

# **OREGON GOVERNMENT ETHICS COMMISSION**

## **DIVISION 1**

### **PROCEDURAL RULES**

#### **199-001-0000**

##### **Notice of Proposed Rule**

Prior to the adoption, amendments or repeal of any rule other than a temporary rule, the Oregon Government Ethics Commission will give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;
- (2) By mailing or e-mailing a copy of the notice to persons on the Oregon Government Ethics Commission's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;
- (3) By mailing or e-mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and
- (4) By mailing or e-mailing, or furnishing a copy of the notice to:
  - (a) Oregon Common Cause;
  - (b) League of Oregon Cities;
  - (c) Association of Oregon Counties;
  - (d) Capitol Club;
  - (e) Oregon School Boards Association;
  - (f) Special Districts Association of Oregon;
  - (g) Confederation of Oregon School Administrators;
  - (h) Director, Department of Administrative Services;
  - (i) Capitol Press Room;
  - (j) Associated Press;
  - (k) State Court Administrator.

(5) The Oregon Government Ethics Commission may update the mailing list described in section two of this rule annually by requesting persons to confirm that they wish to remain on the mailing list. If a person does not respond to a request for confirmation within 28 days of the date the Commission sends the request, the Commission will remove the person from the mailing list. Any person removed from the mailing list will be immediately returned to the mailing list upon request, provided that the person provides a mailing address or e-mailing address to which notice may be sent.

Stat. Auth.: ORS 244.290 & 183.341

Stats. Implemented: ORS 183.335 & 183.341

Hist.: EC 8, f. & ef. 12-24-75; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

### **199-001-0005**

#### **Model Rules of Procedure**

Pursuant to the provisions of ORS 183.341, the Oregon Government Ethics Commission adopts the Attorney General's Model Rules of Procedure, January 1, 2008 version, as its rule of procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 183.341

Hist.: EC 1(Temp), f. 1-2-75, ef. 1-25-75 thru 5-25-75; EC 11, f. & ef. 7-28-76; EC 1-1982, f. & ef. 3-2-82; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

### **199-001-0007**

#### **Commission Funding**

(1) Beginning July 1, 2009, the Commission will charge assessments to State Agencies and Local Governments, Local Service Districts and Special Government Bodies that are subject to the Municipal Audit Law:

(a) State Agencies will be assessed one half of the legislatively approved amount. For the 2009-11 biennium, State Agencies will be assessed \$14.78 per Full-Time Equivalent (FTE) employee.

(b) Local Governments, Local Service Districts and Special Government Bodies that are subject to the Municipal Audit Law will be assessed the remaining half of the Legislatively approved amount as indicated in the following chart: [Chart not included, See ED. NOTE]

(2) The Department of Administrative Services will collect the assessments for State Agencies and Local Governments, Local Special Districts and Special Government Bodies through an annual billing. The Department of Administrative Services will notify all non-paying entities with a final notice that allows 30 days to remit the required payment. After 30 days, the account will be forwarded to the Oregon Department of Revenue for collection.

[ED. NOTE: Chart referenced is available from the agency.]

Stat. Auth.: ORS 244.255 & 244.290

Stats. Implemented: ORS 244.255

Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

## **199-001-0010**

### **Commission Meetings**

(1) Definitions:

(a) “Commission” means Oregon Government Ethics Commission;

(b) “Commissioner” means a duly appointed member of the Oregon Government Ethics Commission;

(c) “Director” means the Executive Director appointed by the Commission pursuant to ORS 244.310 or a person designated by the Executive Director to carry out specific tasks;

(d) “Public Official” means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee or agent, irrespective of whether the person is compensated for such services;

(e) “Staff” means the Executive Director and all other persons employed by the Commission.

(2) The Commission shall be governed by the statutes of the State of Oregon, these rules and the Attorney General's Model Rules of Procedure for the conduct of contested cases as provided in ORS Chapter 183. In event of a conflict, precedence shall be in that order.

(3) The Commission has adopted the following rules of procedure:

(a) A quorum consists of ~~four~~ **five** Commissioners. No decision may be made without an affirmative vote of ~~four~~ **five** members. In the absence of a quorum, Commissioners present may meet to discuss any matter before the Commission, but no action shall be taken.

(b) The Commission shall vote by roll call vote on any action taken to initiate or conclude preliminary review or investigative phases, adopt any final order, or adopt an advisory opinion.

(c) The Commission may utilize a consent calendar for action on agenda items when appropriate. In preparation of the consent calendar, the Director shall group together as separate categories preliminary reviews, dismissal of a case at conclusion of investigation, stipulated final orders, and default final orders on the agenda. The Director shall also submit a recommended action for each item. Any Commissioner may request of the chair to have a matter removed from the consent calendar and considered separately. All consent calendar items not removed as such, shall be disposed of upon the motion of any Commissioner and a roll call vote.

(d) The Commission will use the following processes in making decisions:

(A) Consensus to approve meeting minutes;

(B) Voice vote of a quorum of Commissioners in all other matters.

(e) A motion does not require a second.

(f) Annually, at the last regular meeting of the Commission before January 1, the Commission shall select from its members a Chair and a Vice-Chair who shall serve until their successors are selected and qualified. The Chair or Vice-Chair may resign as such or may be removed from that position by vote of ~~four~~ **five** Commissioners. If the Chair or Vice-Chair shall cease to be a Commissioner, the position shall be vacant and a successor shall be selected at the next regular meeting of the Commission.

(g) The Chair shall preside over all meetings of the Commission. Except for final orders and advisory opinions, the Director may execute all documents that are executed in the name of the Commission. Only the Chair shall execute final orders and advisory opinions in the name of the Commission.

(h) The Vice-Chair shall act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

(i) The Director shall serve as Secretary to the Commission.

(j) Where permitted by law and conforming to the requirement of the Public Meetings Law, ORS 192.670, the Commission may meet by means of a telephone conference.

(k) The Director, in consultation with the Chair, shall set the agenda and cause all notices of time and place of the meeting of the Commission to be given. Commissioners may request items to be placed on the agenda prior to its being distributed.

(l) All meetings of the Commission shall be open to the public unless otherwise permitted or required by statute.

(m) The agenda of meetings of the Commission shall set forth all matters expected to come before the Commission. The Agenda shall contain items in the following order:

- (A) Minutes of previous meetings;
- (B) A consent calendar composed of reports of investigation with dismissal recommended by staff, stipulated final orders and final orders by default;
- (C) Adoption of contested case final orders, including those which impose a civil penalty or financial forfeiture;
- (D) Reports of investigation with preliminary finding of violation recommended by staff;
- (E) Adopt advisory opinions pursuant to ORS 171.776 and 244.280;
- (F) Presentation of correspondence, publications, or any issue introduced by the Chair related to the Commission and its duties.
- (n) Exercising the authority provided by ORS 192.660 and 244.260, the Commission may meet in executive session.
- (o) In action on any agenda item, the Commission may dismiss any proceeding or rescind any motion.
- (p) The Chair shall be responsible for order and decorum at all meetings of the Commission.
- (q) The Chair may suspend or bar from further participation any person who engages in conduct which intentionally delays or disrupts commission proceedings.
- (r) Parties may appear in person or be represented by attorneys who are active members of the Oregon State Bar. Others may appear before the Commission on behalf of a party with the permission of the Chair.
- (s) The Chair may, at the Chair's discretion, change the order of an agenda in order to accommodate parties appearing before the Commission or for other cause shown.
- (t) Commissioners will be advised in writing by the Director or staff of the issues, perceived facts, and arguments during the preliminary review phase. An oral statement from the public official or other respondent will be permitted at the discretion of the Chair when the Commissioners are considering any matter during this phase. The Chair will determine the duration of any oral statement permitted.
- (u) Oral statements by the affected public official or any other respondent, their representative or Staff may be permitted by the Chair at any consideration of a motion to move to a contested case, approval of a stipulated disposition of a matter or the adoption of any final order.
- (v) The Director shall maintain complete files of all documents submitted in any matter and shall summarize for the Commissioners in an impartial and objective manner all relevant favorable and unfavorable material collected and all documents filed in the Commission's office on any

matter before the Commission. At the request of any respondent or complainant any written material submitted to the Director in a timely manner will be reviewed and if the Director determines the information is relevant the material may be provided to each Commissioner for consideration. A document shall be considered filed in a timely manner if submitted in a form permitting it to be copied no less than eight business days before any meeting of the Commission in which the subject matter of the document will be an item on the agenda.

(w) Ex-parte communications with Commissioners by persons other than the staff are not permitted. Documents must be submitted to the Commission through the Director. Oral and written communications to Commissioners concerning matters pending before the Commission other than during the course of formal Commission proceedings, are ex-parte communications.

(x) A subpoena authorized by ORS 244.260(6)(b) may be issued by the Chair, Vice-Chair, or Director:

(A) The subpoena may require the witness to testify to an inquiry which is not privileged and which is relevant to an investigation or inquiry of the Commission including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at a hearing pursuant to ORS 183.413 et seq. if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(B) Upon motion by the witness subpoenaed, or the person under investigation or inquiry, and for good cause shown, the Commission may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(i) That the inquiry not be had;

(ii) That the inquiry may be had only on specified terms and conditions, including a designation of the time or place;

(iii) That certain matters not be inquired into, or that the scope of the inquiry be limited to certain matters;

(iv) That the inquiry be conducted with no one present except persons designated by the Commission; or

(v) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(C) A motion for a protective order under this subsection shall be in writing filed with the Director and shall be heard and first decided by the Chair, or in the absence of the Chair, the Vice-Chair, within three business days of the date filed. If the motion for a protective order is denied in whole or in part by the Chair or Vice-Chair, the person making the motion may within

three business days thereafter request that the full Commission hear and decide the motion which shall occur within three business days. If the full Commission denies the motion, the party making the motion may within three business days request a contested case hearing pursuant to ORS 183.413 et seq.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.250, 244.260, 244.290 & 244.310

Hist.: EC 1-1993, f. & cert. ef. 4-22-93; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10; GEC 1-2016, f. & cert. ef. 6-1-16

## **199-001-0014**

### **Guidelines on How Multiple Violations Will Be Charged**

The Commission will identify each action that appears to constitute a violation of ORS Chapter 244 and that does not qualify as part of an official compensation package as defined in OAR 199-005-0035(3), and when multiple violations are committed will charge them in the following manner:

(1) When a public official appears to have committed two or more violations by subsequent equivalent actions, the Commission will charge the public official with a single violation and count the repeated actions using the number of the equivalent acts as aggravating factors when imposing any sanction as discussed in (2) of this rule. The following examples are offered to illustrate this rule and not meant to limit its application:

(a) Each personal use of a government agency's wireless telephone could be a distinct violation of ORS 244.040(1). If a public official makes personal calls with the agency's wireless telephone on two or more occasions, the multiple violations will be combined into the charge of one violation with each additional personal call being counted as an equivalent action.

(b) Each occasion a public official uses the government agency's equipment (vehicle, tractor, chainsaw, trailer, etc.) for personal purposes could be a distinct violation of ORS 244.040(1). If a public official makes personal use of the agency's equipment on two or more occasions, the multiple violations will be combined into the charge of one violation with each additional personal use of equipment being counted as an equivalent action.

(c) Each occasion a public official uses the government agency's resources (storage space, fuel, cash or other financial transactions, internet connection, computer, etc.) for personal purposes could be a violation of ORS 244.040(1). If a public official makes personal use of the agency's resources on two or more occasions, the multiple violations will be combined into the charge of one violation with each additional personal use of the resource being counted as an equivalent action.

(d) The source that provides a public official with paid expenses for an event defined in ORS 244.020(6)(b)(F) or with honorarium defined in 244.020(7) could violate 244.100 each time the source fails to provide a written notice to the public official as to the value of the paid expenses. If a source fails to notify two or more public officials, who participated in the same event, the multiple violations will be combined into the charge of one violation with each additional failure to notify being counted as an equivalent action.

(e) Each time a public official is met with a conflict of interest, as defined in ORS 244.020(1) or (12), and fails to disclose the nature of the conflict the public official could violate 244.120. If a public official, under similar circumstances, fails to disclose the nature of the same conflict of interest on two or more occasions, the multiple violations will be combined into the charge of one violation with each additional failure to disclose the nature being counted as an equivalent action.

(2) When two or more single violations are charged as one violation, each additional violation by this rule will be counted as equivalent acts. Each of the equivalent acts will be identified as an aggravating factor and included in the calculation of any assessment of a civil penalty or forfeiture that would constitute a sanction as set out in OAR 199-001-0015.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.290, 244.350, 244.370, 244.390

Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

## **199-001-0015**

### **Oregon Government Ethics Commission Guidelines on Sanctions**

(1) The Commission will identify alleged violations of statutes or rules within the Commission's jurisdiction during the preliminary review phase or by preliminary finding of violations at the end of an investigative phase. This rule will standardize the method for setting sanctions to be imposed when a matter before the Commission is to be concluded by a stipulated final order, final order or a final order by default.

(2) TABLE A lists the factors that the staff and Commission may consider as mitigating or aggravating any violation of Oregon Government Ethics law in ORS Chapter 244, Oregon Lobbying Regulation in ORS Chapter 171 or the executive session provisions in ORS 192.660. [Table not included, See ED. NOTE]

(a) Points will be assigned from the factors listed in TABLE A. A total of the points assigned will be calculated.

(b) The total of the points assigned from TABLE A will be applied to TABLE B to determine the type and severity of any sanction imposed.

(A) If the point total indicates a civil penalty, TABLE B will be used to determine the percentage of the maximum civil penalty that may be imposed.

(B) If forfeiture is available as a sanction, TABLE B will be used to determine the percentage of the maximum forfeiture that may be imposed.

(3) If there are aggravating or mitigating factors that are not listed on TABLE A, the director will prepare a summary of those factors for the Commission to consider. This method will not limit the Commission's authority to exercise its discretion to deviate from the calculated sanctions from TABLE B and modify the civil penalty or the forfeiture.

(4) This rule does not apply in cases where the sanction is limited under ORS 244.280, 244.282, 244.284, 244.320 or 244.350(2)(b). This rule also does not apply to sanctions imposed by the Commission for the late filing of reports required by ORS 244.050(2) to (4) or 171.752.

[ED. NOTE: Table referenced is available from the agency.]

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.290, 244.350, 244.370, 244.390

Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

## **199-001-0020**

### **Settlement**

(1) The Oregon Government Ethics Commission encourages the settlement of a case by stipulated final order. As used in this rule, a stipulated final order is an agreement between the Commission and the party which resolves all of the issues pending in the matter.

(2) The stipulated final order shall be in writing and shall be signed by the person who is the subject of a complaint or against whom an investigation has commenced or by the attorney representing such person, if any, before being submitted to the Commission.

(3) The stipulated final order shall contain a short and plain:

(a) Statement of the nature of the complaint and the basis of the jurisdiction of the Oregon Government Ethics Commission;

(b) Statement of all agreed facts and of all facts, if any, that are not agreed;

(c) Statement of the terms of settlement;

(d) Statement that both the commission and respondent have had an opportunity to seek the advice of counsel;

(e) Statement of the effect of the agreement including that it is subject to final approval of the Government Ethics Commission, and that it is binding upon both parties and that the respondent waives the right to a contested case hearing and waives the right to judicial review.

(4) The stipulated final order is a final order of the Commission.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.260

Hist.: EC 1-1993, f. & cert. ef. 4-22-93; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

### **199-001-0030**

#### **Advisory Opinions**

(1) The Oregon Government Ethics Commission may, upon the written request of any person, or upon its own motion, issue opinions on the requirements of ORS Chapter 244 and of ORS 171.725 to 171.785.

(2) The Oregon Government Ethics Commission will issue an Advisory Opinion based on real or hypothetical facts or circumstances but not upon actual events that have already occurred.

(3) The Oregon Government Ethics Commission shall issue an Advisory Opinion only after approval from a majority of Commissioners at a regular meeting of the Commission.

(4) An Advisory Opinion shall contain:

(a) A short and plain statement of the real or hypothetical facts or circumstances on which it is based;

(b) Relevant statutes;

(c) A short and plain statement of the question presented;

(d) A short and plain statement of the opinion of the Commission based on the real or hypothetical facts in answer to the question. The opinion of the Commission may cite relevant statutes of the State of Oregon, opinions of the Oregon appellate courts, opinions of the Attorney General of Oregon, and previous opinions of the Oregon Government Ethics Commission;

(e) A typed notice in uppercase letters not less than 10 point that states the following:

"THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS COMMISSION PURSUANT TO (INSERT ORS 171.776 OR 244.280). A PERSON SHALL NOT BE LIABLE UNDER (INSERT ORS CHAPTER 244 OR ORS 171.725 TO 171.785) FOR ANY GOOD FAITH ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN".

(5) All draft Advisory Opinions shall be reviewed and signed by the Commission's legal counsel before being submitted to the Commission for adoption.

(6) When issued, an Advisory Opinion shall be assigned a sequential number. Thereafter, the Opinion may be cited as "Oregon Government Ethics Commission Advisory Opinion No. \_\_\_\_\_".

(7) An Advisory Opinion of the Oregon Government Ethics Commission shall have precedential effect. A person shall not be liable under ORS Chapter 244 or under 171.725 to 171.785 for any good faith action or transaction carried out according to an Advisory Opinion of the Oregon Government Ethics Commission.

(8) In addition to an Advisory Opinion of the Oregon Government Ethics Commission, the Director may issue informal written opinions of the staff on actual or hypothetical facts or circumstances when requested by any person. The informal written opinion of the Director shall have no precedential effect and the Oregon Government Ethics Commission shall not be bound by any informal written opinion of the Director. The opinion of the Director shall be clearly labeled as such and that it is not issued under authority of the Commission, but is only the informal opinion of the Director. At the next regular meeting of the Commission, all informal written opinions of the Director shall be reported to the Commission and the Commission on its own motion may thereafter issue an Advisory Opinion of the Commission on the same facts or circumstances.

(9) The issuance of an advisory opinion by the Oregon Government Ethics Commission is at its discretion and the failure of the Commission to issue an Advisory Opinion shall have no precedential effect.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.280(3), 244.282 & 244.284

Hist.: EC 1-1993, f. & cert. ef. 4-22-93; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 4-2010, f. & cert. ef. 8-4-10; GEC 1-2016, f. & cert. ef. 6-1-16

## **199-001-0035**

### **Criteria and Procedures for Exercise of Prosecutorial Discretion**

(1) The purpose of this rule is to establish how the Commission uses prosecutorial discretion to decide whether to proceed with an inquiry of a potential violation of ORS Chapter 244, 171.725 to 171.785 or 192.660 (collectively, matters within the Commission's jurisdiction).

(2) All complaints from members of the public concerning alleged violations of matters within the Commission's jurisdiction shall be submitted to the Commission's staff in writing and signed with the person's true name. No anonymous complaints or oral complaints will be accepted. The Director shall review each complaint to determine if the matters alleged come within the Commission's jurisdiction, if the matters alleged occurred within four years of the date the complaint was submitted, and if the complaint contains enough specific information to warrant further review. If the Director determines that the complaint contains allegations without any corroborative information, the Director shall, within 10 days of the complaint's receipt, notify the person filing the complaint that the complaint lacks sufficient information to warrant further

review. If the Director is able to determine the nature of additional information that would enable the Commission to pursue the matter, the person filing the complaint shall likewise be also notified.

(3) The Director shall submit all complaints that meet the requirements of subsection (2) to the Commission to be acted upon within the time lines established by law. In addition, the Director or any member of the Commission may propose that the Commission initiate a preliminary review based on information received from objective sources, such as media accounts or information obtained from the Commission's own records or from other public agencies that indicates that a violation within the Commission's jurisdiction may have occurred.

(4) The Commission shall consider fully all matters presented for preliminary review, or initiated by the Commission's own motion, to determine whether there is "cause" to investigate the matter, as that term is defined in 244.260(13)(a). Following the investigation phase, the Commission shall move a matter to a contested case hearing when the Commission determines that the information presented is sufficient to make a preliminary finding of violation of a statute or statutes within the Commission's jurisdiction. All matters before the Commission may also be settled, at any point in the proceedings, in compliance with OAR 199-001-0020. No settlement negotiated by the Director shall be binding on the parties unless approved by the Commission by motion and vote.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.290(5)(d)

Hist.: GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

## **199-001-0040**

### **Exercise of Prosecutorial Discretion in Enforcement of ORS 244.040(1)**

(1) In addition to the criteria described in OAR 199-001-0035 for the exercise of prosecutorial discretion in all matters subject to the Commission's jurisdiction, this rule describes criteria for the exercise of prosecutorial discretion in enforcement of ORS 244.040(1) when the receipt of financial benefit or avoidance of financial detriment is minimal and does not substantially conflict with the purposes of ORS Chapter 244.

(2) The Commission will not proceed following investigation to move a matter to a contested case proceeding for a violation of ORS 244.040(1) in the following circumstances:

(a) If it appears to the Executive Director that a complaint filed with the Commission involves only allegations that fall within one of the exceptions, the Director need not submit the matter to the Commission.

(b) If sufficient information is available prior to the conclusion of the investigatory phase to determine that the alleged violation falls within one of the exceptions, the matter may be dismissed at any earlier stage of the proceeding.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.290 & 244.040

Hist.: GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10