

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Minnesota State Ethics Commission
(Agency or Board)

Regulation No. EC 401 thru 423 (new)

Subject: Hearing Rules and Regulations

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

MAR 26 1975 11:50 am

BY Eda Staudenmaier
AUTH. SIGNATURE

Stamped and filed with the Secretary of State 3-26-75

Rev. 9-72

ADMIN. 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Mike Miller
Special Assistant
Attorney General

DATE: March 12, 1975

FROM : Joan Swartz
Special Assistant
Attorney General

SUBJECT: Ethics Commission Hearing Rules

Enclosed are the forms for the hearing rules. They were approved by the Commission with the numbering system as you see it. There are internal references which will have to be re-numbered to conform with the Documents Section numbering system. Does that present any problem or can Elsa Carpenter just make the changes before she sends the rules to be printed?

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE ETHICS COMMISSION

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In the matter of the Proposed Adoption of Rules of the State Ethics Commission Governing Hearings (EC 401-EC 423)

ORDER FOR HEARING

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To effectively implement Minnesota Laws 1974, Chapter 470, the Minnesota State Ethics Commission deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in the Commission by said Chapter 470, Section 2, subd. 13.

NOW, THEREFORE, IT IS ORDERED this 23rd day of December, 1974, that a public hearing on the proposed rules captioned above be held in Room 25, State Capitol, St. Paul, Minnesota, on February 7, 1975, commencing at 1:00 P.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
ETHICS COMMISSION

By Spencer Sokolowski
Spencer Sokolowski
Chairman

STATE OF MINNESOTA

STATE ETHICS COMMISSION

COUNTY OF RAMSEY

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In the matter of the Proposed
Adoption of Rules of the State
Ethics Commission Governing
Hearings (EC 401-EC 423)

NOTICE OF HEARING

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NOTICE IS HEREBY GIVEN that a public hearing will be held pursuant to Minnesota Statutes Section 15.0412 (1973) and Minnesota Laws 1974, Chapter 470, in the above-entitled matter, in Room 125, State Capitol, Saint Paul, Minnesota on February 7, 1975, commencing at 1:00 p.m., and continuing until all representatives or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted in writing without appearing at the hearing by mailing to the Minnesota State Ethics Commission, Room 74, State Office Building, Saint Paul, Minnesota 55155, at any time prior to closing of the record. The record shall close at 4:30 p.m. on February 28, 1975.

Copies of the proposed rules and forms are now available and may be obtained by writing to the office of the Commission at the address below. Additional copies will be available at the door on the date of the hearing.

These rules are proposed rules only and are subject to alterations or modifications as the Agency deems necessary and appropriate from its consideration of all the evidence adduced at the public hearing and all statements entered into the record.

Dated this 23rd day of December, 1974.

MINNESOTA STATE ETHICS COMMISSION

By Spencer Sokolowski
Spencer Sokolowski, Chairman

Minnesota State Ethics Commission
Room 74, State Office Building
Saint Paul, Minnesota 55155

Telephone: 612-296-5148
612-296-5149

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

ELSA M. CARPENTER, being first duly sworn upon oath, deposes and says:

1. That she is a Staff Associate in the Office of the State Ethics Commission for the State of Minnesota.

2. That on the 23rd day of December, 1974, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgations of rules pursuant to Minn. Stat. 15.0412.

3. That on the 23rd day of December, 1974, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Elsa M. Carpenter
ELSA M. CARPENTER

Subscribed and sworn to before me
This 23 day of December, 1974.

Helen Oslund

HELEN OSLUND
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jan. 8, 1978

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

CERTIFICATE

In the matter of the Proposed
Adoption of Hearing Rules and
Regulations to be promulgated
by the State Ethics Commission

I hereby certify that the attached 399 labels constitute the complete list of persons, associations, and other interested groups who as of 11:00 o'clock A.M., this 23rd day of December, 1974, have requested, pursuant to M.S. 1969, Stat. 15.0421, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

ARLEN I. ERDAHL
Secretary of State
State of Minnesota
Arlen I. Erdahl
BY Ceil Dion

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

In the matter of the Proposed Adoption of the Hearing Rules and Regulations to be promulgated by the State Ethics Commission

AFFIDAVIT

OF MAILING

Susan M. Scott, BEING FIRST DULY SWORN, DEPOSES AND SAYS:

That on the 30th day of Dec., 1974, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Susan M. Scott

Subscribed and sworn to before me this 30th day of Dec. 1974

Helen Oslund

HELEN OSLUND
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jan. 8, 1978

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE ETHICS COMMISSION

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In the matter of the Proposed Adoption of Rules of the State Ethics Commission Governing Hearings (EC 400-EC 423)

STATEMENT OF NEED

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The above-captioned rules are not amendments to existing rules of the State Ethics Commission.

The need to adopt these rules arises in order to enable the State Ethics Commission to hold contested case hearings as part of the process of determining whether there is probable cause to believe that the provisions of Minn. Stat. §§ 10A.01 - 10A.34 (1974) have been violated, to establish procedures for requests for exemption from the campaign reporting requirements of Minn. Stat. § 10A.20 (1974), to establish procedures for suspension without pay of public officials who fail to file Statements of Economic Interest as required by Minn. Stat. § 10A.09 (1974), and to make permanent the emergency rules adopted by the Commission on December 18th, 1974.

Dated: February 7, 1975

MINNESOTA STATE ETHICS COMMISSION

By Spencer Sokolowski, Chairman

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE ETHICS COMMISSION

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In the matter of the Proposed Adoption of Rules of the State Ethics Commission Governing Hearings (EC 401-EC 423)

FINDINGS OF FACT

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The above-entitled matter came on for hearing before the Minnesota State Ethics Commission [hereinafter the Commission] on the 7th day of February, 1975, at 1:00 p.m. in Room 125 of the State Capitol, Saint Paul, Minnesota, after proper notice required by Minnesota Statutes § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and upon all members of the Minnesota Legislature.

After affording all persons an opportunity to present written and oral data, statements and arguments, having considered all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, the Commission finds the following:

1. In order to fulfill its duties under Minn. Stat. §§ 10A.01 et seq. (1974), it may be necessary for the Commission to hold contested case adjudications.

2. Such adjudications should be conducted as fairly and expeditiously as possible.

3. The Commission should investigate all formal complaints which are filed alleging violations of Minn. Stat. §§ 10A.01 et seq. (1974) and may conduct investigations and audits into other matters on which no complaints have been filed. Minn. Stat. § 10A.02 subd. 11 (1974) provides that such investigations must be confidential.

4. The Commission may wish to hold a contested case hearing on a matter under investigation or audit before making a decision that there is probable cause to believe a violation of Minn. Stat. §§ 10A.01 et seq. (1974) has occurred.

5. In cases in which a person is requesting an exemption from the campaign reporting requirements, such person may wish to remain anonymous. Allowing such person to designate another person to appear on his behalf will help to preserve anonymity.

6. Regard for fundamental fairness dictates that persons appearing in a contested case adjudication before the Commission be allowed to:

a. be apprised of the subject matter of the proceeding;

b. represent themselves or be represented by an attorney;

c. call witnesses and present evidence on their own behalf;

d. cross examine any other witnesses.

7. Regard for fundamental fairness further dictates that all decisions in contested cases should be made a part of the record.

Dated: March 7, 1975

MINNESOTA STATE ETHICS COMMISSION

By Spencer Sokolowski
Spencer Sokolowski
Chairman

STATE OF MINNESOTA

STATE ETHICS COMMISSION

COUNTY OF RAMSEY

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In the matter of the Proposed Adoption of Rules of the State Ethics Commission Governing Hearings (EC 401-EC 423)

CERTIFICATE OF COMMISSION'S ADOPTION OF RULES RESOLUTION

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I, Rosemary Davis, do hereby certify that I am secretary of the Minnesota State Ethics Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Commission duly and properly called and held on the 7th day of March, 1975; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules governing hearings (EC 401-EC 423) be and they hereby are approved and adopted, pursuant to authority vested in us by Minn. Stat. § 10A.02 subdivision 13 (1974), and that Spencer Sokolowski, Chairman of the Minnesota State Ethics Commission, be and he hereby is authorized to sign an order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7th day of March, 1975.

Rosemary Davis

Rosemary Davis, Secretary

Spencer Sokolowski

Attest by one other Officer.

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE ETHICS COMMISSION

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In the matter of the Proposed Adoption of Rules of the State Ethics Commission Governing Hearings (EC 401-EC 423)

AFFIDAVIT OF COMMISSION'S AUTHORIZING RESOLUTION

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I, ROSEMARY DAVIS, do hereby certify that I am secretary of the Minnesota State Ethics Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Commission duly and properly called and held on the 18th day of December, 1974; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Spencer Sokolowski, Chairman of the Minnesota State Ethics Commission, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Commission governing hearings, as well as perform any and all acts incidental thereto, including but without being limited to, signing an order for hearing and notice of hearing as well as acting as presiding officer at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of January, 1975.

MINNESOTA STATE ETHICS COMMISSION

Rosemary Davis

Rosemary Davis, Secretary

Spencer Sokolowski

Attest by one other officer

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE ETHICS COMMISSION

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In the matter of the Proposed Adoption of Rules of the State Ethics Commission Governing Hearings (EC 401-EC 423)

ORDER ADOPTING RULES

- - - - - - - - - - - - - - - - -

The above-entitled matter came on for hearing before the Minnesota State Ethics Commission on the 7th day of February, 1975, at 1:00 p.m. in Room 125 of the State Capitol, Saint Paul, Minnesota, after proper notice required by Minnesota Statutes § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules:

NOW, THEREFORE, IT IS ORDERED that these rules identified as EC 401-EC 423 are adopted this 7th day of March, 1975, pursuant to authority vested in the Commission by Minn. Stat. § 10A.02 subd. 13 (1974).

MINNESOTA STATE ETHICS COMMISSION

By Spencer Sokolowski

Spencer Sokolowski, Chairman

STATE OF MINNESOTA

STATE ETHICS COMMISSION

COUNTY OF RAMSEY

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In the matter of the Proposed Adoption of Rules of the State Ethics Commission Governing Hearings (EC 401-EC 423)

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PRODEDURES

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I, Special Assistant Attorney General Joan Swartz, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Joan Swartz

JOAN SWARTZ
Special Assistant Attorney General

Dated: March // , 1975.

The Order for Hearing lists the room for the public hearing as Room 25 State Capitol. It should have read Room 125. However, the Notice of Hearing contains the correct room number.

Adopted March 7, 1975

MINNESOTA STATE ETHICS COMMISSION

HEARING RULES AND REGULATIONS

EC 401 - EC 423

EC 401. Introduction

The rights, privileges or duties of any person before this Commission shall be determined with regard for fundamental fairness. To that end, these rules are intended to assure that all parties to contested cases before this Commission are provided a speedy and just hearing. Such hearing shall include:

A. Adequate notice of involvement to all interested persons;

B. The opportunity to consult with the Commission informally to attempt to resolve conflicts on issues;

C. Notice at each stage of the proceedings sufficient to provide the opportunity to prepare therefore;

D. An objective decision supported by substantial evidence from the record.

EC 402. Definitions

A. "Commission" means Minnesota State Ethics Commission.

B. "Contested Case" means a proceeding before the Commission in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after a Commission hearing. "Contested case" shall include:

1. A proceedings pursuant to a request for exemption from campaign reporting requirements under Minn. Stat. § 10A.20, subd. 8-10 (1974);

2. A proceeding to suspend a public official without pay for failure to file a Statement of Economic Interest under Minn. Stat. § 10A.09, subd. 8 (1974).

For purposes of these rules, "contested case" shall also include:

1. A hearing ordered by the Commission pursuant to EC 405(B) concerning a complaint, investigation or audit;
2. Any other hearing which may be ordered by the Commission pursuant to these rules or which may be required by law.

For purposes of these rules, "contested case" shall not include a Commission investigation or audit conducted pursuant to Minn. Stat. § 10A.02, subd. 10 (1974).

C. "Party" means any person whose legal rights, duties, or privileges may be determined in a contested case. "Party" shall include the Commission except when the Commission participates in the contested case in a neutral or quasi-judicial capacity only. In anonymous proceedings, "party" shall include the person designated to appear by the applicant. (See EC 406(B)(4)). In a contested case commenced by the Commission following a complaint (see EC 403(B)(4) and EC 405(B)), "party" shall include both the person who filed the complaint and the person against whom it was filed.

D. "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, or any government or governmental sub-division, unit or agency, other than a court of law.

E. "Service; Serve" means service by registered or certified United States mail, postage prepaid and addressed to the party at the last known address of that party, unless some other manner of service is required by law or permitted by these regulations.

EC 403. Complaints, Investigations & Audits

A. Complaints. Any person authorized by law to submit to the Commission a complaint that any person has not complied with the requirements of Minn. Stat. §§ 10A.01-10A.34 (1974) may request that the Commission investigate the alleged non-compliance by filing a complaint. A complaint shall contain:

1. The name and address of the complainant;
2. The name of the person against whom the complaint is made;
3. The statutory sections which the complainant believes have been violated and the basis for complainant's belief, together with any evidentiary material;
4. A statement that the complainant understands that any hearing or action of the Commission concerning any complaint or investigation shall be confidential and all information obtained by the Commission shall be privileged until the Commission makes a finding as to whether there is probable cause to conclude that a violation of Minn. Stat. §§ 10A.01-10A.34 (1974) or other campaign laws has occurred, and that any person violating the confidentiality provisions shall be guilty of a gross misdemeanor;

5. The signature of the complainant;

6. Verification by oath or affirmation of the complainant, taken before any officer authorized to administer oaths.

Any person having knowledge of a violation of Minn. Stat. §§ 10A.01-10A.34 (1974) may informally notify the Commission of the alleged violation without filing a complaint.

B. Investigations & Audits.

1. Upon receipt of a complaint, the Commission or its employees shall undertake an investigation into the allegations contained therein. Immediately following receipt of a complaint, the Executive Director of the Commission shall inform the person complained against that a complaint has been filed against him.

2. The Commission may also undertake investigations or audits with respect to statements and reports which are filed or should have been filed under the provisions of Minn. Stat. §§ 10A.01-10A.34 (1974) although no complaint has been filed. Any decision as to whether an investigation should be undertaken shall be made at a closed meeting of the Commission.

3. All investigations and audits shall be conducted in an expeditious manner, but with regard for fundamental fairness. Within a reasonable time after undertaking an investigation or audit, the Executive Director of the Commission shall inform the person under investigation or audit of the fact of the investigation or audit. The Commission shall make no final decision on any

investigation or audit unless the person under investigation or audit has been informed of the charges against him and has had the opportunity to make a statement to the Commission or its employees or agents.

4. At any time during an investigation or audit, the Commission, in its discretion, may hold a contested case hearing pursuant to these rules before making a finding on any investigation or audit.

5. At the conclusion of an investigation or audit or after a hearing thereon, if such hearing has been ordered, the Commission shall take the following action:

   a. The Commission may make a finding that there is or is not probable cause to conclude that a violation of Minn. Stat. §§ 10A.01-10A.34 (1974) or other campaign laws has occurred. After such determination the Commission shall report any finding of probable cause to the appropriate law enforcement authorities; or

   b. The Commission may authorize the commencement of a civil action for injunctive or other appropriate relief; or

   c. The Commission may take action as provided by both a & b above.

C. Confidentiality. Any hearing or action of the Commission concerning any complaint, audit, or investigation shall be confidential and all information obtained by the Commission shall be privileged until the Commission makes a finding as to probable cause. Any person, including any member or employee of the Commission, violating the confidentiality provisions of this subdivision shall be guilty of a gross misdemeanor.

EC 404. Hearing Officers

A. Appointment. In cases to which the Commission is not a party, the Commission may elect to serve itself as hearing officer. In any cases in which the Commission does not serve as hearing officer, the Commission shall appoint a hearing officer within the time prescribed in EC 407.

B. Qualifications.

1. Cases to which the Commission is a party. In cases to which the Commission is a party, the hearing officer shall not at the time of appointment be an employee or member of, or on retainer to, the Commission. After appointment the hearing officer shall be considered an employee of the Commission for the sole purposes of (1) compensation, if any, and (2) authorization to conduct the hearing and decide the issues. In all other respects the officer shall be independent of the Commission.

2. Cases to which the Commission is not a party. In cases to which the Commission is not a party, the Commission may appoint any person, including an employee of the Commission or a member or members thereof, as the hearing officer.

C. Authority of Hearing Officer.

1. Cases to which the Commission is a party. In cases to which the Commission is a party, the appointment of the hearing officer shall, to the extent permitted by law, authorize the hearing officer to hear the case and recommend findings of fact and a final decision to the Commission.

2. Cases to which the Commission is not a party. In cases to which the Commission is not a party, the appointment of the hearing officer shall, to the extent permitted by law, grant the hearing officer such authority as the Commission deems necessary and appropriate to hear and decide the case and reserve unto the Commission such authority to decide the case as it deems necessary and appropriate.

D. Function. Consistent with law and the terms of the appointment, the hearing officer shall hear the contested case. Functions of the hearing officer shall include, but not be limited to, the following: hear and rule on preliminary motions, conduct the hearing, recommend to the Commission impartial findings of fact based on the evidence presented, recommend a preliminary or final determination, and make or recommend such preliminary, interlocutory or final orders as the officer deems appropriate.

EC 405. Initiating a Contested Case

A. Initiation by Application. Any person requesting an exemption under Minn. Stat. § 10A.20, subd. 8-10(1974) or any other person whose rights, privileges, and duties the Commission is authorized by law to determine after a hearing, may initiate a contested case by making application. Except in anonymous proceedings, an application shall contain:

1. The name and address of the applicant;
2. A statement of the nature of the determination requested including the statutory sections on which the applicant wishes a determination made and the reasons for the request;

3. The names and addresses of all persons known to the applicant who will be directly affected by such determination; and

4. The signature of the applicant.

B. Initiation by Commission Order.

Where authorized by law, the Commission may order a contested case commenced to determine the rights, duties and privileges of specific parties.

EC 406. Initiating Anonymous Proceedings

A. Any person making application for an exemption from campaign reporting requirements under Minn. Stat. § 10A.20 subd. 8-10 (1974) may proceed anonymously if the Commission determines that identification of the person for the purposes of the hearing would result in exposure to economic reprisals, loss of employment or threat of physical coercion.

B. Any person wishing to proceed anonymously under this rule shall make an application under EC 405(A), which shall contain:

1. A name by which the person wishes to be known for the purposes of the proceeding;

2. The name and address of a person upon whom service can be made.

3. A statement of the facts which lead the applicant to believe that identification of the applicant for purposes of the hearing would result in exposure to economic reprisals, loss of employment or threat of physical coercion;

4. The name and address of a person who will appear for the applicant during the proceedings if the applicant wishes to remain anonymous. Such person may be the same person on whom service is to be made.

5. A statement of the facts which lead the applicant to believe that exposure to economic reprisal, loss of employment or threat of physical coercion would result from the applicant's compliance with the reporting and disclosure requirements (Minn. Stat. § 10A.20 et seq. (1974));

6. The signature of the applicant in the name by which the person wishes to be known during the proceedings or the signature of the person designated to appear for the applicant.

C. Upon receipt of an application for initiation of anonymous proceedings, the Commission may require the applicant or the person designated to appear for the applicant to appear before a closed meeting of the Commission with appropriate precautions taken to preserve the anonymity of the applicant from persons other than the Commission and its employees. The purpose of such appearance shall be to enable the Commission to decide whether an anonymous proceeding is required.

EC 407. Commencement of a Contested Case

Within a reasonable time not to exceed 30 days following receipt of an application or adoption of an order by the Commission initiating a contested case, the Commission shall either elect to act as hearing officer or appoint another hearing officer, and shall commence the contested case by serving upon all known parties:

A. A notice stating:

1. The commencement of the contested case;
2. The names and addresses of the parties;
3. That an adverse party must file an answer to the application, complaint or statement of issues within 20 days after service of the notice; and that failure to do so may result in a decision against the adverse party;
4. The time and place of the prehearing conference, if any;
5. The purpose of the prehearing conference;
6. The name of the hearing officer;
7. The rights of the parties to counsel and to a formal hearing;
8. That failure to attend the prehearing conference or the hearing may result in a decision against the party;
9. These rules or a citation thereto;
10. That any hearing or action of the Commission on a complaint, audit or investigation is confidential and any information obtained is privileged.

If the hearing officer decides that no prehearing conference will be held, notice of hearing pursuant to EC 418 shall be given.

B. A statement of the issues to be determined. Such statement may be:

1. In the case of an application for exemption or other application (see EC 405(A)), a copy of the application;
2. In the case of a contested case initiated following a complaint (see EC 403(B)(4)), a copy of the complaint;

3. In the case of a proceeding to suspend a public official (see Minn. Stat. 10A.09, subd. 8 (1974)) or any other contested case initiated by order of the Commission, a statement of grounds for initiation of the proceedings.

EC 408. Answer

Within 20 days after service of the documents required by EC 407 (excluding the day of service), an adverse party shall interpose an answer to the application, complaint or statement of issues. The answer shall be filed with the Commission. Within 10 days following the filing of an answer, the Commission shall serve copies of the answer on all parties.

EC 409. Right to Counsel

Parties may represent themselves or may be represented by legal counsel throughout the proceedings in a contested case before this Commission.

EC 410. Informal Disposition

Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

EC 411. Default

The hearing officer may dispose of a contested case against a party who defaults. Disposition against the defaulting party shall occur only after that party fails to interpose an answer, or, having notice of the hearing, fails to appear.

EC 412. Intervention

Upon timely motion any person shall be permitted to intervene in a contested case upon a showing that legal rights, duties or privileges of the person may be determined or affected in the contested case, unless in the discretion of the hearing officer such person's interest is adequately represented by one or more parties participating in the case.

EC 413. Consolidation

A. Authority. Whenever, before a hearing on any contested case, the Commission, either on its own motion or upon motion by any party, determines (a) that separate contested cases present substantially the same issues of fact or law, (b) that a holding in one case would affect the rights of parties in another case and (c) that consolidation would not substantially prejudice any party, the Commission may order such cases consolidated for a single hearing on the merits. Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Notice. Within five days following an order for consolidation the commission shall serve on all parties a Notice of Consolidation. Such Notice shall contain:

1. A description of the cases consolidated;
2. The reasons for consolidation;
3. Cancellation of all prehearing conferences for the cases consolidated; and
4. Notification of the consolidated prehearing conference in the same fashion prescribed for notice of prehearing conferences.

C. Objection to Consolidation.

1. Petition for Severance. Any party may object to consolidation by filing with the Commission prior to final determination a Petition for Severance from Consolidation, setting forth petitioner's name and address, the designation of the case prior to consolidation, and the reasons for the petition. Briefs may be filed, evidence received and oral argument heard at such time as the hearing officer deems proper.

2. Determination. When such a petition is filed, the hearing officer shall set aside a time for receiving evidence and oral argument, and determining, as a part of the record in the case, whether consolidation prejudices petitioner. If the hearing officer finds that consolidation would prejudice petitioner, the officer may order such severance or other relief as is deemed necessary.

EC 414. Discovery

Upon motion of any party for good cause shown, the hearing officer may permit the service of interrogatories, the taking of depositions, or such other discovery as is appropriate. The hearing officer, upon approval of the Commission, may issue subpoenas for the production of documents or witnesses.

EC 415. Service of Motions

Any person moving to intervene under EC 412 or party moving for consolidation under EC 413 or discovery under EC 414 shall serve a copy of such motion on all parties to the proceeding and shall file the original motion, together with an affidavit of service, with the Commission within 5 days after service is completed.

EC 416. Disqualification

Hearing officers shall withdraw from participation in a contested case at any time prior to the final determination if they deem themselves disqualified for any reason. When any party in good faith files a timely and sufficient Petition of Prejudice, which petition shall state the reasons for the requested disqualification, the hearing officer shall determine the matter as a part of the record in the case.

EC 417. Prehearing Conference

A. Purpose. The purposes of the prehearing conference are to simplify the issues to be determined and to reach a settlement on those issues without the necessity for further hearing.

B. Procedure. A prehearing conference may be held at the discretion of the hearing officer prior to each contested case hearing. The prehearing conference shall be an informal proceeding conducted fairly and expeditiously by the hearing officer. Agreements on the simplification of issues shall be put in the form of stipulations and entered on the record. Final settlements shall be set forth in settlement agreements or consent orders and made part of the record.

C. Dismissal. The hearing officer may, at any stage of the proceedings, including the prehearing conference, after all parties have had an opportunity to present their views, dismiss any sham, capricious or frivolous case or any case not within the Commission's jurisdiction.

D. Consolidated Prehearing Conference. When cases before the Commission are consolidated pursuant to EC 413, a consolidated prehearing conference may be held in lieu of separate conferences for each case and notice thereof given as provided in EC 407.

EC 418. Notice of Hearing

Not less than thirty days prior to the hearing date, unless all parties have agreed to a shorter period, the Commission shall serve a notice of hearing on all parties to the case. Such notice shall contain:

A. The time and place of the hearing;

B. The purpose and procedure for the hearing:

C. The issues to be determined; and

D. The name of the hearing officer who will preside.

EC 419. The Hearing

A. Right to Hearing. All parties shall have the right to a hearing before the Commission or a duly-appointed hearing examiner, at which hearing the parties may cross-examine witnesses, and present evidence, rebuttal testimony and argument with respect to the issues.

B. Witnesses. All parties may be witnesses or may present witnesses on their own behalf at a hearing. All testimony at a hearing shall be under oath or affirmation. In anonymous proceedings, the person wishing to remain anonymous may submit sworn, written testimony. All parties shall have the right of cross-examination of witnesses who testify, except where the witness is the applicant in anonymous proceedings.

C. Rules of Evidence.

1. General Rules. The hearing officer may admit and give effect to evidence which would be accepted as proof by reasonable, prudent people in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or repetitious may be excluded.

2. Evidence Must be Offered to be Considered. All evidence to be considered in the case, including all records and documents (except tax returns and tax reports) in the possession of the Commission, shall be offered and made a part of the record in the case. No other factual information or evidence (except tax returns and tax reports) shall be considered in the determination of the case.

3. Documentary Evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing officer or upon agreement of the parties.

4. Notice of Facts. Hearing officers may take notice of judicially cognizable facts and, in addition, may notice technical facts within their specialized knowledge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

5. The Standard and Burden of Proof. The facts at issue must be proven by a preponderance of the evidence, except in hearings on requests for exemption from the disclosure requirements under Minn. Stat. § 10A.20, subd. 8-10 (1974), where the party making application must prove the facts at issue by clear and convincing evidence.

D. The Record.

1. Commission Prepares Record. The Commission shall maintain an official record in each contested case.

2. What the Record Shall Contain. The record in a contested case shall contain:

aa. All pleadings (including the complaint, if any, documents of initiation and the answers thereto), motions and intermediate rulings;

bb. Evidence received or considered;

cc. A statement of matters officially noticed;

dd. Questions and offers of proof, objections and rulings thereon;

ee. Proposed findings and exceptions;

ff. Any decision, opinion or report by the hearing officer;

gg. All memoranda or data other than advice of legal counsel submitted to the hearing officer by the Commission staff in connection with the case; and

hh. A proposal for final decision, if required by these regulations.

3. Transcript.

aa. Reporter or Mechanical Device. A verbatim record of the hearing shall be taken by court reporter or recording equipment. A court reporter shall be used if demanded by any party. Such expense shall be paid by the demanding party unless the Commission agrees to bear the expense of the court reporter.

bb. Transcript. The verbatim record will not be transcribed unless requested by a party or the Commission. If a transcript is requested, the Commission may require the requesting party to pay the cost of preparing the transcript.

4. The official record and transcript in any contested case held pursuant to a complaint alleging a violation of Minn. Stat. §§ 10A.1-10A.34 (1974) shall be privileged information not available to the public until the Commission makes a determination that there is or is not probable cause to believe a violation of Minn. Stat. §§ 10A.1-10A.34 (1974) or other campaign laws has occurred.

E. Hearing Procedure

1. Hearing Officer Conduct. Hearing officers shall take no part in any preliminary investigation or

inquiry into the facts or issues involved in contested cases except as provided in EC 417. They shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party including the Commission, its employees or agents, nor in connection with any issue of law, with any party, including the Commission, its employees or agents, or representative of any party, except upon notice and opportunity for all parties to participate or to rebut any evidence thus obtained.

2. Sequence of Events. Except as set forth in EC 419(H), the hearing shall be conducted in the following manner:

aa. After opening the hearing, the hearing officer shall indicate the following procedural rules:

i. All parties may present evidence and argument with respect to the issues;

ii. All witnesses must be sworn and identify the party they represent, if any. They are subject to cross-examination by all parties;

iii. The rules of evidence as set forth in EC 419(C);

iv. All parties who wish to introduce written matter may have it marked as an exhibit and offer it into evidence.

bb. A representative of the Commission shall introduce the following exhibits on behalf of the Commission:

i. Complaint, if the case was initiated pursuant to a complaint.

ii. Notice of Initiation of Proceedings, supporting documents, if any, and affidavits of service;

iii. If consolidation has occurred, Notice of Consolidation, supporting documents, if any, and affidavits of service;

iv. Notice of Hearing, supporting documents, if any, and affidavits of service;

v. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing.

cc. The party who initiated the contested case may make an opening statement. All other parties may make such statements in a sequence determined by the hearing officer.

dd. After any opening statements the party who initiated the contested case shall begin the presentation of evidence, followed by the other parties in a sequence determined by the hearing officer.

ee. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing officer.

ff. When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the hearing officer. Such rebuttal and final argument may be in the form of written memoranda, oral argument or both.

gg. After final argument, the hearing shall be closed or continued at the discretion of the hearing officer. If continued, it shall be either (a) continued to a certain time and

day, announced at the time of the hearing and made a part of the record, or (b) continued to a date to be determined later which must be upon not less than five days' written notice to the parties.

F. In anonymous proceedings, the hearing officer may, at the request of the anonymous party, close the hearings to all except parties to the proceeding and members of the Commission, if the hearing officer determines that such action will protect the party from economic reprisals, loss of employment or threat of physical coercion. When the hearing officer has ordered closed hearings, no party to the proceeding or any member of the Commission, its agents or employees shall make any public statement concerning the case until such time as the Commission renders a decision.

G. Decorum

Pursuant to and in accordance with the provisions of Minn. Stat. 624.72 (1973), no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing officer shall read this rule to those persons causing such interference or disruption and thereafter proceed as the officer deems appropriate.

H. Cases to Which Commission is Not a Party. In cases which the Commission has initiated pursuant to EC 405(B), but to which the Commission is not a party, the hearing procedure shall be conducted in a sequence determined by the hearing officer in

accordance with statute or Commission rule. In such cases the burden of proof shall be as the hearing officer determines in accordance with statute or Commission rule. In all such cases the hearing procedure sequence and the burden of proof shall be determined by the hearing officer and stated in a prehearing order notice to all parties.

EC 420. The Commission Decision

A. Basis for Determination.

1. The Record. No factual information or evidence which is not a part of the record, except tax returns and tax reports, shall be considered by the hearing officer or the Commission in the determination of a contested case.

2. Experience, Technical Competence and Specialized Knowledge. Hearing officers may use their experience, technical competence and specialized knowledge in the evaluation of the evidence presented in any case.

B. Proposal for Decision.

1. Need for Proposal, Exceptions and Argument. Whenever in a contested case the Commission has retained the authority to render a final decision, intends to make such final decision and a majority of Commission members has not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the Commission, shall not be made until a Proposal for Decision has been served, and an opportunity has been afforded each party adversely affected to file exceptions and present argument, whether written or oral or both, to the Commission.

2. Service and Contents. The Proposal for Decision shall be served on all parties to the case. The Proposal shall contain:

aa. A statement of the proposed decision;

bb. The reasons for such decision. Each reason shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision;

cc. A final date for the filing of exceptions by parties adversely affected;

dd. A statement of the right of parties adversely affected to present argument.

C. Decisions and Orders.

1. Formal Decision or Order with Reasons Required. Every decision or order rendered by the hearing officer or the Commission in a contested case shall be accompanied by a statement of the reasons therefor. The statement of reasons shall include a concise statement of the conclusions upon each contested issue of fact necessary to the decision.

A decision or order on a petition for severance, petition for intervention, petition of prejudice, on noticed facts which are challenged, or on a petition for rehearing shall be rendered in accordance with this rule.

2. Service and Contents.

Every decision or order shall be served on all parties to the case. It shall contain:

aa. A statement of the decision or order in the case;

bb. A statement of the reasons therefore;

cc. An affidavit of service.

D. Default. When a party with adequate notice fails to plead or otherwise appear within the time allowed therefore by these rules or by statute, judgment by default may be entered against that party.

EC 421. Rehearing

A. Commission Right to Hear. The Commission may, upon request or its own motion and for good cause shown, reopen, rehear and redetermine a contested case after a final decision adverse to a party other than the Commission has been rendered. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

B. Obtaining a Rehearing.

1. Parties other than the Commission. At any time prior to the Commission's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain:

aa. The name and address of the petitioner except in anonymous proceedings where the name by which the party was known during the proceedings and the name and address of the person designated for service shall be given;

bb. The agency designation for the case;

cc. The reasons for the petition.

2. The Commission. The Commission may, on its own motion, for good cause stated in the record, reopen, rehear and redetermine a contested case if the decision in that case was adverse to a party to that case other than the Commission.

3. Default Judgments. A party against whom a default has been adjudged pursuant to EC 411 or EC 420(D) may obtain a rehearing upon a timely showing of good cause for that party's failure to appear or plead.

4. Determination. The Commission shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted if there appears on the face of the petition and the record irregularities in the proceedings, newly discovered material evidence, a lack of substantial evidence to support the decision or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Commission in written or oral form or both by any party to the contested case with respect to the petition.

C. Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing.

D. Rehearing Procedure. A rehearing in a contested case shall be conducted in the same manner prescribed for a hearing.

E. Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

EC 422. Appeal by Commission

The Commission may appeal pursuant to Minn. Stat. § 15.0424 (1971) any adverse decision. The Commission shall be deemed a "person" for such purposes.

EC 423. Emergency Procedures

Nothing contained in these rules is intended to pre-empt, repeal or be in conflict with any rule, regulation or statute which provides for acts by the Commission in an emergency or procedure for conduct by the Commission in such a situation.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 26 1975 - 11:15 am
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
MAR 26 1975
11:50 a.m.
BY Edd Vandermause
AUTH. SIGNATURE

APPROVED AS TO FORM AND LEGALITY
MAR 25 1975 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY Michael B Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

December 12, 1974

MINNESOTA STATE ETHICS COMMISSION

~~PROPOSED~~ HEARING RULES AND REGULATIONS

EC 401 - EC 423

EC 401. Introduction

The rights, privileges or duties of any person before this Commission shall be determined with regard for fundamental fairness. To that end, these rules are intended to assure that all parties to contested cases before this Commission are provided a speedy and just hearing. Such hearing shall include:

A. Adequate notice of involvement to all interested persons;

B. The opportunity to consult with the Commission informally to attempt to resolve conflicts on issues;

C. Notice at each stage of the proceedings sufficient to provide the opportunity to prepare therefore;

D. An objective decision supported by substantial evidence from the record.

EC 402. Definitions

A. "Commission" means Minnesota State Ethics Commission.

B. "Contested Case" means a proceeding before the Commission in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after a Commission hearing. "Contested case" shall include:

1. A proceeding pursuant to a request for exemption from campaign reporting requirements under Minn. Stat. § 10A.20, subd. 810 (1974);

2. A proceeding to suspend a public official without pay for failure to file a Statement of Economic Interest under Minn. Stat. § 10A.09, subd. 8 (1974).

For purposes of these rules, "contested case" shall also include:

1. A hearing ordered by the Commission pursuant to EC 405(B) concerning a complaint, investigation or audit;
2. Any other hearing which may be ordered by the Commission pursuant to these rules or which may be required by law.

For purposes of these rules, "contested case" shall not include a Commission investigation or audit conducted pursuant to Minn. Stat. § 10A.02, subd. 10 (1974).

C. "Party" means any person whose legal rights, duties, or privileges may be determined in a contested case. "Party" shall include the Commission except when the Commission participates in the contested case in a neutral or quasi-judicial capacity only. In anonymous proceedings, "party" shall include the person designated to appear by the applicant. (See EC 406(B)(3)). In a contested case commenced by the Commission following a complaint (see EC 403(B)(4) and EC 405(B)), "party" shall include both the person who filed the complaint and the person against whom it was filed.

D. "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, or any government or governmental sub-division, unit or agency, other than a court of law.

E. "Service; Serve" means service by registered or certified United States mail, postage prepaid and addressed to the party at the last known address of that party, unless some other manner of service is required by law or permitted by these regulations.

EC 403. Complaints, Investigations & Audits

A. Complaints. Any person authorized by law to submit to the Commission a complaint that any person has not complied with the requirements of Minn. Stat. §§ 10A.01-10A.34 (1974) may request that the Commission investigate the alleged non-compliance by filing a complaint. A complaint shall contain:

1. The name and address of the complainant;
2. The name of the person against whom the complaint is made;
3. The statutory sections which the complainant believes have been violated and the basis for complainant's belief, together with any evidentiary material;
4. A statement that the complainant understands that any hearing or action of the Commission concerning any complaint or investigation shall be confidential and all information obtained by the Commission shall be privileged until the Commission makes a finding as to whether there is probable cause to conclude that a violation of Minn. Stat. §§ 10A.01-10A.34 (1974) or other campaign laws has occurred, and that any person violating the confidentiality provisions shall be guilty of a gross misdemeanor;

5. The signature of the complainant;

6. Verification by oath or affirmation of the complainant, taken before any officer authorized to administer oaths.

Any person having knowledge of a violation of Minn. Stat. §§ 10A.01-10A.34 (1974) may informally notify the Commission of the alleged violation without filing a complaint.

B. Investigations & Audits.

1. Upon receipt of a complaint, the Commission or its employees shall undertake an investigation into the allegations contained therein. Immediately following receipt of a complaint, the Executive Director of the Commission shall inform the person complained against that a complaint has been filed against him.

2. The Commission may also undertake investigations or audits with respect to statements and reports which are filed or should have been filed under the provisions of Minn. Stat. §§ 10A.01-10A.34 (1974) although no complaint has been filed. Any decision as to whether an investigation should be undertaken shall be made at a closed meeting of the Commission.

3. All investigations and audits shall be conducted in an expeditious manner, but with regard for fundamental fairness. Within a reasonable time after undertaking an investigation or audit, the Executive Director of the Commission shall inform the person under investigation or audit of the fact of the investigation or audit. The Commission shall make no final decision on any

investigation or audit unless the person under investigation or audit has been informed of the charges against him and has had the opportunity to make a statement to the Commission or its employees or agents.

4. At any time during an investigation or audit, the Commission, in its discretion, may hold a contested case hearing pursuant to these rules before making a finding on any investigation or audit.

5. At the conclusion of an investigation or audit or after a hearing thereon, if such hearing has been ordered, the Commission shall take the following action:

   a. The Commission may make a finding that there is or is not probable cause to conclude that a violation of Minn. Stat. §§ 10A.01-10A.34 (1974) or other campaign laws has occurred. After such determination the Commission shall report any finding of probable cause to the appropriate law enforcement authorities; or

   b. The Commission may authorize the commencement of a civil action for injunctive or other appropriate relief; or

   c. The Commission may take action as provided by both a & b above.

C. Confidentiality. Any hearing or action of the Commission concerning any complaint, audit, or investigation shall be confidential and all information obtained by the Commission shall be privileged until the Commission makes a finding as to probable cause. Any person, including any member or employee of the Commission, violating the confidentiality provisions of this subdivision shall be guilty of a gross misdemeanor.

EC 404. Hearing Officers

A. Appointment. In cases to which the Commission is not a party, the Commission may elect to serve itself as hearing officer. In any cases in which the Commission does not serve as hearing officer, the Commission shall appoint a hearing officer within the time prescribed in EC 407.

B. Qualifications.

1. Cases to which the Commission is a party. In cases to which the Commission is a party, the hearing officer shall not at the time of appointment be an employee or member of, or on retainer to, the Commission. After appointment the hearing officer shall be considered an employee of the Commission for the sole purposes of (1) compensation, if any, and (2) authorization to conduct the hearing and decide the issues. In all other respects the officer shall be independent of the Commission.

2. Cases to which the Commission is not a party. In cases to which the Commission is not a party, the Commission may appoint any person, including an employee of the Commission or a member or members thereof, as the hearing officer.

C. Authority of Hearing Officer.

1. Cases to which the Commission is a party. In cases to which the Commission is a party, the appointment of the hearing officer shall, to the extent permitted by law, authorize the hearing officer to hear the case and recommend findings of fact and a final decision to the Commission.

2. Cases to which the Commission is not a party. In cases to which the Commission is not a party, the appointment of the hearing officer shall, to the extent permitted by law, grant the hearing officer such authority as the Commission deems necessary and appropriate to hear and decide the case and reserve unto the Commission such authority to decide the case as it deems necessary and appropriate.

D. Function. Consistent with law and the terms of the appointment, the hearing officer shall hear the contested case. Functions of the hearing officer shall include, but not be limited to, the following: hear and rule on preliminary motions, conduct the hearing, recommend to the Commission impartial findings of fact based on the evidence presented, recommend a preliminary or final determination, and make or recommend such preliminary, interlocutory or final orders as the officer deems appropriate.

EC 405. Initiating a Contested Case

A. Initiation by Application. Any person requesting an exemption under Minn. Stat. § 10A.20, subd. 8-10(1974) or any other person whose rights, privileges, and duties the Commission is authorized by law to determine after a hearing, may initiate a contested case by making application. Except in anonymous proceedings, an application shall contain:

1. The name and address of the applicant;
2. A statement of the nature of the determination requested including the statutory sections on which the applicant wishes a determination made and the reasons for the request;

3. The names and addresses of all persons known to the applicant who will be directly affected by such determination; and

4. The signature of the applicant.

B. Initiation by Commission Order.

Where authorized by law, the Commission may order a contested case commenced to determine the rights, duties and privileges of specific parties.

EC 406. Initiating Anonymous Proceedings

A. Any person making application for an exemption from campaign reporting requirements under Minn. Stat. § 10A.20 subd. 8-10 (1974) may proceed anonymously if the Commission determines that identification of the person for the purposes of the hearing would result in exposure to economic reprisals, loss of employment or threat of physical coercion.

B. Any person wishing to proceed anonymously under this rule shall make an application under EC 405(A), which shall contain:

1. A name by which the person wishes to be known for the purposes of the proceeding;

2. The name and address of a person upon whom service can be made.

3. A statement of the facts which lead the applicant to believe that identification of the applicant for purposes of the hearing would result in exposure to economic reprisals, loss of employment or threat of physical coercion;

4. The name and address of a person who will appear for the applicant during the proceedings if the applicant wishes to remain anonymous. Such person may be the same person on whom service is to be made.

5. A statement of the facts which lead the applicant to believe that exposure to economic reprisal, loss of employment or threat of physical coercion would result from the applicant's compliance with the reporting and disclosure requirements (Minn. Stat. § 10A.20 et seq. (1974));

6. The signature of the applicant in the name by which the person wishes to be known during the proceedings or the signature of the person designated to appear for the applicant.

C. Upon receipt of an application for initiation of anonymous proceedings, the Commission may require the applicant or the person designated to appeartfor the applicant to appear before a closed meeting of the Commission with appropriate precautions taken to preserve the anonymity of the applicant from persons other than the Commission and its employees. The purpose of such appearance shall be to enable the Commission to decide whether an anonymous proceeding is required.

EC 407. Commencement of a Contested Case

Within a reasonable time not to exceed 30 days following receipt of an application or adoption of an order by the Commission initiating a contested case, the Commission shall either elect to act as hearing officer or appoint another hearing officer, and shall commence the contested case by serving upon all known parties:

A. A notice stating:

1. The commencement of the contested case;
2. The names and addresses of the parties;
3. That an adverse party must file an answer to the application, complaint or statement of issues within 20 days after service of the notice; and that failure to do so may result in a decision against the adverse party;
4. The time and place of the prehearing conference, if any;
5. The purpose of the prehearing conference;
6. The name of the hearing officer;
7. The rights of the parties to counsel and to a formal hearing;
8. That failure to attend the prehearing conference or the hearing may result in a decision against the party;
9. These rules or a citation thereto;
10. That any hearing or action of the Commission on a complaint, audit or investigation is confidential and any information obtained is privileged.

If the hearing officer decides that no prehearing conference will be held, notice of hearing pursuant to EC 418 shall be given.

B. A statement of the issues to be determined. Such statement may be:

1. In the case of an application for exemption or other application (see EC 405(A)), a copy of the application;
2. In the case of a contested case initiated following a complaint (see EC 403(B)(4)), a copy of the complaint;

3. In the case of a proceeding to suspend a public official (see Minn. Stat. 10A.09, subd. 8 (1974)) or any other contested case initiated by order of the Commission, a statement of grounds for initiation of the proceedings.

EC 408. Answer

Within 20 days after service of the documents required by EC 407 (excluding the day of service), an adverse party shall interpose an answer to the application, complaint or statement of issues. The answer shall be filed with the Commission. Within 10 days following the filing of an answer, the Commission shall serve copies of the answer on all parties.

EC 409. Right to Counsel

Parties may represent themselves or may be represented by legal counsel throughout the proceedings in a contested case before this Commission.

EC 410. Informal Disposition

Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

EC 411. Default

The hearing officer may dispose of a contested case against a party who defaults. Disposition against the defaulting party shall occur only after that party fails to interpose an answer, or, having notice of the hearing, fails to appear.

EC 412. Intervention

Upon timely motion any person shall be permitted to intervene in a contested case upon a showing that legal rights, duties or privileges of the person may be determined or affected in the contested case, unless in the discretion of the hearing officer such person's interest is adequately represented by one or more parties participating in the case.

EC 413. Consolidation

A. Authority. Whenever, before a hearing on any contested case, the Commission, either on its own motion or upon motion by any party, determines (a) that separate contested cases present substantially the same issues of fact or law, (b) that a holding in one case would affect the rights of parties in another case and (c) that consolidation would not substantially prejudice any party, the Commission may order such cases consolidated for a single hearing on the merits. Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Notice. Within five days following an order for consolidation the commission shall serve on all parties a Notice of Consolidation. Such Notice shall contain:

1. A description of the cases consolidated;
2. The reasons for consolidation;
3. Cancellation of all prehearing conferences for the cases consolidated; and
4. Notification of the consolidated prehearing conference in the same fashion prescribed for notice of prehearing conferences.

C. Objection to Consolidation.

1. Petition for Severance. Any party may object to consolidation by filing with the Commission prior to final determination a Petition for Severance from Consolidation, setting forth petitioner's name and address, the designation of the case prior to consolidation, and the reasons for the petition. Briefs may be filed, evidence received and oral argument heard at such time as the hearing officer deems proper.

2. Determination. When such a petition is filed, the hearing officer shall set aside a time for receiving evidence and oral argument, and determining, as a part of the record in the case, whether consolidation prejudices petitioner. If the hearing officer finds that consolidation would prejudice petitioner, the officer may order such severance or other relief as is deemed necessary.

EC 414. Discovery

Upon motion of any party for good cause shown, the hearing officer may permit the service of interrogatories, the taking of depositions, or such other discovery as is appropriate. The hearing officer, upon approval of the Commission, may issue subpoenas for the production of documents or witnesses.

EC 415. Service of Motions

Any person moving to intervene under EC 412 or party moving for consolidation under EC 413 or discovery under EC 414 shall serve a copy of such motion on all parties to the proceeding and shall file the original motion, together with an affidavit of service, with the Commission within 5 days after service is completed.

EC 416. Disqualification

Hearing officers shall withdraw from participation in a contested case at any time prior to the final determination if they deem themselves disqualified for any reason. When any party in good faith files a timely and sufficient Petition of Prejudice, which petition shall state the reasons for the requested disqualification, the hearing officer shall determine the matter as a part of the record in the case.

EC 417. Prehearing Conference

A. Purpose. The purposes of the prehearing conference are to simplify the issues to be determined and to reach a settlement on those issues without the necessity for further hearing.

B. Procedure. A prehearing conference may be held at the discretion of the hearing officer prior to each contested case hearing. The prehearing conference shall be an informal proceeding conducted fairly and expeditiously by the hearing officer. Agreements on the simplification of issues shall be put in the form of stipulations and entered on the record. Final settlements shall be set forth in settlement agreements or consent orders and made part of the record.

C. Dismissal. The hearing officer may, at any stage of the proceedings, including the prehearing conference, after all parties have had an opportunity to present their views, dismiss any sham, capricious or frivolous case or any case not within the Commission's jurisdiction.

D. Consolidated Prehearing Conference. When cases before the Commission are consolidated pursuant to EC 413, a consolidated prehearing conference may be held in lieu of separate conferences for each case and notice thereof given as provided in EC 407.

EC 418. Notice of Hearing

Not less than thirty days prior to the hearing date, unless all parties have agreed to a shorter period, the Commission shall serve a notice of hearing on all parties to the case. Such notice shall contain:

A. The time and place of the hearing;

B. The purpose and procedure for the hearing:

C. The issues to be determined; and

D. The name of the hearing officer who will preside.

EC 419. The Hearing

A. Right to Hearing. All parties shall have the right to a hearing before the Commission or a duly-appointed hearing examiner, at which hearing the parties may cross-examine witnesses, and present evidence, rebuttal testimony and argument with respect to the issues.

B. Witnesses. All parties may be witnesses or may present witnesses on their own behalf at a hearing. All testimony at a hearing shall be under oath or affirmation. In anonymous proceedings, the person wishing to remain anonymous may submit sworn, written testimony. All parties shall have the right of cross-examination of witnesses who testify, except where the witness is the applicant in anonymous proceedings.

C. Rules of Evidence.

1. General Rules. The hearing officer may admit and give effect to evidence which would be accepted as proof by reasonable, prudent people in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or repetitious may be excluded.

2. Evidence Must be Offered to be Considered. All evidence to be considered in the case, including all records and documents (except tax returns and tax reports) in the possession of the Commission, shall be offered and made a part of the record in the case. No other factual information or evidence (except tax returns and tax reports) shall be considered in the determination of the case.

3. Documentary Evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing officer or upon agreement of the parties.

4. Notice of Facts. Hearing officers may take notice of judicially cognizable facts and, in addition, may notice technical facts within their specialized knowledge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

5. The Standard and Burden of Proof. The facts at issue must be proven by a preponderance of the evidence, except in hearings on requests for exemption from the disclosure requirements under Minn. Stat. § 10A.20, subd. 8-10 (1974), where the party making application must prove the facts at issue by clear and convincing evidence.

D. The Record.

1. Commission Prepares Record. The Commission shall maintain an official record in each contested case.

2. What the Record Shall Contain. The record in a contested case shall contain:

aa. All pleadings (including the complaint, if any, documents of initiation and the answers thereto), motions and intermediate rulings;

bb. Evidence received or considered;

cc. A statement of matters officially noticed;

dd. Questions and offers of proof, objections and rulings thereon;

ee. Proposed findings and exceptions;

ff. Any decision, opinion or report by the hearing officer;

gg. All memoranda or data other than advice of legal counsel submitted to the hearing officer by the Commission staff in connection with the case; and

hh. A proposal for final decision, if required by these regulations.

3. Transcript.

aa. Reporter or Mechanical Device. A verbatim record of the hearing shall be taken by court reporter or recording equipment. A court reporter shall be used if demanded by any party. Such expense shall be paid by the demanding party unless the Commission agrees to bear the expense of the court reporter.

bb. Transcript. The verbatim record will not be transcribed unless requested by a party or the Commission. If a transcript is requested, the Commission may require the requesting party to pay the cost of preparing the transcript.

4. The official record and transcript in any contested case held pursuant to a complaint alleging a violation of Minn. Stat. §§ 10A.1-10A.34 (1974) shall be privileged information not available to the public until the Commission makes a determination that there is or is not probable cause to believe a violation of Minn. Stat. §§ 10A.1-10A.34 (1974) or other campaign laws has occurred.

E. Hearing Procedure

1. Hearing Officer Conduct. Hearing officers shall take no part in any preliminary investigation or

inquiry into the facts or issues involved in contested cases except as provided in EC 417. They shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party including the Commission, its employees or agents, nor in connection with any issue of law, with any party, including the Commission, its employees or agents, or representative of any party, except upon notice and opportunity for all parties to participate or to rebut any evidence thus obtained.

2. Sequence of Events. Except as set forth in EC 419(H), the hearing shall be conducted in the following manner:

aa. After opening the hearing, the hearing officer shall indicate the following procedural rules:

i. All parties may present evidence and argument with respect to the issues;

ii. All witnesses must be sworn and identify the party they represent, if any. They are subject to cross-examination by all parties;

iii. The rules of evidence as set forth in EC 419(C);

iv. All parties who wish to introduce written matter may have it marked as an exhibit and offer it into evidence.

bb. A representative of the Commission shall introduce the following exhibits on behalf of the Commission:

i. Complaint, if the case was initiated pursuant to a complaint.

ii. Notice of Initiation of Proceedings, supporting documents, if any, and affidavits of service;

iii. If consolidation has occurred, Notice of Consolidation, supporting documents, if any, and affidavits of service;

iv. Notice of Hearing, supporting documents, if any, and affidavits of service;

v. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing.

cc. The party who initiated the contested case may make an opening statement. All other parties may make such statements in a sequence determined by the hearing officer.

dd. After any opening statements the party who initiated the contested case shall begin the presentation of evidence, followed by the other parties in a sequence determined by the hearing officer.

ee. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing officer.

ff. When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the hearing officer. Such rebuttal and final argument may be in the form of written memoranda, oral argument or both.

gg. After final argument, the hearing shall be closed or continued at the discretion of the hearing officer. If continued, it shall be either (a) continued to a certain time and

day, announced at the time of the hearing and made a part of the record, or (b) continued to a date to be determined later which must be upon not less than five days' written notice to the parties.

F. In anonymous proceedings, the hearing officer may, at the request of the anonymous party, close the hearings to all except parties to the proceeding and members of the Commission, if the hearing officer determines that such action will protect the party from economic reprisals, loss of employment or threat of physical coercion. When the hearing officer has ordered closed hearings, no party to the proceeding or any member of the Commission, its agents or employees shall make any public statement concerning the case until such time as the Commission renders a decision.

G. Decorum

Pursuant to and in accordance with the provisions of Minn. Stat. 624.72 (1973), no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing officer shall read this rule to those persons causing such interference or disruption and thereafter proceed as the officer deems appropriate.

H. Cases to Which Commission is Not a Party. In cases which the Commission has initiated pursuant to EC 405(B), but to which the Commission is not a party, the hearing procedure shall be conducted in a sequence determined by the hearing officer in

accordance with statute or Commission rule. In such cases the burden of proof shall be as the hearing officer determines in accordance with statute or Commission rule. In all such cases the hearing procedure sequence and the burden of proof shall be determined by the hearing officer and stated in a prehearing order notice to all parties.

EC 420. The Commission Decision

A. Basis for Determination.

1. The Record. No factual information or evidence which is not a part of the record, except tax returns and tax reports, shall be considered by the hearing officer or the Commission in the determination of a contested case.

2. Experience, Technical Competence and Specialized Knowledge. Hearing officers may use their experience, technical competence and specialized knowledge in the evaluation of the evidence presented in any case.

B. Proposal for Decision.

1. Need for Proposal, Exceptions and Argument. Whenever in a contested case the Commission has retained the authority to render a final decision, intends to make such final decision and a majority of Commission members has not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the Commission, shall not be made until a Proposal for Decision has been served, and an opportunity has been afforded each party adversely affected to file exceptions and present argument, whether written or oral or both, to the Commission.

2. Service and Contents. The Proposal for Decision shall be served on all parties to the case. The Proposal shall contain:

aa. A statement of the proposed decision;

bb. The reasons for such decision. Each reason shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision;

cc. A final date for the filing of exceptions by parties adversely affected;

dd. A statement of the right of parties adversely affected to present argument.

C. Decisions and Orders.

1. Formal Decision or Order with Reasons Required. Every decision or order rendered by the hearing officer or the Commission in a contested case shall be accompanied by a statement of the reasons therefor. The statement of reasons shall include a concise statement of the conclusions upon each contested issue of fact necessary to the decision.

A decision or order on a petition for severance, petition for intervention, petition of prejudice, on noticed facts which are challenged, or on a petition for rehearing shall be rendered in accordance with this rule.

2. Service and Contents.

Every decision or order shall be served on all parties to the case. It shall contain:

aa. A statement of the decision or order in the case;

bb. A statement of the reasons therefore;

cc. An affidavit of service.

D. Default. When a party with adequate notice fails to plead or otherwise appear within the time allowed therefore by these rules or by statute, judgment by default may be entered against that party.

EC 421. Rehearing

A. Commission Right to Hear. The Commission may, upon request or its own motion and for good cause shown, reopen, rehear and redetermine a contested case after a final decision adverse to a party other than the Commission has been rendered. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

B. Obtaining a Rehearing.

1. Parties other than the Commission. At any time prior to the Commission's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain:

aa. The name and address of the petitioner except in anonymous proceedings where the name by which the party was known during the proceedings and the name and address of the person designated for service shall be given;

bb. The agency designation for the case;

cc. The reasons for the petition.

2. The Commission. The Commission may, on its own motion, for good cause stated in the record, reopen, rehear and redetermine a contested case if the decision in that case was adverse to a party to that case other than the Commission.

3. Default Judgments. A party against whom a default has been adjudged pursuant to EC 411 or EC 420(D) may obtain a rehearing upon a timely showing of good cause for that party's failure to appear or plead.

4. Determination. The Commission shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted if there appears on the face of the petition and the record irregularities in the proceedings, newly discovered material evidence, a lack of substantial evidence to support the decision or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Commission in written or oral form or both by any party to the contested case with respect to the petition.

C. Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing.

D. Rehearing Procedure. A rehearing in a contested case shall be conducted in the same manner prescribed for a hearing.

E. Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

EC 422. Appeal by Commission

The Commission may appeal pursuant to Minn. Stat. § 15.0424 (1971) any adverse decision. The Commission shall be deemed a "person" for such purposes.

EC 423. Emergency Procedures

Nothing contained in these rules is intended to pre-empt, repeal or be in conflict with any rule, regulation or statute which provides for acts by the Commission in an emergency or procedure for conduct by the Commission in such a situation.