

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
July 11, 2019**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present included Katherine Noel, Chairperson; Sue Anne Gilroy; Priscilla Keith; Corinne Finnerty; and Kenneth Todd (arriving at 10:15am). Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Kelly Elliott, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Darrell Boehmer, Director of Investigations, Office of Inspector General; and Cynthia Scruggs, Director of Administration, Office of Inspector General.

Others present were Gary Haynes, Chief of Staff, Board of Animal Health; Dr. Bret O. Marsh, State Veterinarian, Board of Animal Health; David Bough, Director of Meat and Poultry Inspection, Board of Animal Health; Stephanie Mullaney, Deputy Attorney General, Attorney General’s Office; Deana Smith, Staff Attorney and Ethics Officer, Indiana State Department of Health; Chris Kulik, Staff Attorney, Indiana State Department of Health; Sarah Kamhi, Assistant General Counsel, Department of Revenue; Nicholas Broderick, Intern, Department of Revenue; Rachel Russell, Deputy General Counsel and Ethics Officer, Department of Child Services; Elizabeth Polleys Burden, Associate General Counsel, Department of Workforce Development; Olajumoke Adeyeye, Legal Intern, Department of Workforce Development; James French, Ethics Officer, Indiana Department of Environmental Management; Matthew Mikkell, Compliance Ethics Specialist, Department of Revenue; Mya Parker, Inspector General Intern, Department of Revenue; Zach Yavger, Investigations Intern, Department of Revenue; Amber Nicole Ying, Special Counsel, Compliance and Ethics, Department of Revenue; Funmi Bab-Oke, Ethics and Compliance, Department of Revenue; Daniel Spears, Meat and Poultry Inspector, Board of Animal Health; Shilang Chen, Legal Intern, Department of Workforce Development; Macey Shamberg, Legal Intern, Management Performance Hub; Erika Steuerwald, Attorney, Indiana State Department of Health; Josh Ganninn, Associate Commissioner, Commission for Higher Education; and, Alecia Nafziger, CFO, Commission for Higher Education.

II. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the Agenda and Commissioner Keith seconded the motion which passed (4-0). Commissioner Gilroy moved to approve the Minutes of the May 9, 2019 Commission Meeting and Commissioner Keith seconded the motion which passed (4-0).

III. Inspector General’s Report

Inspector General Torres presented a report on the second quarter of 2019. She reported the following: The OIG received 92 requests to investigate, and of these 92 requests, 19 new cases were opened. The OIG also closed 12 investigations. The office received 76 requests for informal

advisory opinions. The office issued 71 informal advisory opinions in an average of 1.24 days for each opinion. The OIG also made 18 recommendations.

Inspector General Torres reported that the Auditor & Investigator Conference on Tuesday, June 4th from was a success with 215 attendees. The speaker for the event was the CEO from Reid Investigations and there was very good feedback from the attendees. The feedback was so good that there is now a plan to host a three-day training conference with trainers from Reid Investigations. This is set to be held in October 2019 and will require attendees to pay for attendance.

Finally, Inspector General Torres summarized the Inspector General's Annual Report which was issued prior to this month's SEC meeting.

From the IG Report, for the 2020 Budget:

- The IG budget increased by 3.3%.
- The SEC budget decreased by ~75% due to decreased cost of payments to Commissioners.
- The reversion of the budget was \$11,700.
- Reserve reduced to 1% (was previously 2%).
- Dedicated fund has shifted so that now conferences hosted by the IG's office are free to attend.

Inspector General Torres took questions from the Commissioners. Regarding a question about the lower amount of closed investigations, she reported this is not a staffing issue (as all positions have been filled), but is more likely due to the amount of investigations and how complicated the investigations are. When asked if there are any "red flags" in the IG Report, Inspector General Torres indicated she had no matters which she was worried about.

IV. Consideration of BOAH Waiver of Post-Employment Restrictions for Daniel Spears

Dr. Bret Marsh, BOAH State Veterinarian, and Gary Haynes, BOAH Chief of Staff and Ethics Officer, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Keith seconded the motion which passed (5-0).

V. Request for Formal Advisory Opinion

2019-FAO-0012

Harold Gil, Informatics Director,

Epidemiology Resource Center

Deana M. Smith, Attorney/Ethics Officer

Indiana State Department of Health

Harold Gil is a state employee with the Indiana State Department of Health (ISDH). Deana Smith serves as ISDH's Ethics Officer and has submitted a Formal Advisory Opinion request on behalf of Mr. Gil.

Mr. Gil is an ISDH employee who is seeking part-time employment as a contractor for the Marion County Public Health Department (MCPHD). The opportunity is a position as a part-time computer programming contractor for MCPHD with work hours outside of his normal ISDH work hours. The funding for the contract position is from a Centers for Disease Control (CDC) grant that is not in any way affiliated with ISDH.

Mr. Gil is the Informatics Director for ISDH's Epidemiology Resource Center. His job is to ensure that ISDH is getting the patient information that it needs from emergency departments, labs and local health departments. He is also responsible for overseeing drug and opioid use disorder surveillance being performed by his team. He has no authority to make significant decisions that will benefit MCPHD.

In March, Mr. Gil was involved in a recent grant awarded to MCPHD. His involvement was limited to receiving and forwarding MCPHD's proposed budgets and associated activities to Eric Hawkins, the grant's Project Director for ISDH, and incorporating those associated MCPHD activities into the grant application. From there, Mr. Hawkins and Irene Jameson, an ISDH Project Manager, decided which MCPHD budget option was accepted. Mr. Gil did not have any influence or authority over the grant award.

Based on the information presented, ISDH believes that Mr. Gil's part-time employment is not incompatible with his duties at ISDH nor does it require recusal from his official responsibilities. Furthermore, in his role as the Informatics Director, he is not in a position to participate in any decisions or votes or other matters related to a decision or vote where MCPHD would have a financial interest.

Mr. Gil knows and understands that if permitted to pursue this outside part-time employment opportunity, the Code still applies. He understands and agrees to abide by the Code, specifically the rules governing conflicts of interest, ghost employment, use of state property and confidential information.

Mr. Gil received an informal advisory opinion from the Office of Inspector General in August 2018. The informal advisory opinion included an advisement to study the applicability of the screening and disclosure requirements in IC 4-2-6-9(b). Because Ms. Smith determined that Mr. Gil does not have any influence or authority over the award of grants, ISDH and Mr. Gil did not pursue that process.

Given that Mr. Gil's potential part-time employer, MCPHD, has a business relationship with ISDH, Ms. Smith, on behalf of Mr. Gil, seeks a formal advisory opinion regarding whether he may accept the part-time employment opportunity without violating IC 4-2-6-10.5 and its prohibitions against an employee knowingly having a financial interest in a contract made by a state agency. ISDH also seeks a formal advisory opinion regarding the applicability of IC 4-2-6-5.5, 4-2-6-9, and the criminal conflict of interest statute set forth in IC 35-44.1-1-4.

The advisory opinion stated the following analysis:

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his or her official duties that his or her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities since it views them as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Ms. Smith, ISDH's Ethics Officer, provides that Mr. Gil's part-time employment with MCPHD is not incompatible with his ISDH duties, nor does it require recusal from any of his official responsibilities. Besides Mr. Gil's recent limited involvement in a grant awarded to MCPHD, he is not involved in any matters in which MCPHD would have a financial interest.

The Commission confirmed that Mr. Gil understands that he is prohibited from disclosing confidential information he gained from ISDH in his position with MCPHD and that he must not use or attempt to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Accordingly, the Commission finds that the employee's outside employment with MCPHD would not violate IC 4-2-6-5.5.

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Gil from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Mr. Gil from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which he is serving as an employee has a financial interest in the matter. The definition of "financial interest" in IC 4-2-6-1(a)(11) includes, in part, "an interest arising from employment".

Mr. Gil currently works as the Informatics Director for ISDH's Epidemiology Resource Center and is seeking to work part-time as a computer programming contractor for MCPHD.

Accordingly, he would be prohibited from participating in any decisions or votes, or matter relating to those decisions or votes, in which MCPHD would have a financial interest in the outcome.

Ms. Smith provides that Mr. Gil's ISDH responsibilities do not include having any influence or authority over the award of grants or other matters in which MCPHD would have a financial interest in the outcome.

Accordingly, the Commission finds that a potential conflict of interests has not been identified at this time. If, however, Mr. Gil's circumstances change and a potential conflict of interests is identified in the future, he must follow the disclosure requirements in IC 4-2-6-9(b), including notifying ISDH's appointing authority and seeking an advisory opinion from or filing a written disclosure statement with the Commission.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Mr. Gil's part-time outside employer, MCPHD, has a business relationship with ISDH through which MCPHD has a grant agreement with ISDH; however, Ms. Smith provides that Mr. Gil's compensation is not related to this agreement. The funding source for his contract position is from a CDC grant that is not in any way affiliated with ISDH.

Accordingly, the Commission finds that Mr. Gil does not have a financial interest in a state contract at this time through his position at MCPHD and would not be in violation of this rule.

D. Criminal conflict of interests statute

In the Formal Advisory Opinion request, Ms. Smith also asked whether IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency, would apply to Mr. Gil's circumstances.

IC 35-44.1-1-4 is the criminal statute that prohibits any public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract/purchase connected with an action by the agency served by the public servant. The statute contains certain exceptions in subsection (c). One of these exceptions applies to an individual who obtains written approval from the Commission that the individual will not or does not have a

conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission confirmed with Ms. Smith that Mr. Gil does not have a pecuniary interest in any contract with the agency he serves (ISDH), as the salary he will receive for his part-time employment at MCPHD is not derived from any ISDH or other state contracts.

Accordingly, this opinion serves as written approval from the Commission that the employee does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

E. Confidential information

Mr. Gil is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Mr. Gil from accepting any compensation from any employment, transaction or investment which is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Mr. Gil is exposed to or has access to such confidential information in his position with ISDH, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including his outside employer, in any manner.

F. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Mr. Gil from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits Mr. Gil from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

To the extent that Mr. Gil observes these provisions in his employment with MCPHD, such outside professional activity would not violate these ethics laws.

The Commission found that that the employee’s outside employment would not be contrary to the Code of Ethics.

Commissioner Keith moved to approve the Commission’s findings for outside employment, and Commissioner Gilroy seconded the motion which passed (5-0).

VI. Rulemaking Presentation

Title 40

Kelly Elliott, Staff Attorney

Tiffany Mulligan, Chief Legal Counsel

Indiana Office of Inspector General

Indiana Office of Inspector General Staff Attorney Kelly Elliott and Chief Legal Counsel Tiffany Mulligan presented a brief introduction to the rule promulgation of Title 40, Article 2 of the Indiana Administrative Code. The Commission is not being asked to vote on the proposed rule at this meeting.

Attorney Mulligan briefly outlined that Title 40, Article 2 of the Indiana Administrative Code (IAC) outlines the procedures for the Indiana State Ethics Commission (SEC). The SEC has the statutory authority to promulgate rules under IC 4-2-6-4(a)(5). OIG is currently in the process of revising 40 IAC 2 for adoption by the SEC. In the revised rules, OIG proposes repealing several sections of the rules that are repetitive or unnecessary and revising several sections that are contrary to other Indiana statutes or administrative code rules. The proposed rules will provide the procedures for how the SEC will conduct public meetings, issue formal advisory opinions, and enforce the Code of Ethics. The reason for the revisions are that the SEC last readopted 40 IAC 2 in 2013 and all administrative rules expire after seven years; therefore, the rules are set to expire on January 1, 2020.

Attorney Elliot then covered what next procedural steps would be: The OIG began the process of revising the rule in January of this year and is scheduled to hold a public hearing on July 25 to receive public comments on the proposed rules. The OIG will consider any comments received on the rules. Thereafter, the OIG plans to submit the proposed rules to the SEC for adoption at the August 8 meeting. Changes can be made to the proposed rule as it is currently published at the Indiana Register based on comments that may be received, but any changes must be a logical outgrowth from the proposed rule as it is published at this time. Should the SEC adopt the proposed rules at the August 8 meeting, the OIG will submit the rules to the Office of Attorney General and Governor's Office for final approval. OIG estimates that the proposed rules will become effective on November 8, 2019.

VII. Consideration of Final Report

In the Matter of Jada Mocabay

Case Number 2018-08-0233

Heidi Adair, Staff Attorney

Office of Inspector General

State Ethics Director Jen Cooper presented the Final Report draft to the Commission for their approval, reminding them that they had approved the settlement agreement in this case at their May meeting and that the Final Report would be the final disposition in this case.

Commissioner Noel moved to approve the Final Report and Commissioner Gilroy seconded the motion which passed (5-0).

VIII. Director's Report

State Ethics Director Jen Cooper stated that since the last Commission meeting, the Office of Inspector General had issued 55 informal advisory opinions on the subjects of post-employment restrictions, outside employment, and gifts. Ms. Cooper also announced that the Office of Inspector General has hired a new Legal Assistant. Finally, Ms. Cooper conveyed that new Ethics Training is being worked on would be coming by fall 2019. The training will be accessed online.

IX. Adjournment

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission and Commissioner Finnerty seconded the motion, which passed (5-0).

The public meeting adjourned at 10:44 a.m.



STATE OF INDIANA
OFFICE OF THE TREASURER
INDIANAPOLIS
46204

KELLY M. MITCHELL
TREASURER OF STATE

IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Office of the Indiana Treasurer of State, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Troy Montigney in his post-employment with Ascensus, LLC.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of
(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. (Please provide a brief description of the specific particular matter(s) to which this waiver applies below):

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

As Executive Director of the Indiana Education Savings Authority (IESA), the employee had substantial decision-making authority of policies, rules, and contracts, but did not have ultimate approval or signatory authority on any of them. That power is vested with the IESA Board of Directors (Board). The employee was hired by the Board, as the manager (IC 21-9-4-4), and fulfilled his delegated duties and obligations at the direct request of the Board and its chair, the Treasurer of State. The manager's statutory duties relate to the keeping of official Board records (see IC 21-9-4-10). The power to contract is vested with the Authority (IC 21-9-3-5), and the power to retain professional services is specifically granted to the Board (IC 21-9-4-7(3)). The Board's adopted bylaws vest the power to approve, bind IESA, and sign all contracts with the Board and the Board chair/vice chair (IESA Bylaws Article VI, Section 6.1, 6.2).

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

The employee will be a Vice President of Relationship Management for Ascensus. He will be responsible for management and support of state clients (not Indiana) who run Section 529 plans similar to, but completely separate and distinct from, Indiana's CollegeChoice 529 program. The employee will not perform any job functions for Ascensus directly relating to Indiana's CollegeChoice 529 program nor his previous state position as Executive Director of the IESA.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

The employee will not perform any job functions for Ascensus directly relating to the IESA's contract with Ascensus or his previous state position. There will be no substantial contact and no pecuniary, business contact between the IESA and the employee's position with Ascensus. Indiana is and will continue to be assigned a different individual as its relationship manager at Ascensus.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

The employee is an expert in this field. In his new role, he will offer management and support to other plans and help them thrive. This will lead to progress in other parts of the 529 ecosystem which will ultimately help Indiana better its program through the collective mission all Section 529 plans strive to meet. The public interest is served by ensuring a talented individual stays engaged in providing direction and progress to the broader college savings community, a community that is by federal mandate, publicly run by state governments. There is no rational benefit to Indiana, any other state, nor the public in forcing this employee to seek employment outside the market he has helped shape.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

The national 529 ecosystem is extremely small and very technical. Denying the employee's request to work for Ascensus, one of only a handful of plan administrators in the industry, would nearly shut off any opportunity for his personal growth in the market in which he has built his career. This would have a substantial negative impact on this employee's future employment opportunities, as well as place a significant economic hardship on him and his family.

C. Signatures

1. Appointing authority/state officer of agency

By signing below, I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.

Ryan A. Locke
Ryan A. Locke (Appointing Authority)

7/8/19
DATE

2. Ethics Officer of agency

By signing below, I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).

Ryan A. Locke
Ryan A. Locke (Ethics Officer)

7/8/19
DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission

Katherine Noel, Chair, State Ethics Commission

Date

Mail to:

Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

OR

Email scanned copy to: info@ig.in.gov

Upon receipt you will be contacted with details regarding the presentation of this waiver to the State Ethics Commission.

INDIANA
OFFICE OF INSPECTOR GENERAL

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

TO: All Indiana Office of Inspector General employees and special state appointees

FROM: Lori A. Torres, Inspector General

DATE: August 8, 2019

SUBJECT: Policy on Limited Personal Use of State Property/Resources

I. PURPOSE

Effective July 1, 2015, IC 4-2-6-17 prohibits state employees and special state appointees from using state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the State Ethics Commission. This policy establishes guidelines for limited personal use of state property/resources by state employees and special state appointees of the Office of Inspector General. This policy was approved by the State Ethics Commission on August 8, 2019.

II. APPLICABILITY

This policy applies to all state employees and special state appointees of the Office of Inspector General. This policy replaces/rescinds any previous limited use policies adopted by the Office of Inspector General.

III. POLICY STATEMENT

The Office of Inspector General recognizes that state employees and special state appointees are responsible individuals who are the key to making government work for its citizens. It further recognizes that employees and special state appointees occasionally need to use state property/resources for emergencies and other infrequent personal activities that cannot reasonably be handled away from work. These activities might include communicating with schools, child-care providers, physicians and others. The Office of Inspector General believes that accommodating occasional and limited use of state resources provides a public benefit of attracting and maintaining a diverse, well-rounded workforce. Such limited, personal use of state

property/resources should not be considered a violation of the Indiana Code of Ethics.

The parameters of permissible use under this policy are as follows:

- 1) The use must not interfere with the performance of official duties and work responsibilities;
- 2) The use must be infrequent, of short duration and, unless not reasonably practical, made on the state employee's or special state appointee's personal time;
- 3) The use must not be for the purpose of conducting business related to an outside commercial activity;
- 4) The use must not be for an illegal activity;
- 5) The use must not be for a political purpose. A political purpose does not include handling or disposing of unsolicited political communications;
- 6) A state employee or special state appointee shall not make private use of any state property which has been removed from state facilities or other official duty stations, even if there is no cost to the State, unless otherwise approved.
- 7) The use must be in accordance with the current version of the Information Resources Use Agreement ("IRUA"). The restrictions in the IRUA apply to all Information Resources including, but not limited to, state hardware, software, data, information, network, personal computing devices, phones and other information technology;
- 8) The use must not violate any other ethics rules or agency policies;
- 9) Vehicle use by agency employees is governed by Section 156 (see Attachment 1) of the OIG Office Policies.

IV. COMPLIANCE

Directors, supervisors, and managers are responsible for monitoring the appropriate use of state property/resources within their areas of supervision and for referring matters for investigation and/or discipline. Employees and special state appointees who violate this policy are subject to disciplinary action.

V. LEGAL REFERENCE

42 IAC 1-5-12 Use of State Property
42 IAC 1-5-13 Ghost Employment
IC 4-2-6-17
IC 4-2-7-5

VI. EFFECTIVE DATE

Immediately

VII. ENDING DATE

Upon rescission

APPROVAL

Lori A. Torres
Inspector General

Date

Attachment 1

From the OIG Office Policies

§156 Vehicle Use Policy

Use of any vehicle, whether it be take home, personal vehicle used for state purposes, agency rental or agency owned vehicle, shall comport with the Indiana Department of Administration Vehicle Fleet Management Policy unless superseded by this section.

A pool car may be made available to those OIG employees who may need to travel as part of their job duties. If a pool car is unavailable, the employee may be asked to use the state's rental program or to drive their personally owned vehicle. Use shall be in accordance with the best value to the agency.

Special Agents and the Inspector General are required to travel statewide to perform their duties and are subject to callout 24 hours a day. The Inspector General and Special Agents may be assigned a take home vehicle for use in their duties.

Special Agents are expected to stop and render assistance when in their assigned vehicles when reasonably able. Consideration should be given, however, to safety of the Special Agent and any others in the vicinity, given that the agency's take home vehicles are not equipped with emergency lighting or other safety equipment.

Vehicles are to be used for assigned duties, including travel to and from duty stations, and for limited personal use. Limited personal use would include stops on the way to and from work assignments, during the course of the work day, as well as local use during off duty hours. Long distance recreational trips, trips out of state unless for state business, and similar uses that abuse the privilege of having a take home vehicle are not permitted. Take home vehicles shall not be used for commercial activity. Each Special Agent and the Inspector General shall also have a personally owned vehicle available for personal use. This policy recognizes the unique situation of the OIG which is a law enforcement agency requiring its Special Agents to travel across Indiana without the benefit of assigned districts.

To be exempt from taxation in unmarked vehicles, employees must be full time law enforcement officers, authorized to carry firearms, execute warrants and make arrests, and regularly carry firearms.

There is zero tolerance for alcohol or illegal drug use when operating any state owned or state rented vehicle or when driving a personally owned vehicle on state time or when performing state duties. The zero tolerance prohibits any usage, not just at levels that cause legal impairment. Likewise, any legal drugs that may impair a driver's ability are not permitted.

There is no smoking permitted in state owned vehicles, and seat belts are to be used at all times. Cell phone usage is discouraged, and texting is not permitted by law. All traffic laws and parking regulations are to be obeyed. Vehicles are to be locked and properly secured when unattended.

No passengers that are not state employees are permitted, except in accordance with the Vehicle Fleet Management Policy and other law enforcement needs and as otherwise set out herein. Law enforcement needs may include to render assistance to the public; police activities; to transport prisoners, suspects or witnesses; and to accompany other federal, state, or local law enforcement or inspector general staff. Occasional passengers that meet the limited personal use restrictions of take home vehicles are allowed.

July 29, 2019

Indiana Ethics Commission
315 W. Ohio St., Room 104
Indianapolis, IN 46202
info@ig.in.gov

RE: Request for Formal Advisory Opinion from the Indiana Ethics Commission

I am seeking clarification on my post-employment restrictions as they apply to providing contracted professional services to Indiana state government agencies as an employee of a private public relations, marketing and communications firm. I have received an offer to join Louisville-based C2 Strategic Communications, which is seeking to expand operations in Indiana.

In my 14 years with Indiana state government, I have served with two state agencies. I joined the Indiana Criminal Justice Institute as communications director in June 2017. During my time in this position, I helped negotiate and administer ICJI's advertising and event sponsorship contracts and requisitions, which are reimbursed with federal grant funds. I understand the 365-day "cooling-off period" and particular matter restrictions that apply to these contracts, which have not involved C2 Strategic in any way.

Prior to joining ICJI, I served nearly 12 years as a media relations director with the Indiana Department of Transportation. I served as a specialist with regard to job function and a generalist with regard to subject matter. I was involved at some level in any aspect of INDOT operations and programs that were of interest to the news media or would impact the public. This was either through direct interaction or indirectly through media-relations staff at INDOT's operational districts, which I directed starting in 2009.

While I was employed with INDOT, public-involvement and communications professional services were typically contracted for transportation improvement projects as part of larger environmental assessment or engineering design contracts. Final decision-making authority rested with the project manager and their chain of command.

At the time I left INDOT, the State of Indiana did not have any direct contracts with C2 Strategic. The company had a contract with the Commonwealth of Kentucky for the Louisville-Southern Indiana Ohio River Bridges Project. Starting in 2012, Indiana and Kentucky divided contracting responsibilities for the Bridges Project, and C2 Strategic was part of another Kentucky contract for marketing of the electronic tolling system. Both states collaborated on this initiative with final decision-making authority resting with a Tolling Body comprised of finance and transportation leaders appointed by the Indiana and Kentucky governors. The Bridges Project has now completed construction, but marketing of the electronic tolling system continues.

My involvement with these contracted professional-services providers, including C2 Strategic, included:

- Reviewing and approving draft communications materials for spelling, grammar and clarity;
- Providing advice on communications strategy, tactics and timing;
- Attending project planning meetings and conference calls; and
- Assisting with public meetings and press announcements.

INDOT projects generally follow a sequence of environmental assessment, engineering design, land acquisition (if needed) and then construction. The largest projects are typically divided into smaller contracts to maximize competition among bidders and proposers.

For example, development and construction of the Interstate 69 extension from Evansville to Indianapolis was divided into independent geographic sections. Starting in 2009, I was involved at some level in each section as it developed.

For I-69 Section 6 between Martinsville and Indianapolis, INDOT hired a public-involvement specialist who worked full-time on the project from April 2015 to December 2017 and was supervised by the project manager. I had transitioned most of my responsibilities described above to this specialist by the time the route for Section 6 was recommended for public input in March 2016.

By the time the draft environmental document for I-69 Section 6 was published in March 2017, INDOT also had hired a public affairs manager to service the agency's largest and most innovative road projects. His responsibilities included helping direct the work of the I-69 Section 6 public-involvement specialist.

All environmental studies continue to consider a no build alternative until the final environmental document is published and federal regulators approve the proposed project. In a few cases, this "do nothing" option is chosen in response to public comment.

The final environmental document for I-69 Section 6 was published and federal regulators approved it to move forward as a project in February 2018 after I had left INDOT. The environmental phase of the project is now completed, and since I left INDOT, new contracts have been procured for project development, land acquisition and construction inspection. C2 Strategic is a subcontractor on one of these new contracting teams to provide communications and public-involvement professional services.

The company would be looking for me to service this and other contracts and subcontracts with Indiana state government agencies.

Thank you for your consideration and for your public service as Ethics Commissioners. I look forward to answering any clarifying questions during the Aug. 8, 2019 Commission meeting.

Sincerely,



Will Wingfield
Communications Director
Indiana Criminal Justice Institute
101 W. Washington St., Suite 1170 E
Indianapolis, IN 46204
wwingfield1@cji.in.gov

Baker, Nathaniel P

From: Baker, Nathaniel P
Sent: Thursday, August 1, 2019 2:21 PM
To: Baker, Nathaniel P
Subject: FW: Request for Formal Advisory Opinion from the State Ethics Commission on behalf of Will Wingfield
Attachments: Request for Formal Advisory Opinion - Will Wingfield.pdf

From: Turner, Laura A
Sent: Monday, July 29, 2019 3:02 PM
To: IG Info <info@ig.IN.gov>
Cc: Cooper, Jennifer <JCooper@ig.IN.gov>; Wingfield, William T <WWingfield1@cji.IN.gov>
Subject: Request for Formal Advisory Opinion from the State Ethics Commission on behalf of Will Wingfield

Good Afternoon!

As Ethics Officer for the Indiana Criminal Justice Institute (“ICJI”), I submit this request for a Formal Advisory Opinion on behalf of ICJI employee Will Wingfield. Mr. Wingfield has been employed as the Communications Director of ICJI since June 2017. Prior to that, Mr. Wingfield was the Media Relations Director for the Indiana Department of Transportation (“INDOT”) for approximately 12 years. Mr. Wingfield recently received an offer from C2 Strategic Communications (“C2”), a private public relations, marketing, and communications firm. C2 has no contracts or any direct/indirect relationship with ICJI. Mr. Wingfield’s provides below two examples of projects involving INDOT and C2 that were furthest in development and planning. However, these examples are not an exclusive list of the work Mr. Wingfield completed while at INDOT.

1. **Ohio-River Bridges:** Indiana and Kentucky divided contracting responsibilities for the Ohio River Bridges Project. C2 was part of a Kentucky contract for the marketing of the electronic tolling system for the Bridges. Mr. Wingfield worked with C2 and other public relations service providers by assisting with public meetings and press announcements and providing advice on communication strategy.
2. **I-69 Interstate:** I-69 development was divided into various phases for construction (Sections 1-6). After Mr. Wingfield left INDOT in June 2017, Federal Highway (“FHWA”) approved the final route for Section 6 in February 2018. Recently, C2 was hired as a subcontractor for I-69 Section 6. C2 will be providing communications and public involvement services for the Section 6 Project.

C2 is seeking to employ Mr. Wingfield to assist in providing communication and public involvement services for INDOT and other state agency contracts. Therefore, Mr. Wingfield presents two questions to the State Ethics Commission:

1. **Did Mr. Wingfield’s work at INDOT as the Media Relations Director rise to the level of “personal and substantial participation” in the matters listed above to restrict him for work on I-69 communications and public involvement services for C2?**
2. **Related to the previous question, if Mr. Wingfield was involved in the planning phases of the I-69 Project, before it was approved by Federal Highway, would he be able to participate in later phases of the project under contracts that were procured after he left INDOT?**

Based on the information provided by Mr. Wingfield, I do not believe he personally and substantially participated in the matters listed above to such a degree that he should be restricted from working on I-69 public relations media as an employee of C2. For Ohio River Bridges, while he provided communications advice on strategy, attended project meetings and public meetings, he was not the ultimate decisionmaker. With I-69, C2 was not hired as the communications and public involvement firm until after Mr. Wingfield had left INDOT, approximately 8 months

later. Mr. Wingfield admits to being involved on I-69 during the development phase of the Section 6 project. However, this was before the final route for I-69 Section 6 was approved by federal authorities. Since much can change within the scope of a highway project from planning and development to eventual construction, his involvement was minimal.

Therefore, it is my opinion that Mr. Wingfield did not personally and substantially participate in the matters listed above that would ultimately restrict him from work on INDOT communications and public involvement services for C2. Moreover, I believe that Mr. Wingfield should be allowed to participate in the later phases of the Section 6 project which developed and were finalized after he left INDOT.

Please let me know if you have any questions.

Thank you!

Laura

Laura A. Turner

Deputy General Counsel

Indiana Criminal Justice Institute



Eric Holcomb, Governor
State of Indiana

Office of General Counsel
402 W. WASHINGTON STREET, ROOM W451, MS27
INDIANAPOLIS, IN 46204-2744

July 29, 2019

Ethics Commission
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, Indiana 46202
Via Email: info@ig.in.gov

RE: Request for Formal Advisory Opinion for Aaron Hunter

Dear Chairperson Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Aaron Hunter, requests a Formal Advisory Opinion from the State Ethics Commission addressing conflicts of interest and post-employment restrictions for Mr. Hunter.

Mr. Hunter began working for FSSA in 2018 as a Client Healthy Indiana Plan (HIP) Analyst in the Office of Medicaid Policy and Planning (OMPP). In his position, he works with Managed Care Entities (MCEs). He is responsible for assisting with customer service efforts; participating in regular customer service team meetings with MCEs; researching and tracking member issues; and responding to inquiries from members, legislators, and other officials. Additionally, his duties include routine reporting of cases and issues, identifying critical customer service issues, and bringing them to the HIP team attention for policy and system resolution.

MCE members pay MCEs for health coverage through the State. Mr. Hunter provides troubleshooting by assisting the members in opening up their account with the State and directs the flow of Medicaid/HIP applications to MCEs. The individual applying for state health insurance selects the MCE and Mr. Hunter directs the application accordingly.

On July 16, 2019, Mr. Hunter notified me that he applied and interviewed for a Regulatory Contract Manager position with CareSource, one of the MCEs that contracts with FSSA to coordinate care for members enrolled in Indiana Medicaid programs. CareSource is nonprofit managed care company based in Dayton, Ohio. The company offers Medicaid managed care plans, Medicare Advantage plans and Marketplace insurance plans in multiple states. Mr. Hunter learned about the position after uploading his resume in June 2019 to various online job search websites. On July 1, 2019, CareSource contacted him requesting a phone interview on July 3, 2019. CareSource then conducted a second interview with him on July 11, 2019.



State Ethics Commission
RE: Aaron Hunter
July 29, 2019
Page 2 of 2

Although Mr. Hunter regularly interacts with CareSource in his current position, he was not part of the team that made the final decision to award a contract to CareSource. Furthermore, Mr. Hunter has not engaged in the negotiation or administration of any contract between the State and CareSource, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with CareSource. He does not make any regulatory or licensing decisions.

OMPP's Quality & Outcomes section maintains oversight of the MCEs and manages their contracts to ensure compliance. Contract managers under the leadership of the Managed Care Compliance Manager and Quality and Outcomes Section Director are the primary point of contact for the MCEs. CareSource has an assigned contract manager.

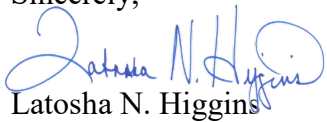
Once OMPP was made aware of Mr. Hunter's interest in employment with CareSource, he was removed from working on any issues related to their contract operations. A different person was assigned to handle all correspondence with CareSource.

The potential CareSource position is different from the duties that Mr. Hunter has currently with the OMPP. Mr. Hunter's role as a Regulatory Contract Manager with CareSource would require him to be responsible for ensuring that CareSource fulfills its contract obligations with the State's HIP. 2.0 Program. This would include, establishing and maintaining a collaborative working relationship with his assigned regulatory agency, which in this case would be FSSA; serving as the primary liaison per contract requirements with FSSA; and providing replies to requested data or reports from regulators. Additionally, the position would require him to be the primary person accountable for providing interpretations and guidance to CareSource regarding regulatory requirements and government contract administration. The position would also require him to respond to incoming regulatory and legislative inquiries and issues regarding compliance requirements.

Mr. Hunter knows and understands that Indiana's ethics laws will continue to apply to him as a private sector employee. He understands and agrees not to divulge confidential information of FSSA during his post-employment endeavors. Furthermore, Mr. Hunter understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

We appreciate the Ethics Commission's consideration regarding this matter.

Sincerely,



Latosha N. Higgins

Managing Attorney and Ethics Officer

INDIANA
OFFICE OF INSPECTOR GENERAL

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

August 2, 2019

To: Indiana State Ethics Commission Members

Thru: Jennifer Cooper, State Ethics Director
Indiana State Ethics Commission

From: Kelly Elliott, Staff Attorney
Indiana Office of Inspector General and State Ethics Commission

RE: Summary of Public Hearing and Rule Adoption - 40 IAC 2

Public Hearing

Pursuant to Ind. Code §4-22-2-26, the State Ethics Commission (SEC), staffed by the Office of Inspector General (OIG), held a public hearing on July 25, 2019, to receive public comments on the proposed rule amendments to 40 IAC 2. The Notice of Public Hearing was published in the Indiana Register on June 26, 2019, and in the Indianapolis Star on July 2, 2019.

Pursuant to Ind. Code §4-22-2-27, the SEC “shall fully consider comments received at the public hearing . . . and may consider any other information before adopting the rule. Attendance at the public hearing or review of a written record or summary of the public hearing is sufficient to constitute full consideration.”

Please let the following serve as a written summary of the public hearing for your consideration:

The SEC, staff by the OIG, held the public hearing on July 25, 2019 at 8:30 a.m. at the Indiana State Library, 315 W. Ohio Street, Indiana Authors Room 203, Indianapolis, Indiana. The following OIG staff were present for the public hearing: Tiffany Mulligan, Chief Legal Counsel; Kelly Elliott, Staff Attorney; and Nathaniel Baker, Legal Assistant. One individual attended the public hearing; however, the individual stated he did not wish to provide a comment regarding the proposed rule. The SEC did not receive any comments at the public hearing. The public hearing was closed at 9:03 a.m. with no individuals present wishing to provide a comment.

Rule Adoption

The SEC last readopted 40 IAC 2 in 2013; therefore, the rules are set to expire on January 1, 2020. The OIG began the process of revising 40 IAC 2 for adoption by the SEC at the beginning of this year.

Pursuant to Ind. Code §4-22-2-29(c), “[a]n agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register, unless it is a logical outgrowth of any proposed rule as supported by any written comments submitted (1) during the public comment period; or (2) by the small business ombudsman under IC 4-22-2.1-6(a), if applicable.”

On June 26, 2019, the Indiana Register published proposed rule 40 IAC 2, referenced as LSA Document #19-265. The following is a link to the proposed rule published in the Indiana Register: <http://iac.iga.in.gov/iac/20190626-IR-040190265PRA.xml.pdf>.

On June 26, 2019, the Legislative Services Agency (LSA) provided the OIG with suggested changes to the proposed rule. The OIG made changes to the proposed rule published in the Indiana Register based on the suggestions. The changes made to the proposed rule are as follows:

1. Remove the term “either” from 40 IAC 2-2-2(c);
2. Add a definition for “commission” to 40 IAC 2-3-1.5 to clarify the rule applies to the SEC and remove the term “state ethics” from 40 IAC 2-3-1 and 40 IAC 2-4.5-1; and
3. Reword 40 IAC 2-3-4.1(e)(3) to change the placement of the term “if known.”

The public comment period ended on July 25, 2019. The OIG did not received any written public comments regarding the proposed rule amendments to 40 IAC 2. Additionally, the Small Business Ombudsman with the Indiana Economic Development Corporation reviewed the proposed rule and economic impact analysis for small businesses associated with the rule changes and concluded the proposed rule will impose no additional requirements or costs on small businesses.

The OIG respectfully requests that the SEC adopt proposed rule 40 IAC 2. A copy of proposed rule 40 IAC 2 with the changes outlined above is attached.

TITLE 40 STATE ETHICS COMMISSION

Proposed Rule LSA Document #19-265

DIGEST

Amends 40 IAC 2-2-1 regarding procedures for the state ethics commission. Amends 40 IAC 2-2-2 regarding reconsideration or clarification of formal advisory opinions. Amends 40 IAC 2-2-4 regarding advisory opinions signed by the director. Amends 40 IAC 2-2-5 regarding others providing information. Amends 40 IAC 2-2-6 regarding the public record. Amends 40 IAC 2-3-1 regarding applicable statutes and rules. Adds 40 IAC 2-3-1.5 to add definitions. Adds 40 IAC 2-3-2.3 regarding investigations. Adds 40 IAC 2-3-2.5 regarding complaints filed by the inspector general. Amends 40 IAC 2-3-3 regarding agreed settlements. Adds 40 IAC 2-3-4.1 regarding public hearings. Adds 40 IAC 2-4.5 regarding fines. Amends 40 IAC 2-5-4 regarding certification of documents and records. Repeals 40 IAC 2-1-1, 40 IAC 2-1-3, 40 IAC 2-1-4, 40 IAC 2-1-5.5, 40 IAC 2-1-6, 40 IAC 2-1-7.1, 40 IAC 2-1-8, 40 IAC 2-1-9, 40 IAC 2-1-14, 40 IAC 2-2-3, 40 IAC 2-3-2, 40 IAC 2-3-4, 40 IAC 2-3-5, 40 IAC 2-3-6, 40 IAC 2-3-7, 40 IAC 2-3-8, 40 IAC 2-4-2, 40 IAC 2-5-1, 40 IAC 2-5-2, and 40 IAC 2-5-3. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

40 IAC 2-1-1; 40 IAC 2-1-3; 40 IAC 2-1-4; 40 IAC 2-1-5.5; 40 IAC 2-1-6; 40 IAC 2-1-7.1; 40 IAC 2-1-8; 40 IAC 2-1-9; 40 IAC 2-1-14; 40 IAC 2-2-1; 40 IAC 2-2-2; 40 IAC 2-2-3; 40 IAC 2-2-4; 40 IAC 2-2-5; 40 IAC 2-2-6; 40 IAC 2-3-1; 40 IAC 2-3-1.5; 40 IAC 2-3-2; 40 IAC 2-3-2.3; 40 IAC 2-3-2.5; 40 IAC 2-3-3; 40 IAC 2-3-4; 40 IAC 2-3-4.1; 40 IAC 2-3-5; 40 IAC 2-3-6; 40 IAC 2-3-7; 40 IAC 2-3-8; 40 IAC 2-4-2; 40 IAC 2-4.5; 40 IAC 2-5-1; 40 IAC 2-5-2; 40 IAC 2-5-3; 40 IAC 2-5-4

SECTION 1. 40 IAC 2-2-1 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-2-1 Procedure

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 1. (a) The commission may render **formal** advisory opinions ~~with respect to the interpretation and applicability of IC 4-2-6, this title, and any other statute or rule governing official conduct of state officers or employees.~~ **in accordance with IC 4-2-6-4(b)(1).**

~~(b) An advisory opinion may be requested by any state officer, employee, former state officer or employee, person who has or had a business relationship with an agency, commission member, or commission employee.~~

~~(c) Requests for opinions~~ **(b) A person requesting a formal advisory opinion shall be in writing and submit a written request that is** signed by the person making the request. ~~and shall be designated an inquiry.~~ The **inquiry request** shall **state include** the official **status position** of the person making the request and ~~shall state disclose~~ all material facts necessary for the commission to understand the circumstances and render a complete opinion. The request must relate to ~~a real~~ **an actual** set of circumstances. ~~Upon receipt of a letter of inquiry, the commission shall send an informational copy to the relevant state officer or appointing authority, if any.~~ **that applies to the requesting party. An agency ethics officer may submit a request on behalf of his or her agency or an employee of the agency.**

~~(d) (c) The person requesting the formal advisory opinion shall receive notice from the staff of the time and place to appear before the commission. The commission staff shall send to the person making the request notice of the date, time, and place to appear before the commission.~~ The name of the person filing the ~~inquiry request~~ shall appear on the agenda of the meeting.

~~(e) (d) In an emergency situation, the chairman commission chair and the state ethics director shall decide whether to add to the agenda a request which that was received less than seven (7) ten (10) calendar days before a commission meeting. of the commission.~~

~~(f) The director shall mail a copy of the letter of inquiry to the commission members approximately seven (7) days before the commission's meeting. The person requesting the opinion shall be asked to appear before the commission at its meeting to answer questions.~~

(e) The commission shall ~~decide~~ **render its opinion** in a public meeting by vote of a majority of commission members present.

~~(g)~~ (f) Following the commission's decision, the commission staff shall prepare a written **formal** advisory opinion. **The commission staff shall send a copy shall be mailed of the formal advisory opinion** to the person requesting ~~an~~ **who requested the formal advisory opinion**. ~~A copy of the opinion shall be sent and~~ to the state officer or appointing authority **of the person requesting the formal advisory opinion**, if any. ~~The Reliance upon a formal advisory opinion is conditioned upon the following:~~

(1) The facts and circumstances actually exist.

(2) All of the relevant facts and circumstances related to the **formal advisory** opinion have been disclosed to the commission.

~~(h) Any (g) A formal advisory opinion rendered by the commission until amended or revoked,~~ is binding on the commission in any subsequent allegations concerning the person who requested the opinion and who acted on ~~it~~ **the advice given by the commission** in good faith, unless **the person requesting the formal advisory opinion omitted or misstated** material facts ~~were omitted or misstated by the person~~ in the request for the **formal advisory** opinion or testimony before the commission. (*State Ethics Commission; 40 IAC 2-2-1; filed Oct 22, 1991, 11:10 a.m.: 15 IR 204; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA*)

SECTION 2. 40 IAC 2-2-2 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-2-2 Request for reconsideration or clarification of formal advisory opinions

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 2. (a) The person who ~~made an inquiry and any person directly affected by the commission's~~ **requested a formal advisory opinion or on whose behalf the formal advisory opinion was requested** may ~~appeal to ask that the commission for reconsideration or clarification of~~ **reconsider or clarify** the advisory opinion.

(b) ~~The commission must receive any such appeal shall be made,~~ **request** in writing to the commission within fifteen (15) days of ~~receipt of when the commission sends the written formal advisory opinion letter to the person who made the request.~~

(c) **The commission shall consider the request for reconsideration or clarification and:**

(1) **vote to confirm the existing formal advisory opinion;**

(2) **amend the existing formal advisory opinion; or**

(3) **issue a new formal advisory opinion.**

(*State Ethics Commission; 40 IAC 2-2-2; filed Oct 22, 1991, 11:10 a.m.: 15 IR 204; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA*)

SECTION 3. 40 IAC 2-2-4 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-2-4 Signed by director

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 4. All **formal advisory** opinions rendered by the commission shall be signed by the **state ethics** director. (*State Ethics Commission; 40 IAC 2-2-4; filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30,*

2013, 1:33 p.m.: 20131030-IR-040130243RFA)

SECTION 4. 40 IAC 2-2-5 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-2-5 Others may provide information

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 5. The commission may permit or request any person to submit memoranda, briefs, or other relevant material or to provide oral ~~information~~ **testimony** relevant to its determination **in rendering a formal advisory opinion.** (*State Ethics Commission; 40 IAC 2-2-5; filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA*)

SECTION 5. 40 IAC 2-2-6 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-2-6 Public record

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 6. The commission staff will periodically publish for distribution the accumulated **formal** advisory opinions with the names removed in a format explaining the facts, the question, and the commission's opinion. (*State Ethics Commission; 40 IAC 2-2-6; filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA*)

SECTION 6. 40 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-3-1 Applicable statutes and rules

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 4-2-7; IC 4-21.5; IC 5-14-1.5

Sec. 1. ~~(a)~~ All proceedings **involving ethics complaints** before the ~~state ethics~~ commission shall be governed by IC 4-21.5, IC 4-2-6, **IC 4-2-7**, IC 5-14-1.5, this rule, and any applicable rule adopted by the commission. On any procedural matter not dealt with by these statutes and rules, the commission shall be guided to the extent practicable by the Indiana Rules of Trial Procedure.

~~(b) The basic purpose of this rule is to supplement the statutes and other rules stated in subsection (a).~~ (*State Ethics Commission; 40 IAC 2-3-1; filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA*)

SECTION 7. 40 IAC 2-3-1.5 IS ADDED TO READ AS FOLLOWS:

40 IAC 2-3-1.5 Definitions

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 4-2-7; IC 4-21.5

Sec. 1.5. The following definitions apply throughout this article:

- (1) "Administrative law judge" means a member of the commission who is appointed by the commission to function as an administrative law judge under IC 4-21.5.
- (2) "Code of ethics" means standards set forth in IC 4-2-6 and 42 IAC 1 that govern the conduct for those persons listed in IC 4-2-6-2.5.
- (3) "Commission" means the state ethics commission established under IC 4-2-6-2.
- (4) "Inspector general" means the office established under IC 4-2-7-2.
- (5) "Recommended report" means an administrative law judge's order that is not a final order under IC 4-21.5-3-29.

(6) "Report" means the commission's final order under IC 4-21.5-3-27 and IC 4-21.5-3-28.

(7) "Respondent" means an individual against whom the inspector general has filed an ethics complaint.

(State Ethics Commission; 40 IAC 2-3-1.5)

SECTION 8. 40 IAC 2-3-2.3 IS ADDED TO READ AS FOLLOWS:

40 IAC 2-3-2.3 Investigations

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 4-2-7-3; IC 4-21.5-3

Sec. 2.3. The state ethics director shall refer any request for investigation that is received by the commission to the inspector general consistent with IC 4-2-7-3. *(State Ethics Commission; 40 IAC 2-3-2.3)*

SECTION 9. 40 IAC 2-3-2.5 IS ADDED TO READ AS FOLLOWS:

40 IAC 2-3-2.5 Complaint filed by the inspector general

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 4-2-7-5

Sec. 2.5. (a) The inspector general may seek probable cause from the commission to file a complaint within the commission's jurisdiction at the conclusion of an investigation.

(b) If the commission finds probable cause for a complaint under the code of ethics, the inspector general may file a complaint with the commission. *(State Ethics Commission; 40 IAC 2-3-2.5)*

SECTION 10. 40 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-3-3 Agreed settlements

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 3. (a) The commission may ~~resolve cases through agreements with respondents.~~ consider an agreed settlement entered into by the inspector general and the respondent to an ethics complaint in a public meeting. The commission may accept or reject an agreed settlement by majority vote.

(b) ~~In negotiations to settle under this section, if the negotiations occur before a vote to find probable cause and schedule a public hearing, the chairman or his designee will represent the commission. If the negotiations occur after a vote to find probable cause and schedule a public hearing, the chairman shall designate a person to represent the commission. At an informal conference to negotiate, no record shall be made, and No statement made by any person at such conference~~ during settlement negotiations shall be used as evidence in any subsequent public hearing or proceeding.

(c) ~~If the respondent and the chairman or his designee concur that an agreed settlement would be appropriate, they may submit a proposal in writing to the commission for its approval or disapproval by majority vote. If the time of the agreed settlement is prior to a vote of the commission that probable cause exists to support an alleged violation, the commission vote on approval of the agreed settlement shall be in executive session unless the respondent has waived confidentiality. If the time of the agreed settlement is after the commission has voted that probable cause exists to support an alleged violation, the vote on approval or disapproval of the agreed settlement shall be taken at an open meeting. In either case, The commission shall state its findings~~ document its approval or rejection of the agreed settlement in writing in a written report, signed by a majority of the commission members. ~~The report may make a recommendation for the sanctions to be imposed as authorized in IC 4-2-6-4(b)(2)(E) or IC 4-2-6-12.~~

(d) The report ~~containing findings of fact and recommendations~~ shall be open to public inspection as a public record and shall be presented to those individuals listed in ~~IC 4-2-6-4(b)(2)(G).~~ **IC 4-2-6-4(b)(2)(J). The commission may present the report to those individuals listed in **IC 4-2-6-4(b)(2)(K).** *(State Ethics Commission; 40 IAC 2-3-***

3; filed Oct 22, 1991, 11:10 a.m.: 15 IR 207; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA)

SECTION 11. 40 IAC 2-3-4.1 IS ADDED TO READ AS FOLLOWS:

40 IAC 2-3-4.1 Public hearings

Authority: IC 4-2-6-4

Affected: IC 4-2-6-12; IC 4-21.5-3

Sec. 4.1. (a) Upon a finding of probable cause, the commission shall set a public hearing on the matter.

(b) Prior to the public hearing, the commission shall:

(1) send a copy of the complaint filed by the inspector general to the respondent pursuant to service requirements under IC 4-21.5-3-1; and

(2) serve notice of a public hearing to the respondent in accordance with the requirements set forth in IC 4-21.5-3-20.

(c) The respondent may be represented by counsel, who shall file a written appearance with the commission.

(d) The parties or counsel for either party may:

(1) exercise all discovery provisions under Trial Rules 26 through 37; and

(2) file motions in writing at any time after the filing of the complaint.

All appearances and filings must be filed with the commission in writing, with a copy served to the respondent or the respondent's counsel and the inspector general's counsel.

(e) There are no specific requirements of a form for any pleading, except:

(1) cases shall be titled "In the Matter of";

(2) the title provided for shall appear at the upper left portion of the initial page of any pleading or paper (other than exhibits) filed;

(3) the initial page of any pleading or paper (other than exhibits) shall show, opposite the title, the case number assigned by the commission, if known; and

(4) motions and petitions shall contain the name, address, and phone number of the person filing, including any counsel representing a party, and shall be signed by the person filing or counsel.

(f) Public hearings may be conducted by either:

(1) the commission; or

(2) one (1) or more commission members acting as administrative law judges.

(g) On motion of a party or the commission chair, the commission chair or an administrative law judge may consolidate hearings on two (2) or more allegations or cases against different persons if:

(1) it is determined that there is substantial identity of facts arising out of a common transaction or event; or

(2) the respondent is the same person although the violations alleged arose from different complaints, transactions, or events.

Consolidation shall not be ordered if consolidation will substantially prejudice the right of any party.

(h) The commission chair or an administrative law judge for the hearing shall rule on all motions, except for any motions or actions that would terminate the adjudicatory proceeding. Any motion or action that would terminate the adjudicatory proceeding may be taken only by the commission.

(i) Unless otherwise ordered by the commission chair or administrative law judge, the inspector general and respondent or counsel for respondent shall exchange exhibits and the names and addresses of witnesses at least ten (10) days prior to the public hearing.

(j) After the hearing, the commission chair or the administrative law judge may request that the

interested parties submit proposed findings of fact and conclusions of law for the commission's acceptance, rejection, or modification.

(k) If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a recommended report to the full commission and all interested parties.

(l) The finding of a violation by the commission must be based on a preponderance of the evidence and be supported by a majority vote. If the commission finds a violation, the commission may set a penalty as provided in IC 4-2-6-12.

(m) The commission shall state its findings in a written report supported and signed by a majority of the commission. The final report shall be adopted by the commission at a public meeting. The report shall be made public and served upon the respondent and all interested parties. (*State Ethics Commission; 40 IAC 2-3-4.1*)

SECTION 12. 40 IAC 2-4.5 IS ADDED TO READ AS FOLLOWS:

Rule 4.5. Fines

40 IAC 2-4.5-1 Fines

Authority: IC 4-2-6-4

Affected: IC 4-2-6

Sec. 1. Any fine imposed by the commission under IC 4-2-6-8 or IC 4-2-6-12 shall be made payable to the commission and remitted to the general fund. (*State Ethics Commission; 40 IAC 2-4.5-1*)

SECTION 13. 40 IAC 2-5-4 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-5-4 Certification of documents and records

Authority: IC 4-2-6-4

Affected: IC 4-2-6; IC 5-14-3

Sec. 4. The **state ethics** director is authorized to copy and certify all documents and records of the commission, which may be released in accordance with public records laws. (*State Ethics Commission; 40 IAC 2-5-4; filed Oct 22, 1991, 11:10 a.m.: 15 IR 211; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA; readopted filed Sep 30, 2013, 1:33 p.m.: 20131030-IR-040130243RFA*)

SECTION 14. THE FOLLOWING ARE REPEALED: 40 IAC 2-1-1; 40 IAC 2-1-3; 40 IAC 2-1-4; 40 IAC 2-1-5.5; 40 IAC 2-1-6; 40 IAC 2-1-7.1; 40 IAC 2-1-8; 40 IAC 2-1-9; 40 IAC 2-1-14; 40 IAC 2-2-3; 40 IAC 2-3-2; 40 IAC 2-3-4; 40 IAC 2-3-5; 40 IAC 2-3-6; 40 IAC 2-3-7; 40 IAC 2-3-8; 40 IAC 2-4-2; 40 IAC 2-5-1; 40 IAC 2-5-2; 40 IAC 2-5-3.