

Summary of Proposed Rules

R2-20-809- Provides for complaints by members of the public and others regarding violations of Title 16, Chapter 6.1 and related rules, as well as complaints by the Executive Director and referrals from other government entities. Provides a process for handling the administration of complaints.

R2-20-810- Provides for a response by a person against whom a proper complaint has been filed. Provides the procedures for such a response, including requirements, and for a presumption that may arise based on a failure to respond.

R2-20-811- Provide the process for investigation and enforcement. Authorizes the Executive Director or other staff member to issue subpoenas and other process and seek compliance with such process. Provides for an appeal to the Commission. Provides that attorneys may assist the Executive Director but may not also represent the Commission itself when it sits for a hearing. Provides for a report by the Executive Director including factual and legal allegations and recommendations and recommended penalties. Provides a process for consent agreements. Provides the Executive Director may dismiss a complaint at any time.

R2-20-812 – Provides for a hearing at a respondent's request. Provides for a pre-hearing conference and items that should be discussed, including scheduling, briefing, witnesses and other items. Provides for the Commission to hold a meeting and vote on whether to issue an order and assessment of penalties, dismiss a complaint or continue a complaint. Provides for judicial review by a respondent upon a final order and for the Executive Director to enforce a Commission order.

R2-20-813 – Provides rules relating to transactions and structuring. Provides that a person who is not a covered person may rely on records provided related to campaign media spending, but has the burden of establishing reasonable reliance, and may not claim reasonable reliance on records the person knows are false or misleading. Provides that a person who is not a covered person may issue a notice to another person that their donation may be used for campaign media spending. Provides that the Executive Director has the burden of establishing structuring by evidence of willful conduct with respect to a transaction or circumstance. Provides that advising investigation, enforcement, or judicial review, nor does it include

assisting a person in availing themselves of provisions of Title 16, Chapter 6.1 or these rules relating to exemptions from disclosure. Provides that willful conduct does include providing advising a client to take an action or taking an action to violate A.R.S. § 16-975.

R2-20-809 Complaint Procedures

A. Complaints

1. Any person may submit a complaint to the Executive Director if the person believes a violation of Arizona Revised Statutes Title 16, Chapter 6.1 or these rules has occurred. The complaint must be made in writing. Email submissions are acceptable.
2. Regardless of whether a complainant is represented by counsel, a complaint must contain the full name, email address, and mailing address of the complainant.
3. A complaint must:
 - a. Clearly recite the facts that describe a violation of Arizona Revised Statutes Title 16, Chapter 6.1 or these rules as specifically as possible. Citations to law are not required.
 - b. Clearly identify each person, including any individual, entity, committee, organization or group, that is alleged to have committed a violation.
 - c. Include any supporting documentation which the Complainant believes establishes the alleged violation, if available.
 - d. Differentiate between statements based on a complainant's personal knowledge and those based on information and belief. Statements not based on personal knowledge should identify the source of the information, and include supporting documentation if available.
Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
4. The Executive Director shall review the complaint within 5 days to determine if the Commission has jurisdiction to hear and rule on the complaint, and to ensure the complaint meets the criteria identified in subsection (A)(3).
5. If the complaint does not meet the criteria, Commission staff will notify the complainant of the deficiencies in the complaint and that no action will be taken on the complaint unless those deficiencies are remedied.
6. If the complaint is deemed sufficient, Commission staff will:
 - a. Assign the complaint a complaint number.
 - b. Confirm in a writing to the complainant and respondent that the complaint has been received.
 - c. Inform the complainant that the respondent will be provided an opportunity to submit a response.

7. A complainant may withdraw the complaint by writing to the Executive Director no later than 14 days after filing the complaint or before the response, whichever is sooner.
- B. Internally Generated Complaints
1. The executive director may file a complaint if the person believes a violation of Arizona Revised Statutes Title 16, Chapter 6.1 or these rules has occurred. The complaint shall:
 - a. Clearly recite the facts that describe a violation of Arizona Revised Statutes Title 16, Chapter 6.1 or these rules as specifically as possible. Citations to law are not required.
 - b. Clearly identify each person, including any individual, entity, committee, organization or group, that is alleged to have committed a violation.
 - c. Include any supporting documentation which the Complainant believes establishes the alleged violation, if available.
 2. Any employee, agent or representative of another government agency or subdivision of Arizona, including the state, any Arizona county, or any Arizona city or town, may make a referral to the executive director under this subsection.
 3. Commission staff will:
 - a. Assign the complaint a complaint number.
 - b. Confirm in a writing to the complainant and respondent that the complaint has been received.
 - c. Inform the complainant that the respondent will be provided an opportunity to submit a response.

R2-20-810 Response Procedures

- A. Within 14 days after receiving a complaint that complies with R2-20-809, a staff member will send the respondent a copy of the complaint and a written communication describing the campaign finance processing procedures. The written communication will:
1. Inform the respondent that the Executive Director has received allegations as to possible violations of campaign finance laws by the respondent.
 2. Provide a copy of the complaint.
 3. Gives the respondent an opportunity to respond in writing in a timely manner and setting forth a deadline of not more than 30 days after the date of the written communication. Extensions

shall be granted on request at the discretion of the Executive Director.

- B. The notification letter reflects no judgment about the accuracy of the allegations.
- C. The response is the respondent's opportunity to demonstrate to the Executive Director why they should not pursue an enforcement action, or to clarify, correct, or supplement the information in the complaint or referral. Respondents are not required to respond to the allegations.
- D. Respondents, if they choose, may be represented by counsel. Once the Executive Director receives a notification that the respondent is represented by counsel, the Commission staff will communicate only with the counsel unless otherwise authorized by the respondent or the respondent's counsel.
- E. The respondent's response shall be sworn to and signed in the presence of a notary public and shall be notarized. The respondent's failure to respond within the time specified in subsection A may be viewed as an admission to the allegations made in the complaint.
- F. If a respondent provides a response, the response should address each and every reason why no further action should be taken, including any legal or factual basis for an assertion that the matter is not subject to the Commission's jurisdiction.
- G. While not required, when possible, a response should provide documentation, including sworn affidavits or declarations under penalty of perjury from persons with first-hand knowledge of the facts.
- H. The response may be submitted by email, and the respondent need not copy the complainant on the response.
- I. A complainant may request a copy of the response.
- J. Complainants other than the Executive Director are not parties to any enforcement matter that may arise as a result of the complaint and response.

R2-20-811 Investigation and Enforcement Procedures

- A. Upon the expiration of the time for a response, the Executive Director or other Commission staff may conduct an investigation. The Executive Director or other Commission staff may engage attorneys pursuant to A.R.S. § 16-979(D).
- B. Attorneys who do substantial work investigating the complaint or enforcing orders and other matters arising from the complaint shall not participate as attorneys for the Commission regarding the

complaint. Such attorneys may represent the Executive Director or other Commission staff before the Commission.

- C. The Executive Director or other Commission staff may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers. The Executive Director or Commission staff may utilize attorneys to effectuate any of these actions, including filing any action necessary to compel compliance. A person subject to a subpoena or other order pursuant to this subsection may appeal to the Commission by sending a written request to the Commission's attention. The Chair or a Commissioner designated by the chair may confer with an independent legal advisor and shall issue an order scheduling the appeal for a public meeting of the Commission and may set a schedule for any additional briefing.
- D. Upon the completion of an investigation the Executive Director may prepare a report stating with reasonable particularity the nature of the violation, including the facts, laws, or rules substantiating the allegations in the complaint, and issue it to the respondent. The Executive Director may make a recommendation regarding the seriousness of violation, the appropriate remedy, and any other factors that the Executive Director and staff believe are relevant to the matter.
- E. If the Executive Director determines that a consent agreement with the respondent is sufficient, the Executive Director and the respondent may agree to present the agreement to the Commission for acceptance. A consent agreement may include a penalty. The Commission may vote to accept, reject, or modify the proposed consent agreement at a public meeting. At this meeting, the Commission's commission attorney for independent advice shall serve as the legal advisor for the commission. That attorney must not have worked on the investigation, enforcement, or consent agreement.
- F. The Executive Director may dismiss the complaint at any time.

R2-20-812 Enforcement Hearing Procedures

- A. Within 30 days after the issuance of the Executive Director's report and recommendations, a respondent may request a hearing before the Commission. The Commission shall be represented by counsel who have had no role in the investigation or enforcement.
- B. No later than 14 days after the request, the Executive Director, other Commission staff or attorneys for the Executive Director shall meet with the respondent or their attorneys to develop a proposed hearing plan. At the conference the following matters should be considered:
 - 1. The possibility of a consent agreement, and possible terms
 - 2. Select at least three mutually-agreeable dates for the hearing to present to the Commission.
 - 3. Discuss whether any additional written material shall be provided to the Commission. If additional written material is necessary, discuss deadlines for the parties to exchange those materials prior to the hearing.
 - 4. Decide whether either side will call live witnesses, disclosure of the witness' proposed testimony, and agree whether alternative procedures for providing the evidence are available and appropriate.
 - 5. Determine how much time each side will need at the hearing.
 - 6. Any pre-hearing matters that must be decided by the Commission and a schedule for presenting such matters.
 - 7. A schedule for any pre-hearing briefing.
 - 8. Each side may prepare a draft final order to be submitted to the Commission with other materials.
- C. Following the Conference, the Executive Director and respondent shall provide a report to the Commission's Chair or other Commission member designated by the Chair. The Chair may consult with an independent legal advisor. The Chair or the independent legal advisor will issue a scheduling order.
- D. The complaint, the response, the report, and any additional documents shall be provided to the Commission no later than 14 days before the hearing.
- E. At the conclusion of hearing the Commission may
 - 1. Vote issue a final order and assessment of penalties.
 - 2. Vote to dismiss the matter; or
 - 3. Vote to continue the matter to another meeting.

The Commission shall schedule the next hearing as soon as practicable, considering the schedules of respondent, respondent's counsel, the Executive Director, and any counsel for the Executive Director.

- F. Following a vote in favor of a final order and assessment of penalties a respondent may seek timely judicial review.
- G. At the expiration of the time for judicial review, the Executive Director or their representatives must seek compliance with the Commission's final order. This may include the Executive Director, Commission staff, or their attorneys seeking judicial enforcement of the order if necessary.

R2-20-813 Transactions and Structuring

- A. A person, including an individual, may rely on records provided to the person as documentation of a transaction related to campaign media spending if the records are provided by an independent person who owns or controls the monies involved in the transaction. The person claiming reliance bears the burden of showing the reliance is reasonable by a preponderance of the evidence. The person claiming reliance must not have knowledge the records are false or misleading, and must not refuse to consider or produce information that indicates the records are false or misleading.
- B. A person who is not a covered person may provide the notice prescribed by A.R.S. § 16-972(B) to another person who has given that person monies before transferring monies or making an in-kind donation to a covered person.
- C. In order to establish structuring, the Executive Director shall provide evidence that a person acted willfully with regard to the transaction or other circumstance.
- D. Willful conduct does not include representing a client during an investigation, enforcement, or judicial review, nor does it include assisting a person in availing themselves of provisions of Title 16, Chapter 6.1 or these rules relating to exemptions from disclosure. Willful conduct includes advising a client to take an action or taking an action to violate A.R.S. § 16-975.