon receipt of the request and written approval from the chair of the legislative council, the committee chair or vice-chair shall immediately 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. An explanation of AS 24.60.075 and the reporting requirements will be included with the letter. A copy of the letter will be sent to the chair of the legislative council.

(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).

- (1) The Administrator will review all documentation provided and consult with the Chair prior to approving the internship program. Committee members will be notified as soon as possible of all internship programs approved. Backup materials will be available upon request.

(2) 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.

(3) The administrator will send an informational letter to legislative offices, LAA offices, Office of the Ombudsman, Office of Victims' Rights and Office of Legislative Budget and Audit at the beginning of each legislative session outlining the intern program application process and procedures.

(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 at least an annual basis, the committee will review proposals for statutory changes received from committee members, committee staff, and others.

(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 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 3 GUIDELINES

(a) AUTHORITY: The committee may issue guidelines other than those statutorily mandated.

(b) DEFINITION: Guidelines are defined as those interpretations of the Ethics Law formally made and adopted by the committee for use by covered employees and legislators in making a judgment or determining a policy or course of action under this law.

(c) **BINDING/PUBLICATION:** Guidelines, as well as any amendments or deletions of guidelines, adopted by the committee will be published on the same schedule as the Advisory Opinions and will be considered binding after publication.

SECTION 4 MEETINGS/NOTICE

(a) **SESSION:** Meetings during session will be held in Juneau, unless the committee agrees to another location.

(b) **NOTICE:** Notice providing date, time, and place of the committee meeting along with an agenda will be sent to the House clerk for House subcommittee meetings, the Senate Secretary for Senate subcommittee meetings, to the clerk and secretary for full committee matters, a minimum of 5 days in advance. It is the committee's preference to provide notice as far in advance as possible. Agendas will also be posted on the committee website a minimum of 5 days in advance.

(c) **RULE 23(a):** The committee is subject to the notification requirements in Rule 23(a) of the Uniform Rules of the Alaska State Legislature during session.

(d) **MOTIONS:**

(1) Motions: Motions must be stated in the positive.

(2) Vote: A vote of a majority of the members appointed to the committee or a subcommittee is required for official action. AS 24.60.130(i)

(3) Reconsideration of a Vote:

(A) A motion for reconsideration may only be given by a member who voted on the prevailing side in the original vote.

(B) A motion for reconsideration must be made prior to adjournment on the day the vote was taken or in the case of a multi-day meeting, prior to adjournment.

(C) There may be but one reconsideration.

(D) Once the question is called for, the previous vote is suspended.

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:**

- (1) Attendance at executive sessions will be limited to members of the committee, legal counsel, and essential Ethics personnel as determined by the committee. Exceptions to this subsection are listed in (c).
- (2) During deliberations and voting, no one other than the committee’s legal counsel and essential Ethics personnel as determined by the committee will be allowed in executive session.
- (c) **EXCEPTIONS** to (b)(1) Limitations:
- (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, 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 pursuant to the requirements and stipulations outlined in AS 24.60.170(d). 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).
 - (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.
- (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:** During 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, the committee and caller must verify that no one else can listen in and the 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.
- (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 7 COMMITTEE MATERIALS/CORRESPONDENCE**(a) CONFIDENTIAL DOCUMENTS:**

- (1) **IDENTIFICATION:** All confidential documents will be marked "confidential. Copies of confidential documents may be conspicuously marked using notations (such as pre-assigned numbers) identifying the recipients.
- (2) **DISTRIBUTION:** Confidential documents distributed to committee members will be contained in sealed folders or envelopes, which distinguish them from other committee materials. Confidential documents, other than those delivered to committee members, will be hand delivered and signed for, or delivered by a receipted process. Confidential documents will not be faxed unless absolutely necessary and the sender first faxes a cover letter while on the phone with the designated recipient, who confirms that the fax is being received properly.
- (3) **SECURITY:**
 - (A) Committee staff, members and contractors will store confidential documents in locked receptacles. All outstanding copies of confidential documents must be returned to the Ethics Committee staff at the conclusion of the relevant meeting, unless the committee authorizes continued possession or personal destruction by the committee member. The staff will dispose of unnecessary copies by shredding.
 - (B) Before anyone other than a committee member is authorized to handle confidential documents, his or her name must first be submitted to the committee. The individual must also sign a statement that he or she is aware of the laws and procedures governing access to confidential information. An exception would be if a subpoena were served on the committee (see Section 16).

(b) **RECEIPT:** If a committee member receives the original complaint letter or advisory opinion request, s/he will send the original, without making any copies, to the Ethics Committee staff, who will record it in the log and make any necessary copies.

(c) CLOSURE:

- (1) See Sec. 10(j) for closure of advisory opinion files.
- (2) A complaint file is considered closed upon completion of proceedings under AS 14.60.170. All originals and copies of confidential information, including those of legal counsel and investigators, are to be returned to the committee office, logged in and scheduled for destruction.
 - (A) Copies may be destroyed at any time.
 - (B) Destruction of the originals of closed confidential materials under this section will be scheduled for 5 years and 6 months from the date of final committee action.
- (3) See Sec 9(e) for closure of informal advice files.
- (4) Legal opinion documents shall be kept on file permanently.
- (5) Meeting agenda, minutes and tape recordings shall be kept on file permanently.
- (6) See Sec 11(f) for closure of disclosure records.

(d) REQUESTS FOR COMMITTEE MATERIALS/CORRESPONDENCE:

- (1) Public decisions and advisory opinions are considered public documents per statute and are available upon request at any time.
- (2) Committee meeting packets are available to the public five days prior to a committee meeting or two days after mailing to committee members if the mailing is within five days of the meeting unless staff receives a request from a committee member(s) indicating a particular item should remain confidential until the meeting. (Approved December 2, 2003 by a majority of committee members.)
- (3) Publication of Committee Meeting Minutes:
 - a. Draft Minutes: Draft committee meeting minutes will be reviewed by the committee with changes made as necessary and subsequently posted on the website with a notation *draft* superimposed on all pages. Draft minutes will also be available to the public upon request. Draft minutes will also contain the following statement: *Draft* minutes are not the official record of committee proceedings and are for informational purposes only.
 - b. Approved Minutes: Draft minutes approved by the committee at the next regularly scheduled committee meeting are the official record of committee proceedings and will be posted on the Ethics website the following workday.
- (4) Documents determined confidential by statute or by the committee at a public meeting and noted in the committee's Rules of Procedure are not available for public inspection. Confidential documents may only be released upon receipt of a subpoena if required by statute to be confidential, as noted in AS 24.60 or by a majority vote of the committee if the committee has made the document confidential.

SECTION 8 ATTORNEY-CLIENT PRIVILEGE

All communications between the committee, its members, and the committee's legal counsel are protected by the attorney-client privilege.

SECTION 9 INFORMAL ADVICE

(a) **CONFIDENTIALITY:** Informal advice, other than a summary described in (b) below, is considered confidential unless waived, in writing, by the person requesting the informal advice or compelled by statute or subpoena to release.

(b) **REVIEW BY COMMITTEE:** A brief summary of informal advice, whether given verbally or in writing, given by committee staff will be provided in the STAFF REPORT presented at committee meetings. The staff report does not represent all inquiries, i.e., inquiries of a routine nature or inquiries previously answered. The committee reviews the advice and notifies committee staff if any member has questions or disagrees with the advice. The request and advice presented in the STAFF REPORT is cleansed of identifying information.

(c) **DISCLAIMER:** Those requesting informal advice are informed:

- (1) Pursuant to AS 24.60.158, informal advice, while given in good faith, is not binding on the committee unless the advice has been issued through the formal advisory opinion process pursuant to AS 24.60.160.
- (2) The informal advice only applies to the specific facts and activities as outlined in the communication. If the nature of the request or any facts has been misrepresented or omitted in the communication, the requester should contact committee staff immediately for amended advice.
- (3) Pursuant to AS 24.60.165, the committee may not bring a complaint against a person based upon information voluntarily given to the committee by the person in connection with a good faith request for advice under AS 24.60.158, and may not use that information against the person in a proceeding under AS 24.60.170. This section does not preclude the committee from acting on a complaint concerning the subject of a person's request for advice if the complaint is brought by another person, or if the complaint arises out of conduct taking place after the advice is requested, and does not preclude the committee from using information or evidence obtained from an independent source, even if that information or evidence was also submitted with a request for advice.

(d) **SEEKING INFORMAL ADVICE FOR SOMEONE ELSE:** The Ethics Administrator does not provide informal advice when someone is requesting advice regarding the actions of another.

(e) **CLOSURE:** All information related to the request shall be considered closed after the informal advice is received by the requester. STAFF REPORTS, which are public documents, shall be kept on file permanently.

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 on-line and printed copies of advisory opinions on an annual basis as specified in AS 24.60.150(a)(2). The advisory opinions, along with a letter of transmittal, will be sent on an annual basis at the beginning of the legislative session to the House Clerk and Senate Secretary to be officially read into the legislative journal. The committee will summarize advisory opinions 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 and approve forms for each type of disclosure. The committee will accept electronic forms and signatures.

(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 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: 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.
- (2) Subsequent Late Disclosures: Upon receipt of a subsequent late disclosure report from an individual on the list described in subsection (g)(1), 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.” 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 6th 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 Finance. 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: If fines are not paid within 30 days after notification, committee staff will mail a certified letter to those individuals with unpaid fines. If the fine is not paid within 30 days from date the certified letter is received, committee staff will notify the committee chair to determine the next step; a second certified notification or a referral 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 30 days 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 and instructions for accessing blank disclosure forms available on the Ethics website.
- (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 the Legislative Personnel Office, or other hiring agency within the legislature, a standardized letter that informs employees leaving legislative employment of the requirement to file final disclosures. The letter shall be updated annually by the Ethics office. The letter shall be included with the employee's last paycheck per LAA Personnel internal policies.

SECTION 12 EDUCATION

(a) **HANDBOOK:**

(1) The committee will publish online and print copies of a Standards of Conduct Handbook. The handbook will include a copy of the Legislative Ethics Act; question and answer guidelines for each section of the Act, a copy of other applicable laws, a recap of the previous year's advisory opinions, example copies of disclosure forms and deadlines; and information about the complaint process and a sample complaint form.

(2) Printed copies will be available:

- (A) at all Ethics training courses to attendees by request
- (B) at the beginning of each legislative session to legislator's offices in Juneau
- (C) to LIO offices throughout the state; and
- (D) be included in the 'new hire' packet distributed by the Legislative Personnel Office or other hiring agency within the legislature; the employee will be required to sign a form acknowledging receipt of the handbook and responsibility for complying with the Act.

(b) **TRAINING:** The committee administrator and/or committee members will participate in training legislators, public members of the committee and legislative staff by administering a legislative ethics course that teaches compliance with the Legislative Ethics Act and is designed to give an understanding of the Act under AS 24.60.010.

(1) The committee shall within 10 days of the first day of each regular session, and at other times determined by the committee, administer two types of legislative ethics courses as defined in AS 24.60.150(a)(4).

(A) Returning legislators, committee members, or legislative employees shall attend a refresher course which includes a review of compliance issues.

(B) First-time legislators, committee members, or legislative employees shall attend a course offering a fundamental understanding of the Act and how to comply with it.

(2) If a person takes office or begins employment after the 10th day of the first regular session, the person shall complete the course within 30 days after the person's first day of service. The committee may grant a person additional time to complete the course.

- (A) The committee will provide a variety of methods to accomplish this requirement which may include a course administered by Ethics staff.
- (3) If the course is not administered by Ethics staff, the person will be required to complete the on-line course within seven days after notification by Ethics Staff. Upon completion, an internal electronic notification will be sent to Ethics staff.
- (4) Legislative leadership or agency department heads, whichever is appropriate, will be notified of any person required to take training who has not completed the course within the 30-day statutory requirement.

(c) **INFORMATION:** The committee will provide the leadership of both legislative bodies a list of requirements and deadlines, for general announcement and distribution, to all legislators and their staff at the beginning of each legislative session.

(d) **COMMUNICATION:** Public decisions and advisory opinions rendered by the committee will be communicated to legislative members and legislative staff as soon as possible. Communication may be in the form of a newsletter, memo, or other informal presentation.

(e) **NEWSLETTER:** The committee will issue a bi-monthly newsletter which *highlights* applicable sections of the Ethics Code based on current events, contains upcoming reporting deadlines and provides other information of value to legislators and legislative employees. The committee may issue additional newsletters as needed.

SECTION 13 POTENTIAL COMPLAINTS

(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 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 is found to be sufficient, it 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 consider the anonymous information, the matter 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 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.

(A) If the information is found to be sufficient, it 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 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.

(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 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) LEGAL REPRESENTATION:

(1) Under AS 24.60.170(r) the subject of the complaint may choose to be represented by legal counsel or another person. The choice of counsel or another person is not subject to review and approval or disapproval by the committee. This choice does not constitute a waiver of any confidentiality provisions outlined in AS 24.60.

(2) When the subject of the complaint is represented by legal counsel or another person, all correspondence shall be sent to both the representative and the subject of the complaint. Verbal communication shall be directed to the representative.

(d) 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) advise the committee whether the allegations, if true, constitute a violation of AS 24.60 and a proceeding is warranted. AS 24.60.170(c) and,
- (3) there is specific and credible information to indicate that an investigation is warranted.

(e) WAIVER OF CONFIDENTIALITY BY SUBJECT OF COMPLAINT:

(1) General Information. Under the complaint provisions outlined in AS 24.60.170, 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.

(A) 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.

(B) The subject may not waive the committee's duty of confidentiality under AS 24.60.170. 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.

(2) Types of Confidentiality Waivers.

(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.

(3) Waiver of Confidentiality Before or After a Decision by the Committee.

(A) Confidentiality Waived Prior to a Decision by the Committee.

(1) 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.

(2) After deliberations and vote in executive session, pursuant to AS 24.60.170(f), the committee will reconvene in public session. The motion approved in executive session stating a probable cause violation(s) of AS 24.60 or a dismissal of the charge(s) will be read. The statement will include an affirmation indicating the decision was by a majority vote of the committee.

(B) Confidentiality Waived After a Decision by the Committee.

The committee will release copies of all the following documents contingent upon the confidentiality conditions outlined in (e)(1)(A) and (e)(1)(B), including:

- 1) Public documents which are part of the investigative file e.g. reports filed with the Alaska Public Offices Commission.
- 2) Materials submitted to the committee by the subject of the complaint.
- 3) The formal complaint, with deletions if necessary, accompanying documents and correspondence from the complainant.
- 4) The resolution identifying the Scope of Investigation.
- 5) Correspondence from the committee to the subject of the complaint and/or the complainant.
- 6) The public decision previously issued by the committee.

(f) RESPONSE BY THE SUBJECT OF A COMPLAINT: The committee may invite, via written correspondence, 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. The administrator

shall obtain acknowledgment of receipt of the correspondence by the subject, and the subject's representative if appropriate.

- (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.

(g) 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).

(h) 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 15 COMPLAINTS – INVESTIGATIONS

(a) SCOPE OF INVESTIGATION RESOLUTION:

- (1) The committee adopts a resolution defining the Scope of Investigation. The resolution will include steps to follow, whenever possible.

EXAMPLE: Did Senator Q accept a campaign contribution during the legislative session?

- If Senator Q did accept the contribution, was it kept or was it returned within a reasonable period of time per APOC?
- If the contribution was kept, who made the contribution, date, and amount?
- Did Senator Q take any legislative, administrative or political actions during the session on behalf of the contributor?
- Did Senator Q require an employee to assist in any part of the contribution activity?

- (2) A copy of the Scope of Investigation is sent to the subject of the complaint, and the subject's representative if applicable, and complainant pursuant to AS 24.60.170(d). The administrator shall obtain acknowledgement of receipt of the Scope of the Investigation by the subject of the complaint, and the subject's representative if appropriate.

(b) INVESTIGATIVE PLAN: The committee will set an investigative plan to include the following:

- (1) Who will coordinate the investigation? Committee chair, vice-chair, legal services contractor, other.
- (2) Will the investigation be conducted by one firm or person or will portions be conducted by several persons, such as APOC reports reviewed by staff, interviews with Senator Q and Contributor Z conducted by attorney.

- (3) Specific identification of those involved in the investigation: Professional investigator, staff, or others
- (4) Determination as to when and whether findings are to be reported verbally, in writing or both.

(c) **INVESTIGATIVE INTERVIEWS:** Pursuant to AS 24.60.170 all complaint investigations are confidential.

- (1) **CONFIDENTIALITY:** Interviews conducted during the course of an investigation shall be conducted in a confidential setting. All parties will be informed of the confidentiality provisions in statute and in the Rules of Procedure concerning complaint investigations.
- (2) **LEGAL REPRESENTATION:** All parties interviewed shall be informed that they have the right to legal counsel.
- (3) **TELEPHONIC INTERVIEWS:** If the interview is being conducted through the use of telephonic equipment, the person being interviewed and any legal representative, shall verify for the record no one else is present or on a conference call line.

(d) **INVESTIGATIVE MATERIALS:** An investigative report and any attorney or investigator work products related to the investigation, either prepared on behalf of the committee or disclosed to it as part of the investigation are required to be kept confidential. The committee will request all original products generated by an investigator at the close of the investigation and will require the investigator to destroy all copies in his or her possession.

SECTION 16 SUBPOENAS

(a) **ISSUANCE OF SUBPOENAS:** Under AS 24.60.150(b)(2), the committee has the authority to issue subpoenas at any point during the formal complaint process. Section 2 of Committee Procedures authorizes the chair or the vice chair to sign subpoenas. Legal counsel will be consulted on all subpoenas for proper format. Subpoenas may be issued to appear and/or produce documents.

(b) **RECEIPT OF SUBPOENAS:**

- (1) When a subpoena is served on the committee administrator, committee chair, or an individual member of the committee, the chair and legal counsel will be consulted immediately.
- (2) Requirement to release documents confidential by statute has been addressed by the U.S. District Court of Alaska in *In re Grand Jury Subpoena*, 198 F. Supp. 2d1113 (Alaska 2002). The Supremacy Clause of the U.S. Constitution requires compliance with a subpoena from a federal grand jury despite state law to the contrary. June 2005 legal counsel letter on file in the committee office.
- (3) Requests for documents must be reviewed by legal counsel prior to release. Documentation of the documents released must be kept on file for two years.

- (4) Notes between staff and committee members, notes of executive meetings and voting records and written notes by staff regarding materials are judged to be non-responsive to the request and will be so noted on the letter accompanying the documents.
- (5) Legal counsel will accompany staff and/or members of the committee if compelled to testify.

SECTION 17 COMPLAINTS – DECISIONS

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

- (1) A letter shall be sent notifying the subject of the complaint, and the subject's representative, 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. The administrator shall obtain acknowledgment of receipt of the correspondence by the subject, and the subject's representative if appropriate.
- (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:**

- (1) After deliberations and vote in executive session, pursuant to AS 24.60.170(f), the committee will reconvene in a public session. (Exception: subsection (c) Dismissal Prior to Investigation.) The motion approved in executive session stating a probable cause violation(s) of AS 24.60 or a dismissal of the charge(s) will be read. The statement will include an affirmation indicating the decision was by a majority vote of the committee.
- (2) Decisions will include the names of committee members in attendance and state the motion was approved by a majority vote of the committee, if publicly determined.
- (3) Decisions requiring public release will be transmitted in the fastest mode possible in the order listed below. A phone call to the subject of the complaint, and the subject's representative, is recommended followed by transmittal of the written decision. The administrator shall obtain acknowledgement of receipt of the Public Decision and Order by the subject of the complaint or the subject's representative, Speaker of the House and Senate President (or designated staff) and complainant prior to informing the media:
 - (A) Subject of the complaint.
 - (B) Speaker of the House and Senate President
 - (C) Members of the committee
 - (D) Complainant

(E) Media request list

(c) **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. Therefore, the committee will not reconvene in public session to affirm the committee's decision. 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 and the subject's representative, if applicable, of the committee's decision. The notification will only contain the determination that the complaint is dismissed based on the grounds as stated above.

(d) **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, 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.
- (2) The committee will publicly issue a dismissal order and decision for lack of probable cause under the distribution provisions outlined in (b) of this section.

(e) **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.
- (2) The committee will publicly issue a finding of probable cause under the distribution provisions outlined in (b) of this section.
- (3) 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.
 - (B) Requirement for the subject to submit a letter to the committee, within 20 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 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”.

(f) **SUMMARY/PUBLICATION:** The committee will publish on-line and printed copies of all public decisions on an annual basis. All public decisions, along with a transmittal letter, will be sent on an annual basis at the beginning of the legislative session to the Senate Secretary and House Clerk to be officially read into the legislative journal. The committee will summarize complaint decisions in the bi-monthly newsletter.

(g) **WAIVER OF CONFIDENTIALITY:** See Section 14(d), COMPLAINTS, concerning waiver of confidentiality.

(h) **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.

SECTION 18 COMPLAINTS - HEARING PROCEDURES

(a) **GENERAL:**

- (1) A person, who is subject to charges under AS 24.60.170(h) or findings of probable cause with corrective action under AS 24.60.170(g), is entitled to a hearing in accordance with AS 24.60.170(j).
- (2) The intent of these procedures is to provide due process to people charged under the Ethics Law and to protect the privacy and rights of the victims, complainants and the public in the process. Every effort has been made to

make these procedures consistent with and parallel to those for State Administrative Hearings pursuant to AS 44.62.330-630, Alaska Bar Rule 22 Procedure and the Commission on Judicial Conduct Rule 10 Subpoenas.

- (3) These procedures are applicable to all hearings of the Select Committee on Legislative Ethics pursuant to AS 24.60.170(g)(h)(j)(m). These procedures are adopted under AS 24.60.150(a)(1).
- (4) No waiver of confidentiality is required by the subject of the complaint at the public hearing stage of the complaint process.

(b) **REPRESENTATION AT HEARING:** The subject of the probable cause determination or the charge shall be entitled to be represented by counsel in all pre-hearing and hearing matters. The committee shall designate its own counsel to present the evidence supporting the violations alleged in the probable cause findings. Pursuant to AS 24.60.170(i), the committee may appoint an individual to present the case against the person charged if that individual does not provide and has not provided legal advice to the committee except in the course of presenting cases under AS 24.60.170.

(c) **COMMITTEE RESTRICTIONS:**

- (1) In order to assure a separation between the determination of probable cause and the hearing, committee members shall confine themselves to the evidence presented at the hearing.
- (2) Following a finding of probable cause, committee members should avoid any ex parte discussions with the committee counsel, subject of the complaint, the subject's counsel and others providing information on the merits of the matter.

(d) **TIMELINES:**

- (1) A hearing will be scheduled no sooner than 20 days and no later than 90 days from the date of service of charges or probable cause findings on the person subject to the charges, unless the committee schedules a later hearing or the conditions in Committee Procedures Sec. 4(a) apply.
- (2) If the complainant prevents the hearing from starting before the 90-day deadline passes and a quorum of the committee determines by vote of a majority of committee members the delay is not supported by a compelling reason or will result in the person charged being deprived of a fair hearing, the committee may dismiss the complaint with prejudice or enter some other order the committee determines is appropriate.
- (3) Upon summons and notice of hearing, the person subject to the charges pursuant to AS 24.60.170(h) shall have 10 days to admit to the charges or request a hearing.

(e) **DISCOVERY:**

- (1) The subject and/or the counsel for the subject shall have the right to reasonable discovery, under Section 19 in these Procedures.

- (2) The counsel for the committee, in a manner consistent with the Alaska Civil Rules of Procedure, shall have rights of discovery and production of documents relating to the hearing once a hearing has been requested and scheduled.

(f) PRE-HEARING PROCEDURES:

- (1) The committee may issue a pre-hearing order including such items as: time limits on opening statements, presentation of evidence and closing arguments and deadlines for submitting witness lists, exhibit lists and any motions raising issues resolvable prior to the beginning of the hearing. Pre-trial motions should be submitted to the committee at least one week prior to the hearing.
- (2) Counsel for the committee and the person subject to charges or their counsel, are encouraged to stipulate prior to hearing, as to any matters including evidentiary matters or undisputed facts.

(g) CONDUCT OF HEARING: The hearing shall be in front of the appropriate committee of the Select Committee on Legislative Ethics and presided over by the chair of that committee.

(1) Hearing Officer:

- (a) The committee may determine the need for an impartial Hearing Officer to facilitate and expedite aspects of the hearing.
- (b) The committee chair shall compile a list of Hearing Officers. The list will be provided to the committee counsel and the counsel for the person charged or the person charged. The counsels or the person charged may submit recommendations to the chair for selection or disqualification of any candidates. The committee chair selection of a Hearing Officer is final.
- (c) The Hearing Officer will rule on whether a witness is to appear in person or on teleconference; on admission and exclusion of evidence; advise the chair on matters of law; and control the conduct of participants and the time allotments to participants. Decisions on all procedural matters will be made by the Hearing Officer, subject to a right to appeal to the chair of the committee. The committee may overrule a determination by the Hearing Officer. The chair and the members may question the witnesses and the person charged or ask clarifying questions of either counsel, the person charged or the hearing officer.
- (2) **Person Charged:** The person charged shall have the right to appear personally before the committee at the hearing. The hearing will proceed with or without the appearance of the person charged.
- (3) **Witnesses:** Both counsel or the person charged if counsel is not used, have the right to subpoena witnesses. All witnesses shall testify under oath. In the event of problems in travel arrangements, especially for witnesses not subject to subpoena; depositions or affidavits may be used in lieu of live testimony. If agreed to by both parties, a witness may participate via teleconference. The Hearing Officer will decide the issue if agreement is not reached. The opposing party must have been offered the opportunity to participate in any deposition or to refute any affidavit which is admitted.

- (4) **Order of Proceedings:** The person charged and the committee counsel will have the opportunity to make opening and closing statements. Each party will have the right to examine and cross-examine witnesses and present evidence in his or her behalf. One opportunity for redirect for each witness will be allowed. The entire proceeding will be recorded and evidence will be secured and preserved.
- (5) **Decorum in the Hearing Room:** All persons will be required to conduct themselves in an orderly manner consistent with courtroom protocol. Failure to do so or disruption of the hearing may result in removal from the hearing room and charges of disturbing the peace in a public place. If the person charged is disruptive, that lack of cooperation will be considered during deliberations on any sanctions recommended. Media personnel will be provided a designated place and will not be allowed to move freely throughout the hearing room.
- (6) **Teleconference:** In the interest of the public, the proceedings of the hearing shall be teleconferenced

(h) **POST-HEARING:**

- (1) At the end of the hearing and prior to committee deliberations, the Hearing Officer will provide to the chair, a summary of the rulings and issues unresolved. Only committee members will participate in the deliberations and those deliberations shall be confidential as required by AS 24.60.170(m).
- (2) After deliberations and vote in executive session, pursuant to AS 24.60.170(f), the committee will reconvene in a public session. The motion approved in executive session stating a violation(s) of AS 24.60 based on clear and convincing evidence or a dismissal of the charge(s) will be read. The statement will include an affirmation indicating the decision was by a majority vote of the committee.
- (3) Decisions will include the names of committee members in attendance and state the motion was approved by a majority vote of the committee. The committee will subsequently issue a written public decision under the distribution provisions outlined in Section 17(b).
- (4) If the committee finds that a violation occurred or the subject did not cooperate, the committee will make a written recommendation of sanctions to the appropriate body of the legislature.

SECTION 19 COMPLAINTS - DISCOVERY

(a) **DISCOVERY BY SUBJECT:** A person against whom a complaint has been filed is entitled to engage in discovery in a manner consistent with the Alaska Rules of Civil Procedure, subject to reasonable restrictions imposed by the committee for the time of discovery and the materials that may be discovered. When allowing discovery, the committee will take into consideration the potential for public distribution of materials, under AS 24.60.170(i).

- (1) **TIMEFRAME FOR DISCOVERY AT THE PUBLIC HEARING STAGE OR WHEN FORMAL CHARGES ARE ISSUED:** The subject of a complaint may request discovery at any time after the subject requests a public

hearing or after the committee has formally charged the subject under AS 24.60.170(h).

- (A) When the discovery request is made after the subject requests a public hearing or the committee issues formal charges, but before the committee has scheduled the public hearing, the committee shall have 30 days to respond to the discovery request. The committee shall set a date for the public hearing not fewer than 30 days after serving its responses to the discovery request.
- (B) When a discovery request is made by the subject after the committee has set the date for the public hearing, the committee shall make all reasonable efforts to respond fully to the request prior to the public hearing but is not obligated to do so and is not obligated to postpone the hearing.
- (C) Under AS 24.60.170(p), the discovery process may continue during a campaign period if the committee has formally charged the subject prior to the beginning of the campaign period. The committee's actions must remain confidential.

(2) TIMEFRAME FOR DISCOVERY AT AN EARLIER STAGE:

- (A) The committee is authorized but not required, to allow discovery at an earlier stage of the proceeding.
- (B) The subject of the complaint may request discovery after the determination of probable cause but before making a decision as to whether or not to comply with the decision or to request a public hearing. If the committee authorizes the chair to allow early discovery, the committee shall have 20 days to respond to this discovery request. The subject of the complaint remains obligated to respond to the committee under the conditions set out in the decision and order.

- (3) MATERIALS:** The committee must produce to the subject of the complaint any materials relevant to the subject matter involved in the pending investigation that is not privileged material, in accordance with subsections (b), (c), (d) and (e) of this section. Such material includes the names and addresses of persons known to have knowledge or relevant facts, their written or recorded statements, any reports or statements of experts, books, papers, documents, photographs or tangible objects relevant to the probable cause determination.

(b) DUTY TO SUPPLEMENT: The committee has an on-going duty to supplement produced materials.

(c) CONFIDENTIALITY: The subject is required by law to keep confidential all materials discovered in this process, unless the subject who was formally charged under AS 24.60.170(h) provides written notification to the committee that he or she is not restricted under the provisions in AS 24.60.170(i) and attaches supporting evidence. The committee cannot make materials subject to public inspection unless produced at a public hearing.

(d) **DISCOVERABLE DOCUMENTS:** Materials or information subject to the attorney-client privilege or the work-product doctrine shall not be discoverable. This privilege shall extend to the work-product of investigators or others concerning work supervised by the committee's attorneys. Documents produced or discovered during the committee's investigation shall remain confidential and are not subject to public inspection unless produced at a public hearing. The subject of an investigation, however, may exercise his or her limited rights to waive confidentiality under AS 24.60.170(1). Unless the entire confidentiality is waived, the subject may not release the confidential documents per AS 24.60.060. See Sec. 14 COMPLAINTS, subsection (d) for additional information on waiver of confidentiality.

(e) **RESTRICTIONS:** The committee is authorized to issue protective orders under AS 24.60.170(i)(1). A legislator or legislative employee who makes an unauthorized disclosure of information under a protective order is in violation, under AS 24.60.060(b). Materials obtained during the course of investigation that will not be used in deliberations on specific allegations may be discoverable by the subject of the complaint. The committee may place reasonable restrictions on the material's discoverability in order to protect the privacy of individuals not under investigation or for any other reasonable, legitimate purpose. Such restrictions may include providing for "in camera" review of the materials, providing copies of the materials with the names of people mentioned therein deleted, or denying discovery altogether. The committee, or the person authorized by the committee, will review all information, prior to release for discovery by the subject. If the committee has not reviewed the irrelevant materials, production of such materials may be denied in total. The principle of fundamental fairness will be applied to discovery decisions.

(f) **DEPOSING COMMITTEE MEMBERS/STAFF:**

- (1) Committee members are not subject to deposition by the subject of the complaint, or the subject's counsel, unless a member has personal, first-hand knowledge relevant to the case and is considered a potential witness. A member who has personal, first-hand knowledge relevant to the case is recused from participation in matters related to the complaint and may be subject to deposition. A member whose knowledge of information relevant to the case is based solely upon information gathered from the complainant, the complaint or the investigation of the complaint does not have "personal, firsthand knowledge" and may not be deposed on matters relating to the complaint.
- (2) Committee staff is not subject to deposition by the subject of the complaint, or the subject's counsel, unless the staff person has personal first-hand knowledge relevant to the case or if the staff person is performing investigative duties related to the case. A staff person who is performing investigative duties may not be deposed until after the investigation is complete.
- (3) Depositions taken under this subsection are subject to all attorney work product privileges and other applicable privileges and must be kept confidential.