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State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

"A Public Office is a Public Trust"

Kerrie J. Stillman
Executive Director

Steven J. Zuilkowski
*Deputy Executive Director/
General Counsel*

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

MEMORANDUM

TO: Commission Members
FROM: Gray Schafer, Assistant General Counsel (GS)
DATE: July 12, 2023
RE: Rule Hearing on amendments to Chapter 34-7.010

The Commission is being asked to consider and approve rulemaking involving a necessary update to Chapter 34-7.010(1)(a), Florida Administrative Code (F.A.C.) and incorporated materials (the instructions for the CE Form 2). The rule amendment has been duly noticed and materials have been provided to the Joint Administrative Procedures Committee.

This rulemaking is necessary to update and clarify our rule concerning the CE Form 2 because Section 112.3145(2)(e), Florida Statutes, was recently modified to read, "Beginning January 1, 2024, a statement of financial interests, a final statement of financial interests, and any amendments thereto, **or any other form required by this section**, except any statement of a candidate who is not subject to the annual filing requirement, must be filed electronically through an electronic filing system created and maintained by the commission as provided in s. 112.31446." (emphasis added). Because the statutory authority for the CE Form 2 is found in Section 112.3145(6), Florida Statutes, it must be incorporated into the Commission's electronic filing system

The specific amendment in Rule 34-7.010(1)(a) reflects the pivot away from the paper filing of the CE Form 2 toward the electronic filing of the Form. In particular, the Rule is being amended to incorporate only the instructions for completing the Form. The material incorporated by reference in the rule used to include the paper form, although further incorporating a paper form is unnecessary, given that Section 112.3145(2)(e) indicates the filing may no longer be made by paper starting on January 1, 2024.

The Notice of Proposed Rulemaking, the text of the proposed amended rule, and the instructions incorporated by reference are attached. Also attached is a comment from JAPC and a response to that comment. You will be asked to approve this proposed rulemaking at your July 28, 2023, Commission meeting.

Attachments

THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE REGISTER.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Jessica Sapp, Executive Director, Board of Dentistry/MQA, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3258; Jessica.Sapp@flhealth.gov

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

Section II Proposed Rules

→ COMMISSION ON ETHICS

RULE NO.: RULE TITLE:

34-7.010: List of Forms and Instructions

PURPOSE AND EFFECT: This amendment affects Rule 34-7.010(1)(a), F.A.C. The purpose of the amendment is to transition the Form which that provision concerns (the Form 2 - Quarterly Client Disclosure) from paper filing to electronic filing. This reflects a recent statutory change in Section 112.3145, Florida Statutes, the statute authorizing the Form 2, requiring the Form to be submitted, beginning January 1, 2024, only through the electronic filing system created and maintained by the Commission as provided in Section 112.31446, Florida Statutes.

SUMMARY: The amendment clarifies the meaning of the Form 2, and then updates the material incorporated by reference to eliminate the paper version of the Form, as the Form, under a recent change to Section 112.3145(2)(e), must be filed beginning January 1, 2024, only through the electronic filing system maintained by the Commission. The material incorporated by reference will continue to include the instructions for completing the Form, although any reference to paper filings will be removed from the instructions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

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

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based on past experience, the adverse impact or regulatory costs, if any, do not exceed and would not be

expected to exceed any one of the economic criteria set forth in Section 120.541, FS.

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

RULEMAKING AUTHORITY: Art. II, Section 8, Fla. Const., 112.3145, 112.3147, 112.322(9), FS.

LAW IMPLEMENTED: 112.31446, 112.3145, Fla. Stat.

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

DATE AND TIME: July 28, 2023, 8:30 a.m.

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

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

34-7.010 List of Forms and Instructions.

(1) The following forms and instructions are incorporated by reference and are used by the Commission in its dealings with the public:

(a) Form 2, Quarterly Client Disclosure. This is the fields of information required to be utilized by elected constitutional officers, state officers, local officers, and specified employees for compliance with Section 112.3145(6), F.S., as set forth by instructions available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX 12820>. Revised 1/2024 2/2021.

(b) through (i) No change.

(2) No change.

PROPOSED EFFECTIVE DATE January 1, 2024.

Rulemaking Authority Art. II, Section 8(i), Fla. Const., 112.3144, 112.3145, 112.3147, 112.3215(14), 112.322(9) FS. Law Implemented Art. II, Section 8(a), (f), (h), Fla. Const., 112.313(9), (12), 112.31425, 112.3143, 112.3144, 112.31446, 112.3145, 112.3148, 112.31485, 112.3149, 112.3215 FS. History—New 4-11-76, Formerly 34-7.10-7.22, 8.10, Amended 2-23-77, 4-7-77, 5-17-77, 10-20-77, 2-25-79, 1-29-80, 4-29-81, 1-12-82, 3-25-82, 2-21-83, Formerly 34-7.10, Amended 7-10-88, 3-4-91, 10-6-91, 10-29-91, 12-22-91, 7-5-92, 10-

15-92, 12-6-92, 11-10-93, 12-27-93, 11-21-94, 2-16-95, 12-26-95, 1-27-97, 1-1-98, 1-1-99, 1-1-00, 12-4-00, 12-21-00, 10-14-01, 11-22-01, 1-1-02, 1-1-03, 1-1-04, 1-1-05, 1-1-06, 6-15-06, 1-1-07, 1-1-10, 8-18-10, 1-1-11, 1-19-11, 11-4-13, 1-1-15, 11-24-15, 7-5-16, 1-9-17, 1-9-20, 4-8-21, ____.

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

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 26, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: June 22, 2023

COMMISSION ON ETHICS

RULE NOS.:	RULE TITLES:
34-8.001	General
34-8.002	General Rules for Filing the CE Form 6 - Full and Public Disclosure of Financial Interests
34-8.003	Persons Required to File Full and Public Disclosure
34-8.005	Disclosure of Sources and Amounts of Income
34-8.008	Final Filing Using the CE Form 6F
34-8.009	Amended Filing Using the CE Form 6X
34-8.011	Penalties for Late Filing
34-8.202	General Rules for Filing the CE Form 1 - Statement of Financial Interests
34-8.208	Final Filing Using the CE Form 1F
34-8.209	Amended Filing Using the CE Form 1X
34-8.210	Penalties for Late Filing

PURPOSE AND EFFECT: This rulemaking has several purposes. First, certain of these rules need to be updated to reflect that - beginning January 1, 2024 - the Commission on Ethics will accept certain disclosure filings only through the electronic filing system created and maintained by the Commission as provided in Section 112.31446, Florida Statutes. In particular, this will affect the filing of the CE Form 1 - Statement of Financial Interests, CE Form 1F - Final Statement of Financial Interests, and CE Form 1X - Amendment to Statement of Financial Interests. Second, the amendments will update, clarify, and re-adopt the instructions incorporated by reference within these rules to similarly reflect that the CE Form 1, CE Form 1F, and CE Form 1X must be filed electronically beginning January 1, 2024. Third, additional changes are being made to enumerated rules, and to the materials incorporated by reference, to reflect recent legislative changes to the disclosure laws, as explained in the "summary" portion of this notice.

SUMMARY: The referenced rules are each being amended to reflect changes to the financial disclosure process. The amendments are based on statutory changes found in the language of Sections 112.3142, 112.3144, 112.31446, and 112.3145, Florida Statutes. In particular, the amendments to Rules 34-8.001, 34-8.202, 34-8.208, 34-8.209, and 34-8.210 (which concern the CE Form 1, CE Form 1F, and CE Form 1X filings) delete any references to paper filings and related statements regarding filing by paper because, in accordance with Section 112.3145(2)(e), Florida Statutes, any enumerated disclosures filed after January 1, 2024, must be through the electronic filing system. This also affects the material incorporated by reference within certain of these Form 1-related rules inasmuch as the paper forms for these filings will be eliminated, although the rules will continue to incorporate the instructions for completing the forms. In addition, Rules 34-8.005 and 34-8.009 are being amended to reflect a recent statutory change to Section 112.3144(6)(c) allowing CE Form 6 and CE Form 6X filers to attach their federal income tax returns for purposes of reporting their income. The rules are also being updated to reflect that, for each of the disclosure forms submitted through electronic filing, filers may include attachments or other supporting documentation, as recently provided in statutory amendments to Sections 112.3144(8), 112.31446(2)(f), and 112.3145(8). The amendments to Rule 34-8.003 clarify that mayors, elected members of municipal governing bodies, and each member of the Commission on Ethics must file a CE Form 6, in accordance with recent changes to Sections 112.3144(1)(d) and 112.3144(1)(e). The amendments to Rules 34-8.011 and 34-8.210 reflect a statutory change to Sections 112.3144(8)(f) and 112.3145(8)(f), which indicate the monetary penalties for late filing of a CE Form 6 or CE Form 1 will be based only upon when the filer submitted the form to the electronic filing system. An additional change to Rule 34-8.210 reflects the notice requirements for penalties, as provided in Section 112.3145(8)(f)1.

And, finally, the instructions incorporated by reference in the enumerated rules (Rules 34-8.001, 34-8.002, 34-8.008, 34-8.009, 34-8.202, 34-8.208, and 34-8.209) will be amended to reflect the following: (1) filers can submit attachments or other supporting documentation when filing their forms (under Sections 112.3144(8), 112.3144(2)(f), and 112.3145(8)); (2) filers should not include mortgage or brokerage account numbers, PID numbers, or taxpayer information on their filings, and the Commission on Ethics will not be liable if such information is included (under Sections 112.3144(7)(a) and 112.3145(4)(a)); (3) mayors, municipal commissioners, and members of the Commission no longer file a Form 1, but a Form 6 (Sections 112.3144(1)(d) and 112.3144(1)(e)); (4) on the instructions for the CE Form 6 and CE Form 6X, that a filer can complete the "Income" section by submitting a copy of their

34-7.010 List of Forms and Instructions.

(1) The following forms and instructions are incorporated by reference and are used by the Commission in its dealings with the public:

(a) Form 2, Quarterly Client Disclosure. This is the fields of information required to be utilized by elected constitutional officers, state officers, local officers, and specified employees for compliance with Section 112.3145(6), F.S., as set forth by instructions available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX> ~~12820~~. Revised 1/2024 ~~2/2021~~.

(b) through (i) No change.

(2) No change.

PROPOSED EFFECTIVE DATE January 1, 2024.

Rulemaking Authority Art. II, Section 8(i), Fla. Const., 112.3144, 112.3145, 112.3147, 112.3215(14), 112.322(9) FS. Law Implemented Art. II, Section 8(a), (f), (h), Fla. Const., 112.313(9), (12), 112.31425, 112.3143, 112.3144, 112.31446, 112.3145, 112.3148, 112.31485, 112.3149, 112.3215 FS. History—New 4-11-76, Formerly 34-7.10-7.22, 8.10, Amended 2-23-77, 4-7-77, 5-17-77, 10-20-77, 2-25-79, 1-29-80, 4-29-81, 1-12-82, 3-25-82, 2-21-83, Formerly 34-7.10, Amended 7-10-88, 3-4-91, 10-6-91, 10-29-91, 12-22-91, 7-5-92, 10-15-92, 12-6-92, 11-10-93, 12-27-93, 11-21-94, 2-16-95, 12-26-95, 1-27-97, 1-1-98, 1-1-99, 1-1-00, 12-4-00, 12-21-00, 10-14-01, 11-22-01, 1-1-02, 1-1-03, 1-1-04, 1-1-05, 1-1-06, 6-15-06, 1-1-07, 1-1-10, 8-18-10, 1-1-11, 1-19-11, 11-4-13, 1-1-15, 11-24-15, 7-5-16, 1-9-17, 1-9-20, 4-8-21, ____.

INSTRUCTIONS FOR COMPLETING AND FILING FORM 2 QUARTERLY CLIENT DISCLOSURE

WHEN TO FILE: It is due not later than the last day of the calendar quarter following the calendar quarter during which the representation was made. (Example: If a representation was made in March, the form disclosing it should be filed by June 30.) This form need not be filed if no reportable representations were made during the quarter.

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

DISCLOSURE OF CLIENTS REPRESENTED BEFORE AGENCIES

[Required by Fla.Stat. § 112.3145(6)]

[NOTE: Under Art. II, §8(e), Fla. Const., and §112.313(9), Fla. Stat., members of the Legislature are prohibited from personally representing another person or entity for compensation before State agencies (other than judicial tribunals). However, members of the Legislature are required to list below any such appearances before State agencies made by any partner or associate of a professional firm of which the legislator is a member. Also, public officers and their firms are prohibited by §112.313(7), Fla. Stat., from representing clients before boards on which they serve. Further, members of the governing bodies of local governments, and their firms, are prohibited by §112.313(7), Fla. Stat., from representing clients before subordinate staff or boards of their political subdivisions. Note also that local government attorneys and their firms are prohibited by §112.313(16), Fla. Stat., from representing private clients before the local governments they serve.]

1. If you are a state officer, elected constitutional officer of state government, or specified employee—Please list the names of all clients who were represented for a fee or commission during the previous calendar quarter before any agency at the state level of government either by you or by any partner or associate of a professional firm of which you are a member and of which representation you have actual knowledge. Also list the name of the agencies before which such clients were represented.

2. If you are a local officer or elected constitutional officer of local government—Please list the names of all clients who were represented for a fee or commission during the previous calendar quarter before any agency within the political subdivision you serve either by you or by any partner or associate of a professional firm of which you are a member and of which representation you have actual knowledge. Also list the names of the agencies before which such clients were represented.

NOTE: “Representation” includes actual physical attendance on behalf of a client in an agency proceeding, letters written or documents filed on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client. “Representation” DOES NOT include appearances before any court, or Chief Judges of Compensation Claims or judges of compensation

claims, representations on behalf of your agency in your official capacity, the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license based on a quota or a franchise of such agency, or a license or operation permit to engage in a profession, business or occupation, so long as the issuance or granting of such license, permit, or transfer, a variance, a special consideration, or a certificate of public convenience and necessity does not require substantial discretion. You are NOT required to disclose appearances in ministerial matters, i.e., where the person before whom you represent a client takes action in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgement or discretion as to the propriety of the action taken. For example, filing a document with a Circuit Court Clerk is a ministerial matter since it requires no discretionary action by the Clerk.

KATHLEEN PASSIDOMO
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Blaise Ingoglia, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Kimberly Berfield
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

PAUL RENNER
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

July 6, 2023

FLORIDA
COMMISSION ON ETHICS

JUL 10 2023

Mr. Gray Schafer
Assistant General Counsel
Commission on Ethics
P O Drawer 15709
Tallahassee, Florida 32317-5709

RECEIVED

**RE: Commission on Ethics
Proposed Rule Number 34-7.010**

Dear Mr. Zuilkowski:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on June 29, 2023. I have the following comments.

34-7.010(1)(a) It appears that the phrase, "[t]his is the fields of information required to..., " should be changed to either "this is the field" or "these are the fields." Please revise as appropriate via a technical change letter to the Department of State when you file the rule for adoption.

Please let me know if you have any questions. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon Jones".

Sharon Jones
Chief Attorney

SJ:yw #190425

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July 10, 2023

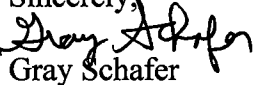
BY EMAIL to japc@leg.state.fl.us and JONES.SHARON@leg.state.fl.us

Ms. Sharon Jones
Senior Attorney
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

Re: Comments regarding amendments to Chapter 34-7.010, Florida Administrative Code

Dear Ms. Jones:

This letter responds to your July 6, 2023, letter, which included a comment on the proposed amendment to Chapter 34-7.010, Florida Administrative Code. Your letter identifies a technical change, which the Commission will be sure to make when it files the rule for adoption. If there are any questions about the foregoing, please do not hesitate to contact Steven Zuilkowski (General Counsel for the Ethics Commission) or myself.

Sincerely,

Gray Schafer
Assistant General Counsel