

ETHICS COMMISSION
STATE OF OKLAHOMA

DISPOSITION BY COMMISSION

RULE AMENDMENT

No. 5

(Date)

Mr. Chairman:

I agree to sponsor Ethics Commission Rule No. 257:1-1-5(c), 257:1-1-6(h), 257:30-1-3(f) and (g), and 257:30-1-6 as follows:

257:1-1-5. Conflicts of interest

~~(c) — **Replacement.** The Chief Justice of the Supreme Court shall appoint a member of the Court on the Judiciary to replace any member of the Commission who disqualifies himself or who is disqualified pursuant to the provisions of this section to serve with respect to that particular proceeding only. The Executive Director of the Commission shall notify the Chief Justice in writing of any such disqualification. Such notice shall be confidential and not open for public inspection.~~

257:30-1-3. Investigations

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~~(f) Prior to a determination to initiate a complaint under Section 4 of this chapter, no person who has provided information to the Commission or has knowledge that the Commission is undertaking an investigation shall disclose:~~

- ~~(1) — his knowledge that an investigation has been undertaken;~~
- ~~(2) — any information he obtains as a result of having submitted information or interacted with the Commission in connection with a particular investigation; or~~
- ~~(3) — the fact that he testified to or filed information with the Commission, or otherwise participated in the Commission investigation.~~

~~If a person, who has provided or intends to provide or file with the Commission any information alleging a violation of this Title, publicly discloses such intent or action, the Respondent shall be notified, in writing by certified mail, that the Respondent may either keep the matter confidential pursuant to Section 6 of this Chapter or waive confidentiality with respect to the final action of the Commission in the matter; provided, such waiver shall be made in writing to the Commission within twenty (20) days of the receipt of notice described in this subsection. The Respondent's waiver, once received by the Commission, may not be amended or rescinded.~~

~~(g) If the Respondent discloses the contents of an information or the fact that an information has been filed against him or her, any provisions of this Chapter prohibiting disclosure of the information by the Commission may be waived and the information and written correspondence between the Respondent and the~~

Commission's staff or independent contractors may, in the discretion of the Commission, be open for public inspection.

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257:30-1-5. ~~Settlement agreements~~ Resolution of investigations other than by complaints

(a) The Commission may resolve any possible violation of this chapter by the following:

- (1) after prior notice and an opportunity to be heard, issuing a private reprimand to the Respondent for an inadvertent violation;
- (2) after prior notice and an opportunity to be heard, issuing a public reprimand to the Respondent;
- (3) electing to enter into a settlement agreement.

~~A public reprimand and a settlement agreement shall be a matter of public record.~~

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257:30-1-6. Public inspection or confidentiality of actions and records relating to alleged violations

(a) **Confidential Commission actions and records.** The following Commission actions and records are confidential and not open for public inspection:

- (1) information received from any source alleging violations of this title, except as may be filed in district court. The Commission may refer to such matters on the public agenda by the internal matter number assigned by the Commission or its employees or independent contractors rather than by the name of the individual accused of an ethics violation;
- (2) deliberations which shall include discussion of ethics interpretations, investigations, complaints, settlement ranges or settlement offers, decisions, ~~and~~ recommendations, and discussions on pending litigation, all of which shall be held in executive sessions of the Commission; ~~and~~
- (3) ~~records and materials obtained or work products prepared by the Commission, its employees or independent contractors in connection with an investigation or complaint~~ confidential communications between the Commission and its attorney or attorneys concerning a pending investigation, claim, or action if the Commission, with the advice of its attorney or attorneys, determines that disclosure will seriously impair the ability of the Commission to process the claim or conduct a pending investigation or litigation in the public interest; and
- (4) ~~communications between the Executive Director of the Commission and the Chief Justice in writing pertaining to the disqualification of a member of the Commission pursuant to Section 5 of Chapter 1 of this title;~~ ~~and~~
- (5) ~~private reprimands for inadvertent violations.~~ The Commission shall within 10 days of issuance, publish private reprimands without the name of the subject or subjects of the private reprimands.

(b) **Commission actions and records open for public inspection.** The following Commission actions and records are open for public inspection:

- (1) Public reprimands;
- (2) Settlement agreements;
- (3) Names of respondents and allegations contained in any complaint initiated by the Commission and any other information as may be filed in district court; and
- (4) Names of respondents and allegations contained in any record transmitted by the Commission to a law enforcement agency, officer, or prosecuting authority.

(c) **Disclosure to a respondent or law enforcement authority.** Notwithstanding Subsection (a) of this section, the record of a matter that is the subject of an investigation shall be disclosed upon written request to:

- (1) a Respondent or the subject of an investigation, or the attorney for a Respondent or subject of an investigation; provided that disclosure of the record to the Respondent or the subject of an investigation or to an attorney for a Respondent or subject of an investigation record shall be limited to a copy of the complaint, a copy of all statements made by the Respondent, a copy of all sworn statements by persons other than the Respondent, and any and all exculpatory evidence; or
- (2) a law enforcement ~~commission~~ agency, officer, or prosecuting authority to fulfill the purposes of this title.

~~(c)~~ (d) **Disclosure when necessary in investigation.** Notwithstanding Subsection (a) and (b) of this section, a record or any part of a record may, in the discretion of the Commission, be disclosed ~~upon written request~~ when necessary in the course of an investigation to such persons as are material to the investigation.

~~(d)~~ (e) **Disclosure by staff or independent contractor in investigation.** Notwithstanding anything in this section, an employee or independent contractor of the Commission may, when necessary in the course of an investigation, disclose a record or any part of a record to such persons as are material to the investigation.

~~(e)~~ (f) **Disclosure upon referral for prosecution.** Notwithstanding anything in this chapter, a record or any part of a record containing information indicating that a violation of ~~criminal~~ law, whether state or federal, has occurred or may have occurred, may be transmitted to a law enforcement ~~commission~~ agency, officer, or prosecuting authority.

Submitted by

Commissioner Bob McKinney

Explanation: This amendment in 257:1-1-5(c) removes replacement of a commissioner by the Chief Justice of the Supreme Court as unconstitutional; in 257:30-1-3(f) & (g) removes restrictions on informants and witnesses speaking of informations or names of respondents; in 257:30-1-5(a), removes language making public reprimands and settlement agreements public records; and in 257:30-1-6 retains restrictions on Commissioners and Commission staff to keep informations

confidential until filed as complaints in district court or referred to a law enforcement agency, officer, or prosecuting authority; repeals restrictions on communications between the Executive Director and the Chief Justice on disqualification of Commissioners; and makes open record public reprimands, settlement agreements, complaints, and referrals.

Purpose: The purpose of this amendment is to conform the Rules to current case law regarding the constitutionality of rules on confidentiality of Commission actions and records.

Person requesting amendment: This amendment was requested by Chairman Raley.

Promulgated June 19, 2009 by unanimous vote of the Ethics Commission

RESOLUTION

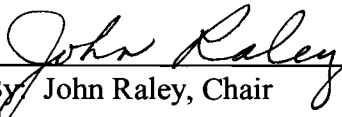

WHEREAS, the Ethics Commission has studied developments in the law regarding first amendment rights, open records and open meetings; and

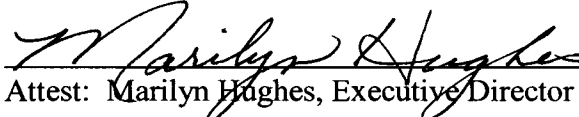
WHEREAS, the existing Rules were written in the 1990's; and

WHEREAS, amendments to the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Ethics Commission of the Rules of the Ethics Commission, 74 O.S. Supp. 2009, Ch. 62, App.], at Sections 257:1-1-5(c), 257:30-1-3(f) and (g) and 257:30-1-6 have been promulgated bringing these Rules more closely into compliance with current law;

NOW, THEREFORE, the Commission hereby adopts this Resolution and expresses its intent not to enforce the current language of the Sections of the Rules cited above until the Legislature has the opportunity during the 2010 legislative session to review this promulgated amendment.

Dated this 19th day of June, 2009.


By John Raley, Chair



Attest: Marilyn Hughes, Executive Director

