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MEMORANDUM

TO: Commission Members
FROM: Gray Schafer, Assistant General Counsel
DATE: November 20, 2024
RE: Rule Hearing on amendments to Chapter 34-17 (GS)

The Commission is being asked to consider and approve rulemaking involving necessary updates Chapter 34-17, Florida Administrative Code (F.A.C.). The rule amendments have been duly noticed and materials have been provided to the Joint Administrative Procedures Committee.

This rulemaking is intended to update certain rules regarding the handling of ethics referrals and will reflect recent changes made by Ch. 2024-253, Laws of Florida. The updates are necessary to implement statutory amendments made by the law to Section 112.324(3), Florida Statutes. The particular amendments in question, which will be discussed below, concern new timeframes for each stage of the ethics referral process, and apply to referrals submitted to the Ethics Commission on or after October 1, 2024. See § 112.324(3)(k), Fla. Stat. Rulemaking authority for these changes is found in Section 112.322(9), Florida Statutes, which allows the Commission "to make such rules not inconsistent with law" regarding its practices and procedures. (emphasis added). The following discussion will cite each change to the rules that is needed, and cite to the newly-amended portion(s) of Section 112.324(3) requiring each individual change.

First, Rule 34-17.008(1) will be amended to indicate: (1) a preliminary investigation must be undertaken by Commission within 30 days after receiving a referral (§ 112.324(3)(a), Fla. Stat.); and (2) the Commission has one year to complete a preliminary investigation, including determining probable cause (§112.324(3)(a), Fla. Stat.).

Second, Rule 34-17.008(6) will be amended to indicate: (1) an investigatory report must be completed within 150 days from the start of the investigation (§ 112.324(3)(b), Fla. Stat.); and (2) the process by which the Commission may extend the time frame to complete the investigation, which can extend for up to 60 days (§ 112.324(3)(b), Fla. Stat.).

Third, Rule 34-17.010(1) will be amended to indicate an investigatory report must be sent to the respondent within 5 days of its completion (§ 112.324(3)(b), Fla. Stat.).

Fourth, Rule 34-17.010(3) will be amended to indicate: (1) an investigatory report must be sent to the Commission's Advocate within 5 days of its completion (§ 112.324(3)(b), Fla. Stat.); (2) the Advocate will have 15 days upon receiving the report to submit a written recommendation to the Commission concerning probable cause (§ 112.324(3)(b), Fla. Stat.); and (3) the Advocate's recommendation shall be sent to the respondent within 5 days of its completion, and the respondent will have 14 days to respond in writing to the recommendation (§ 112.324(3)(b), Fla. Stat.).

Fifth, Rule 34-17.010(4) will be amended to indicate that, upon receiving the Advocate's recommendation, the Commission will schedule a probable cause hearing for its next Commission meeting (§ 112.324(3)(c), Fla. Stat.).

Sixth, Rule 34-17.010(7) will be amended to indicate: (1) if the Commission finds probable cause during the hearing, it will send an order of this finding to the complainant and the respondent within 5 days of the date of the determination (§ 112.324(3)(e), Fla. Stat.); (2) the process by which a formal evidentiary hearing or an informal hearing may be requested, including clarifying that a formal or informal public hearing will be deemed waived if not requested by a respondent within 14 days of receiving the probable cause determination (§§ 112.324(3)(e) and (3)(f), Fla. Stat.); and (3) the process by which the Commission will complete final action on a case after a public hearing is held (§ 112.324(3)(g), Fla. Stat.).

Seventh and finally, Rule 34-17.017(3) will be amended to indicate that at least two-thirds of the members of the Commission present at a meeting must vote to reject or deviate from a stipulation or settlement being recommended by the Commission Advocate. See § 112.324(3)(h), Fla. Stat.

The Notice of Proposed Rulemaking and the text of the proposed amended rules are attached. You will be asked to approve this proposed rulemaking at your December 6, 2024, Commission meeting.

Attachments

for which notice requirements can be met. At that Commission meeting, the Commission must complete final action on such case.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 4-7-77, Amended 9-21-77, 7-13-80, 2-21-83, 11-14-85, Formerly 34-5.06, Amended 2-19-91, 7-7-91, 7-5-92, 7-28-98, 9-4-12.

34-5.020 Stipulations, Settlements, and Consent Orders.

Informal disposition of the complaint may be made of any proceeding by stipulation, agreed settlement, or consent order between the Advocate and the Respondent, upon approval of the Commission in a public meeting, so long as a public report is made.

(1) through (2) No change.

(3) At least two-thirds of the members of the Commission present at a meeting must vote to reject or deviate from a stipulation or settlement that is recommended by the Advocate.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const. 112.322, 112.324 FS. History—New 7-13-80, Formerly 34-5.20, Amended 2-16-95, 7-28-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Gray Schafer, Assistant General Counsel, Florida Commission on Ethics (850)488-7864

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kerie J. Stillman, Executive Director, Florida Commission on Ethics

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 29, 2024

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 24, 2024

→ **COMMISSION ON ETHICS**

RULE NOS.:	RULE TITLES:
34-17.008	Investigations
34-17.010	Probable Cause Determination
34-17.017	Stipulations, Settlements and Consent Orders

PURPOSE AND EFFECT: The purpose of this rulemaking will be to update the rules regarding the handling of ethics referrals to reflect the deadlines and process changes recently inserted into Section 112.324(3), Florida Statutes, by Ch. 2024-253, Laws of Florida.

SUMMARY: All of the following amendments are based on statutory additions to Section 112.324(3), Florida Statutes. Rule 34-17.008 will be amended to indicate: (1) a preliminary investigation must be undertaken by Commission within 30 days after receiving a referral that is technically and legally sufficient; (2) the Commission has one year to complete a preliminary investigation, including determining probable cause; (3) an investigatory report must be completed within 150

days from the start of the investigation; and (4) the process by which the Commission may extend the time frame to complete the investigation, which can extend for up to 60 days. Rule 34-17.010 will be amended to reflect: (1) the investigatory report must be sent to the respondent and the Commission's Advocate within 5 days of its completion; (2) the Advocate will have 15 days upon receiving the report to submit a written recommendation to the Commission concerning probable cause; (3) the Advocate's recommendation shall be sent to the respondent within 5 days of its completion, and the respondent will have 14 days to respond in writing to the recommendation; (4) upon receiving the Advocate's recommendation, the Commission will schedule a probable cause hearing for its next Commission meeting; (5) if the Commission finds probable cause during the hearing, it will send an order of this finding to the complainant and the respondent within 5 days of the date of the determination; (6) the process by which a formal evidentiary hearing may be requested, including clarifying that a public hearing will be deemed waived if not requested by a respondent within 14 days of receiving the probable cause determination; and (7) the process by which the Commission will complete final action on a case after a public hearing is held. Rule 34-17.017 will be amended to indicate that at least two-thirds of the members of the Commission present at a meeting must vote to reject or deviate from a stipulation or settlement being recommended by the Commission Advocate.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: considering that these amendments pertain only to deadlines and process requirements concerning how the Commission handles ethics referrals, the adverse impact or regulatory costs, if any, do not exceed and would not be expected to exceed any one of the economic criteria set forth in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 112.322(9), F.S.

LAW IMPLEMENTED: 112.324, F.S. (as amended by Ch. 2024-253, Laws of Fla.)

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: December 6, 2024, 8:30 a.m.

PLACE: First District Court of Appeal, Third Floor Courtroom, 2000 Drayton Drive, Tallahassee, Florida.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Diana Westberry, Office Manager, Florida Commission on Ethics (850)488-7864. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gray Schafer, Assistant General Counsel, Florida Commission on Ethics (850)488-7864

THE FULL TEXT OF THE PROPOSED RULE IS:

34-17.008 Investigations.

(1) Commencement of Investigations. Investigations shall be initiated only as provided above in Rule 34-17.005, F.A.C., provided that information from public records may be obtained by staff prior to the ordering of an investigation to aid in the just and efficient resolution of a referral. A preliminary investigation must be undertaken by the Commission within 30 days after the receipt of any technically and legally sufficient referral over which the Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. The probable cause determination is the conclusion of the preliminary investigation. The Commission shall complete the preliminary investigation, including the probable cause determination, no later than 1 year after the beginning of the preliminary investigation.

(2) through (5) No change.

(6) Investigator's Report. Upon the completion of the preliminary investigation, the investigator shall prepare a report to the Commission. The report shall contain a narrative account of all pertinent information obtained through interviews of witnesses, documentary evidence, or other sources and shall include a discussion of any conflicts in the evidence. The report shall not contain any determination or speculation with respect to whether the evidence indicates a breach of public trust. The report shall make no recommendations.

(a) An investigatory report must be completed no later than 150 days after the beginning of the preliminary investigation

(b) If, at any one meeting of the Commission held during a given preliminary investigation, the Commission determines that additional time is necessary to adequately complete such investigation, the Commission may extend the time frame to

complete the preliminary investigation by no more than 60 days. During such meeting, the Commission shall document its reasons for extending the investigation and transmit a copy of such documentation to the alleged violator no later than 5 days after the extension is ordered.

(7) No change.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13.

34-17.010 Probable Cause Determination.

(1) Notification of Completion of Investigation. When the investigator's report is completed, the Executive Director shall notify the respondent that the report is completed and shall send to the respondent a copy of the investigator's report. The investigatory report must be transmitted to the alleged violator no later than 5 days after completion of the report. The investigatory file and main referral file shall be open for inspection by the respondent and the respondent's counsel at that time, and copies may be obtained at no more than cost.

(2) No change.

(3) Advocate's Recommendation. The investigatory report must be transmitted to the counsel representing the Commission (the Advocate) no later than 5 days after completion of the report. The Advocate shall review the investigator's report and make a written recommendation to the Commission for the disposition of the referral no later than 15 days after he or she receives the completed investigatory report. The Advocate's Advocate shall review the investigator's report and shall make a written recommendation to the Commission for the disposition of the referral; must include including a statement of what charges shall be at issue at the probable cause hearing. A copy of the recommendation must be transmitted shall be furnished to the respondent no later than 5 days after its completion. The respondent shall be given 14 not less than 7 days from the date of mailing of the Advocate's recommendation, within which time to file with the Commission a written response to the recommendation. This time period may be shortened with the consent of the respondent, or without the consent of the respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission, so long as the recommendation is furnished to the respondent within a reasonable period of time under the circumstances.

(4) Notice of Probable Cause Hearing and Right to Attend. Upon receipt of the Advocate's recommendation, the Commission shall schedule a probable cause hearing for the next Commission meeting for which notice requirements can be met. The respondent, a representative from the referring agency, their counsel, and the Advocate shall be permitted to attend the hearing at which the probable cause determination is

made. Notice of the probable cause hearing shall be sent to the respondent, the referring agency, and Advocate at least 14 days before the hearing. This time period may be shortened with the consent of the respondent, or without the consent of the respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission, so long as the notice is furnished within a reasonable period of time under the circumstances.

(5) through (6) No change.

(7) Finding of Probable Cause. If the Commission finds probable cause to believe a breach of the public trust has been committed, it must transmit a copy of the order finding probable cause to the alleged violator no later than 5 days after the date of the probable cause determination.

(a) Upon request submitted to the Commission in writing, any person whom the Commission finds probable cause to believe has committed a violation is entitled to a public hearing and may elect to have a formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings.

(b) If the person does not elect to have a formal administrative hearing by an administrative law judge, the person is entitled to have an informal hearing conducted by the Commission.

(c) Such person is deemed to have waived the right to a formal or informal public hearing if the request is not received within 14 days of the mailing date of the probable cause notification.

(d) If the Commission conducts an informal hearing, it must be held no later than 75 days after the date of the probable cause determination.

(e) If the Commission refers a case to the Division of Administrative Hearings for a formal hearing and subsequently requests that the case be relinquished back to the Commission, or if the administrative law judge assigned to the case relinquishes jurisdiction back to the Commission before a recommended order is entered, the Commission must schedule the case for additional action at the next Commission meeting for which notice requirements can be met. At that Commission meeting, the Commission must complete final action on such case.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13.

34-17.017 Stipulations, Settlements and Consent Orders.

Informal disposition of the referral may be made of any proceeding by stipulation, agreed settlement, or consent order between the Advocate and the Respondent, upon approval of

the Commission in a public meeting, so long as a public report is made.

(1) through (2) No change.

(3) At least two-thirds of the members of the Commission present at a meeting must vote to reject or deviate from a stipulation or settlement that is recommended by the Advocate. Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Gray Schafer, Assistant General Counsel, Florida Commission on Ethics (850)488-7864

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kerrie J. Stillman, Executive Director, Florida Commission on Ethics

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 29, 2024

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 24, 2024

DEPARTMENT OF HEALTH

Board of Optometry

RULE NO.: RULE TITLE:

64B13-4.0041 Endorsement

PURPOSE AND EFFECT: The Board proposes the rule promulgation due to new legislation regarding the application for licensure by endorsement.

SUMMARY: Due to new legislation regarding the application for licensure by endorsement, the rule is being promulgated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: During discussion of the economic impact of this rule at its Board meeting, the Board concluded that this rule change will not have any impact on licensees and their businesses or the businesses that employ them. The rule will not increase any fees, business costs, personnel costs, will not decrease profit opportunities, and will not require any specialized knowledge to comply. This change will not increase any direct or indirect regulatory costs. Hence, the Board determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No

34-17.008 Investigations.

(1) Commencement of Investigations. Investigations shall be initiated only as provided above in Rule 34-17.005, F.A.C., provided that information from public records may be obtained by staff prior to the ordering of an investigation to aid in the just and efficient resolution of a referral. A preliminary investigation must be undertaken by the Commission within 30 days after the receipt of any technically and legally sufficient referral over which the Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. The probable cause determination is the conclusion of the preliminary investigation. The Commission shall complete the preliminary investigation, including the probable cause determination, no later than 1 year after the beginning of the preliminary investigation.

(2) through (5) No change.

(6) Investigator's Report. Upon the completion of the preliminary investigation, the investigator shall prepare a report to the Commission. The report shall contain a narrative account of all pertinent information obtained through interviews of witnesses, documentary evidence, or other sources and shall include a discussion of any conflicts in the evidence. The report shall not contain any determination or speculation with respect to whether the evidence indicates a breach of public trust. The report shall make no recommendations.

(a) An investigatory report must be completed no later than 150 days after the beginning of the preliminary investigation

(b) If, at any one meeting of the Commission held during a given preliminary investigation, the Commission determines that additional time is necessary to adequately complete such investigation, the Commission may extend the time frame to complete the preliminary investigation by no more than 60 days. During such meeting, the Commission shall document its reasons for extending the investigation and transmit a copy of such documentation to the alleged violator no later than 5 days after the extension is ordered.

(7) No change.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13,

34-17.010 Probable Cause Determination.

(1) Notification of Completion of Investigation. When the investigator's report is completed, the Executive Director shall notify the respondent that the report is completed and shall send to the respondent a copy of the investigator's report. The investigatory report must be transmitted to the alleged violator no later than 5 days after completion of the report. The investigatory file and main

referral file shall be open for inspection by the respondent and the respondent's counsel at that time, and copies may be obtained at no more than cost.

(2) No change.

(3) Advocate's Recommendation. The investigatory report must be transmitted to the counsel representing the Commission (the Advocate) no later than 5 days after completion of the report. The Advocate shall review the investigator's report and make a written recommendation to the Commission for the disposition of the referral no later than 15 days after he or she receives the completed investigatory report. ~~The Advocate's Advocate shall review the investigator's report and shall make a written recommendation to the Commission for the disposition of the referral; must include including~~ a statement of what charges shall be at issue at the probable cause hearing. A copy of the recommendation must be transmitted shall be furnished to the respondent no later than 5 days after its completion. ~~The respondent shall be given 14 not less than 7 days from the date of mailing of the Advocate's recommendation; within which time~~ to file with the Commission a written response to the recommendation. This time period may be shortened with the consent of the respondent, or without the consent of the respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission, so long as the recommendation is furnished to the respondent within a reasonable period of time under the circumstances.

(4) Notice of Probable Cause Hearing and Right to Attend. Upon receipt of the Advocate's recommendation, the Commission shall schedule a probable cause hearing for the next Commission meeting for which notice requirements can be met. The respondent, a representative from the referring agency, their counsel, and the Advocate shall be permitted to attend the hearing at which the probable cause determination is made. Notice of the probable cause hearing shall be sent to the respondent, the referring agency, and Advocate at least 14 days before the hearing. This time period may be shortened with the consent of the respondent, or without the consent of the respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission, so long as the notice is furnished within a reasonable period of time under the circumstances.

(5) through (6) No change.

(7) Finding of Probable Cause. If the Commission finds probable cause to believe a breach of the public trust has been committed, it must transmit a copy of the order finding probable cause to the alleged violator no later than 5 days after the date of the probable cause determination.

(a) Upon request submitted to the Commission in writing, any person whom the Commission finds probable cause to believe has committed a violation is entitled to a public hearing and may elect to have a formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings.

(b) If the person does not elect to have a formal administrative hearing by an administrative law judge, the person is entitled to have an informal hearing conducted by the Commission.

(c) Such person is deemed to have waived the right to a formal or informal public hearing if the request is not received within 14 days of the mailing date of the probable cause notification.

(d) If the Commission conducts an informal hearing, it must be held no later than 75 days after the date of the probable cause determination.

(e) If the Commission refers a case to the Division of Administrative Hearings for a formal hearing and subsequently requests that the case be relinquished back to the Commission, or if the administrative law judge assigned to the case relinquishes jurisdiction back to the Commission before a recommended order is entered, the Commission must schedule the case for additional action at the next Commission meeting for which notice requirements can be met. At that Commission meeting, the Commission must complete final action on such case.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13,

34-17.017 Stipulations, Settlements and Consent Orders.

Informal disposition of the referral may be made of any proceeding by stipulation, agreed settlement, or consent order between the Advocate and the Respondent, upon approval of the Commission in a public meeting, so long as a public report is made.

(1) through (2) No change.

(3) At least two-thirds of the members of the Commission present at a meeting must vote to reject or deviate from a stipulation or settlement that is recommended by the Advocate.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13,