

## THE PUBLIC HEARING PROCESS

### Commission Responsibilities

**If the Commission makes a probable cause finding it shall proceed to a public hearing to determine whether a violation has actually occurred. The Commission should do the following:**

- 1. Set the hearing date & designate a hearing officer.**
  - a. The hearing must be held no more than sixty (60) days after the *filing*<sup>1</sup> of the complaint.
  - b. The hearing officer will preside over the hearing (e.g., run the hearing, make evidentiary determinations, draft the final decision, etc.)
- 2. The Commission should notify the respondent of the following no later than 21 business days prior to the hearing date<sup>2</sup>:**
  - a. The specific provisions of the Ethics Code that the respondent is charged with violating (this is limited to the probable cause finding);
  - b. The hearing date and location;
  - c. The name of the hearing officer; and
  - d. That the respondent must notify the Commission of the name of his/her counsel within 10 business days of the hearing.
- 3. The Commission should notify the complainant of the following:**
  - a. The specific provisions of the Ethics Code that the Commission found there is probable cause to believe the respondent violated;
  - b. The hearing date and location;
  - c. The name of the hearing officer
- 4. The Commission shall provide the respondent with copies of all exhibits that it anticipates will be entered into evidence in the direct presentation of the case.**
- 5. The Commission shall provide the complainant and respondent with a list of witnesses it anticipates will testify at the hearing no later than seven (7) days before the hearing.<sup>3</sup>**
- 6. Make sure all witnesses are sworn and the exhibits are marked.**

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<sup>1</sup> Must determine the "filing date".

<sup>2</sup> Consult UAPA section 4-177 (a) as guidance.

<sup>3</sup> The Complainant and Respondent shall provide the Commission with their witness lists within (ten) 10 days of the hearing.

- 7. Per section 53-6(D) of the Ethics Code, the Commission is bound by Connecticut General Statutes § 4-178 when considering the evidence.<sup>4</sup>**
- 8. Record the hearing and ensure that the recording is maintained safely.**
- 9. Maintain a record of all of the exhibits, filings, decisions, orders and correspondence in the matter from the complaint through the final decision or consent order. The record will consist of the following:**
  - a. Complaint;
  - b. Respondent's response;
  - c. Written notices related to the case;
  - d. Pleadings, motions, intermediate rulings;
  - e. Evidence received or considered;
  - f. Questions, objections and rulings thereon;
  - g. The official recording of the proceedings;
  - h. Proposed final decision<sup>5</sup> or draft consent order and exceptions thereto; and
  - i. The final decision or consent order.
- 10. Meet to determine whether the evidence establishes that a violation of the law occurred.**
- 11. No violation may be found unless 4 members of the Commission agree.**
- 12. If the Commission determines that a violation has occurred, it must inform the Complainant and Respondent of its finding no later than three (3) business days after the termination of the hearing. The Commission must provide a written summary of its reasons for making such a finding (i.e., findings of fact and conclusions of law). This must be done via registered or certified mail.<sup>6</sup>**

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<sup>4</sup> Connecticut General Statutes section 4-178 provides as follows:

In contested cases: (1) Any oral or documentary evidence may be received, but the agency shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence; (2) agencies shall give effect to the rules of privilege recognized by law; (3) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form; (4) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, and upon request, parties and the agency conducting the proceeding shall be given an opportunity to compare the copy with the original; (5) a party and such agency may conduct cross-examinations required for a full and true disclosure of the facts; (6) notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge; (7) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed; and (8) the agency's experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.

<sup>5</sup> We are only required to draft a proposed final decision if a majority of the members of the Commission were not present during the hearing.

<sup>6</sup> It appears that the Commission should also notify the complainant and respondent of a finding of *no violation* within (3) three days after the termination of the hearing. It should be done by registered or certified mail. It is unclear whether we need to provide our reasons for making said finding but it may be advisable to do so.

13. No later than five (5) business days after the hearing, the Commission must make public a finding of a violation. The record of the matter also becomes public at that time.

The Hearing Officer's Duties
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The hearing officer will act as follows:

**1. Run the hearing;**

- a. Introduce the case and inform the Respondent of the charges against them;
- b. Allow Complainant to present its case.
- c. Allow Respondent to present its case.
- d. Administer oaths to the witnesses;
- e. Mark exhibits (we need stickers for this – different colors for the Complainant's exhibits and the Respondent's exhibits);
- f. Make evidentiary decisions;
- g. Examine witnesses and allow the Commission to do so if requested; and
- h. End the hearing.

**2. Draft the Commission's proposed and final decision for review and distribution.**

Additional Items to Note
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- The complainant will present the case against the respondent if they are present at the hearing.
  - The complainant is not required to attend the hearing but if they choose not to the Commission's determination may be limited to the information gathered by the Commission during its preliminary investigation and probable cause hearing.
- The Respondent has the right to be represented by counsel (at the Respondent's expense) and to examine and cross-examine witnesses.
- The complainant and the Commission have the right to examine and cross-examine witnesses.
- All witnesses must be sworn.

## Commission's Guide to the Ethics Process

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- The respondent and the complainant shall notify the Commission of the names of the individuals that will serve as witnesses for the respondent during the hearing no later than ten (10) business days before the hearing
- The respondent shall also notify the Commission of the name of their counsel, if any within 10 days of the hearing.
- Rules of privilege that apply in the state of Connecticut must be understood as they apply in our hearings. For example, attorney-client privilege, spousal privilege, etc.
- We can receive any evidence in written form as long as that evidence does not “substantially prejudice” any party.
- Originals are always the best form of evidence, however, documentary evidence can be in the form of copies or excerpts if the original isn't readily available but the Commission or any party can ask to compare those copies/excerpts to the original.
- Notice can be taken of “judicially cognizable facts”. (Examples of these include regulations, rulings, and orders of the Commission, the Code of Ethics, or statutes of this or any state or of the US.) If we take notice of one of these facts, we must notify the parties so they can have a chance to inspect and contest the material noticed.