

Suggested language changes in **bold**.

§ 1227. INVESTIGATIONS

(a) Power to investigate. The Commission, through its Executive Director, may investigate public servants for alleged unethical conduct. The Commission may investigate either without receiving a complaint or after being referred a complaint to the Commission pursuant to section 1223 of this title.

Comment: Where complaints are not accepted by the Commission for investigation but are instead referred to other relevant entities for further action, the Commissions suggest adding language requiring the relevant entity to consult with the Ethics Commission on the portions of the complaint that relate to the Sate Code of Ethics. This would help with consistency in the application of the Code and help alleviate fears held by some complainants about the impartial handling of complaints filed with the Commission and referred to their home agency for investigation and enforcement.

For example, under §1223(b), add language such as: **“Where a complaint is referred to a relevant entity for further action, the relevant entity shall consult with the Ethics Commission regarding the application of the State Code of Ethics to facts presented in the complaint.”**

§ 1227. INVESTIGATIONS

(new) “Parties” means the Respondent, Complainant, and the Commission during an investigation or hearing pursuant to § 1227 et seq.

Comment: Suggest defining “parties” for clarity.

§1227(b). INVESTIGATIONS

(b) Executive Director and Chair must agree. The Commission shall only initiate an investigation upon the agreement of the Executive Director and the Chair of the Commission.

(b) Executive Director **to notify Commission** and Chair must agree. ~~The Commission shall only initiate an investigation upon the agreement of the Executive Director and the Chair of the Commission.~~ **The Executive Director may initiate an investigation upon receipt of a complaint, or upon reasonable suspicion that a violation of the Code of Ethics has occurred. The Executive Director must notify the Commission of any investigation that is opened.**

Comment: This could be unintentionally restrictive to the flow of work and potentially burdensome for the Chair. Alternatives include notifying the Chair, or agreement of a majority of the members of the Commission present at a meeting where the decision to investigate is presented by the Executive Director.

§1227(g). INVESTIGATIONS

(g) Timeline of investigation. An investigation shall conclude within ~~three~~ **six** months **from** either the date of the complaint received or, in the event no complaint was received, the date of the investigation's initiation by the Executive Director, ~~whichever is earlier.~~

Comment: TJ – do you have the explanation for this involving the 30 days etc..I think you can explain this better than I could.

§1227(i). INVESTIGATIONS

(i) Determination after investigation.

(1) Upon investigating the alleged unethical conduct, if the Executive Director determines that an evidentiary hearing is warranted, ~~and the Chair of the Commission agrees,~~ the Executive Director shall notify the Commission and prepare an investigation report specifying the public servant's alleged unethical conduct, a copy of which shall be served upon the public servant and any complainant, . . .

Comment: See comments above re agreement of the Chair.

§ 1229 (b) (4) WARNINGS; REPRIMANDS; RECOMMENDED ACTIONS

(new) (4) Notwithstanding any of the subparagraphs above, the Executive Director and a Respondent may enter into an agreement, in writing, at any point in time that includes an agreed course of action for the Respondent.

Comment: Suggest adding the above language, or other similar language, so that the Commission can offer conciliation or mediation services at any stage of the process, including immediately after the receipt of a complaint.

§ 1230 (c) PROCEDURE; RULEMAKING

(c) Waiver of rules. To prevent unnecessary hardship, delay, or injustice, or for other good cause, a vote of two-thirds of the Commission's members **present and voting** may waive the application of a rule upon such conditions as the Chair may require, unless precluded by rule or by statute.

Comment: Suggest adding the above language to facilitate the flow of work.

§ 1230 (d) PROCEDURE; RULEMAKING

(d) Subpoenas and oaths. The Commission shall have the power to issue subpoenas and administer oaths in connection with any investigation or hearing, including compelling the provision of materials

or the attendance of witnesses at any investigation or hearing. The Commission may take or cause depositions to be taken as needed in any investigation or hearing.

(d) Subpoenas and oaths. The Commission and **its staff** shall have the power to issue subpoenas and administer oaths in connection with any investigation or hearing, including compelling the provision of materials or the attendance of witnesses at any investigation or hearing. The Commission **and its staff** may take or cause depositions to be taken as needed in any investigation or hearing.

Comment: Suggest adding the above clarifying language to facilitate the flow of work.

Sec. 20. EFFECTIVE DATES¹⁶

This act shall take effect on passage

Comment: We may need some additional time to prepare for all the new responsibilities.

§ 1231 (b) (4) (new)

Notwithstanding the above, a Respondent may waive his or her right to confidentiality with respect to the investigation at any time, at which point the investigative file will be subject to the Public Records Act. Thinking about this one a bit more.