

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
WISCONSIN ETHICS COMMISSION**

Rule No.: ETH Ch. 21

Relating to: Practice and Procedure

Rule Type: Permanent

1. Detailed description of the objective of the proposed rule:

The Commission proposes a rule to clarify the procedure by which an individual may make a request for advice under Wis. Stat. § 19.46(2) and the procedure of the Commission in responding to those requests. The Commission also proposes to further clarify the complaint process of Wis. Stat. § 19.49(2).

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The Commission has two current policies relevant to the rule:

Delegation of Authority for Informal Advisory Opinions

Pursuant to Wis. Stat. § 19.46(2), the Commission may authorize the Commission's administrator or his or her designee to issue an informal written advisory opinion or transmit an informal advisory opinion electronically on behalf of the Commission, subject to such limitations as the Commission deems appropriate.

The Commission originally adopted a policy to delegate this authority on March 7, 2017 and has readopted this policy each year since. The delegation of authority is subject to the following conditions:

1. The request for an informal opinion must be received in writing (e.g., email, or a typed or written letter).
2. The informal opinion must be issued in writing (e.g., email, or a typed or written letter).
3. Every informal opinion issued shall be consistent with all applicable formal advisory opinions issued by the Commission, state or other law, and case law as required by Wis. Stat. § 19.46(2)(b)1; as well as United States and Wisconsin constitutional law.
4. The Commission Administrator, or the Staff Counsel upon delegation by the Administrator, may issue an informal opinion consistent with the policy adopted by the Commission.

Informal opinions issued by the administrator subject to the above conditions provide the same legal protections as an opinion issued by the Commission. Pursuant to Wis. Stat. § 19.46(2)(a)4., at each regular meeting of the commission, the administrator is required to review informal advisory opinions requested of and issued by the administrator that relate to recurring issues or issues of first impression for which no formal advisory opinion has been issued. In practice, the administrator regularly reports all informal advisory opinions issued on behalf of the Commission. The Commission may choose to issue a formal advisory opinion adopting or modifying the informal advisory opinion. If the Commission disagrees with a formal or informal advisory opinion, the commission may withdraw the opinion, issue a revised formal or informal advisory opinion, or request an opinion from the attorney general.

The proposed policy would seek to provide additional information as to the processes by which a requestor may seek an informal opinion from the administrator, an informal opinion of the Commission, or a formal opinion of the Commission. It would also delineate the process for requesting a public or private hearing on a formal opinion. This policy would assist requestors by enabling them to more easily request the particular type of advice sought and clarify expectations as to the type of response to be received as well as the process to be used.

The alternative to adopting this policy would be for Commission staff to continue to work with requestors to individually to review the request to identify the type of advice requested and attempt to meet each requestor's expectations as to the response to be received and the process to be used.

Complaints and Investigations Procedures

The complaint process is largely codified in Wis. Stat. § 19.49(2); however, the Commission has adopted a policy to further describe its internal processes for handling complaints including initial review of the complaint by the administrator and staff counsel, tracking mechanisms, notice procedures, and the process for subsequent review by the Commission.

The proposed policy would further describe the required elements of a sworn complaint and the conditions under which Commission staff will reject a submitted complaint as insufficient to proceed, the process through which a complaint is considered by the Commission, and how the Commission would determine whether a complaint is frivolous.

The alternative to adopting this policy would be for Commission staff to continue to exercise their independent judgment as to whether a complaint is sufficient to proceed, and for the Commission to continue its existing practices for considering complaints and making determinations as to whether a complaint is frivolous.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

Wis. Stat. § 11.1304(17):

11.1304 Duties of the ethics commission. The commission shall:

(17) Promulgate rules to administer this chapter.

Wis. Stat. § 19.48(1):

19.48 Duties of the ethics commission. The commission shall:

(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

Wis. Stat. § 227.11(2)(a):

227.11 Extent to which chapter confers rule-making authority.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

4. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The Commission estimates that it will use approximately 0.05 FTE staff to develop this rule. This includes time required for research, rule drafting, preparing related documents, coordinating stakeholder meetings, holding public hearings, legislative review and adoption, and communicating the final rule with affected persons and groups. The Commission will use existing staff resources to develop this rule.

5. List with description of all entities that may be affected by the proposed rule:

Candidates, political parties, and other registered committees; lobbyists and lobbying principals; state and local public officials; and the general public may be affected by the proposed rule.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Wisconsin Ethics Commission is unaware of any existing or proposed federal regulation that is applicable to this rule.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Wisconsin Ethics Commission anticipates the rule having no economic impact beyond the specified amounts proposed to be forfeited in the event of a violation. The settlement schedule is designed to deprive the alleged violator of any benefit and serve as a deterrent to violations. This proposed rule includes no significant economic impact on small businesses.

Contact person: David P. Buerger
david.buerger@wisconsin.gov (608) 267-0951

Daniel A. Carlton, Jr.
Administrator
Wisconsin Ethics Commission

Date Submitted