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EXECUTIVE ETHICS COMMISSION
Employee Misconduct

TOPIC: Executive branch state employee misconduct.

**JURISDICTION AND
AUTHORITY:**

The Executive Ethics Commission has jurisdiction over all officers and employees of State agencies other than the General Assembly, the Senate, the House of Representatives, the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Senate Operations Commission, the legislative support services agencies, and the Office of the Auditor General. 5 ILCS 430/20-5(d).

The Commission adjudicates allegations of violations of the State Officials and Employees Ethics Act committed by executive branch employees of the State of Illinois. 5 ILCS 430/20-15. Only executive inspectors general may bring allegations of such violations before the Commission.

STATUTE: 5 ILCS 430/20-5, *et seq.* (State Officials and Employees Ethics Act)

RULES: 2 Ill.Admin. Code pt. 1620

OFFICES: Executive Ethics Commission
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**INITIAL FILING
DEADLINES:**

Executive inspectors general must initiate investigations within one year of the most recent act of the alleged violation or series of violations except when there is reasonable cause to believe that fraudulent concealment has occurred. 5 ILCS 430/20-20.

**COMMENCEMENT
OF PROCEEDINGS:**

Upon conclusion of the investigation, if the executive inspector general believes that reasonable cause exists to believe that a violation has occurred, he or she issues a summary report to his or her ultimate jurisdictional authority (appointing constitutional officer). 5 ILCS 430/20-50(a). If the executive inspector general desires to file a petition for leave to file a complaint with the Commission, he or she notifies the Commission and the Attorney General within 30 days after the delivery of the summary report. 5 ILCS 430/20-50(c).

The executive inspector general, represented by the Attorney General, must file with the Commission a petition for leave to file a complaint within 18 months after the most recent act of the alleged violation or series of alleged violations except when there is reasonable cause to believe that fraudulent concealment has occurred. *Id.*

**RESPONSIVE FILING
DEADLINES:**

A respondent may file objections to the petition for leave to file a complaint within 30 days of service. 5 ILCS 430/20-50(e). If the respondent fails to object to the petition, a general denial of the facts set forth in the petition shall be considered filed. 2 Ill.Admin. Code §1620.470.

**INVESTIGATIVE
PROCESS:**

The executive inspectors general are authorized to investigate allegations of “fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of [the State Officials and Employees Ethics Act] or violations of other related laws and rules.” 5 ILCS 430/20-10(c). It is contemplated that the executive inspectors general will complete most of the investigation prior to filing a petition for leave to file a complaint with the Commission.

Executive inspectors general open an investigation file upon receiving a completed complaint initiation form. 2 Ill.Admin. Code §1620.330. In the absence of such a form, an investigation file may be opened if the executive inspector general reasonably believes that misconduct may have occurred within his or her jurisdiction. *Id.*

DISCOVERY:

No discovery is permitted without leave of the Commission other than what is described below. Parties are encouraged to voluntarily exchange information. 2 Ill.Admin. Code §1620.490(a).

At least two weeks prior to a scheduled hearing or at another date determined by the Chair of the Commission or an administrative law judge, if any, each party must file with the Commission and disclose to the other party the names of all witnesses expected to testify at hearing, a summary of the witnesses' expected testimony, copies of all documents expected to be introduced into evidence at the hearing, a description of any physical evidence expected to be introduced at hearing, and any known evidence that tends to negate the allegations contained in the complaint. 2 Ill.Admin. Code §1620.490(b).

Physical evidence expected to be introduced into evidence by either party at hearing shall be described and made available to the other party for inspection at least two weeks prior to a scheduled hearing or at another date determined by the Chair or an administrative law judge. 2 Ill.Admin. Code §1620.490(c).

Writings or electronic recordings reflecting the prior statements of an identified witness shall be filed with the Commission and shall be produced to the opposing party no later than one week before hearing or at another date determined by the Chair or an administrative law judge. 2 Ill.Admin. Code §1620.490(d).

The Chair and the administrative law judge, if any, shall have the authority to issue subpoenas to compel the presence of witnesses and the production of documents and other items. 2 Ill.Admin. Code §1620.500. The party requesting the subpoena is responsible for its service in accordance with the Illinois Code of Civil Procedure, 735 ILCS 5/1-101, *et seq.*, and shall bear all costs, witnesses' fees, and mileage. 2 Ill.Admin. Code §§1620.500(d), 1620.500(e).

HEARING TIMELINES:

After service of the petition and complaint on the respondent, the respondent has 30 days to file any objections. 5 ILCS 430/20-50(e). The Commission meets in a closed session to review the sufficiency of the complaint. 5 ILCS 430/20-50(f). If the Commission deems the complaint to sufficiently allege a violation of the Act, the Commission will grant the petition for leave to file the complaint and schedule a hearing date within four weeks, unless all of the parties agree to a later date. *Id.*

**FORMAL/INFORMAL
HEARING PROCESS:**

Formal.

PARTICIPANTS:

The executive inspectors general are the petitioners and are represented by the Office of the Attorney General. The respondents are employees of the executive branch of state government and may be represented by counsel.

HEARING LOCATIONS: As determined by the Chair or administrative law judge, if any.

**HEARING
PROCEDURES:**

The Chair presides over all hearings unless, at the election of the Commission, the Commission designates an administrative law judge to act as a hearing officer. 2 Ill.Admin. Code §1620.520(a). Either party may petition the Commission for disqualification of the administrative law judge or a commissioner for bias or conflict of interest. *Id.*

Hearings are closed to the public (5 ILCS 20-50(g)) and are conducted in accordance with the contested case provisions of Article 10 of the Illinois Administrative Procedure Act, 5 ILCS 100/10-5, *et seq.* 2 Ill.Admin. Code §1620.520(c). At the close of the hearing, the Chair or the administrative law judge may set a briefing schedule. 2 Ill.Admin. Code §1620.520(d).

RELIEF AVAILABLE: The Commission determines whether the Executive Inspector General has shown by a preponderance of the evidence that the employee in question has violated provisions of the State Officials and Employees Ethics Act.

**AUTHORITY TO
SANCTION:**

See 5 ILCS 430/20-55.

FINES AND PENALTIES:

The Commission will issue, within 60 days after the hearing or after briefs are due, a written decision that includes a description of the alleged misconduct, the decision of the Commission including any fines levied and any recommendation for discipline made to an agency head or constitutional officer, and the reasoning for that decision. 5 ILCS 430/20-55(a); 2 Ill.Admin. Code §1620.530.

The Commission is authorized to impose administrative fines of up to \$5,000 against any person who violates the State Officials and Employees Ethics Act, who intentionally obstructs or interferes with an investigation conducted under the Act by an inspector general, or who intentionally makes a false, frivolous, or bad-faith allegation. 5 ILCS 430/50-5(e).

APPEAL PROCESS:

A decision of the Commission to impose a fine is subject to judicial review under the Administrative Review Law. All other decisions are final and not subject to review either administratively or judicially. 5 ILCS 430/20-60.

PRECEDENT:

None at this time.

EXECUTIVE ETHICS COMMISSION
Revolving Door Prohibition Waivers

- TOPIC:** Waiving the revolving door prohibition set out in 5 ILCS 430/5-45.
- The revolving door prohibition provides that state officers and employees who, within the year prior to termination of state service, either participated personally and substantially in a decision to award contracts with a cumulative value of over \$25,000 to a prospective employer, or its parent or subsidiary, or made a regulatory or licensing decision that directly applied to the prospective employer, or its parent or subsidiary may not accept employment or receive compensation from that prospective employer, or its parent or subsidiary for one year following the officer's or employee's termination of state service. Their spouses and immediate family members living at home may not accept such employment or compensation either. 5 ILCS 430/5-45.
- JURISDICTION:** The Commission has jurisdiction to waive the requirements of the revolving door prohibition for employees of the executive branch. 5 ILCS 430/5-45(c).
- STATUTE:** 5 ILCS 430/5-45 (State Officials and Employees Ethics Act)
- RULES:** 2 Ill.Admin. Code §1620.600, *et seq.*
- OFFICES:** Executive Ethics Commission
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Springfield, IL 62706
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- WEB SITE:** www.eec.illinois.gov
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- COMMENCEMENT OF PROCEEDINGS:** Officers and employees of the executive branch who seek a waiver of the revolving door prohibition (requestors) must file a verified petition seeking a waiver with the Executive Ethics Commission and two verified statements in support of the waiver. 2 Ill.Admin. Code §1620.610.

**CONTENTS OF
PETITION:**

The verified petition should describe in detail the officer's or employee's involvement in the decision to award contracts to the prospective employer or source of compensation (source) or the regulatory or licensing decisions related to the source. It should provide the dates of the officer's or employee's involvement in these decisions and the date that the requestor and the source first began discussing or negotiation a relationship, as well as any other relevant information. 2 Ill.Admin. Code §1620.610(a).

**CONTENTS OF
SUPPORTING
STATEMENTS:**

The requestor must file at least two verified statements that support the waiver. One must be from the agency's ethics officer and state that the ethics officers has read the requestor's petition, has made diligent inquiries into the underlying facts and circumstances surrounding the petition, believes the statements made in the petition are true and complete, and knows of no reason why the Commission should not grant the requestor's petition. 2 Ill.Admin. Code §1620.610(b)(1). A second statement must be from the source and state that an authorized representative has read the petition, that to the best of the source's knowledge the statements made in the petition are true and complete, and that the source knows of no reason why the Commission should not grant the requestor's petition. 2 Ill.Admin. Code §1620.610(b)(2).

**FORMAL/INFORMAL
HEARING PROCESS:**

Informal.

PARTICIPANTS:

The Commission expects that most requests will be decided without a hearing. If a hearing is required, the Commission may seek oral testimony from the requestor or from other persons. 2 Ill.Admin. Code §1620.620(d).

HEARING LOCATIONS:

As determined by the Chair or administrative law judge, if any.

STANDARD OF PROOF:

The requestor must show that the officer's or employee's involvement in the decision to award any state contract to the source, or the officer's or employee's involvement in a regulatory or licensing decision that directly applied to the source, was not affected by the requestor's prospective relationship with the source. 5 ILCS 430/5-45(c); 2 Ill.Admin. Code §1620.620(a).

RELIEF AVAILABLE:

The Commission may grant the petition, deny the petition, request additional written or oral testimony from the requestor or other persons, conduct further inquiry, or determine that the

revolving door prohibition does not apply. 2 Ill.Admin. Code §1620.620.

APPEAL PROCESS:

None

PRECEDENT:

None at this time.