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MEMORANDUM

TO: Commission Members
FROM: Gray Schafer, Assistant General Counsel, and Amelia Naomi, Staff Attorney GS AN
DATE: November 20, 2025
RE: Overview of Rulemaking required by Section 120.5435, Florida Statutes

This memorandum pertains to recent changes made to the Administrative Procedure Act (Chapter 120, Florida Statutes). These changes require state agencies to review each of their rules over a five-year period, accounting for various statutory factors. Summarized below are the requirements for this rule review, as well as an overview of the Commission on Ethics rules which your staff has already reviewed for this fiscal year. Also included below is a request for you to authorize staff to proceed with the next step in this rule review process.

Rule Review Requirements

The requirements regarding this rule review are found in Section 120.5435, Florida Statutes, which is a new law passed in the 2025 legislative session.¹ According to Section 120.5435(2), Florida Statutes, each state agency—including the Commission on Ethics—must review all of its rules over the next five fiscal years, completing a review of at least 20 percent of its rules per year, until all of its subject rules have been reviewed.

When conducting its rule review, the agency must look at seven different factors listed in Section 120.5435(4), Florida Statutes. These factors are whether the rule under review:

¹ Section 120.5435 is found in Chapter 2025-189, Laws of Florida, which became effective on July 1, 2025.

1. Is a valid exercise of delegated legislative authority;
2. Has current statutory authority;
3. Reiterates or paraphrases statutory material;
4. Is in the proper form;
5. Is consistent with the expressed legislative intent pertaining to the specific provision of law which the rule implements;
6. Requires a technical or substantive update to reflect current use;
and
7. Requires updated references to statutory citations and incorporated materials.

Section 120.5435 also provides a very specific timeline for how agencies should conduct this rule review each year:

- **By January 1**, agencies must submit a report to the President of the Senate, the Speaker of the House, and the Joint Administrative Procedures Committee (JAPC) summarizing its intended action on each rule being reviewed for that year. See § 120.5435(5), Fla. Stat. The statute only requires that this initial report contain a summary of the agency's intended actions, not the exact wordings that it wants to use.
- **By April 1**, agencies must inform JAPC—for each rule being reviewed that year—of its assessment of the seven factors in Section 120.5435(4), as well as its intended action (i.e., make no change, make a technical change, make a substantive change in which case a notice of rule development must also be filed in the Florida Administrative Register, or repeal the rule in which case a repeal notice must be filed in the Florida Administrative Register). See § 120.5435(6), Fla. Stat.
- **Before July 1**, JAPC will examine the intended actions for each rule under review, collect information from the agency if needed, and certify the agency to take the intended action if necessary. See § 120.5435(7), Fla. Stat.
- **By July 1**, agencies complete their rule review by complying with certain requirements (i.e., filing a certified copy of the reviewed rule and the JAPC certification with the Department of State if no changes or only technical changes are made, or filing notices to engage in rulemaking for each reviewed rule requiring a substantive change or repeal). See § 120.5435(8), Fla. Stat.

The purpose of this rule review process is to ensure that, by the close of the five-year period—which ends on July 1, 2030—agencies will have reviewed all their existing rules under the seven

factors listed above, and made any changes needed to update them. See § 120.5435(2)(a), Fla. Stat.

This rule review process does not preclude agencies from continuing to engage in rulemaking as usual. Agencies may continue to adopt new rules, and update or repeal old rules as needed. It simply requires that, concurrent with normal rulemaking, an agency also reviews its existing rules under the seven statutory factors and make necessary changes.

Overview of Rules Being Reviewed for Fiscal Year of July 1, 2025 – June 30, 2026

Currently, the Commission on Ethics has 188 rules organized under various rule chapters in the Florida Administrative Code. Each of these rules will have to be reviewed over the next five years, with at least 20 percent of the rules being reviewed per year. Staff intends to use the following schedule:

- July 1, 2025 – June 30, 2026 – Chapter 34-5 and Chapter 34-17, F.A.C. (**44 rules total**)
- July 1, 2026 – June 30, 2027 – Chapter 34-15, Chapter 34-18, and a portion of Chapter 34-12 (specifically Rules 34-12.00 through and including 34-12.210) (**39 rules total**)
- July 1, 2027 – June 30, 2028 – Chapter 34-9 and the remaining portion of Chapter 34-12 (specifically Rules 34-12.330 through and including Rule 34-12.760) (**44 rules total**)
- July 1, 2028 – June 30, 2029 – Chapter 34-6 and Chapter 34-13 (**39 rules total**)
- July 1, 2029 – June 30, 2030 – Chapter 34-7, Chapter 34-8, and Chapter 34-16 (**22 rules total**)

As noted above, the initial step in the rule review process is to submit a report by January 1 to the Senate President, the House Speaker, and JAPC summarizing the Commission's intended actions regarding the rules being reviewed during the July 1, 2025, through June 30, 2026 fiscal year. All that is required in this report is a summary of intended action, not the exact language which needs to be added or removed from the rules being reviewed.

Staff has reviewed the rules in Chapter 34-5 and Chapter 34-17 using the factors in Section 120.5435, and has prepared the required summary for your review. The summary is attached to this memo. For each rule under review, the summary indicates either that no change is needed, or what technical or substantive changes are recommended. Nearly all the recommendations are minor in nature, and simply update the rules to reflect current legal citations and Commission practices. The summary recommends:

- Updating legal references, including updating statutory and Constitutional citations, and removing references to rules that have been repealed;

- Removing language in the rules which extensively quote from the ethics statutes, which are duplicative;
- Changing any reference to a "party" in an ethics proceeding to a "respondent" for the sake of clarity, given that respondents are the only parties;
- Removing language in one rule allowing Commission investigators to report evidence of "wrongful acts" to the Commission, which appears to lack statutory authority and has never been used;
- Updating the options for the Commission when an ethics referral is being recommended as legally insufficient to reflect current statutes and practices;
- Removing language that states separate complaint proceedings against separate respondents can be consolidated, given that this raises confidentiality concerns and does not reflect current practice; and
- Renumbering subsections when needed.

Requested Commission Action

At your meeting on December 5, 2025, you will be asked to authorize staff to submit the attached summary, along with a cover memo, to the Senate President, the House Speaker, and JAPC, as required by statute. This will not be a rulemaking hearing. It is simply the initial step in this new rule review process. You only will be authorizing staff to submit this initial summary to these officers/agencies, thereby notifying them of the changes that likely will be needed. Next year, staff will propose actual updates to these rules reflecting the recommendations in the summary, and, at that time, you will be asked in a rulemaking hearing to approve those specific updates for the rules in question.

The Summary of Intended Agency Action on Each Rule Under Review for Fiscal Year 2025-2026, and the text of Chapters 34-5 and 34-17, Florida Administrative Code, are attached.

Attachments

**Summary of Intended Agency Action on Each Rule Under Review
Fiscal Year 2025-2026
Florida Commission on Ethics**

Rule 34-5.0001- Scope and Applicability of Chapter.

- *Technical Change-* Within the text of the rule, change the reference to Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.

Rule 34-5.0005- Time Periods.

- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.0006- Filing and Serving Documents; Facsimile Transmissions.

- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.0008- Presiding Officer.

- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.001- Staff Procedures Upon Receipt of a Complaint of Breach of Public Trust.

- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Technical Change-* Within the law implemented citation section, remove citation to Chapter 2013-36, Section 17, LOF.

Rule 34-5.0015- Jurisdiction of the Commission.

- *Technical Change-* Within the text of the rule, change the reference to Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change-* Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

- *Substantive Change*- The last sentence of the rule should be modified to match the form of the preceding sentence outlining the provisions which the Commission has jurisdiction over.

Rule 34-5.002- Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation; Review of Allegations of Failure to Properly Complete Financial Disclosure Forms.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, remove citation to Chapter 2014-183, Sections 3 and 4, LOF.
- *Technical Change*- Within the law implemented citation section, remove citation to Section 112.3144, F.S.
- *Technical Change*- Within the law implemented citation section, remove citation to Section 112.3145, F.S.
- *Substantive Change*- Delete Subsection (5) of the Rule.

Rule 34-5.0025- Withdrawal of Complaints.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.0028- Delegation of Authority.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.003- Subpoenas During Preliminary Investigation.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.004- Investigations.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Technical Change*- Renumber Subsections (5)-(8) of the Rule.
- *Substantive Change*- Delete Subsection (4) of the Rule.
- *Substantive Change*- Delete the last sentence of Subsection (7) of the Rule.

Rule 34-5.0043- Investigation of Facts and Parties Materially Related to Complaint.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Substantive Change*- Remove the reference to Rule 34-5.016, F.A.C. (repealed) in the last sentence of Subsection (4) of the Rule, and modify the sentence to read "A separate public hearing shall be held on the matter unless consolidation with the original complaint is ordered."

Rule 34-5.0045- Counsel.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.005- Motions to Dismiss for Lack of Jurisdiction.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.006- Probable Cause Determination.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Substantive Change*- In Subsection (3) of the Rule, delete "shall review the investigator's report and shall make a" (third sentence); delete "shall be furnished" (fourth sentence).
- *Substantive Change*- In Subsection (6) of the Rule, change the word "may" to "must" in the second clause.

Rule 34-5.007- Notification of Manner of Disposition.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.008- Confidentiality.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.010- Public Hearings.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Technical Change*- Delete the title of Chapter 28-106, F.A.C. ("the Uniform Rules of the Administration Commission").

Rule 34-5.011- Parties to Public Hearings.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Technical Change*- In the second sentence of the Rule, add the word "the" before the word "Respondent"; change the "R" in the word "Respondent" to be lowercase.
- *Substantive Change*- Delete everything after the word "party" in the second sentence of the Rule.

Rule 34-5.017- Disqualification of Commission Members.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Technical Change*- Within the rulemaking authority citation section, delete the citation to Article II, Section 8(f) and (h), Florida Constitution.
- *Substantive Change*- In the last sentence of Subsection (1) of the Rule, replace the phrase "a party" with "the respondent".

Rule 34-5.0171- Ex Parte Communications.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Substantive Change*- In the last sentence of Subsection (2) of the Rule, delete the phrase "any party, including the Advocate, desiring" and replace it with "if the respondent or Advocate desires"; add ",they" after the phrase "ex parte communication".

Rule 34-5.020- Stipulations, Settlements, and Consent Orders.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.
- *Technical Change*- In the first sentence of the Rule, change the "R" in the word "Respondent" to be lowercase and change the "d" in the word "disposition" to be uppercase.

- *Technical Change*- In Subsection (2) of the Rule, change the "R" in the word "Respondent" to be lowercase.
- *Substantive Change*- In the first sentence of the Rule, delete the word "informal".

Rule 34-5.024- Action on Recommended Public Report or Recommended Order by the Full Commission.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.025- Transmittal of Public Report.

- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(f), Florida Constitution, to Article II, Section 8(g), Florida Constitution.
- *Technical Change*- Within the law implemented citation section, change Article II, Section 8(h), Florida Constitution, to Article II, Section 8(j)(3), Florida Constitution.

Rule 34-5.0291- Award of Attorney's Fees

- *Technical Change*- In Subsection (3) of the Rule, delete the title of Chapter 28-106, F.A.C. ("the Uniform Rules of the Administration Commission").
- *Technical Change*- In Subsection (6) of the Rule, delete the comma after the word "or".

Rule 34-17.001- Scope and Applicability of Chapter.

- *No Change*

Rule 34-17.002- Time Periods.

- *No Change*

Rule 34-17.003- Filing and Serving Documents; Facsimile Transmissions.

- *No Change*

Rule 34-17.004- Staff Procedures Upon Receipt of a Referral.

- *No Change*

Rule 34-17.005- Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation.

- *Substantive Change*- Delete everything after the first sentence of Subsection (3) of the Rule. Then add the following language: " The Commission may find the referral to be sufficient and order an investigation; may find the referral to be insufficient, dismiss it, and notify the referring agency that no investigation will be made; or may take such other action as may be appropriate. In any case where a referral is found legally insufficient and dismissed, a summary of the reasons for dismissing the referral together with the referral itself and all documents related thereto shall become a public record and constitute a public report."

Rule 34-17.006- Delegation of Authority.

- *No Change*

Rule 34-17.007- Subpoenas During Preliminary Investigation.

- *No Change*

Rule 34-17.008- Investigations.

- *No Change*

Rule 34-17.009- Counsel.

- *Technical Change*- A citation to Section 120.62, Florida Statutes, should be added as a law implemented.

Rule 34-17.010- Probable Cause Determination.

- *Substantive Change*- In Subsection (1) of the Rule, add "and a copy of the Executive Director's order to investigate" to the end of the first sentence.
- *Substantive Change*- In the second clause of Subsection (6) of the Rule, change the word "may" to "must".
- *Substantive Change*- In Subsection (7) of the Rule, before the word "alleged," add "referring agency and the".

Rule 34-17.011- Notification of Manner of Disposition.

- *No Change*

Rule 34-17.012- Confidentiality.

- *No Change*

Rule 34-17.013- Public Hearings.

- *Technical Change*- Delete the title of Chapter 28-106, F.A.C. ("the Uniform Rules of the Administration Commission").

Rule 34-17.014- Parties to Public Hearings.

- *Technical Change*- In the second sentence of the Rule, add the word "the" before the word "Respondent," and change the "R" in the word "Respondent" to be lowercase.
- *Substantive Change*- In the second sentence of the Rule, delete everything after the word "party," and then add a "." after the word "party".

Rule 34-17.015- Disqualification of Commission Members.

- *Substantive Change*- In the last sentence of Subsection (1) of the Rule, replace the phrase "a party" with "the respondent".

Rule 34-17.016- Ex Parte Communications.

- *Substantive Change*- Move the last sentence of Subsection (1)(c) of the Rule down one line so that it applies to all of Subsection (1).
- *Substantive Change*- In the last sentence of Subsection (2) of the Rule, delete the phrase "any party, including the Advocate, desiring" and replace it with "if the respondent or Advocate desires".

- *Substantive Change*- In the last sentence of Subsection (2) of the Rule, delete the phrase "any party, including the Advocate, desiring" and replace it with "if the respondent or Advocate desires"; add ",they" after the phrase "ex parte communication".

Rule 34-17.017- Stipulations, Settlements, and Consent Orders.

- *Technical Change*- In the first sentence of the Rule, change the "R" in the word "Respondent" to be lowercase and change the "d" in the word "disposition" to be uppercase.
- *Technical Change*- In Subsection (2) of the Rule, change the "R" in the word "Respondent" to be lowercase.
- *Substantive Change*- In the first sentence of the Rule, delete the word "informal".

Rule 34-17.018- Action on Recommended Public Report or Recommended Order by the Full Commission.

- *No Change*

Rule 34-17.019- Transmittal of Public Report.

- *No Change*

CHAPTER 34-5
REVIEW, INVESTIGATION AND HEARING OF COMPLAINTS

34-5.0001	Scope and Applicability of Chapter
34-5.0005	Time Periods
34-5.0006	Filing and Serving Documents; Facsimile Transmissions
34-5.0008	Presiding Officer
34-5.001	Staff Procedures Upon Receipt of a Complaint of Breach of Public Trust
34-5.0015	Jurisdiction of the Commission
34-5.002	Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation; Review of Allegations of Failure to Properly Complete Financial Disclosure Forms
34-5.0025	Withdrawal of Complaints
34-5.0028	Delegation of Authority
34-5.003	Subpoenas During Preliminary Investigation
34-5.004	Investigations
34-5.0042	Investigation of Facts and Parties Materially Related to Complaint (Repealed)
34-5.0043	Investigation of Facts and Parties Materially Related to Complaint
34-5.0045	Counsel
34-5.005	Motions to Dismiss for Lack of Jurisdiction
34-5.006	Probable Cause Determination
34-5.007	Notification of Manner of Disposition
34-5.0075	Amendments to Charges at Public Hearing (Repealed)
34-5.008	Confidentiality
34-5.009	Waiver of Public Hearing (Repealed)
34-5.010	Public Hearings
34-5.011	Parties to Public Hearings
34-5.012	Counsel (Repealed)
34-5.013	Notice of Public Hearing (Repealed)
34-5.014	Hearing Panels (Repealed)
34-5.016	Consolidation of Cases (Repealed)
34-5.017	Disqualification of Commission Members
34-5.0171	Ex Parte Communications
34-5.018	Subpoenas for Public Hearing (Repealed)
34-5.0181	Subpoenas for Discovery; Discovery (Repealed)
34-5.0183	Motions (Repealed)
34-5.0184	Motions in Opposition to Proceeding (Repealed)
34-5.0185	Prehearing Conferences (Repealed)
34-5.0186	Exchange of Witness Lists (Repealed)
34-5.019	Procedures for Public Hearings (Repealed)
34-5.020	Stipulations, Settlements, and Consent Orders
34-5.0205	Motions to Dismiss Filed by Advocate (Repealed)
34-5.021	Public Report by Full Commission, Single Commission Member or Three-Member Panel of Commissioners, Generally (Repealed)
34-5.022	Recommended Public Report and Recommended Order by Single Commission Member, DOAH Hearing Officer, or Panel of Three Commission Members (Repealed)
34-5.023	Exceptions to Recommended Public Report or Recommended Order (Repealed)
34-5.024	Action on Recommended Public Report or Recommended Order by the Full Commission
34-5.025	Transmittal of Public Report
34-5.026	The Record (Repealed)
34-5.027	Prehearings (Repealed)

34-5.028	Waiver of Rules (Repealed)
34-5.029	Award of Attorney's Fees in Complaints Filed Before January 1, 1995 (Repealed)
34-5.0291	Award of Attorney's Fees
34-5.030	Enforcement of 1977 Disclosure Deadline (Repealed)
34-5.031	Substantial Compliance With Deadline for Filing Financial Disclosure (Repealed)

34-5.0001 Scope and Applicability of Chapter.

The rules in this Chapter 34-5, F.A.C., shall govern the receipt and disposition of all complaints concerning a breach of public trust under Article II, Section 8(f), Florida Constitution. These rules are the rules of procedures for the constitutional powers of the Commission on Ethics under that provision of the Constitution. On the effective date of this chapter, the rules of procedure of this chapter shall govern disposition of all complaints concerning breach of public trust heretofore received by the Commission, including those concerning violations of Part III of Chapter 112, F.S., and all complaints concerning breach of public trust received after the effective date of this chapter.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), Fla. Const., 112.322, 112.324 FS. History—New 7-13-80, Formerly 34-5.001.

34-5.0005 Time Periods.

In computing any period of time prescribed or allowed by these rules, by order of the Commission, the Chair, or another presiding officer, or by any applicable statute, the time period shall be calculated in accordance with Rule 28-106.103, F.A.C.

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

34-5.0006 Filing and Serving Documents; Facsimile Transmissions.

Pleadings and other documents under the rules of this chapter shall be filed and served in accordance with Rule 28-106.104, F.A.C., whether in paper or electronic form, and shall contain the information required by that rule.

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

34-5.0008 Presiding Officer.

For the purposes of Commission proceedings under this chapter, the presiding officer shall be the Chair of the Commission or, in the event the Chair is unavailable, the Vice Chair of the Commission.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 7-28-98.

34-5.001 Staff Procedures Upon Receipt of a Complaint of Breach of Public Trust.

(1) Upon receipt of a complaint, staff shall stamp on the face thereof the date on which the complaint was received in the Commission office.

(2) Technical and Clerical Review. Upon receipt of a complaint, the staff of the Commission shall review the complaint to insure that the proper complaint form has been used, that all the information required has been provided, that only one respondent has been named in each complaint form submitted, and that the complaint has been properly signed by the complainant under oath. One or more persons may sign a complaint under oath; however, when the complaint is to be filed under oath in a representative capacity in behalf of an incorporated association or group, the complaint shall include sufficient information to indicate the authority of the person signing the complaint to file such a complaint in behalf of the association or group. If the complaint lacks any of the foregoing, is otherwise incomplete, or alleges a matter or names a person not within the jurisdiction of the Commission on Ethics, the complaint shall be returned to the complainant identifying the defect. The staff shall provide assistance or information to persons seeking to file a complaint, but shall not encourage, solicit or discourage the filing of a complaint. If the complaint is filed in behalf of an unincorporated group or association, the person(s) signing the complaint will be considered to be the complainant(s) rather than the group or association.

(3) Each complaint which is not returned to the complainant shall be assigned a control number which shall be entered on the

complaint itself and on a colored folder in which the complaint shall be filed so long as it remains confidential. Any document related to the complaint shall be entered into the complaint file.

(4) Transmittal of Complaint to Respondent. A copy of the original sworn complaint that passes Technical and Clerical Review shall be transmitted to the respondent by certified mail, return receipt requested, by the Commission staff within five days of its receipt. Subsequent sworn amendments to the complaint also shall be transmitted to the respondent within five days of their receipt. If the certified mailing is returned undelivered, personal service of the copy of the complaint may be used in the manner provided by law for service of subpoenas, while maintaining the confidentiality of the complaint to the extent possible under the circumstances.

(5) Unless the complaint is based upon personal information or information other than hearsay, a complaint against a candidate in a general, special, or primary election that is received within the thirty (30) calendar days immediately preceding the date of that election, including Saturdays, Sundays, and holidays, will be returned by the Executive Director to the person filing the complaint, with an explanation of why the complaint is being returned.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Sec. 8(f), (h), Fla. Const., Chapter 2013-36, Section 17, LOF, 112.322, 112.324 FS. History--New 4-7-77, Amended 9-21-77, 11-9-77, 7-13-80, 11-26-80, 4-29-81, 2-21-83, Formerly 34-5.01, Amended 2-16-95, 10-29-13, 1-9-25.

34-5.0015 Jurisdiction of the Commission.

Article II, Section 8(f) Florida Constitution, requires the Commission on Ethics “to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.” The rules of this chapter have been promulgated by the Commission to provide the practices and procedures under which the Commission shall exercise this constitutional function. A complaint concerning breach of public trust is any complaint, filed with the Commission in accordance with the rules of this chapter, which alleges that a public officer or employee has violated a provision of the State Constitution, or of Part III, Chapter 112, F.S., or any other statutory provision within the jurisdiction of the Commission. The rules of this chapter also have been promulgated by the Commission to provide the practices and procedures under which the Commission shall exercise its statutory function of investigating complaints of violations of the Code of Ethics for Public Officers and Employees contained in Part III, Chapter 112, F.S.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History--New 9-21-77, Amended 7-13-80, Formerly 34-5.015, Amended 7-28-98, 11-24-15.

34-5.002 Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation; Review of Allegations of Failure to Properly Complete Financial Disclosure Forms.

(1) Legal Sufficiency Review. After a complaint has been subject to a Technical and Clerical Review, as described in Rule 34-5.001(2), F.A.C., and found to be in proper form, the complaint shall be reviewed by the Executive Director in order to determine whether the complaint is legally sufficient to allege a breach of public trust. Complaints need not be as precise as would be required by the rules of civil procedure in a court of law and shall be deemed sufficient if the complainant under oath upon knowledge or belief alleges matters which, if true, may constitute a breach of public trust, and the allegation of a breach of the public trust is based upon personal knowledge or information other than hearsay. In order to make this determination, the Executive Director may request additional information from the complainant and may obtain information from public records.

(2) Personal Knowledge or Information Other Than Hearsay. For an allegation to be considered legally sufficient, each element of the statute to be investigated, except elements pertaining to mental state, intent, or knowledge of an individual, must be supported by information in the complaint that is based on personal knowledge of the complainant or information other than hearsay.

(a) An allegation will be considered based on information other than hearsay so long as the evidence supporting the allegation is:

1. Information that is not hearsay;
2. Hearsay that is admissible under Sections 90.801 through 90.805, F.S. (e.g., the admission of a public officer); or
3. Hearsay that will likely be admissible under Sections 90.801 through 90.805, F.S. (e.g., a campaign treasurer report that would be admissible with the testimony of a records custodian, as provided by Section 90.803(6)(a), F.S.).

(b) In the case of a complaint filed in a representative capacity on behalf of an incorporated association or group, an allegation of a breach of public trust will be considered legally sufficient only if every element of the statute(s) to be investigated, except elements pertaining to the mental state, intent, or knowledge of an individual, is supported by information in the complaint that is based upon the personal knowledge of the person(s) signing the complaint, the personal knowledge of the individuals(s) who

authorized the signing of the complaint, or information other than hearsay.

(c) A determination that a particular allegation in a complaint is legally sufficient to establish a breach of the public trust may be made even when other allegations in the complaint are determined not to be based upon personal knowledge or information other than hearsay.

(3) If the Executive Director finds that the complaint is legally sufficient, the Executive Director shall order an investigation of the complaint.

(4) If the Executive Director finds that the complaint is not legally sufficient, the complaint shall be brought before the Commission in executive session with the recommendations of the Executive Director. The Commission may find the complaint to be sufficient and order an investigation; may find the complaint to be insufficient, dismiss it, and notify the complainant that no investigation will be made; or may take such other action as may be appropriate. In any case where a complaint is found legally insufficient and dismissed, a summary of the reasons for dismissing the complaint together with the complaint itself and all documents related thereto shall become a public record and constitute a public report.

(5) Review of complaints alleging violation of Article II, Section 8(a) or (i), Florida Constitution, or Sections 112.3144 or 112.3145, F.S., due to errors or omissions on an annual CE Form 6 – Full and Public Disclosure of Financial Interests, or CE Form 1 – Statement of Financial Interests.

(a) Effective May 1, 2013, the Commission shall treat an amended annual CE Form 6 – Full and Public Disclosure of Financial Interests, or CE Form 1 – Statement of Financial Interests, filed prior to September 1 of the year in which the disclosure is or was due as the original filing, regardless of whether a complaint has been filed.

(b) If a complaint filed after May 1, 2013, alleges an error or omission on an annual CE Form 6 – Full and Public Disclosure of Financial Interests, or CE Form 1 – Statement of Financial Interests, the Executive Director shall determine whether the complaint contains any allegations other than allegations of an immaterial, inconsequential, or de minimis error or omission on the disclosure form. If the complaint contains no such allegations, the staff shall take no action on the complaint other than to notify the respondent of the complaint. If the respondent files an amended disclosure correcting the error or omission with the Commission within 30 days of the date the notice is mailed, no further action shall be taken. If the respondent does not file an amended disclosure correcting the error or omission with the Commission within 30 days of the date the notice is mailed, the procedures in subsections (1)-(3), above, shall be followed.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., Chapter 2014-183 Sections 3 and 4, LOF, 112.3144, 112.3145, 112.322, 112.324 FS. History—New 4-7-77, Amended 9-21-77, 7-13-80, 1-12-82, Formerly 34-5.02, Amended 10-29-13, 10-19-14, 10-21-24.

34-5.0025 Withdrawal of Complaints.

After a complaint has been filed with the Commission, the Commission may permit the complainant(s) to withdraw the complaint only for good cause shown. Withdrawal shall be requested in writing, signed by the complainant(s) and witnessed by a notary public, stating the facts and circumstances constituting good cause. The Executive Director shall prepare a written recommendation regarding disposition of the request which shall be given to the Commission together with the request. “Good cause” shall be determined based upon the legal sufficiency or insufficiency of the complaint to allege a violation of the Code of Ethics or other breach of public trust, the stage in disposition of the complaint arrived at before the request was received, and the reasons given by the complainant(s) for wishing to withdraw the complaint. If withdrawal is permitted, the Commission shall order the complaint dismissed and shall proceed in accordance with Rule 34-5.002, F.A.C. as if the complaint had been found insufficient under that rule.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Sec. 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 4-21-83, Formerly 34-5.025.

34-5.0028 Delegation of Authority.

The Commission hereby delegates to its investigators the authority to administer oaths and affirmations, delegates the authority to issue subpoenas to its chair and, in the absence or unavailability of the chair, to its vice chair, and authorizes its employees to serve any subpoena issued under the Commission’s authority.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 2-16-95,

34-5.003 Subpoenas During Preliminary Investigation.

When an investigation of a complaint is ordered or at any time thereafter, upon recommendation of the Executive Director or upon motion of the Commission, the Commission Chair or other member authorized by the Commission may authorize the issuance of subpoenas or subpoenas duces tecum. Each subpoena shall be signed by the Chair or other member authorized by the Commission and shall state the person, documents, or other things to be subpoenaed. Each subpoena further shall name the person before whom the witness is to give testimony, and shall state in general terms the subject matter of the testimony to be elicited. If documents or other things are to be produced, the subpoena shall describe the same with as much specificity as reasonably practicable. The subpoena shall state clearly on its face that it is issued by the Commission on Ethics in accordance with its authority to investigate complaints of breaches of public trust. Such subpoenas shall be issued for investigative purposes only, and neither the complainant, the respondent, nor their counsel shall be entitled to attend the investigative proceeding at which the witness is to give a sworn statement unless the complainant or respondent is the person subpoenaed.

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, 11-26-80, Formerly 34-5.03, Amended 2-19-91, 7-28-98.

34-5.004 Investigations.

(1) Commencement of Investigations. Investigations shall be initiated only as provided above in Rule 34-5.002, 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 complaint. A preliminary investigation must be undertaken within 30 days after the receipt of a technically and legally sufficient complaint to determine whether there is probable cause to believe that a violation has occurred. A complainant may submit an amended complaint up to 60 days after the Commission receives the initial complaint. A 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) Investigators. Investigation shall be conducted by Commission staff, by personnel of the Department of Legal Affairs, or by any other person or agency so designated by the Commission.

(3) Scope of Investigation. Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue.

(4) Evidence of Wrongful Acts Unrelated to the Complaint. If during the course of an investigation evidence of a wrongful act not materially related to the complaint at issue is discovered by the investigator, such evidence shall be reported to the Commission in a separate investigator's report. The wrongful act shall not be further investigated by the investigator in the absence of a complaint with respect thereto. Upon receipt of a separate investigator's report containing evidence of a wrongful act not materially related to the complaint at issue, the Commission shall: (a) as soon as practicable forward evidence of the commission of a crime to the appropriate law enforcement official; and (b) forward evidence of the commission of any other wrongful act to the appropriate disciplinary or law enforcement official as soon as practicable following the completion of the preliminary investigation. If upon independent investigation the appropriate disciplinary official wishes to file a complaint with the Commission he or she may do so and said complaint shall be received and considered by the Commission in the same manner as any other complaint.

(5) Investigator Contacts with Potential Witnesses. The investigator shall inform the person being interviewed of the confidential nature of the investigation and of the complaint, unless the respondent has waived confidentiality.

(6) Investigator to be Impartial. An investigator shall be impartial and unbiased in the conduct of the preliminary investigation. An investigator shall collect all evidence materially related to the allegations of the complaint, whether such evidence tends to prove or disprove the allegations. If the Commission determines that a public hearing shall be held, however, the investigator is responsible for assisting the Advocate in the proof of the allegations brought against the respondent. If an investigator feels that for any reason he or she cannot be impartial or unbiased during the preliminary investigation then such investigator shall so notify the Executive Director of the Ethics Commission and shall immediately discontinue working in the investigation. If the Commission feels that the investigator cannot be unbiased or impartial at any point of time during the preliminary investigation, the Commission shall terminate any further investigation by the investigator.

(7) 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 separate report shall be prepared in accordance with subsection (4), above, if necessary.

(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 and complainant no later than 5 days after the extension is ordered.

(8) Investigatory File. The investigator shall prepare an investigatory file to be maintained in the office of the Commission on Ethics, which file shall contain:

(a) Copies of all documents obtained during the course of the investigation;

(b) Tape recordings of interviews with witnesses and, if no recording is made, a summary of the interview;

(c) A list of the names and addresses of all persons actually interviewed;

(d) Any other relevant documents; and

(e) The investigator's report(s) to the Commission.

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, 1-12-82, Formerly 34-5.04, Amended 2-19-91, 1-9-25.

34-5.0042 Investigation of Facts and Parties Materially Related to Complaint.

Rulemaking Authority Art. II, Sec. 8(f), (h), Fla. Const., 112.322(10), 120.53(1) FS. Law Implemented 112.322, 112.324 FS. History—New 4-29-81, Formerly 34-5.042, Repealed 2-16-95.

34-5.0043 Investigation of Facts and Parties Materially Related to Complaint.

The Commission has the duty to investigate all facts and parties materially related to the complaint at issue.

(1) Facts materially related to the complaint include facts which tend to show:

(a) A separate violation of Art. II, Sec. 8, Fla. Const. or the Code of Ethics by the respondent other than as alleged in the complaint and consisting of separate instances of the same or similar conduct by respondent as alleged in the complaint; or

(b) A separate violation of Art. II, Sec. 8, Fla. Const. or the Code of Ethics by the respondent from that alleged in the complaint which arises out of or in connection with the allegations of the complaint.

(2) Where facts materially related to the complaint are discovered by the investigator during the course of the investigation, the Executive Director shall order an investigation of them and the investigator shall include them in the investigative report. The Advocate may recommend and the Commission may order a public hearing as to those violations of the Code of Ethics which are indicated by such facts. From that point in the proceedings until final disposition of the complaint, such facts shall be treated as if they were initially alleged in the complaint at issue.

(3) A party materially related to the complaint means:

(a) Any other public officer or employee within the same agency as the respondent who has engaged in the same conduct as that alleged against the respondent in the complaint at issue; or

(b) Any other public officer or employee who has participated with the respondent in the alleged violation as a coconspirator or an aider and abettor.

(4) Whenever the investigation of the complaint at issue indicates the existence of a party materially related to the complaint, the Executive Director shall order an investigation of that party. The investigator shall maintain a separate investigatory file and prepare a separate investigative report, neither of which shall be made available to the complainant or to the original respondent. Separate proceedings from the original complaint at issue shall be commenced against such a party, who shall be deemed a "respondent," by sending to that person a copy of the Executive Director's order to investigate. From the date the investigation is ordered until final disposition of the matter, the charges against such a party (respondent) shall be treated as if they had been included in a complaint filed against such party. A separate public hearing shall be held on the matter unless consolidation with the original complaint is ordered as provided in Rule 34-5.016, F.A.C.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 2-16-95, Amended 7-30-00.

34-5.0045 Counsel.

(1) Respondent. Respondent may appear on his or her own behalf or may be represented by a lawyer or other qualified representative. All notices and communications to a respondent represented by a lawyer or qualified representative shall be made through the respondent's lawyer or qualified representative.

(2) Advocate. The Advocate presenting the matter before the Commission shall be an Assistant Attorney General or another attorney designated by the Commission as Advocate. The Advocate represents the Commission in its prosecutorial function.

(3) Complainant. To the limited extent the complainant is entitled to participate or observe Commission proceedings, the complainant may be represented by legal counsel or other qualified representative. All notices and communications to a complainant represented by a lawyer or qualified representative shall be made through complainant's lawyer or qualified representative.

(4) Appearances. Appearances by counsel or other qualified representatives shall be governed by Rules 28-106.105 and 28-106.106, F.A.C. The qualifications of a representative shall be determined in accordance with Rule 28-106.106, F.A.C. Qualified representatives shall observe the standards of conduct specified in Rule 28-106.107, F.A.C.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324, 120.62(2) FS. History—New 7-13-80, Formerly 34-5.12, 34-5.045, Amended 2-16-95, 7-28-98.

34-5.005 Motions to Dismiss for Lack of Jurisdiction.

Within a reasonable time before the hearing specified in Rule 34-5.006, F.A.C. is to be held, respondent may file with the Commission a written motion to dismiss the complaint for lack of jurisdiction which motion shall state with particularity the grounds therefor. The respondent shall simultaneously serve a copy of any such motion upon the Advocate. The Commission shall hear arguments of the respondent and Advocate on such motion prior to the hearing on the complaint specified in Rule 34-5.006, F.A.C. If the Commission finds that it has jurisdiction over matters alleged in the complaint, it shall deny respondent's motion with respect to those allegations and shall proceed to the hearing. If the Commission finds that it has no jurisdiction over matters alleged in the complaint, it shall order the complaint dismissed with respect to those allegations and shall proceed in accordance with Rule 34-5.002, F.A.C. as if such allegations had been found insufficient under that rule.

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, Formerly 34-5.05.

34-5.006 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 and a copy of the Executive Director's order to investigate. 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 complaint 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) Time to Review Report. The respondent shall be given not less than 14 days from the date of mailing of the investigator's report, within which time to file with the Commission a written response to the investigator's report. 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 reasonable notice under the circumstances is given.

(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 disposition of the complaint no later than 15 days after he or she receives the completed investigatory report. The Advocate's shall review the investigator's report and shall make a written recommendation to the Commission for the disposition of the complaint must include 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 days from the date of mailing of the Advocate's recommendation 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, the complainant(s), 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, complainant(s), 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) Scope of Probable Cause Determination. The probable cause determination is the conclusion of the preliminary investigation. The respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Commission, based on the investigator's report, before the probable cause determination. The Commission's determination shall be based upon the investigator's report, the Advocate's recommendation, the complaint, and staff recommendations, as well as any written statements submitted by the respondent and any oral statements made at the hearing. No testimony or other evidence will be accepted at the hearing.

(6) Probable Cause Determination. At its meeting to determine probable cause, the Commission may continue its determination to allow further investigation; may order the issuance of a public report of its investigation if it finds no probable cause to believe that a violation of the Code of Ethics or other breach of public trust has occurred, concluding the matter before it; may order a final, public hearing of the complaint if it finds probable cause to believe that a violation of the Code of Ethics or other breach of public trust has occurred; or may take such other action as it deems necessary to resolve the complaint, consistent with due process of law. In making its determination, the Commission may consider:

- (a) The sufficiency of the evidence against the respondent, as contained in the investigator's report;
- (b) The admissions and other stipulations of the respondent, if any;
- (c) The nature and circumstances of the respondent's actions;
- (d) The expense of further proceedings; and

(e) Such other factors as it deems material to its decision. If the Commission orders a public hearing of the complaint, the Commission shall determine what charges shall be at issue for the hearing.

(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 complainant and 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 the 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 before 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(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, 1-9-25.

34-5.007 Notification of Manner of Disposition.

Upon the Commission's ordering a public hearing of a complaint or a public report, as provided in Rule 34-5.006, F.A.C. the Executive Director shall so notify the complainant and the respondent in writing. The complainant also shall be provided with a copy of the report of investigation and of the Advocate's written recommendation.

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, Formerly 34-5.07, Amended 2-19-91, 7-5-92, 7-28-98.

34-5.0075 Amendments to Charges at Public Hearing.

Rulemaking Authority Art. II, Sec. 8(f), (h), Fla. Const., 112.322(10), 120.53(1) FS. Law Implemented Art. II, Sec. 8(f), (h), Fla. Const. History—New 4-29-81, Formerly 34-5.075, Repealed 2-16-95.

34-5.008 Confidentiality.

(1) Except as otherwise provided in these rules, the complaint and all staff and Commission activities, proceedings, and documents relating to the complaint shall be confidential until either:

(a) Confidentiality is waived in writing by the respondent; or

(b) The Commission orders the complaint dismissed, as provided in Rule 34-5.002, F.A.C.; or

(c) The Commission orders a public report, or a public hearing, as provided in Rule 34-5.006, F.A.C. When confidentiality is waived, the Commission orders the complaint dismissed, or the Commission orders a public report or a public hearing, all materials relating to the complaint shall become public records available to the public as provided in Chapter 119, F.S., except to the extent the materials are otherwise exempted from disclosure under the public records law.

(2) For the purposes of this rule, the Commission shall be deemed to have ordered a dismissal of the complaint, a public report, or a public hearing at the time the written order or document evidencing that action is filed with the Commission Clerk, rather than at the time the Commission has so voted.

(3) The confidentiality provided by this rule shall not prohibit the Commission or its staff from advising the respondent or the complainant about the status of the complaint proceeding.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 2-5-76, Formerly 34-1.07, Amended 4-11-76, 4-7-77, 9-21-77, 7-13-80, 10-3-84, Formerly 34-5.08, Amended 2-19-91, 7-5-92, 2-16-95, 7-28-98.

34-5.009 Waiver of Public Hearing.

Rulemaking Authority Art. II, Sec. 8(f), (h), Fla. Const., 120.53(1) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 4-11-76, Amended 4-7-77, Formerly 34-5.09, Repealed 7-13-80.

34-5.010 Public Hearings.

Public hearings may be conducted by the full Commission, by a single Commission member, or by the Division of Administrative Hearings, as directed by the Chair of the Commission after considering the Commission's workload. The Commission may refer the matter by letter to the Division of Administrative Hearings for the appointment of an administrative law judge. Public hearings held before the Commission or its members shall be governed by the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C. Proceedings before the Commission after the public hearing shall be governed by the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C., if one of the rules of that chapter is applicable, and, if not, by the rules of this chapter.

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, Formerly 34-5.10, Amended 2-19-91, 7-28-98.

34-5.011 Parties to Public Hearings.

The person accused of breach of public trust shall be the respondent. Respondent shall be the only party unless consolidation of complaints is granted. The Advocate shall be a full participant in the proceeding and shall present all the evidence relevant to the cause that was produced by the preliminary investigation and such additional evidence as may be obtained through discovery or further investigation.

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, Formerly 34-5.11, Amended 2-16-95, 7-28-98.

34-5.012 Counsel.

Rulemaking Authority Art. II, Sec. 8(f), (h), Fla. Const., 120.53(1) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 4-11-76, Formerly 34-5.12, Repealed 7-13-80.

34-5.013 Notice of Public Hearing.

Rulemaking Authority 112.322(10) 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, Formerly 34-5.13, Repealed 7-28-98.

34-5.014 Hearing Panels.

Rulemaking Authority 112.322(10) 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, Formerly 34-5.14, Amended 2-19-91, Repealed 7-28-98.

34-5.016 Consolidation of Cases.

Rulemaking Authority 112.322(10) 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, Formerly 34-5.16, Repealed 7-28-98.

34-5.017 Disqualification of Commission Members.

(1) Commission members shall be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final public hearing for bias, prejudice, or interest. Disqualification may be raised by a party, by the Advocate, or by any member, but not by the complainant.

(2) Unless good cause is shown, all motions for disqualification shall be filed with the Commission at least 5 days prior to the hearing at which the member is expected to participate. The motion shall be accompanied by an affidavit stating the particular grounds.

(3) Unless denied as untimely, the motion shall be ruled on by the Commission member whose disqualification is sought; the ruling shall be based on the legal sufficiency of the motion and affidavit. If the motion and affidavit are found legally sufficient, the member shall disqualify himself or herself.

Rulemaking Authority Art. II, Section 8(f), (h), Fla. Const., 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const. History—New 4-7-77, Amended 9-21-77, 7-13-80, Formerly 34-5.17, Amended 2-16-95.

34-5.0171 Ex Parte Communications.

(1) A commission member shall not initiate nor consider any ex parte communication relative to the merits of a pending complaint proceeding by:

(a) A public employee or official engaged in prosecution or advocacy in connection with the matter;

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed action of the Commission, or his or her authorized representative or counsel; or

(c) A complainant or any other individual who has personal knowledge of the facts underlying the proceeding, or his or her authorized representative or counsel.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the Commission in the proceeding or shall prohibit Commission members who are contacted by any of the above persons from referring them to Commission staff or the Commission Advocate.

(2) A commission member who receives such an ex parte communication shall place on the record of the matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party, including the Advocate, desiring to rebut the ex parte communication shall be allowed to do so, if a request for the opportunity for rebuttal is made within 10 days after notice of the communication.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 11-26-80, Formerly 34-5.171, Amended 2-16-95.

34-5.018 Subpoenas for Public Hearing.

Rulemaking Authority 112.322(10) 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, Formerly 34-5.18, Repealed 7-28-98.

34-5.0181 Subpoenas for Discovery; Discovery.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 7-13-80, Amended 11-26-80, Formerly 34-5.181, Repealed 7-28-98.

34-5.0183 Motions.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 11-26-80, Formerly 34-5.183, Amended 2-16-95, Repealed 7-28-98.

34-5.0184 Motions in Opposition to Proceeding.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 11-26-80, Formerly 34-5.184, Repealed 7-28-98.

34-5.0185 Prehearing Conferences.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 9-21-77, Amended 7-13-80, 11-26-80, Formerly 34-5.185, Repealed 7-28-98.

34-5.0186 Exchange of Witness Lists.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 1-12-82, Formerly 34-5.186, Repealed 7-28-98.

34-5.019 Procedures for Public Hearings.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 4-7-77, Amended 7-13-80, 11-29-83, Formerly 34-5.19, Amended 2-19-91, 2-16-95, Repealed 7-28-98.

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) The Advocate is not required to present or propose to the Commission a stipulation, settlement, or consent order offer from the Respondent unless the Advocate agrees to the terms of the offer.

(2) Commission staff shall send to the complainant a copy of the proposed stipulation, settlement, or consent order, notify the complainant of the meeting at which the Commission will consider the proposed stipulation or order, and advise the complainant that any written response to the proposed stipulation or order submitted by the complainant will be provided to the Commission for its consideration. If the complainant files a written response, a copy of it will be provided to the Respondent and the Advocate by Commission staff.

(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, 1-9-25.

34-5.0205 Motions to Dismiss Filed by Advocate.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 2-16-95, Repealed 7-28-98.

34-5.021 Public Report by Full Commission, Single Commission Member or Three-Member Panel of Commissioners, Generally.

Rulemaking Authority 112.322(10) 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, Formerly 34-5.21, Amended 2-16-95, Repealed 7-28-98.

34-5.022 Recommended Public Report and Recommended Order by Single Commission Member, DOAH Hearing Officer, or Panel of Three Commission Members.

Rulemaking Authority 112.322(10) 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, Formerly 34-5.22, Amended 2-19-95, Repealed 7-28-98.

34-5.023 Exceptions to Recommended Public Report or Recommended Order.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 2-16-95, Repealed 7-28-98.

34-5.024 Action on Recommended Public Report or Recommended Order by the Full Commission.

(1) Where the hearing has been conducted by a single Commissioner or DOAH administrative law judge, the meeting of the full Commission to consider the recommended public report shall not be an evidentiary “hearing.” No new evidence shall be taken.

(2) As the complainant is not a party, the complainant is not entitled to address the Commission either orally or in writing in response to the recommended order.

(3) In order to assist the Commission in evaluating any exceptions that may have been filed, Commission staff may provide a draft final order analyzing the exceptions. If one is drafted, copies shall be provided to the respondent and the Advocate prior to the final hearing.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 2-16-95, Amended 7-28-98, 7-30-00.

34-5.025 Transmittal of Public Report.

The public report shall be signed by the Chair, shall be transmitted by mail to the respondent and complainant, and shall be made available to the public.

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, Formerly 34-5.25, Amended 7-28-98.

34-5.026 The Record.

Rulemaking Authority 112.322(10) 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, 11-26-80, Formerly 34-5.26, Repealed 7-28-98.

34-5.027 Prehearings.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 4-11-76, Amended 4-7-77, Formerly 34-5.27, Repealed 7-13-80.

34-5.028 Waiver of Rules.

Rulemaking Authority 112.322(10) 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, Formerly 34-5.28, Repealed 7-28-98.

34-5.029 Award of Attorney's Fees in Complaints Filed Before January 1, 1995.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 4-7-77, Amended 7-13-80, 6-10-81, Formerly 34-5.29, Amended 2-19-91, 2-16-95, 7-28-98, Repealed 7-30-00.

34-5.0291 Award of Attorney's Fees.

(1) If the Commission determines that a person has filed a complaint against a public officer or employee or a candidate for public office with a malicious intent to injure the reputation of such officer or employee or candidate by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of the Code of Ethics, the complainant shall be liable for costs plus reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees.

(2) The Commission shall make such a determination only upon a petition for costs and attorney's fees filed with the Commission by the public officer or employee or candidate for public office complained against within 30 days following a dismissal of the complaint. Such petition shall state with particularity the facts and grounds which would prove entitlement to costs and attorney's fees and shall include the amount of such costs and attorney's fees expended by, or on behalf of, such petitioner through the date of the filing of the petition. Staff shall forward a copy of said petition to the complainant by certified mail, return receipt requested.

(3) If the facts and grounds alleged in the petition are not sufficient to state a claim for costs and reasonable attorney's fees, the Commission shall dismiss the petition after an informal proceeding. If the Commission determines that the facts and grounds are sufficient, the Chair after considering the Commission's workload, shall direct that the hearing of the petition be held before the Division of Administrative Hearings, the full Commission, or a single Commission member serving as hearing officer. Commission hearing officers shall be appointed by the Chair. The hearing shall be a formal proceeding under Chapter 120, F.S., and the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C. All discovery and hearing procedures shall be governed by the applicable provisions of Chapter 120, F.S. and Chapter 28-106, F.A.C. The parties to the hearing shall be the petitioner (i.e., the public officer or employee or candidate for public office who was the respondent in the complaint proceeding) and the complainant(s), who may be represented by legal counsel.

(4) The petitioner has the burden of proving the grounds for an award of costs and attorney's fees.

(5) If the petition is heard by the full Commission, it shall direct staff to prepare an order complying with Chapter 120, F.S., incorporating its findings and either granting or denying the petition. The draft of that order shall be modified or adopted at the next Commission meeting.

(6) If the petition is heard by a Commission hearing officer or, DOAH administrative law judge, in order to assist the Commission in evaluating any exceptions that may have been filed, Commission staff will provide a draft final order analyzing the exceptions. Copies shall be provided to the parties prior to the final hearing.

Rulemaking Authority 112.322(9) FS. Law Implemented 112.317(7), 112.322, 112.324 FS. History—New 2-16-95, Amended 7-28-98, 7-30-00, 9-4-12, 10-21-24.

34-5.030 Enforcement of 1977 Disclosure Deadline.

Rulemaking Authority Art. II, Section 8(f), (h), Fla. Const., 120.53(1) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS. History—New 9-21-77, Formerly 34-5.30, Repealed 7-13-80.

34-5.031 Substantial Compliance With Deadline for Filing Financial Disclosure.

Rulemaking Authority 112.322(10) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.3145, 112.317, 112.324 FS. History—New 9-21-77, Amended 7-13-80, Formerly 34-5.31, Amended 2-16-95, Repealed 7-28-98.

CHAPTER 34-17
REVIEW, INVESTIGATION AND HEARING OF REFERRALS

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34-17.001 Scope and Applicability of Chapter.

Section 112.324(1)(b), F.S., authorizes the Commission to accept written referrals of possible violations of Article II, Section 8, Florida Constitution, or Chapter 112, Part III, F.S., from the Governor, the Florida Department of Law Enforcement, a state attorney, or a United States Attorney. The rules in this Chapter 34-17, F.A.C., shall govern the receipt and disposition of all referrals reported to the Commission under this statute.

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

34-17.002 Time Periods.

In computing any period of time prescribed or allowed by these rules, by order of the Commission, the Chair, or another presiding officer, or by any applicable statute, the time period shall be calculated in accordance with Rule 28-106.103, F.A.C.

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

34-17.003 Filing and Serving Documents; Facsimile Transmissions.

Pleadings and other documents under the rules of this chapter shall be filed and served in accordance with Rule 28-106.104, F.A.C., whether in paper or electronic form, and shall contain the information required by that rule.

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

34-17.004 Staff Procedures Upon Receipt of a Referral.

(1) Upon receipt of a referral pursuant to Section 112.324(1)(b), F.S., staff shall assign a control number which shall be entered on the referral itself and on a colored folder in which the referral shall be filed so long as it remains confidential. Any documents related to the referral shall be entered in the referral file.

(2) A copy of the original referral shall be transmitted to the respondent by Commission staff within five (5) days of its receipt.

(3) Unless the referral is based upon personal information or information other than hearsay, any referral against a candidate in a general, special, or primary election that is received within the thirty (30) calendar days immediately preceding the date of that

election, including Saturdays, Sundays, and holidays, will be returned by the Executive Director to the person submitting the referral, with an explanation of why the referral is being returned.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13, Amended 10-21-24.

34-17.005 Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation.

(1) The referral shall be reviewed by the Executive Director in order to determine whether or not it is sufficient to allege a breach of public trust or a violation of Chapter 112, Part III, F.S. A referral shall not be insufficient because it is based upon evidence which would be hearsay evidence in a court of law. In order to make this determination, the Executive Director may request additional information from the referring agency and may obtain information from public records.

(2) If the Executive Director finds that the referral is sufficient to invoke the jurisdiction of the Commission, an order to investigate the referral shall be entered.

(3) If the Executive Director finds that the referral is not legally sufficient to invoke the jurisdiction of the Commission, the referral shall be brought before the Commission in executive session with the recommendation of the Executive Director. If a majority of the Commission accepts the Executive Director's recommendation that the referral is not legally sufficient, the referral shall be dismissed and the referring agency and the respondent will be notified of the dismissal. A summary of the reasons for dismissing the referral together with the referral itself and all documents related thereto shall become a public record and constitute a public report.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13, Amended 10-21-24.

34-17.006 Delegation of Authority.

The Commission hereby delegates to its investigators the authority to administer oaths and affirmations, delegates the authority to issue subpoenas to its chair and, in the absence or unavailability of the chair, to its vice chair, and authorizes its employees to serve any subpoena issued under the Commission's authority.

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

34-17.007 Subpoenas During Preliminary Investigation.

When an investigation of a referral is ordered or at any time thereafter, upon recommendation of the Executive Director or upon motion of the Commission, the Commission Chair or other member authorized by the Commission may authorize the issuance of subpoenas or subpoenas duces tecum. Each subpoena shall be signed by the Chair or other member authorized by the Commission and shall state the person, documents, or other things to be subpoenaed. Each subpoena further shall name the person before whom the witness is to give testimony, and shall state in general terms the subject matter of the testimony to be elicited. If documents or other things are to be produced, the subpoena shall describe the same with as much specificity as reasonably practicable. The subpoena shall state clearly on its face that it is issued by the Commission on Ethics in accordance with its authority to investigate referrals of breaches of public trust. Such subpoenas shall be issued for investigative purposes only, and neither a representative from the referring agency, the respondent, nor their counsel shall be entitled to attend the investigative proceeding at which the witness is to give a sworn statement unless a representative from the referring agency or the respondent is the person subpoenaed.

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

34-17.008 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) Investigators. Investigation shall be conducted by Commission staff, by personnel of the Department of Legal Affairs, or by any other person or agency so designated by the Commission.

(3) Scope of Investigation. Investigations shall be limited to the allegations of the referral.

(4) Investigator Contacts with Potential Witnesses. The investigator shall inform the person being interviewed of the confidential nature of the investigation and of the referral, unless the respondent has waived confidentiality.

(5) Investigator to be Impartial. An investigator shall be impartial and unbiased in the conduct of the preliminary investigation. An investigator shall collect all evidence materially related to the allegations of the referral, whether such evidence tends to prove or disprove the allegations. If the Commission determines that a public hearing shall be held, however, the investigator is responsible for assisting the Advocate in the proof of the allegations brought against the respondent. If an investigator feels that for any reason he or she cannot be impartial or unbiased during the preliminary investigation then such investigator shall so notify the Executive Director of the Ethics Commission and shall immediately discontinue working in the investigation. If the Commission feels that the investigator cannot be unbiased or impartial at any point of time during the preliminary investigation, the Commission shall terminate any further investigation by the investigator.

(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) Investigatory File. The investigator shall prepare an investigatory file to be maintained in the office of the Commission on Ethics, which file shall contain:

(a) Copies of all documents obtained during the course of the investigation;

(b) Recordings of interviews with witnesses and, if no recording is made, a summary of the interview;

(c) A list of the names and addresses of all persons actually interviewed;

(d) Any other relevant documents; and

(e) The investigator's report to the Commission.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13, Amended 1-9-25.

34-17.009 Counsel.

(1) Respondent. Respondent may appear on his or her own behalf or may be represented by a lawyer or other qualified representative. All notices and communications to a respondent represented by a lawyer or other qualified representative shall be made through the respondent's lawyer or qualified representative.

(2) Advocate. The Advocate presenting the matter before the Commission shall be an Assistant Attorney General or another attorney designated by the Commission as Advocate. The Advocate represents the Commission in its prosecutorial function.

(3) Referring Agency. To the limited extent the referring agency is entitled to participate or observe Commission proceedings, the referring agency may be represented by legal counsel or other qualified representative. All notices and communications to a referring agency represented by a lawyer or qualified representative shall be made through referring agency's lawyer or qualified representative.

(4) Appearances. Appearances by counsel or other qualified representatives shall be governed by Rules 28-106.105 and 28-106.106, F.A.C. The qualifications of a representative shall be determined in accordance with Rule 28-106.106, F.A.C. Qualified representatives shall observe the standards of conduct specified in Rule 28-106.107, F.A.C.

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) Time to Review Report. The respondent shall be given not less than 14 days from the date of mailing of the investigator's report, within which time to file with the Commission a written response to the investigator's report. 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 reasonable notice under the circumstances is given.

(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 written recommendation to the Commission for the disposition of the referral must include a statement of what charges shall be at issue at the probable cause hearing. A copy of the recommendation must be transmitted to the respondent no later than 5 days after its completion. The respondent shall be given 14 days from the date of mailing of the Advocate's recommendation 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) Scope of Probable Cause Determination. The probable cause determination is the conclusion of the preliminary investigation. The respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Commission, based on the investigator's report, before the probable cause determination. The Commission's determination shall be based upon the investigator's report, the Advocate's recommendation, the referral, and staff recommendations, as well as any written statements submitted by the respondent and any oral statements made at the hearing. No testimony or other evidence will be accepted at the hearing.

(6) Probable Cause Determination. At its meeting to determine probable cause, the Commission may continue its determination to allow further investigation; may order the issuance of a public report of its investigation if it finds no probable cause to believe that a violation of the Code of Ethics or other breach of public trust has occurred, concluding the matter before it; may order a formal hearing of the referral if it finds probable cause to believe that a violation of the Code of Ethics or other breach of public trust has occurred; or may take such other action as it deems necessary to resolve the referral, consistent with due process of law. In making its determination, the Commission may consider:

- (a) The sufficiency of the evidence against the respondent, as contained in the investigator's report;
- (b) The admissions and other stipulations of the respondent, if any;
- (c) The nature and circumstances of the respondent's actions;
- (d) The expense of further proceedings; and
- (e) Such other factors as it deems material to its decision. If the Commission orders a public hearing of the referral, the Commission shall determine what charges shall be at issue for the hearing.

(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, Amended 1-9-25.

34-17.011 Notification of Manner of Disposition.

Upon the Commission's ordering a public hearing of a referral or a public report, as provided in Rule 34-17.010, F.A.C., the Executive Director shall so notify the referring agency and the respondent in writing. The referring agency also shall be provided with a copy of the report of investigation and of the Advocate's written recommendation.

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

34-17.012 Confidentiality.

(1) Except as otherwise provided in these rules, the referral and all staff and Commission activities, proceedings, and documents relating to the referral shall be confidential until either:

(a) Confidentiality is waived in writing by the respondent; or

(b) The Commission orders the referral dismissed, as provided in Rule 34-17.005, F.A.C.; or

(c) The Commission orders a public report or a public hearing as provided in Rule 34-17.010, F.A.C. When confidentiality is waived, the Commission orders the referral dismissed, or the Commission orders a public report or a public hearing, all materials relating to the referral shall become public records available to the public as provided in Chapter 119, F.S., except to the extent the materials are otherwise exempted from disclosure under the public records law.

(2) For the purposes of this rule, the Commission shall be deemed to have ordered a dismissal of the referral, a public report, or a public hearing at the time the written order or document evidencing that action is filed with the Commission Clerk, rather than at the time the Commission has so voted.

(3) The confidentiality provided by this rule shall not prohibit the Commission or its staff from advising the respondent or the referring agency about the status of the referral proceeding.

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

34-17.013 Public Hearings.

Public hearings may be conducted by the full Commission, by a single Commission member, or by the Division of Administrative Hearings, as directed by the Chair of the Commission after considering the Commission's workload. The Commission may refer the matter by letter to the Division of Administrative Hearings for the appointment of an administrative law judge. Public hearings held before the Commission or its members shall be governed by the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C. Proceedings before the Commission after the public hearing shall be governed by the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C., if one of the rules of that chapter is applicable, and, if not, by the rules of this chapter.

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

34-17.014 Parties to Public Hearings.

The person accused of breach of public trust shall be the respondent. Respondent shall be the only party unless consolidation of referrals is granted. The Advocate shall be a full participant in the proceeding and shall present all the evidence relevant to the cause that was produced by the preliminary investigation and such additional evidence as may be obtained through discovery or further investigation.

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

34-17.015 Disqualification of Commission Members.

(1) Commission members shall be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final public hearing for bias, prejudice, or interest. Disqualification may be raised by a party, by the Advocate, or by any member, but not by the referring agency.

(2) Unless good cause is shown, all motions for disqualification shall be filed with the Commission at least 5 days prior to the hearing at which the member is expected to participate. The motion shall be accompanied by an affidavit stating the particular grounds.

(3) Unless denied as untimely, the motion shall be ruled on by the Commission member whose disqualification is sought; the ruling shall be based on the legal sufficiency of the motion and affidavit. If the motion and affidavit are found legally sufficient, the member shall disqualify himself or herself.

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

34-17.016 Ex Parte Communications.

(1) A Commission member shall not initiate nor consider any ex parte communication relative to the merits of a pending referral proceeding by:

(a) A public employee or official engaged in prosecution or advocacy in connection with the matter;

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed action of the Commission, or his or her authorized representative or counsel; or

(c) A referring agency or any other individual who has personal knowledge of the facts underlying the proceeding, or his or her authorized representative or counsel. Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the Commission in the proceeding or shall prohibit Commission members who are contacted by any of the above persons from referring them to Commission staff or the Commission Advocate.

(2) A Commission member who receives such an ex parte communication shall place on the record of the matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party, including the Advocate, desiring to rebut the ex parte communication shall be allowed to do so, if a request for the opportunity for rebuttal is made within 10 days after notice of the communication.

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) The Advocate is not required to present or propose to the Commission a stipulation, settlement, or consent order offer from the Respondent unless the Advocate agrees to the terms of the offer.

(2) Commission staff shall send to the referring agency a copy of the proposed stipulation, settlement, or consent order, notify the referring agency of the meeting at which the Commission will consider the proposed stipulation or order, and advise the referring agency that any written response to the proposed stipulation or order submitted by the referring agency will be provided to the Commission for its consideration. If the referring agency files a written response, a copy of it will be provided to the Respondent and the Advocate by Commission staff.

(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, Amended 1-9-25.

34-17.018 Action on Recommended Public Report or Recommended Order by the Full Commission.

(1) Where the hearing has been conducted by a single Commissioner or DOAH administrative law judge, the meeting of the full Commission to consider the recommended public report shall not be an evidentiary “hearing.” No new evidence shall be taken.

(2) As the referring agency is not a party, the referring agency or its representative is not entitled to address the Commission either orally or in writing in response to the recommended order.

(3) In order to assist the Commission in evaluating any exceptions that may have been filed, Commission staff may provide a draft final order analyzing the exceptions. If one is drafted, copies shall be provided to the respondent and the Advocate prior to the final hearing.

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

34-17.019 Transmittal of Public Report.

The public report shall be signed by the Chair, shall be transmitted by mail to the respondent and referring agency, and shall be made available to the public.

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