



# FREDERICK COUNTY GOVERNMENT

Jan H. Gardner  
County Executive

## FREDERICK COUNTY ETHICS COMMISSION

Office of the County Attorney

Brian Duncan, Chair

### FREDERICK COUNTY ETHICS COMMISSION STANDARD OPERATING PROCEDURES

#### I. Background

State law requires all Maryland counties to adopt public ethics laws related to conflicts of interest, financial disclosure and lobbying. The local conflict of interest and financial disclosure provisions for appointed officials and employees must be “similar” to the State Ethics Law, while the conflict of interest and financial disclosure provisions for elected officials must be “equivalent to or exceed” the State’s requirements for State officials. The local lobbying provisions must be “substantially similar” to the State law.

The Frederick County Ethics Commission was established in 1982, when the first Frederick County Ethics Law was enacted. The current Ethics Law is located in Chapter 1-7.1 of the Frederick County Code. (The Ethics Law may also be found on the County’s website at <https://www.frederickcountymd.gov/DocumentCenter/Home/View/1618>.)

The Commission is made up of seven members and an alternate, all of whom are appointed by the County Executive for three-year staggered terms, subject to confirmation by the County Council. Members may not serve more than two full consecutive three-year terms. The Commission elects its own chairman.

Except as provided in Section V.F.4., the Commission will decide all matters by a majority vote. If one of the members is absent or does not participate in the matter before the Commission, the alternate will vote in the member’s place.

#### II. Commission Responsibilities

The Ethics Law gives the Ethics Commission the following responsibilities:

- A. To devise, receive and maintain all forms required by the Ethics Law.
- B. To develop procedures and policies for advisory opinion requests, including the reconsideration of advisory opinions, and provide published advisory opinions to persons subject to the Ethics Law as to the applicability of the Law to them.
- C. To develop procedures and policies for the processing of complaints and to make determinations regarding complaints filed by any person alleging violation of the Ethics Law.
- D. To conduct a public information program regarding the purposes and application of the Ethics Law.

- E. To issue an annual report of compensation and spending in connection to lobbying activity by registered lobbyists.
- F. To certify by October 1 of each year to the State Ethics Commission that the County is in compliance with the requirements of State law for local elected officials.
- G. To make recommendations for changes to the Ethics Law when needed in order to comply with the State Ethics Law.
- H. To develop policies and procedures as needed to assist in implementing the Ethics Law.
- I. To request funds for outside counsel and other services, as required.
- J. To approve spending budgeted funds upon approval by a majority vote of the Commission.
- K. To provide required annual training on the Ethics Law.

III. County Attorney's Office Responsibilities

- A. To appoint an attorney to serve as the Commission's legal advisor.
- B. To serve as the repository for the Commission's records and files.
- C. To distribute and collect financial disclosure forms.
- D. To prepare minutes of Commission meetings.
- E. To maintain and keep the Commission's web site current.
- F. To conduct such investigations and preliminary inquiries as may be needed by the Commission where a majority of the Commission agrees that there is not an organizational conflict of interest.
- G. To advise the Commission when outside counsel or other services are needed.

IV. Requests for Advisory Opinions and Requests for Exemptions

- A. The Ethics Commission issues Advisory Opinions to provide guidance on compliance with the requirements of the Ethics Law. Requesting an Advisory Opinion helps a person to determine whether a contemplated action would violate the Ethics Law or create the perception of a violation. Advisory Opinions are issued in advance of the action and provide guidance on how to comply with the Ethics Law. This differs from a Commission decision on a complaint, which

looks at conduct that has already occurred and determines whether there has been a violation of the Ethics Law. For example, an Advisory Opinion may be issued in response to a request from an employee or supervisor and is intended to serve as a guide to the persons immediately affected, as well as to others who may face similar questions in the future. The Ethics Commission may also issue Advisory Opinions as an alternative to formal enforcement action. (The enforcement options available to the Ethics Commission are found in §1-7.1-10 of the Ethics Law.)

- B. Requests are generally directed to the legal advisor.
- C. Requests should be made in writing. The request should contain the person's name, signature, home and email addresses, telephone numbers, and a statement of the facts and circumstances giving rise to the request.
- D. The legal advisor will circulate each request to the members of the Commission, including the alternate member. Upon receipt of notice that a request has been received, each Commission member will promptly advise the legal advisor as to whether the request should be discussed at the next Commission meeting. The person making the request or other persons with information material to the request may be invited to meet with the Commission, at the Commission's discretion.
- E. When the Commission makes a decision on the request, it will issue a written Advisory Opinion. The person who is the subject of the request will not be identified in the opinion. Copies of the opinion will be given to the subject of the request and the person making the request. The Advisory Opinion will also be placed on the Commission's website and included in the Advisory Opinion binder maintained by the Office of the County Attorney.
- F. As an alternative to section E above, when a request presents facts and raises issues that have been addressed in a previously issued Advisory Opinion, the Commission may transmit the prior Advisory Opinion as an expedited informal response to the request.
- G. The name of the person who is the subject of the Advisory Opinion should remain confidential.
- H. Meetings to discuss the application of the Ethics Law to requests for exemptions and requests for Advisory Opinions will be considered as administrative function meetings under the State Open Meetings Act and, as such, need not be open to the public.
- I. Responses to requests should generally be provided within 90 days of receipt of the request. The time for a response to the request may be extended, if necessary.

- J. Requests for reconsideration of an advisory opinion will only be accepted when the person requesting the reconsideration provides material and substantive new facts or circumstances to support the request.

V. Complaints

The Ethics Commission only has the jurisdiction to consider violations of the specific provisions of the Ethics Law and Public Ethics Law. General allegations that conduct is “unethical” cannot be considered unless the conduct would constitute a violation of the law itself.

- A. Filing of complaints. Any person, including the Ethics Commission on its own motion, may file a complaint with the Ethics Commission. Such complaints must:
  - 1. Be against an official, employee, or lobbyist under the jurisdiction of the Ethics Commission and allege facts that would support a reasonable person in concluding that a violation of the Ethics Law or Public Ethics Law has occurred.
  - 2. Allege a violation of the specific section or sections of the Ethics Law or Public Ethics Law either by:
    - a. Actual activities or decisions that present a conflict of interest.
    - b. Conduct or relationships that give the appearance of a conflict of interest or improper influence.
    - c. Conduct that may present a conflict of interest or improper influence.
    - d. Conduct or relationships that violate the financial disclosure or lobbying provisions of the Ethics Law, including failure to adequately complete forms.
    - e. Conduct that presents a violation of the Public Ethics Law.
  - 3. Be filed with the Ethics Commission in writing. The written complaint of violation must contain the name of the employee or official and set forth sufficient facts to substantiate the alleged violation. The complaint must specify the specific sections of the law that are alleged to have been violated. The complaint must also contain the name, address, and telephone number of the complainant.
  - 4. A complaint must be filed within two years after the date of the alleged violation.

5. A complaint filed must be signed and made under oath.
6. Complaints that fail to comply with these requirements will not be considered.
7. Evidence provided to the Ethics Commission outside of a signed complaint will be considered at the discretion of the Ethics Commission.

B. Processing complaints

1. Recording complaints

Once the Ethics Commission receives or initiates a complaint, it will be recorded in an appropriate confidential log under a unique file number.

2. Notice to the subject of the complaint

Upon receipt of a complaint or the initiation of a complaint by the Commission, the Commission will notify the subject of the complaint that a complaint has been made and will provide that person with a copy of the complaint. Where a referral for a possible criminal investigation is made before an investigation is started, however, notice will not be given to the subject of the complaint until after the referral is resolved.

3. Notice of intent to proceed or dismissal

If a reasonable basis exists for a preliminary inquiry, the Ethics Commission will send written notice to the complainant and the subject of the complaint. The Ethics Commission may at any time dismiss a complaint if the Commission determines that it lacks jurisdiction or insufficient evidence is provided, and that no further action is warranted.

4. Action on allegations of criminal conduct

If the allegations in the complaint suggest that criminal conduct may have occurred, the Ethics Commission shall refer the matter to the appropriate agency for a determination as to whether a criminal investigation is warranted. Once a referral for possible criminal investigation is made, the Commission will not act on the complaint until the referral is resolved.

5. Investigating complaints

- a. Preliminary inquiry. A preliminary inquiry is the process by which a matter may be presented to the Ethics Commission for preliminary review to determine whether the matter should be processed as a complaint. The Ethics Commission, through any member of the Frederick County Attorney's Office, or any attorney or other individual engaged by the

Ethics Commission for the purpose of conducting investigations, may conduct a preliminary inquiry.

If the complaint does not allege facts sufficient to state a violation of the Ethics Law, the Commission may dismiss the complaint and will notify the complainant in writing. The Commission must inform the complainant of the reason for its decision to dismiss the complaint. The Commission may inform the subject of the complaint that the complaint was filed and dismissed, but must not disclose the identity of the complainant. If the matter does not qualify for further action, the disposition will be entered in the confidential log.

All information will be subject to the confidentiality provisions of the Ethics Law.

- b. Formal investigation
  - i. Complaints that are determined to have enough merit for further action will be investigated.
  - ii. Unless a conflict exists, such as when a complaint is made against an elected official, an investigation must be conducted by a member of the Frederick County Attorney's Office or any attorney or other individual engaged by the Ethics Commission for the purpose of conducting investigations. The Commission members must not actively participate in any investigations.
- c. An investigator acting under the authority of a duly issued subpoena by the Commission will serve or cause to be served the subpoena and instruct the person to comply with the provisions of the subpoena, which will usually be one or more of the following:
  - i. To respond under oath to written questions within 30 days.
  - ii. To produce verified copies of records within 30 days.
  - iii. On 15 days' notice, to attend a deposition to answer under oath questions asked by the investigator.

Upon refusal by any person to comply with any subpoena issued by the Commission, the investigator will refer the refusal to the Commission, which shall apply to a court of jurisdiction for a judicial order to comply.

6. After investigation, the results of investigations of complaints will be presented to the Ethics Commission. This report may contain provisions for a resolution of minor infractions, which have been agreed to by the subject of the complaint. The Ethics Commission may accept this resolution and no hearing need be scheduled. Upon resolution, the Ethics Commission will notify the complainant and the subject of the complaint in writing.
7. If the Ethics Commission determines that there is sufficient evidence that a violation of the ethics laws has occurred or is occurring and a resolution is not appropriate, a hearing will be scheduled. The subject of the complaint and the complainant will be notified in writing at least 30 days prior to the hearing date. The preliminary findings of the Ethics Commission will be forwarded to the subject of the complaint and complainant at the same time as notice of the hearing.
8. Hearings
  - a. The Ethics Commission will conduct hearings. A member shall declare to the Ethics Commission if a personal interest may present a conflict of interest or an appearance of such a conflict. A member who recuses himself or herself from the matter must not be present for any part of the hearing and shall not participate in any discussions or votes on the complaint. Hearings are not open to the public.
  - b. The subject of the complaint may request the Commission to issue subpoenas for witnesses and documents to the same extent that a party in litigation in state court would be entitled to a subpoena.
  - c. All hearings are administrative hearings and are therefore not subject to the strict rules of evidence. Latitude is available to the Ethics Commission in order to determine the true circumstances of the case and arrive at an appropriate conclusion. A hearing is closed to the public. However, the Commission may in its sole discretion open the hearing to the public if the subject of the complaint requests that the hearing be open.
  - d. Evidence and investigation results will be presented to the Ethics Commission by any member of the Frederick County Attorney's Office or any attorney or other individual engaged by the Ethics Commission for the purpose of conducting investigations.
  - e. The standard of review used by the Ethics Commission in determining whether a violation has occurred will be a preponderance of the evidence. The Commission may admit and give appropriate weight to evidence, including hearsay, that possesses probative value commonly accepted by reasonable and prudent persons.

- f. The Ethics Commission will make written findings of fact and conclusions based on evidence presented at the hearing. The opinion of the Ethics Commission will contain the alleged violations, the elements of the violations, the findings of fact by the Ethics Commission, action taken by the Ethics Commission, and the number of votes supporting and opposing the Commission's opinion. The Ethics Commission will send its written findings to the complainant and the subject of the complaint and post the opinion on the Commission's website.
- g. Written reports of investigations and all documentary evidence will be maintained by the Commission.
- h. All witnesses must swear or affirm to tell the truth prior to testifying.
- i. All hearings must be recorded. If it becomes necessary to have a reporter prepare a transcript of the hearing, the party making the request will bear the cost.
- j. If after a hearing the Commission finds that no violation of the Ethics Law has occurred, the Commission shall dismiss the complaint. If the Commission dismisses a complaint, the Commission must not release to the public the identity of the subject of the complaint, the complainant, or any witness.
- k. If the Commission finds a violation, it may issue sanctions as permitted by Section 1-7.1-10 of the Ethics Law.

C. Outside legal counsel

If any matter coming before the Commission presents an apparent conflict of interest on the part of the legal advisor due to the fact that the County Attorney is the attorney for the County Executive and the County Council and is employed by the County Executive, the Commission or the legal advisor must decide whether outside legal counsel is needed. If the Commission believes that an outside attorney is needed to advise the Commission, it will need to employ outside counsel for that matter.

D. Confidentiality

- 1. Once a complaint is filed or initiated by the Commission, the proceedings, meetings, and activities of the Commission and staff in connection with the complaint shall be conducted in a confidential manner. The Commission, its staff, and the parties should not disclose any information relating to the complaint, including the identity of the subject of the complaint or the person making the complaint.

2. The complaint remains confidential until the Commission finds that the Ethics Law has been violated, makes a referral under Section V.B.4 or refers the matter for prosecution.
3. If the Commission finds that there has been no violation of the Ethics Law, it will issue a written decision. The name of the individual who was the subject of the complaint will remain confidential and the person's name will not be included in the decision.

E. Right to legal representation and participation

1. Before making a decision adverse to the subject of the complaint, the subject of the complaint has the right to be heard by the Commission.
2. The subject of the complaint has the right to be represented by legal counsel in his meetings with the Commission and in any hearings conducted by the Commission. The subject of the complaint is responsible for payment of any legal fees associated with the attorney's representation.

F. Oaths and subpoenas

1. The Commission shall administer oaths to persons presenting testimony or evidence to the Commission.
2. The Commission may issue subpoenas to require any person to respond under oath to written questions and issue subpoenas for the attendance of witnesses to testify or to produce verified copies of records or other tangible objects. A sample subpoena and instructions for issuing, completing and processing the subpoena are attached as an Appendix.
3. The Commission should make every effort to obtain testimony or evidence from a party or other person or entity before issuing a subpoena.
4. A subpoena may only be issued upon the affirmative vote of six members after a majority of the Commission determine that a complaint has merit.
5. County officials, employees and other individuals are expected to comply with all subpoenas issued by the Commission.
6. A subpoena issued by the Ethics Commission may be judicially enforced.

G. Decisions

1. If the Commission decides to dismiss the complaint or makes a decision on the merits of the complaint, it shall give written notice of the dismissal

to the complainant and to the subject of the complaint. Decisions on complaints should generally be issued within 90 days of receipt of the complaint. The time for a decision on a complaint may be extended, if necessary, particularly when there is a referral to another agency. Written decisions shall be signed by the Chair or other designated member of the Commission.

2. If the Commission finds that the person who is the subject of the complaint has violated the Ethics Law, the written decision shall include findings of fact and conclusions of law for each violation alleged in the complaint. The name of the subject of the complaint must also be included in the Commission's written decision. The decision is a public record that must be posted on the Ethics Commission's website.
3. If the Commission finds that the person who is the subject of the complaint has violated the Ethics Law, it may take such steps as allowed in the Law.
4. Where a violation is found, a copy of the decision shall be sent to the County Executive, the County Council and the Chief Administrative Officer.

#### VI. Financial Disclosure Forms

- A. The financial disclosure forms are drafted by the legal advisor to the Commission and approved by the Commission members.
- B. The County Attorney's Office sends the annual financial disclosure forms out around April 1 of each year to the officials and employees designated in the Ethics Law.
- C. The annual financial disclosure forms are to be completed and returned to the County Attorney's Office no later than April 30. The County Attorney's Office will send reminders and notify the supervisors of the persons who have not returned their forms, as deemed necessary. The Commission may assess a late fee of \$2 per day up to a maximum of \$250 for failure to timely file a financial disclosure statement.
- D. The Commission will review the completed financial disclosure forms and take appropriate action based on the information contained in the forms. The Commission may ask the legal advisor to obtain additional information if the information provided is incomplete, unclear or raises questions under the Ethics Law.

VII. Guidelines For Use in Conflict of Interest Situations

The following guidelines will be used in making decisions on conflict of interest questions brought to the Commission:

- A. Except where a direct financial gain can be identified or a direct employer-employee business relationship or a family relationship exists, as defined in the Ethics Law, the Commission will not view indirect relationships as de facto conflicts of interest. The Commission will, however, consider the evidence presented when personal gain is alleged.
- B. Officials are expected to “read their hearts” prior to becoming involved in a hearing or voting on a case. If the official recognizes that he cannot render a fair and impartial decision based on the facts presented, he should remove himself from the case.
- C. If the official recognizes a conflict, or the appearance of a conflict, the official should state this conflict before the hearing and physically remove himself from the hearing room and avoid discussion of the case with fellow officials until a decision is made.

VIII. Educational Efforts

A short summary of the Ethics Law appears in an appendix to the Personnel Rules handbook given to all employees. In addition, opinions and decisions of the Commission appear on the Commission’s web site, as do the minutes of Commission meetings. Other programs are also offered as the Commission deems appropriate.

IX. Role of Alternate Member

- A. The alternate will attend Commission meetings and may participate fully in Commission discussions, subject to the limitation in subsection IX.B.
- B. The alternate shall not vote unless one of the regular members is not present or is otherwise unable to vote.

Adopted on this 10th day of August, 2016.

  
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Brian Duncan, Chair

**SUBPOENA**

**FREDERICK COUNTY ETHICS COMMISSION**  
**Brian Duncan, Chair**

To

*You are hereby required to appear before*  
*of the Frederick County Ethics Commission at*  
*in the County of*

on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock a.m. /p.m. of that day, to :

- respond under oath to written questions;*
- produce verified copies of records;*
- attend a deposition to answer questions under oath.*

*This investigation is being conducted pursuant to § 1-7.1-4(B) of the Frederick County Code and in order to determine whether any person has violated the Frederick County Ethics Law or the Public Ethics Law;*

*And you are hereby required to bring with you and produce at said time and place the following records and/or answer the following questions:*

*This subpoena has been issued pursuant to an affirmative vote of six members of the Ethics Commission upon a finding that an ethics complaint has merit. Failure to comply with the subpoena will be judicially enforced. This subpoena must be served within 60 days after its issuance and may not be served thereafter.*

**In testimony whereof I have hereunto affixed my signature**  
at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
*Chair, Frederick County Ethics Commission*

**Return of Service**

*I hereby certify that the original of the within subpoena was duly served on the person named herein.*

(Check method used)

- in person*
- by certified or registered mail*
- other (specify) \_\_\_\_\_*
- by leaving at principal office or place of business, to wit:*

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on \_\_\_\_\_  
(Month, day, year)

\_\_\_\_\_  
(Name of person making service)  
\_\_\_\_\_  
(Official Title)

## **Instructions for Issuance of Subpoenas by Ethics Commission**

- I. Subpoenas are authorized and issued as follows:
  - A. The Commission may:
    - 1. Issue subpoenas to require any person to respond under oath to written questions.
    - 2. Issue subpoenas for the attendance of witnesses to testify or to produce verified copies of records or other tangible objects.
  - B. County officials and employees and other individuals are expected to comply with all subpoenas from the Ethics Commission.
  - C. A subpoena may be issued by the Commission upon the affirmative vote of six members after a majority of the Commission determines that a complaint has merit.
  - D. A subpoena issued under this subsection may be judicially enforced.

### II. Authorization

- A. The Commission must have opened, either by complaint from an outside person or on its own volition, a complaint that the Commission deems to have merit.
- B. The Commission must authorize a subpoena by vote of no less than six of its members.

### III. Issuance

The Commission's legal advisor, either from the County Attorney's Office or outside legal counsel to the Commission, will prepare the subpoena. The subpoena should be completed as follows:

- A. **COMPLAINT NUMBER**  
Fill in the case number assigned to the complaint
- B. **TO**  
Enter the name and address of the individual or entity to whom the subpoena is directed.
- C. **TO APPEAR BEFORE**  
Enter the name of the person or the Ethics Commission, before whom the individual or entity receiving the subpoena is required to appear.
- D. **AT**  
Enter the address where the recipient is required to attend.
- E. **ON THE**  
Enter the date and time the recipient is required to appear.
- F. **TO**  
Check one or more of the boxes to respond to written questions, produce records, or attend a deposition.

G. AND YOU ARE HEREBY REQUIRED

If necessary, enter a list of the records to be brought or the questions that must be answered.

H. AFFIX

The subpoena will be signed by the Commission's Chair. In the event that the Chair is not available or has decided not to participate in the matter before the Commission, the Vice Chair will sign the subpoena.

IV. Service

The subpoena must be served within 60 days after its issuance and may not be served thereafter.

V. Return of Service

Complete this section when service has been effected. The person serving the subpoena will check the block certifying how the subpoena was served. This person will also provide the date that the subpoena was served, his or her name, and official title.

A. Service of the Subpoena

The original subpoena is served on the subject and the County Attorney will maintain a completed copy.

B. Service by Mail

1. Normally, subpoenas will be served by certified or registered mail, return receipt requested. Unless the Commission determines otherwise, service should be arranged, when reasonably possible, by prior phone conversation. Service may also be arranged through the recipient's attorney.
2. If the subpoena is being served on an individual, mail delivery should be restricted to that individual. In all cases, a letter should accompany a subpoena. The file copy of the letter accompanying the subpoena should note the specific number of the certified or registered letter for evidence that it related to the specific subpoena. When service is complete, the second box of the return of service should be checked and a copy of the return receipt should be kept with the copy of the subpoena.

C. Service in Person

Where it proves impractical or impossible to serve the subpoena on an individual by mail, it may be served personally, although a copy should also be sent by mail. Personal service is complete when the subpoena is delivered directly to the subject, is left at the subject's residence with a person of suitable age and discretion residing there fulltime, such as a spouse, or is left with the person in charge at the office or place of business of the recipient.

August 10, 2016