

State of Rhode Island and Providence Plantations

Rhode Island Ethics Commission 40 Fountain Street Providence, RI 02903 (401) 222-3790

Public Notice of Proposed Rule-Making

Pursuant to the provisions of R.I. Const., art. III, sec. 8 and R.I. Gen. Laws § 36-14-9, and in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-3, the Rhode Island Ethics Commission hereby gives notice of its intent to amend the following regulations:

Regulation 1006 -- Finding of Probable Cause. The purpose of this amendment is to eliminate the Complainant's attendance in executive session hearings, recognizing that the Complainant is not a party to the proceeding.

Regulation 1011 -- Informal Disposition. The purpose of this amendment is to eliminate the Complainant's attendance in executive session hearings and to maintain the confidentiality of settlement negotiations, recognizing that the Complainant is not a party to the proceeding.

Regulation 1003 -- Initial Determination of Complaint. The purpose of this amendment is to clarify that at this stage of the process, the Commission will not engage in fact-finding or consider materials not included in the Complaint.

Regulation 36-14-12001 -- Preliminary Investigations. The purpose of this amendment is to clarify that during a preliminary investigation, the Commission's only role is to determine whether there is good cause to allow an extension of time to conduct an investigation, and to clarify that at this stage the Executive Director may compel the attendance of witnesses and require the production of documents.

Regulation 1009 -- Subpoena. The purpose of this amendment is to clarify that the Executive Director may cause a subpoena to issue without the review or approval of a Commissioner.

The proposed regulations and concise summaries thereof are available for public inspection at <http://www.ethics.ri.gov>, in person at the above address, or by calling Jason Gramitt, Education Coordinator/Staff Attorney at (401) 222-3790.

In the development of the proposed amendments, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified upon available information.

All interested parties are invited to submit written comments concerning the proposed regulations by March 1, 2010 to the Ethics Commission at the above address, or via email to comment@ethics.state.ri.us. A public hearing to consider the proposed amendments shall be held on **Tuesday, March 9, 2010 at 9:00 a.m.** at the above address, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 222-3790 or through Rhode Island Relay at 1-800-RI5-5555.

STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

PROPOSED AMENDED REGULATION 1006

1 **Regulation 1006 - Finding of Probable Cause.**

2 (a) The Executive Director or designee shall submit a written report to the Commission
3 summarizing the results of the investigation. The Executive Director or designee may
4 make a recommendation as to the existence or non-existence of probable cause. A copy
5 of this written report shall be sent to the Respondent and/or counsel no less than fourteen
6 (14) days before the scheduled hearing regarding the existence of probable cause. A
7 copy of any report, and written response thereto, so submitted shall be made public and a
8 part of the official Commission Complaint file, upon the issuance by the Commission of
9 either a Finding of Probable Cause or a Dismissal of the Complaint.

10 (b) The Commission shall permit the Respondent and/or counsel to submit a written
11 statement and/or to appear for the purpose of presenting arguments and/or written
12 evidence in response to the allegations against him or her. ~~Any Complainant in the~~
13 ~~Complaint at issue may also attend the hearing regarding the existence of probable cause.~~

14 (c) The Commission shall consider the Complaint, any amendment thereto, the written report
15 submitted by the Executive Director or designee, and recommendation, if any, and any
16 response submitted by the Respondent and/or counsel, in addition to any arguments or
17 statements made thereupon by the Executive Director or designee and the Respondent
18 and/or counsel, in finding the existence of probable cause. The Commission shall
19 conduct its hearing regarding probable cause in Executive Session as an investigative
20 proceeding, pursuant to R.I. Gen. Laws § 42-46-5(a)(4).

21 (1) If the Commission finds that probable cause does not exist, the Complaint shall be
22 dismissed with prejudice and the Respondent and the Complainant, if any, shall
23 be sent a copy of the Dismissal of the Complaint within three (3) working days of
24 such issuance. A Complaint dismissed for lack of probable cause shall not be

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25 entertained again by the Commission unless new facts are discovered which
26 materially add to the Complaint.

27 (2) If the Commission finds that probable cause exists to support the allegations of
28 the Complaint, its findings shall state in detail such violations complained of and
29 the manner in which they occurred. A copy of the Finding shall be mailed to the
30 Respondent and the Complainant, if any, within three (3) working days of such
31 issuance. The Commission shall schedule an adjudicative hearing on the matter.
32 The Finding of Probable Cause constitutes the official Commission Complaint
33 upon which the hearing shall be held.

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36 **CONCISE SUMMARY OF NON-TECHNICAL AMENDMENT**

37 This amendment eliminates the Complainant's attendance in the executive session
38 hearing to determine whether probable cause exists, recognizing that the Complainant is
39 not a party to an enforcement action. Rather, the people of the State of Rhode Island,
40 represented by the Executive Director or his/her designee, and the Respondent are the
41 parties in interest.