

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.

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.