

INTERNAL CONTROL PROCEDURES

COMPLAINT INTAKE AND MANAGEMENT FOR INVESTIGATIONS

Objective: To ensure that all complaints received by the Commission regarding possible violations of the Public Officers Law, the Legislative Law, and the Civil Service Law are appropriately documented, managed, and tracked and that the appropriate procedures and actions are taken.

Complaints:

A. Sources

The Commission receives complaints in the following sources/formats: mail, phone, tip line/hotline, email, referrals from government entities, media, walk-ins, and JCOPE initiated, including referrals from other units of JCOPE. Telephone and walk-ins will immediately be reduced to writing utilizing the "intake complaint form."

B. Complaints Intake and Case Adoption

1. Entering Matters into the Case Management System
 - a. The Investigations Division will immediately log in and assign a sequential case number to each complaint in the Case Management System ("CMS"), with the exception of JCOPE initiated matters.
 - b. "complaint" means any communication that alleges a possible violation of law under the Commission's jurisdiction or which requires further examination to so determine.
 - c. Matters that are JCOPE initiated are logged in at the discretion of the Director of Investigations and Enforcement ("Director").
2. CMS records the following information: complaint number, date of complaint, name of complainant, name of subject, nature of subject, summary of the allegations, defense counsel information, status of the case, law (POL/Lobby), notes, case assignment (counsel and investigator names), firewall attorney, and all recusals;
 - a. defense counsel information and recusals shall be recorded at the time identified.
 - b. firewall attorney shall be recorded at the time a 15 day letter is sent.
 - c. date of significant events including, but not limited, to: 15 day, presentation of a scope of investigation, Commission votes, Notice of Substantial Basis Investigation and Hearing, hearing, SBIR, or any presentation to the Commission; settlement; and if closed, reason for closure.
 - d. CMS records are confidential. The Executive Director, Director of Investigations and Enforcement, Chief Investigator and Principal Investigative Analyst have access to all CMS records and Director of Investigations and Enforcement has read/write access to all CMS records. Otherwise, other attorneys and investigators have access to only the cases he/she is assigned to.

3. Generally, an acknowledgement letter will be generated and mailed to the complainant. For the complaints received by the tip line, an auto-reply message has been formulated acknowledging the receipt of the complaint. For emailed complaints acknowledgement may be in the form of a reply email. The following exceptions apply:
 - a. anonymous tips, walk-ins to include personal delivery of a complaint, conversations with the complainant whether in person or on the phone;
 - b. DOCCS inmate complaints; these will be compiled together and forwarded to the DOCCS Office of Special Investigations on a weekly basis.
 - c. Complaints against judges of the New York State Unified Court system. A letter describing the jurisdiction of the Committee on Judicial Conduct will be sent to the complainant when contact information was provided.

4. There are three categories to identify the status of a case in CMS:
 - a. “open”: matters where the Commission commenced an investigation
 - b. “pending”: matters that are under review or those where a 15-day letter has been sent
 - c. “closed”: those matters that were referred, were resolved through decision or settlement, in which a guidance letter was sent, or were closed by staff or the Commission

5. With the exception of JCOPE initiated matters, upon receipt of a complaint, the investigative staff will immediately “triage” the complaint and determine the following:
 - a. whether it meets the criteria of a Sworn Complaint.
 - i. “Sworn Complaint” is a notarized complaint that alleges conduct under the potential jurisdiction of the Commission. Thus, allegations for actions which do not, under any interpretation, amount to a violation of the laws enforced by the Commission or against an individual(s) who is not subject to the law enforced by the Commission is not a “Sworn Complaint.”
 - b. whether it constitutes a formal agency referral (“Referral”)
 - i. a Referral is one where the agency has conducted a full investigation, made written findings (i.e. issued a report), and explicitly “referred” the matter to JCOPE
 - ii. the statutory time period is triggered for a Referral, therefore, Commission staff shall present the matter to the Commission within sixty (60) days of the receipt of the Referral for a Commission vote on whether to open an investigation or allow Commission staff leave to re-present the matter upon obtaining more evidence
 - iii. the statutory time period is not triggered when an agency reports or forwards information to JCOPE for consideration
 - c. whether it relates to elected officials, heads of agencies, or other high profile matters

6. Matters that meet any of the above criteria are elevated and must be brought to the attention of the Director and the Executive Director, as soon as practical and no later than at the next Investigations meeting which occur on a weekly basis between the Investigations Unit, Executive Director, General Counsel and Deputy General Counsel.
7. Matters that do not meet the criteria as described in the “triage” process will be reviewed on a weekly basis by the investigative staff with the Director. This review process will determine if the complaint identifies a potential violation of law under the Commission’s jurisdiction and/or if it warrants further inquiry.
 - a. Matters that warrant further inquiry and/or investigation are brought to the attention of the Executive Director to discuss next steps.
 - b. Matters that do not fall under the Commission’s jurisdiction but fall under the jurisdiction of a different agency are brought to the attention of the Commission for authorization to refer to that agency, with the exception of a standing authorization to refer matter to DOCCS.
 - c. In certain instances, the matter may be closed on its face after the “routine review.” The investigative staff shall have the authority to close those complaints on their face that do not allege a violation of law under the Commission’s jurisdiction (ie: election law violations, ethics complaints about local officials, wrongful imprisonment, etc.), or where the Commission has no jurisdiction over the subject.
8. For matters that are entered into CMS, the subject will be added to the Lobbying and FDS audit draw hold list, when appropriate.
9. An electronic case folder will also be created for each complaint entered into CMS and placed on the “G” drive within the “Investigations” folder. The electronic folder will be identified by the name of the person or entity targeted in the complaint and case number.
10. Documents received in hard copy will be scanned and added to the “G”drive folder.

C. Investigation Process

1. Once a determination has been made that there may be a violation of law under the Commission’s jurisdiction, the file will be assigned to an investigator. For all matters other than Lobbying Division referral matters, the investigator assigned is responsible to fill out and maintain the “case status sheet.” The case status sheet includes basic background information on the allegations and parties, procedural background, and any other relevant information. In certain instances, in the discretion of the Director, the case sheet may be waived. The attorney and/or investigator assigned is also responsible for tracking all timelines such as the issuance of the 15-day letter, Commission votes, scope of investigation, Notice of Substantial Basis Investigation and Hearing, SBIR, and any presentations to the Commission.

2. Prior to the Commission authorizing a formal investigation, the investigative activity is generally limited to open source research and follow-up communications with the complainant. However, the Commission may consider additional action, including issuing a subpoena pursuant to Executive Law § 94(17)(c).
3. In accordance with Executive Law § 94(13(a)), if the commission receives a Sworn Complaint alleging a violation of Public Officers Law §§ 73, 73-a, 74, Civil Service Law § 107, or Article 1-A of the Legislative Law by a person or entity subject to the jurisdiction of the Commission including members of the legislature and legislative employees and candidates for member of the legislature, or if a reporting individual has filed a statement which reveals a possible violation of these provisions, or if the Commission determines on its own initiative to investigate a possible violation, the Commission shall notify the individual in writing, describe the evidence and possible or alleged violation of such laws and provide the person with a fifteen day period in which to submit a written response setting forth information relating to the activities cited as a possible or alleged violation of law.
4. The Commission shall, within sixty calendar days after a Sworn Complaint or a Referral is received (regardless of whether a 15-day letter is sent), or if an investigation is initiated on the Commission's own initiative by sending a 15-day letter, vote on whether or not to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred. The Commission shall, within sixty days of receipt, be informed of complaints which are notarized but do not alleged a violation of law under the Commission's jurisdiction, and, as such, are not "Sworn Complaints."
5. Upon the issuance of a 15-day letter, the staff of the Commission shall provide to the members prior to such vote information regarding the likely scope and content of the investigation, and a subpoena plan, to the extent such information is available. For all matters, the Commission can vote not to commence a substantial basis investigation with leave to represent and direct staff to send a 15-day letter or authorize other action to gather more information, or the Commission can vote to close a matter. The voting requirements under the Executive Law § 94 apply to all investigative matters.
6. When the Commission is ready to proceed with a hearing, the Commission shall provide the respondent with a Notice of Substantial Basis Investigation and Hearing within the statutory time limits in accordance with the regulation in Part 941.
7. Voting requirements remain the same upon issuance of the 15-day letter. The same voting requirements apply throughout the investigation and enforcement proceeding as determined by the status of the respondent when the 15-day letter was issued. For example, the special voting requirement for legislative members applies even if the respondent leaves elected office after the issuance of the 15-day letter.

8. Jurisdiction of the LEC pursuant to Executive Law § 94 (14-a). The LEC's jurisdiction is dependent on the status of the respondent when the conduct in question took place. LEC has jurisdiction over current members, employees, and candidates of the Legislature. With respect to former members and employees, the LEC's jurisdiction depends on the status of the respondent when the conduct in question took place, with the exception of post-employment violations under POL 73(8)(a)(iii). LEC maintains jurisdiction regardless of whether special voting requirements for legislative members, employees, and candidates apply to respondents.
9. On a bi-monthly basis, the Chief Investigator and the Director will conduct a case review of all complaints that are deemed "open" or "pending." It will be the responsibility of the individual attorney and investigator assigned to individual complaints to ensure that the Chief Investigator and the Director are apprised of any new developments.
10. When a case is closed, the investigator/attorney assigned to the case will note the reason for the closure in CMS. The Director will then confirm the closing of the case in CMS. A closing memorandum may be prepared on a case by case basis and noted in CMS.

D. Retention and Purging of Records

1. Where there are hard copy documents pertaining to a case, those documents will be maintained in a room that is locked and provides limited access to specific staff members.
2. After ten years from the year the matter was entered into CMS, the case files are handed over to the Administrative Officer for secure disposal, except that the master copy of the report of investigation with attachments, together with the Substantial Basis Investigation Report, if issued, and hearing or settlement documents, shall be retained for reference purposes in the archives shelves in the investigations file room.

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