

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 36-14-12001

1 **Regulation 36-14-12001 Preliminary Investigations.**

2 Pursuant to its constitutional authority to investigate violations of the State's Code of Ethics (R.I.
3 Const., art. III, sec. 8) and its statutory empowerment to investigate allegations of violations of
4 the provisions of R.I. Gen. Laws § 36-14-1, et seq. (R.I. Gen. Laws § 36-14-12(a)), the Rhode
5 Island Ethics Commission adopts the following procedures for the preliminary investigation of
6 allegations of violations of the Code of Ethics.

7 (a) Upon a determination by the Executive Director of the Commission that information
8 provided to and/or in the possession of the Commission and/or its staff establishes a
9 reasonable basis to believe that a state or municipal official or employee, as those terms
10 are defined in R.I. Gen. Laws § 36-14-1, et seq., may have violated provisions of R.I.
11 Gen. Laws § 36-14-1, et seq., the State's Code of Ethics, the Executive Director, within a
12 reasonable time, shall provide the Commission with written notification that a
13 preliminary investigation has been initiated including the date the preliminary
14 investigation file was opened, the subject(s) and/or subject matter of the preliminary
15 investigation, and the nature and source(s) of the information that establishes a
16 reasonable basis that a state or municipal official or employee may have violated
17 provisions of R.I. Gen. Laws § 36-14-1, et seq., the State's Code of Ethics.

18 (b) All files, documents or other materials relating to a preliminary investigation, including
19 but not limited to written notifications, pleadings, records of counsel and investigators,
20 subpoenas and pleadings requesting the issuance of subpoenas, documentary evidence,
21 and records of witness statements, whether written or recorded by other means, shall
22 remain confidential, except as follows:

- 23 (1) the Commission, itself or through its Executive Director, may at any time grant
24 access to any information related to and/or obtained during a preliminary
25 investigation to any federal, state or municipal law enforcement agency;

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- 26 (2) the Commission, itself or through its Executive Director or his/her designee, may
27 in a complaint filed with the Commission pursuant to R.I. Gen. Laws § 36-14-
28 12(b) disclose information related to and/or obtained during a preliminary
29 investigation; and,
- 30 (3) the Commission, itself or through its Executive Director or his/her designee, shall
31 disclose information related to and/or obtained during a preliminary investigation
32 in accordance with the provisions of R.I. Gen. Laws § 36-14-12(c)(4).
- 33 (c) In accordance with R.I. Gen. Laws § 36-14-12(a)(1) the Commission, its Executive
34 Director or his/her designee, through the issuance of subpoenas, may compel the
35 attendance of witnesses and require the production of documents as follows:
- 36 (1) no subpoenas may issue until written notification of the initiation of a preliminary
37 investigation is made to the Commission pursuant to subsection (a) of this
38 regulation; and,
- 39 (2) issuance of a subpoena(s) as part of a preliminary investigation shall be in
40 accordance with the provisions of Commission Regulation 36-14-1009.
- 41 (d) No later than sixty (60) days from the initiation of a preliminary investigation the
42 ~~Commission, itself or through its Executive Director or his/her designee~~, shall complete
43 ~~its the preliminary investigation and the Executive Director or his/her designee~~ shall file a
44 report with the full Commission detailing the results of said investigation, including
45 whether or not the Executive Director or his/her designee intends to file a complaint with
46 the Commission pursuant to R.I. Gen. Laws § 36-14-12(b) as a result of said
47 investigation. Upon a showing of good cause the Commission may grant an extension of
48 time for the filing of said report.
- 49 (e) The only decision made by the Commissioners during the preliminary investigation stage
50 is whether there is good cause for an extension of time. The Commission shall not

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PROPOSED AMENDED REGULATION 36-14-12001

51 engage in any review of the substance of the complaint relating to the merits of the
52 complaint.

53 (e) (f) The Executive Director or designee shall provide the Commission with quarterly reports
54 identifying all open preliminary investigations.

55 (f) (g) The Executive Director or designee shall provide the Commission with notice when a
56 preliminary investigation is closed without the filing of a complaint.

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63 CONCISE SUMMARY OF NON-TECHNICAL AMENDMENT

64 This amendment clarifies that during the preliminary investigation stage of a complaint,
65 the Commission's only role is to determine whether there is good cause to allow an
66 extension of time to conduct the investigation. It also clarifies that the Executive
67 Director or his/her designee may compel the attendance of witnesses and require the
68 production of documents.